Historical Introduction to The Annotated Constitution of the Australian Commonwealth

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Final Checking and Parsing
Part I. Ancient Colonies.
(1) Hellenic City-States.

COLONIES AND PLANTATIONS. — The terms "Colony" and "Plantation" were originally applied to English settlements abroad, or small communities of English subjects established in foreign parts, principally for the purpose of raising produce. They were never extended to English dominions in Europe, such as Dunkirk, Toulon, and Calais, whilst those places belonged to the kingdom, nor were they, nor are they at the present time used in reference to Jersey or Guernsey, or other islands in the English Channel. For some years the terms colony and plantation were used indiscriminately. In the reign of Charles II. "Colony" came into general use, to denote the relation of dependence in which American Plantations stood to the Crown. A colony then came to mean a plantation which had a Governor and civil establishment subordinate to the mother country. In the statute 7 and 8 William III. c. 22, declaring void Colonial Laws repugnant to English Law applicable to the colonies, and in the Navigation Acts afterwards passed, the two names are used without distinction. — Petersdorff's Abridgment, vol. V., p. 540.

In connection with a new instrument of Government which marks the transition from the colonial system planted in Australia over one hundred years ago to a new order of things, a higher and more complex political organization, a larger measure of self-government, and a more matured social development, it will be fitting to draw attention to the origin and growth of British colonies, and to some of their leading characteristics and achievements, and to compare them with the colonies of antiquity with which they in some respects agree, but from which they in more respects differ. They agree in having, like the older types, sprung from a parent stock, but they differ materially in the circumstances and motives which led to their establishment, in their primary structure, and in their relations with the mother country, as well as in their career and progress.

GREEK COLONIES. — Various tribes and divisions, of which the ancient Hellenic race was composed, participated in the settlements known as Greek colonies. The causes which led to these migrations were the pressure of population on the means of subsistence within the narrow limits of crowded cities; internal dissensions consequent on class domination and party faction; and a love for maritime exploration and discovery.

Among the first recorded of these settlements were the Ionian colonies. After the death of Codrus (B.C., 1100, according to the early legends of Greek history), Ionian adventurers sailing eastward and northward from Attica, established themselves in that part of Asia Minor along the shores
of the Aegean sea from Phocaea to Miletus. Twelve cities were built, the principal of which were Ephesus and Miletus. They were severally independent of the States from which their founders had emigrated, but they formed a mutual association for common purposes known as the Ionic Confederacy. From this new centre expeditions went forth and planted commercial emporiums on the shores of the Black Sea, including one from Miletus which established Sinope, the greatest and most important of the colonial stations fronting the Euxine. Trepezus (Trebizond) was afterwards settled from Sinope.

Whilst the Ionians were thus engaged, another body of Greeks, Aeolians, proceeding from Thessaly and Boeotia, founded Aeolian colonies on the northern islands of the Aegean sea, and on the northern part of the western coast of Asia Minor. They also were united in a confederacy of twelve cities, called the Aeolian Confederacy, the chief of which were Lesbos and Tenedos.

In like manner the DORIANS, another Hellenic tribe, settled in the southern islands and in the southern part of the western coast of Asia Minor. Six of these cities formed themselves into the Dorian Confederacy. In 658 B.C., Greek emigrants from Megara established a colony at Byzantium, commanding an entrance to the Euxine, which grew into an important centre, and in after ages became Constantinople. The DORIANS and other Greeks sailing along the Mediterranean westward and southward from their central home reached Sicily, Italy, Gaul (South France), and even Africa; planting in Sicily, Syracuse and Agrigentum, two of the most splendid cities of the ancient world; in the forked peninsula of Italy, cities such as Tarentum, Sybaris, Croton, Metapontum, Rhegium, Cumae, and Neapolis (Naples), in which Greek civilization became so advanced and the colonists so numerous that Lower Italy was known as Graecia Magna or Great Greece; in the south of Gall, Massilia (Marseilles), which for centuries was one of the most important commercial centres of the Mediterranean; and on the northern shore of Africa, between the Nile and Carthage, Cyrene, occupying a fine maritime situation which developed into a city rivalling the Phoenician capital in wealth and splendour.

The very name "Apoikia," by which these primitive communities were known, indicated their true character and origin. A Greek colony was not a mere plantation retaining its connection with the parent state from which its pioneers had emigrated; it was literally a going-away-from-home, a parting, a complete separation. These colonial groups went away from their old city-states, like swarms from old hives, to cluster in new hives, to cultivate new lands, to found new cities, to establish new centres of trade and commerce. Following, in their tiny ships, the ebbs and flows of the
great tidal sea, they, for the most part, clung to its coastal regions. They explored what was to them a new world of strange waters, and here and there on the narrow fringes of the seaboard they made camps which grew into towns and bustling cities, pulsating with new life and new energy. The situations selected afforded convenient sites within communication, by sea, with their ancient seats, and at the same time they were accessible to an avenue of retreat from the invasions of barbarous hordes, should they emerge from the interior.

Greek colonization was not promoted by state-aid or state-patronage. It was in some instances prosecuted in spite of the opposition of Greek cities, from which the migrating swarms went forth. From small beginnings these insignificant groups, whilst preserving the laws, customs, and institutions of their mother-cities, which they regarded with respect and reverence, grew in power, influence, and importance, and became autonomous political communities. With one or two exceptions each of them enjoyed the unfettered right of self-government. Until they became subject to local despots, or were crushed by foreign conquest, the people of each colony exercised perfect freedom in the management of their own affairs; they appointed their own leaders and magistrates, and, even in their foreign relations, they were independent of their mother-city; they could declare war and make peace with her public enemies. In every respect, therefore, these small Greek societies were free and sovereign commonwealths, having the obligation to maintain that freedom and sovereignty against external attacks, by their own prowess and with their own resources. They owed no allegiance to any distant hereditary king, nor were they under subjection to any political state except their own. The mother-cities from which they had migrated regarded them as emancipated children over whom they exercised no direct authority or jurisdiction; guaranteed them favours and assistance in times of difficulty and danger, and expected nothing in return except filial respect and gratitude.

In the course of time some of these Greek colonies equalled if they did not surpass the mother-cities in wealth, population, art, philosophy and poetry, and in all the achievements of culture and civilized life. The only ties tending to draw them together in sympathy were those of common language, common religion and common blood; vital forces which seldom fail to yield tremendous results in the history of mankind. This community of sentiment led in some instances to something like a federal union between the original states and their colonial offshoots; such as the defensive league between Imperial Athens and the powerful Ionian cities of the Aegean sea and Asian shore, known as the Confederation of Delos. — Adam Smith's Wealth of Nations, pp. 249, 252, 454. Conversations
Lexicon, vol. VI., p. 768.

"The Greek colonist, citizen of a city, planted a city. Severed from his native city, severed perhaps by such a world of waters as that which parts Euboia from Sicily or by such a wider world of waters as parts Phokaia from Gaul, he could no longer remain a citizen of his own city; he could no longer discharge the duties of citizenship on a distant spot; he could no longer join in the debates of the old agorë; he could no longer join in the worship of the old temple; but he must still have some agorë and some temple; he must still have a city to dwell in, a city in which still to dwell the life of a free Greek, when he could no longer live that life in the city of his birth. So he planted a city, a free city, a city that knew no lord, that knew no ruling city, a city furnished from the first with all that was needed for the life of a Greek commonwealth, a city free and independent from its birth. And he dwelled in the new city as he once dwelled in the old; he gave himself to make the new worthy of the old, the daughter worthy of the mother. But did he thereby deem that he had ceased to be a Greek? Did he deem that he had severed himself from Greece? Did he even deem that he had broken off from all duty and fellowship towards the city from whence he had set forth? No; dwell where he might, the Greek remained a Greek; wherever he went he carried Hellas with him; in Asia, in Libya, in Sicily, in Italy, in Gaul, far away by the pillars that guarded the mouth of Ocean, far away in the inmost recesses of the In hospitable Sea, wherever he trod, a new Hellas, if we will, a Greater Hellas, sprang into being; on those new shores of Hellas he kept his old Hellenic heart, his old Hellenic fellowship; he still kept the tongue and customs of his folk; he gave to the gods of his folk; he could go to the old land and consult their oracles, he could claim his place in their sacred games, as freely as if he still dwelled by the banks of the Spartan Eurotas or under the shadow of the holy rock of Athens. And how fared he towards the city of his birth, the metropolis, the mother-city of his new home, the birthplace and cradle of himself and his fellow-citizens of his new city? Political tie none remained; no such tie could remain among a system of cities. Parent and child were on the political side necessarily parted; the colonist could exercise no political rights in the mother-city, nor did the mother-city put forward any claim to be lady and mistress of her distant daughter. Still the love, the reverence, due to a parent was never lacking. The tie of memory, the tie of kindred, the tie of religion, were themselves so strong that no tie of political allegiance was needed to make them stronger. The sacred fire on the hearth of the new city was kindled from the hearth of its mother; the parent was honoured with fitting honours, her gods were honoured with fitting offerings; her citizens were welcomed as elder brethren when they visited the younger city. And
when the child itself became a parent, when the new city itself sent forth its colonies, the mother-city of all was prayed to share in the work and to send forth elder brethren of her own stock to be leaders in the enterprise of her children." — Freeman's Greater Greece and Greater Britain, pp. 26–29.
(2) Roman Colonae.

ROMAN COLONIES. — The Roman system of colonization differed materially from the autonomous settlements of the Greeks. "Colony," as its derivation from the Latin "Colonia" denotes, was originally a plantation of coloni, or farmers, under the protection of the central government it was not an apoikia or a separate state. Roman colonies were established by the Roman government as a matter of national policy, and for political and military considerations. In the early history of the Republic, as the Romans gradually subjugated the various Italian races with whom they came into contact, lands of the conquered people were divided among Roman citizens, who were distributed in groups under military protection. When the Etruscans were finally vanquished, numerous military garrisons, which developed into colonies, were founded in various parts of Etruria. The national character of the surviving Etruscans was in that way gradually destroyed, and they were ultimately Romanised. Florentia, one of the towns of Etruria, thus became a leading Roman colony; its greatness under the name of Florence dates from the Middle Ages. So when the Samnites were finally conquered Samnium was laid waste and most of the inhabitants were sold into slavery; their places were supplied by Roman citizens clamouring for land. After the conquest of Cis-Alpine Gaul, Venetia became a Roman dominion; military stations were formed, and the land was divided among the victors, as in the case of Etruria and Samnium. When Trans-Alpine Gaul was brought under the Roman yoke it was divided into four provinces, in each of which was established a military colony. The name and identity of one of them, Lugolunum, situated at the confluence of the Rhone and Saone, still survives in the name of Lyons. Similarly the name and identity of another, Colonia Agrippina, on the Rhine, settled by the Emperor Claudian, is preserved in the modern city of Cologne.

For over three hundred years Britain, like Gaul, was subjected to the dominion of the Roman Empire. At the maturity of Roman occupation (304 A.D.) there were five divisions or provinces. Each of these provinces had a separate local ruler, subject to the Governor-General of Britain, who was appointed by the Emperor under the title of Prefect. This Prefect exercised all but sovereign authority, having supreme military and judicial power. Under the Prefect was a Procurator or Quaestor, who levied taxes and administered the revenue. The chief military and civil power of the Roman Government was centralised in about one hundred cities; the principal being London, Colchester, Bath, Gloucester, Chester, Lincoln,
and Chesterfield. Most of these were built on lands which the Emperor had
granted to the veterans of the conquering legions. The descendants of these
warriors formed the greater part of the population of the cities. The ten
largest cities enjoyed a special privilege, called the *Jus Latii*, an incomplete
citizenship, which conferred on them the right to elect their own
magistrates. The inferior ones, called *Stipendiaries*, were governed by
officers under the Prefect's authority, and paid tribute to the Emperor —
Part II. Modern Colonization.
(1) In America, Africa and Asia.

SPANISH AND PORTUGUESE COLONIES. — It was a great day in the world's history when Christopher Columbus, a Genoese pilot, set sail from Spain with a small fleet of three vessels bound on that memorable voyage which resulted in the discovery of America, and in the opening of new regions for the industrial activity and enterprise of civilized man. After years of endeavour he had convinced Ferdinand and Isabella of Spain that the realms of Indian wealth and treasure could be reached by sailing in the direction of the setting sun; that, the earth being round, the countries of the east could be attained by sailing to the west, so that communication could be established over the whole world across the sublime highway of the ocean. Bold mariner was he, indeed, in that age, when the lamp of science burnt dimly, to gaze across the wild waves of the Atlantic, and, beyond its primeval darkness, to see the light of promise with its glimmering rays leading on to modern civilization. How transported with delight he was when, after tossing about in strange seas for twenty-one days, without sight of land, he saw grass floating on the waves, and birds appeared on the western horizon as the gentle messengers of a harbour of safety. It was on the night of the 12th October, 1492, that Columbus from the deck of his vessel descried a dim light flickering across the waves; and at 2 o'clock in the morning a cannon shot from the Pinta announced that a sailor had discovered land.

That light was a spark that has since illuminated the whole world, and the cannon shot will be heard echoing through all time. To Christopher Columbus is due the immortal honour of having discovered the continent of America. He was the first of a long line of maritime pioneers and discoverers who lifted the curtain of the trackless deep — who ploughed their way from sea to sea, from ocean to ocean, from continent to continent, until the great work of circumnavigating the globe, so daringly begun, was duly accomplished.

The second great voyage which largely assisted to expand the dominion of European civilization was that performed six years after the discovery of America, by Vasco da Gama, a Portuguese navigator. To that distinguished man was entrusted the execution of the project of sailing from Portugal to India round the continent of Africa. It may seem strange that both the expedition of Columbus and that of Vasco da Gama were launched for the purpose of reaching India. But the fact is that the nearest and safest route to the riches of Cathay and the trade of India was, to the commercial nations of the south-west of Europe, a problem of vital importance; they wished to
compete with Venice and Genoa, which long enjoyed the monopoly of that trade by way of eastern caravan routes. Hence it was that the Portuguese were endeavouring to explore the western coast of Africa, with a view to reaching India by passing round its most southern promontory, many years before Columbus conceived the daring idea of sailing westward to India, in essaying which he was stopped by the Isthmus of Panama.

The Cape of Good Hope was discovered by Bartholomew Diaz in 1486. It was doubled by Vasco da Gama's fleet in November, 1497, and subsequently he arrived at Calicut, on the Malabar coast of India, the goal of his enterprise, where he established a trading station which marked the beginning of the European conquest of India. In comparing the achievements of Columbus and Da Gama as pioneers of oceanic exploration, it may be noted that whilst Columbus crossed a wild waste of waters, upon which man had never previously ventured, Da Gama, in circumnavigating Africa, followed the track of Pharoah Necho, an Egyptian king, whose ships had sailed round Africa more than 2,000 years before. But, for supreme grandeur, no exploit in the history of the human race is equal to the voyage of Fernando Magellan, a Portuguese mariner who inaugurated an expedition which first sailed round the world, demonstrating beyond all doubt the rotundity of our planet, and leading the way to the discovery of new islands and a new continent in the Southern Hemisphere. In September of the year 1519 Magellan was entrusted by Charles V. of Spain with the command of a fleet of five ships fitted out for the purpose of exploring the southern seas. Magellan succeeded in discovering the famous straits which bear his name, running between the southern headland of South America and Terra-del-Fuego; thence he passed into the broad expanse of the Pacific Ocean, to which he gave its present name. Continuing his voyage, he sailed on, and on, month after month, undergoing privations and encountering perils until at last, in the year 1521, he arrived at the Philippine Islands, north of Australia, where he was killed in a skirmish with the natives. His vessel, conveying his records, charts and observations, was brought back to Spain by way of the Cape of Good Hope. The circumnavigation of the globe was thus completed after a three years' voyage of unparalleled difficulty and danger; the saddest event of the expedition being the loss of its intrepid commander before he had seen the accomplishment of his world-wide enterprise. It must be admitted that this voyage was the most triumphant in the whole record of navigation, ancient or modern. It was Magellan who burst through the gates of the American continent; it was he who first navigated the majestic Pacific, with its numerous islands and its mighty highway from America to the Indian Ocean, preparing the way for much that was to follow in the fulness
of time. Well has Dr. Draper written of Magellan — "He impressed his name on earth and sky; on the straits connecting two oceans, and on clouds of starry worlds seen in the southern sky." — The Intellectual Development of Europe, Vol. II., p. 169.

PIONEERS OF MODERN COLONIZATION. — Christopher Columbus, Vasco da Gama and Fernando Magellan were the first great pioneers of modern colonization to whom reference must necessarily be made in any account of the beginning and expansion of England's empire beyond the seas; for, although their expeditions and discoveries were conducted in the interests and at the expense and direction of Spain and Portugal, the time came when England obtained possession of most of the countries which they added to the inheritance of civilized man. They prepared the way for Sir Francis Drake's circumnavigation of the earth in 1578, and for James Cook's voyage in 1769–70. The nation and the generation who sow the seed of progress do not always gather in the harvest, but sooner or later the human race, as a whole, enjoys and profits by what has been planted "with the blood and tears of a few." So it was in the case of those renowned navigators. Where now is the colonial empire of Spain? Nothing remains; her provinces were lost in the hurricane of revolution and conquest. Where is now the colonial empire of Portugal? Not an island of any consequence remains to speak of departed fame.

To England fell the greatest and richest share of the glorious result of those three great voyages which "broke the night of ages;" which ushered in modern times with all their bustling activity; which directed the course of civilization from the east to the west — from rivers such as the Nile, the Tiber, the Euphrates, the Danube and the Rhine, and from inland seas, such as the Black, the Baltic and the Mediterranean, to the broad Atlantic and the far-reaching stretches of the Pacific Ocean. From that time the nations of the Mediterranean were destined no longer to monopolize the commerce of the world. Egypt ceased to be the avenue to India; Europe was startled by the intelligence brought in quick succession from the new world, and an impetus of an unprecedented character was given to the spirit of adventure and discovery. Then began the mighty race for slices of the new world. England, of the sixteenth century, was not behindhand; she now began to lead the vanguard of nations in that grand struggle. See Seeley's "Growth of British Policy."

In many respects the English at that time were peculiarly qualified for the work to be done. For over a thousand years the people of the island had been going through various stages of preparation and apprenticeship calculated to fit them for the arts of navigation and colonization. In the first place, England itself had been for many centuries a colony belonging to
different and successive, nations. The Phoenicians, the Romans, the Danes, the Saxons and the Normans, had, in successive periods, planted colonies in British soil, which left enduring traces in the country and in the character of the inhabitants. Then, again, the main element of the amalgamated population of Britain was composed of a sea-faring people, having habits and instincts which attached them to the sea and its associations. Under these circumstances it is hardly surprising to see the English come to the front in this remarkable epoch of geographical discovery and maritime enterprise.

NORTH AMERICAN DISCOVERIES. — Four years after Columbus had discovered America, and whilst Vasco da Gama was preparing to circumnavigate Africa, John Cabot, a Venetian pilot, with his son, Sebastian, a native of Bristol, obtained from King Henry VII. letters patent authorizing them to proceed on a voyage of exploration towards the northwest, in order, if possible, to find, conquer and settle unknown lands for the English crown. The King supplied one ship, and the merchants of Bristol and London placed a few smaller ones at their disposal, and with this meagre fleet the Cabots, father and son, sailed forth on their dangerous enterprise. The result of this and succeeding voyages made by John and Sebastian Cabot were most momentous; they laid the foundation of England's trans-Atlantic colonial empire. In June, 1497, they reached the coast of Newfoundland, or, as some think, of Labrador. Afterwards they sailed southwards along the eastern coast of the American continent as far as Cape Florida, near the Gulf of Mexico. They were the first Europeans who sighted and surveyed the coastline of the vast territory which was subsequently occupied by the thirteen original colonies, and which now belongs to the United States Republic. The discoveries of the Cabots gave England an international claim to the whole of North America, and that claim, although allowed to remain dormant for nearly a century, was eventually asserted in an emphatic and practical manner.

The Spanish devoted their energies and resources to the conquest of Central America, and a part of South America, together with the adjacent islands known as the West Indies, whilst the Portuguese took possession of Brazil; but neither of these nations explored or asserted a right to North America. Whilst the Spaniards and Portuguese were plundering and enslaving the defenceless natives of the south, committing unspeakable outrages, and spreading unutterable ruin wherever the lust of gold induced them to extend their devastating sway, the English by slow and cautious steps explored the apparently poor and inhospitable coast of North America. Many disasters and failures delayed the work of settlement. For many years after the Cabots, expeditions were sent across the Atlantic by
English enterprise, for the purpose of finding what Columbus failed to discover — a north-west passage to India. At last these attempts were for the time given up; the route of Vasco da Gama round the Cape of Good Hope was resorted to, and trading factories were established on the shores of the Indian Peninsula, which were the feeble beginnings of our Indian empire.

FIRST ENGLISH COLONIES IN AMERICA. — After John and Sebastian Cabot, Sir Humphrey Gilbert and Sir Walter Raleigh were two of the most famous pioneers of English colonization in North America. Sir Humphrey Gilbert, an English navigator and maritime discoverer, obtained from Queen Elizabeth, in 1578, a patent empowering him to discover and colonize any unsettled lands which he might reach. This was the first charter granted by an English monarch to found colonies. Two expressions from this remarkable instrument may be quoted: He was to take possession of "all remote and barbarous lands" and to govern them, subject to the proviso that "all who settled there should have and enjoy all the privileges of free citizens and natives of England." In his first voyage, in pursuance of this authority, he sailed for Newfoundland, but returned home unsuccessful. He sailed again in 1583, landed on the shores of Newfoundland, took possession of the harbour of St. Johns, and shortly afterwards lost his life in a storm whilst exploring the coast. In 1585 Sir Walter Raleigh, one of the most brilliant figures in the reign of Queen Elizabeth, promulgated a scheme for the settlement of those parts of North America not appropriated by Christian powers. Through his great influence with the Queen he obtained an extensive patent for that purpose, and by the assistance of wealthy friends and relatives two ships were fitted out for the expedition. It is interesting to observe that one of the clauses of Raleigh's first patent, like that of Sir Humphrey Gilbert, provided that the English subjects who accompanied him should have a guarantee of the "continuance and enjoyment of all the rights which they enjoyed at home." It was a maxim of the common law that, if an uninhabited country were discovered and peopled by English subjects, they were supposed to possess themselves of it for the benefit of their sovereign, and that such of the laws of England as were applicable and necessary to their situation and the conditions of an infant colony were immediately in force; that wherever an Englishman went he carried with him as much of English law and liberty as the nature of his circumstances required. — Petersdorf's Abridgment, vol. V., p. 540. Thus early was it recognised that Englishmen carried their political birthright with them over the broad surface of the earth; that the charters of freedom for which their ancestors fought were not left behind, but accompanied them to their new homes beyond the sea. This was the
fundamental principle of English colonization, and it presents a marked contrast to the colonizing systems of Spain, Portugal and France.

In this expedition Sir Walter Raleigh founded a settlement on Roanoke Island, in what is now North Carolina. A few years previously a party of French Huguenots had settled at Port Royal, in what is now South Carolina, and had built a fort which they called "Arx Carolina" in honour of Charles IX. of France. They had, however, been murdered by the Spaniards from the adjoining territory of Florida. Raleigh's settlement was not successful and was soon broken up. His vessels brought to England some natural productions which proved the great value of the resources of the country, and another expedition was sent out under the command of Sir Richard Grenville, a kinsman of Sir Walter Raleigh. This was more successful, and resulted in the foundation of the colony of Virginia, so named in honour of the Virgin Queen Elizabeth. It was the first and greatest of the thirteen colonies established under the protection of the English flag. It is said that to Sir Walter Raleigh's expedition is due the introduction of the potato and tobacco plant into Europe. In these early attempts at colonization failure and success were blended together, and it was not until about the year 1606, in the reign of James I., that anything like safe and permanent settlement was effected in these strange and distant regions.

England's struggle with Spain had been long and deadly, but it ended with the defeat of the Spanish Armada in the year 1588. England became mistress of the sea, having only the Dutch as powerful rivals; and thus there were no longer serious dangers in the way of maritime discovery and adventure.

The reign of the Stuarts, disastrous as it was to themselves, prolific as it was in civil war and revolution at home, was above all things distinguished by the growth and expansion of England's first colonial empire in North America. Herein can be seen the vitality and energy of the people of whom we are the descendants, and whose political birthright we now enjoy with the fullest measure of freedom. During the tyrannical government of Charles I., the disorder and uncertainty of the Commonwealth under Cromwell, and the persecution and proscription of the Restoration under Charles II., thousands of Englishmen and Englishwomen fled from their land to seek for liberty and safety in the wilds of North America, and these were the pioneers of that great development of emigration and colonization which paved the way for the establishment of a greater Britain in the new world. And here one general remark must be made as to the character of these momentous movements to which is mainly owing the stability and success of the early colonies of America. These colonies were founded by
private enterprise, not with the assistance, but only with the official sanction of the Crown. This will be best understood by a brief reference to examples.

In the year 1606, the year in which Torres passed through the straits, which now bear his name, and sighted the Australian coast, two companies were formed for the purpose of colonizing America — the London Company and the Plymouth Company. To the London Company was assigned by King James I. South Virginia, which extended from Cape Fear to the Potomac River; to the Plymouth Company was granted North Virginia, which extended from the Hudson River to Newfoundland. The country between the Hudson and Potomac was declared neutral territory. This division of Virginia, North and South, included nearly the whole of the eastern fringe of North America, but that divisional nomenclature was not long maintained. The London Company was the first in the field, and began the work of colonization in a practical manner, though at first with limited success. It was followed by the Plymouth Company, which also proceeded to distribute grants of land to actual settlers. The title of each of these companies was a charter from the Crown. The charter of the London Company contained provision for the creation of governing councils; one in London, appointed by the King, having power to appoint a colonial council, endowed with the absolute power of Government. The soil was vested in the Company by grant from the Crown. There was no mention made of representative assemblies in either charter, but each contained a clause somewhat similar to that of Raleigh's first patent, to the effect that "all British subjects who shall go and inhabit within the said colony and plantation, and their children and posterity, which shall happen to be born within the limit thereof, shall have and enjoy all the liberties, franchises, and immunities of free denizens and natural subjects within any of our dominions, to all intents and purposes, as if they had been abiding and born within their own realms of England or in any of our other dominions." This contained the germ from which afterwards sprang the system of representative self-government in the American colonies. In none of the charters, with the exception of that of Jamaica, to which allusion will presently be made, was there an express grant of representative government, but the right was asserted as inherent to and necessarily a part of those liberties, franchises, and immunities granted in the charters.

In 1607 Thomas Gates and Company sent out, under the leadership of Christopher Newport, three ships containing 105 emigrants, who were landed at Chesapeake Bay; and on the 13th May of that year the Commonwealth of Virginia was established by the building of Jamestown on the James River, which was so named in honour of the King. This party
consisted of gentlemen of fortune, labourers, and other persons of no occupation, and without families, who were picked up in London. The friendly Indians sold them land and provisions, and they struggled along, clearing the wilderness and attempting to cultivate the soil. Owing to misgovernment and internal dissensions the infant colony was several times on the verge of starvation and dissolution. In 1609 the London Company superseded Gates' Company in the management of the colony and sent out Captain John Smith, who by his prudence and good counsel saved the struggling community from destruction. It was next reinforced by fresh arrivals from England under the direction of Lord Delaware. By this time the permanent establishment of the new settlement was assured. Gradually a liberal element began to prevail in the management of the London Company, and in 1619 the first representative assembly came into existence. In the quaint language of an old chronicle, "a House of Burgesses broke out in that year." The charter of James I. contained no provision for the creation of such an institution as "a House of Burgesses;" nevertheless that House was legally acknowledged by the Government of the mother country as being in strict accordance with the principles of Sir Walter Raleigh's patent, and with the general scope of the clause of the Company's charter.

In the same year which saw the forerunner and type of all American assemblies, convicts were sent out to the colonies from England, and negro slaves were introduced by the Dutch. The element of convictism and slavery did not spread to any very large extent in the early history of America, but they afterwards became the plague spot of England's colonial empire. The practice of negro slavery and the transportation of convicts was first introduced by the Portuguese and the Spaniards. And the system was too readily followed by other nations.

In 1624, the London Company surrendered its charter to the Crown, but the House of Burgesses elected by the people survived the surrender of the charter, and maintained the power of legislation and taxation, subject to the veto of the Governor. We have referred to the preliminary history of Virginia at some length, because it was the earliest settled, and the largest, richest, and most populous of all the original thirteen states. It was affectionately called the "old Dominion," and also the "mother of Presidents," because four out of five Presidents who ruled the Republic up to the year 1824 were natives of Virginia. It was the birthplace of George Washington, Thomas Jefferson, Richard Henry Lee, and Patrick Henry, who became the leaders of the revolution.

Before passing from Virginia, reference should be made to four other colonies adjacent to it which were carved out of the original grant of
territory to the London Company. In 1623, Sir George Calvert, afterwards the first Lord Baltimore, received a grant of land forming part of Virginia from Charles I. for the purpose of forming a proprietary colony. It was called Maryland by way of compliment to Queen Henrietta Maria. The first Lord Baltimore died before the letters patent were sealed, but the second Lord Baltimore carried out the scheme in 1632. The Baltimores were Roman Catholics, and Maryland was settled by Catholic gentry and others belonging to that Church, who were driven from England during the fierce persecutions of these times. Maryland became the "land of sanctuary," and claimed the proud distinction of being a refuge for the toleration of all religious denominations. Its form of administration was by a Governor having a patent right to veto acts of the legislature, which consisted of an Upper House nominated by him, and a Lower House elected by the people. The colony, according to the patent, belonged to the Proprietors, who nominated an administrative council and granted governmental privileges, for which they received certain consideration.

In 1662 the southern part of Virginia was granted as a proprietary colony to Lord Clarendon and others by Charles II. under the name of "Carolina." Its early population consisted for the most part of emigrants from Virginia. The young colony obtained a representative assembly in 1667, but its form of government was similar to that of the proprietary colony of Maryland. However, in 1717 the proprietors surrendered their patent to the Crown, and Carolina became a royal colony by purchase. In 1729, Carolina was divided into two separate and independent districts, North and South Carolina, which afterwards became two of the most important states of the union.

Georgia, which was organised into a colony in 1732, was the fifth distinct settlement carved out of the Virginia foundation.

Passing now to the northern group of colonies which were formed out of the territory assigned to the Plymouth Company, we find a record of progress and cultivation of the soil proceeding in the teeth of trials and obstacles as extraordinary as those experienced in the history of Virginia and its offshoots in the south. Under the direction and with the license of the Plymouth Company, a settlement was, during the year 1620, formed at Massachusetts Bay by the famous and heroic "Pilgrim Fathers," who were compelled to leave England on account of the persecution to which they were subjected for their non-conformity to the Church of England. They sailed from Southampton for America to the number of 102 persons, in the Mayflower, a little vessel of 160 tons burden, and landed on 21st December, 1620, at a place which they named New Plymouth, where they long had a desperate struggle for existence owing to the coldness of the
climate, the poverty of their circumstances, and attacks by the Indians. They were afterwards joined by a society of Puritans, who also sought refuge there from the ecclesiastical policy of Charles I. Massachusetts became the centre and leader of four important colonies which in a few years sprang into existence in the North, between the Hudson River and Newfoundland. They were known as the New England Colonies, New England being the designation applied to the whole of that region by Captain John Smith, who explored the coast in the year 1614.

Settlers went to the south of Massachusetts, and formed colonies of Connecticut and Rhode Island, which received separate charters from the Crown. A fishing village to the north of Massachusetts, established under a grant of land to one John Mason, became the nucleus of the colony of New Hampshire.

Such were the four important plantations formed out of New England, the territory of the Plymouth Company. The Plymouth Company finally surrendered its charter, and Massachusetts received an independent charter from Charles I. in 1629, whilst Connecticut and Rhode Island received separate charters from Charles II. in 1662. These were the famous New England colonies, in which there was a larger measure of political freedom and local self-government than in any of the North American plantations. They were chartered colonies, in which the sovereign parted with his rights and prerogatives either wholly or in part to the settlers, who elected their own representative assemblies, having the power of legislation without appeal to the Crown, there being no royal governor or royal agent within the colonies. They elected their own governors, as well as their Parliamentary representatives in the Upper and Lower Houses. The Home Government did not interfere with them in any way. They were, in fact, simple democracies, if not veritable republics, the highest achievement in the way of political organisation, and the nearest approach to independent states attained by any of the thirteen colonies before the revolution. The only terms and conditions under which these colonies held their charters of colonization were, first, allegiance to the Crown, and, secondly, that one-fifth of the gold and silver found within their jurisdiction should be paid to the King. In the year 1665, only 40 years after the foundation of Massachusetts, and 100 years before the Declaration of Independence, we find the people of that settlement asserting that they did not regard themselves as subject to England, and maintaining that as long as they paid one-fifth of all the gold and silver according to the terms of their charter "they were not obliged to the king, but by civility." These advanced ideas of colonial independence and autonomy received a startling development and a determined assertion during the subsequent conflict with England,
for it was in Massachusetts that the battles of Lexington and Bunker's Hill were fought.

We have now referred to two groups of colonies, that of Virginia and that of Massachusetts, which are described as the original foundations of British colonization in North America. There remains a third group, which grew up in the neutral zone between the Potomac and the Hudson rivers, between Virginia and New England. Whilst settlement was proceeding in the vast country to the north and the south, this central territory was explored by the Dutch, who established a trading station at Manhattan, the site of the present city of New York. The Dutch Government assigned this locality to the Dutch West India Company. It was named New Netherland, and the town which sprang into existence at the mouth of the Hudson, a river discovered by Henry Hudson, an Englishman in the service of the Dutch, was called New Amsterdam. The Dutch, however, had a very precarious title and tenure of this country, and they were soon cleared out of North America. After the restoration of Charles II. in 1660, England and Holland went to war, and a fatal blow was struck at the colonial possessions of the Dutch. An English fleet under Colonel Nichols proceeded to New Amsterdam and conquered it, driving out the Dutch, and converting it into an English settlement. It was granted as a proprietary colony by Charles II. to his brother, the Duke of York, after whom it received the name of New York. The Duke granted a part of the territory of New York to Lord John, Berkeley and Sir George Carteret, who formed out of it the colony of New Jersey.

In 1681, the square tract of country to the west of New Jersey was granted by Charles II. to William Penn, the celebrated English Quaker and philanthropist, in satisfaction of a monetary claim against the Crown. Here arose another proprietary colony under the never-to-be-forgotten name of Pennsylvania. Penn had been unjustly persecuted for his religious faith; and his great desire was to establish a home for himself and his co-religionists in the distant wilderness of the west where they might enjoy religious and political liberty; where they might preach and practice according to their convictions in peace and quietness. Penn planned and named the great city of Philadelphia, and framed a liberal constitution for the young settlement, which became what Maryland was to the Catholics, and New England to the Puritans — a refuge and a sanctuary for the persecuted brethren, hunted out of their native land. Penn also purchased from the Duke of York a small strip of New York territory which was added to Pennsylvania until the revolution, when it was erected into a separate State called Delaware.

CLASSIFICATION OF THE ORIGINAL COLONIES. — Having
sketched the thirteen original provinces of North America we are now in a position to consider generally their peculiar distribution and classification. First, as regards their location; the southern group consisted of five — Virginia, Maryland, North Carolina, South Carolina and Georgia; the northern group consisted of four — Massachusetts, New Hampshire, Connecticut and Rhode Island; the central group consisted of four — New York, New Jersey, Pennsylvania and Delaware.

The political constitutions, or forms of government of these colonies comprised three classes. First came the royalist colony of Virginia, which was always subject to the influence of the Crown more than in any other, even from the first, when the Executive Government was vested in a prerogative-created Council. Virginia became a thoroughly royalist colony in 1620, when the London Company decided to surrender its charter to the Crown. So New York, which began as a proprietary colony, was converted into a royalist colony when its proprietor, the Duke of York, became King as James II. Virginia, may be regarded as the type and model of modern colonies, in which representative and responsible government is the prevailing system, with a Governor appointed by the Crown as the agent of the sovereign to watch imperial interests.

The proprietary colonies were Maryland, New Hampshire, Pennsylvania, Delaware, Carolina, New Jersey, Georgia, and, in its early career, New York. In this class of colonies the soil was granted to and vested in certain proprietors or companies, who exercised the governmental powers which, in royalist colonies, were enjoyed by the king; they appointed administrative Councils to conduct public business; and sometimes they nominated their Governors, who had by charter the right of veto on the legislation of the colonial assemblies. This plan of colonization, which may be compared to that adopted by the East India Company, was found not to work satisfactorily as the population increased, and as conflicts between private and public interests arose. In time the proprietors became tired of continual quarrels and dissensions with the colonists, and one by one they either surrendered or lost their charters, until by degrees all the colonies assumed the royalist form of government, with the exception of two.

The chartered colonies were Massachusetts, Connecticut and Rhode Island, in which, by their original title deeds from the Crown, the people had the right of choosing their own Governors, their own magistrates, and their own representatives, to make, interpret, and administer their own laws. They could repeal and abrogate the common law of England, except the general law of allegiance and dependence, without the danger of a veto by the Home Government. They could also repeal and abrogate the statute law of England, except such Acts as were expressly applicable to the whole
empire. Massachusetts, however, lost its charter in consequence of proceedings taken against it in England by Charles II. After that it became a quasi-royalist colony. At the time of the revolution in 1770, Connecticut and Rhode Island were the only chartered colonies. It may be observed that the chartered colonies had a much larger instalment of constitutional liberty and local independence than any existing dependency of the British Crown.

Speaking generally of this survey of the political organization of the early North-American settlements, it is to be remarked that in their matured history they had local autonomy, self-government, self-taxation, and political equality, and that there was no State Church and no official aristocracy to become an incubus or a source of strife and bitterness. The transplanted institutions and franchises of the old country took root and flourished in the new country under the guidance and protection of bold and hardy bands of pioneers, who laid the foundations of a mighty Anglo-Saxon empire along the coast of the Atlantic. They carried with them the traditions and charters of their ancestors; Magna Charta, the Petition of Rights and the Bill of Rights formed a part of their political inheritance as much as those muniments of title were the birthright of those of their fellow countrymen whom they left behind them.

We are now in a position to notice the truth and importance of the statement with which this account of the American colonies was introduced. They were established not by Government agency, assistance or direction, but by private adventurers, who left their native land in search of that freedom denied them at home. The Anglican Cavaliers of Virginia, the Puritans of New England, the Quakers of Pennsylvania and the Catholics of Maryland emigrated from the land of their forefathers, and fought their way in the waste wilderness of the new world in order that they might escape political proscription and religious persecution; that they might, establish hearths, homes and hamlets where they would be far away from tyranny, spoliation and martyrdom. In other words, these colonies were places of refuge from the fierce political and ecclesiastical domination which prevailed in England in the seventeenth century, during the reigns of James I. and Charles I., the Protectorate, and the Restoration under Charles II. and James II.

WEST INDIAN COLONIES. — Leaving the thirteen provinces of the mainland, let us now glance at the progress of English colonization in other parts of the globe during the later half of the seventeenth century. Barbadoes is the oldest discovered British colony in the West Indies. It was taken possession of in 1605, when a party of roving Englishmen planted a cross on the island, and inscribed the words "James, King of England;" but
no actual settlement was effected on it until 1624, when a patent for the island was granted to the Earl of Carlisle, as sole proprietor. A large number of royalists emigrated to Barbadoes during the civil war between Charles I. and his Parliament, and it became a prosperous and populous sugar-producing colony. Bermuda, another of the earliest West India plantations, was colonized from Virginia, and England shortly after 1609. Jamaica, the largest and wealthiest of our West Indian possessions, was taken from the Dutch by an expedition sent out by Oliver Cromwell during his protectorate in the year 1655. Charles II., after the restoration of 1660, sent a Governor to Jamaica, and provided for the creation of an elective Council to legislate for the Colony. This has been described as the first representative colonial Constitution granted by the Crown Of England to any of its possessions and plantations abroad; for it will be remembered that there was no express grant of elective assemblies by the Crown to any of the American colonies. In the eighteenth century Jamaica became the greatest sugar-producing country in the world, but it afterwards declined through the exhaustion of the soil and the competition of new sugar countries.

CANADIAN COLONIES. — Glancing northward of the New England colonies, we come to Newfoundland, which was discovered by Cabot in 1497; but England had a very doubtful title and precarious possession of that territory up to the end of the sixteenth century, as it was claimed by powerful and persistent French rivals. Newfoundland was not permanently settled by English emigrants until 1624, fourteen years after the planting of Bermuda. Though it was not that part of the American soil which was first settled from England, Newfoundland claims to be the earliest of existing British colonies from the fact that it was first discovered; and in the Colonial Conference held in London, in 1887, the representatives of Newfoundland were held entitled to the precedence attached to seniority.

At the time when Newfoundland was first colonized, Nova Scotia, New Brunswick and Canada belonged to France by priority of occupation. Although the coast of Canada was discovered by Sebastian Cabot in 1497, its interior was not explored by Europeans until 1541, when Jacques Cartier, a French navigator, sailed up that great arm of the sea which penetrates into the lake country, to which he gave the name of the River St. Lawrence. Jacques Cartier founded the first settlement at St. Croix's Harbour, but little progress was made for nearly 100 years. In 1603, Samuel Champlain, a French naval officer and marine explorer, was commissioned to initiate colonizing establishments in the New World, and he is justly celebrated as the pioneer of French exploration in North America. In his first voyage Champlain ascended the St. Lawrence to the
part where Jacques Cartier had been stopped. In his second voyage he visited the coast of Nova Scotia. In his third expedition, in 1608, he fixed the site of the town of Quebec on the heights of Abraham, overlooking the St. Lawrence, and he also ventured as far as Lake Ontario and Lake Champlain, to which he gave his name. Quebec was founded and French settlement began in Canada a few years before the voyage of the Mayflower. The French possessions were gradually extended westward and southward from the St. Lawrence to the Mississippi, and down that river to its mouth. The whole of the country at the back or westward of the thirteen states of America, the Hinterland, including the valley of Ohio and all Canada, was in the beginning of the eighteenth century claimed by France, which contended that the Alleghanies were the western limits of the British dominions.

BRITISH POSSESSIONS IN INDIA. — Before proceeding to show how France lost that vast colonial empire, we may draw attention to the march of British influence and the planting of British trading stations in Africa and Asia. After many fruitless attempts to find a north-west passage to East India, English merchants, traders and adventurers adopted the route discovered by Vasco da Gama, and sent their vessels to India by the Cape of Good Hope. In 1585, Queen Elizabeth granted a patent to a company to trade to Gambia, on the West Coast of Africa, but no settlement of any consequence was effected in that region until 1625. In its subsequent history Gambia became a notorious centre of the slave trade.

In December, 1600, Queen Elizabeth granted a charter to a company formed for the purpose of carrying on a trade with countries beyond the Cape and the Straits of Magellan. This company, which was the beginning of the famous East India Company, established a few trading factories in India, but their commerce was for many years very meagre. By the end of the eighteenth century the progress of the East India Company in the Peninsula of Hindostan had not advanced beyond the factory stage. The Company were simply leaseholders under the great Indian Princes, by whose leave they established trading stations in various localities along the sea coast. In the struggle for commercial ascendancy the East Indian Company had to contend with powerful rivalry from the French and the Dutch. But the Company, which was incorporated by Royal Charter and vested with sovereign powers by the Crown, ultimately became master of the whole of India. The history of its struggles and final triumph in laying the foundation of the British Empire in India is one of the most romantic and extraordinary in the whole record of colonization and conquest. These momentous events must be briefly summarised. Madras, the present capital of the presidency of that name, situated on the Coromandel (south-east)
coast, was founded in 1639 by the Company, who obtained from the Rajah of Chandgerry a grant of a piece of land for the erection of a town and fort. Fort St. George, built in this district, was the first place where the British obtained a permanent footing. Madras soon grew into a flourishing city and became the central Station of the Company along the Coromandel Coast.

Bombay is, next to Madras, the oldest British possession in India. It was granted to the Portuguese by an Indian chief in 1530, ceded by Portugal to England in 1661, and transferred to the East Indian Company by King Charles II. in 1668.

The first factory established by the Company in Bengal was built on the Hoogly in 1664. The Company's representative, Job Charnock, was driven thence in 1686, and in 1690 he founded another settlement on the Hoogly, which expanded into the town of Calcutta. The site of the settlement was granted to the Company by the Nabob of Bengal, and the grant was confirmed by the Emperor Aurengzebe, the last of the Moguls. Fort William, was built at Calcutta in 1699, and it was so named after William III.

Such were the early and humble beginnings of the British East India Company. After the death of Aurengzebe, in 1707, the native princes who owed feudal allegiance to the Mogul Empire began to quarrel among themselves, and the French and English interfered to quell the disturbances. It was then evident that the political organization of India was thoroughly rotten, and that only a Strong arm was required to conquer and possess the whole country, and reduce the native princes to subjection. Then began the great contest between the French and British in India for the ascendency and empire. At first the French maintained their superiority, but in the end they were defeated and driven out of India by the Company's forces, and the victory of Lord Clive at the Battle of Plassy on 26th June, 1756, established the exclusive sovereignty and supremacy of the British in India.

SOUTH AFRICAN COLONIES. — The Cape of Good Hope was first discovered in modern times by Bartholomew Diaz in the year 1486–7. The heavy seas which rolled along the coast prevented him from landing, and hence he named it the "Cabo doz tormentos," the "Cape of Storms," but King John II. of Portugal altered the name to "Cabo da Bona Esperanza," the Cape of Good Hope. Vasco da Gama doubled the Cape a few years afterwards on his voyage to India. The Portuguese, however, never formed any permanent establishment there. The Dutch took possession of it in 1650, and it became a powerful station for them in their journeys to and from their trading factories in India and Batavia. It was captured by the British in 1795, was restored to Holland at the Peace of Amiens in 1802,
and was again captured in 1806. At the Congress of Vienna, in August, 1814, the Dutch colonies at the Cape of Good Hope, and in South America, were ceded by the Netherlands Government to Great Britain, six millions sterling being paid as part consideration for the transfer. On 11th March, 1853, Cape Colony was granted a Representative Legislature, composed of two elective chambers, followed in 1872 by the concession of Responsible Government. Between 1861 and 1870, British Kaffraria was added to the colony, and in 1880 Fingoland and Griqualand West were similarly incorporated. In 1894 and 1895, West Pondoland and British Bechuanaland became part of the same growing Dominion. Dutch farmers or Boers, who left the colony shortly after 1835, established the Republics known as the Orange Free State and the Transvaal.

In May, 1843, Natal, where the Boers were prevented from forming a republic, was proclaimed a British settlement and remained a part of Cape Colony until 1856, when it became a separate colony under a Royal Charter, authorized by statute, with a Governor and a Legislative Council partly elective and partly nominated. In 1893, a new Constitution, embodying a bi-cameral legislature and accompanied by Responsible Government, was granted. In 1897, Zululand was made a province of Natal.

Through the enterprising operations of the British South Africa Company, led by Mr. Cecil Rhodes, the vast regions south of the Zambesi, known as Southern Rhodesia, formerly Mashonaland and Matabeleland, and north of the Zambesi known as Northern Rhodesia, including Nyassaland, have been, since 1888, added to the Empire. They are destined in course of time to be partitioned into a group of self-governing colonies.

CONQUEST OF CANADA. — From this survey of the progress of the British flag in Asia and Africa, we return to our review of the march of events in the New World during the eighteenth century. The Seven Years War with France, which terminated in the Peace of Paris, 1762, left Great Britain the first State in the world, with the equivocal reputation of the "Tyrant of the Seas." It was in this war that she completely established her supremacy on the ocean, which she first began to assert upon the defeat of the Spanish Armada. It was in this war, so vigorously prosecuted by the first William Pitt, afterwards Lord Chatham, that England obtained possession of the whole of North America, and drove the French out of Canada as they had been driven out of India. The story of the invasion of Quebec by a British expedition sent up the St. Lawrence under the command of General Wolfe, the scaling of the Heights of Abraham by our troops in the dead of night, the fierce battle which followed on the plateau, the gallant, defence of the French under General Montcalm, the victory of
the attacking party, and the death of both noble and heroic commanders in the midst of the fight, is one of the most thrilling in the whole range of naval and military history. This event was followed by the surrender of all Canada to the British, and the French power in that quarter of the globe was thus absolutely annihilated. But France had her revenge on Great Britain at a later date, when she assisted the American colonies in their revolt against the mother country.

LOSS OF THE AMERICAN COLONIES. — To those colonies we must, now once more refer, and see how it came about that Britain lost the brightest jewel in the crown of a thousand years. During the first half of the eighteenth century the American colonies along the eastern coast of what is now the territory of the United States made enormous progress in settlement and internal prosperity. Neglected and uncared for in the early years of struggle, they sprang into importance and commanded attention from the people and government of England when their trade increased and their resources were developed. Whilst they enjoyed the ampest measure of local autonomy and local self-government, there was one serious exception and limitation to their legislative power. The Home Government claimed the right of regulating their external trade and commerce. Their export and import trade was watched with jealousy, and hedged about with hampering restrictions. They could not amend or repeal the slightest fiscal regulations, however obnoxious or oppressive. Apart from this, they had absolute freedom and independence; but in matters of trade, the British Parliament asserted its supremacy. The Navigation Laws passed during the Commonwealth under Cromwell, and mainly directed against the Dutch, with a view to ruin Dutch commerce, and the Dutch mercantile marine, were the basis of the colonial policy which subsequently pressed so heavily on the colonies. The main provisions of these laws were that no commodities of Asia, Africa, or America could be imported into Great Britain or her colonies except in British ships. This restricted the markets of the colonies, as they could not trade directly with other nations. On the other hand, Great Britain imposed high protective duties on the goods of foreign countries in favour of her colonies. Then there was a restriction on the manufacture of their raw products by the colonies and on the direct importation of the goods of foreign countries. This constituted what is called the old "colonial system," which was at the root of the quarrel and the war which led to American separation. We are now brought down to the reign of George III., a period well described as "the most eventful in the history of the human race," marked by two thrilling tragedies — the War of American Independence and the French Revolution. It was in the year 1764, that George Grenville, the Chancellor of the Exchequer,
nicknamed "The Gentle Shepherd," induced the House of Commons to take the fatal step of attempting to draw a revenue from America by the taxation of the colonies. By the Stamp Act, 5 Geo. III. c. 12, he secured the imposition of duties on certain commodities imported into America from other European colonies, and also stamp duties similar to those contained in our own Stamp Acts. This was a violation of the fundamental principle of Constitutional Government — that there should be "no taxation without representation."

The news was received in America with indignation, and with a stern determination to resist. Virginia took the lead in organizing confederate resistance. In the House of Burgesses at Williamsburg, Patrick Henry spoke against the Stamp Act with burning eloquence. "Caesar had his Brutus," he cried, "Charles I. had his Oliver Cromwell, and George III. — " "Treason! Treason!" interposed the Speaker. "And George III. may profit by their example," replied Patrick Henry. "The torch of confederate opposition was carried through every Colony like a fiery cross." — Cassell's History of England, vol. V., pp. 58–71.

In October, 1765, the first Congress of Delegates was held in New York, at which resolutions were adopted, denying the right of the mother-country to tax the colonies without representation. The Stamp Act was repealed in the following year, by the Act 6 Geo. III. c. 11, but the British Parliament carefully avoided any appearance of a surrender of its rights. Indeed, it passed a Declaratory Act (6 Geo. III. c. 12) affirming the subordination of the colonies and the supreme authority of the Crown and Parliament of Great Britain. The mad policy inaugurated by George Grenville was followed, in 1767, by his successor, Charles Townshend, who as Chancellor of the Exchequer proposed the reduction of the Land Tax to relieve the country gentlemen, and, in order to make up the resulting deficiency in the revenue, determined to impose new taxes on goods imported into America, including tea. This scheme was carried in the Commons with the utmost indifference, and with hardly any debate. These Customs duties rekindled the fires of revolution in the colonies. The Republican party increased in power and influence. Non-importation societies were formed. Resistance and rebellion were openly advocated. The storm gathered in every quarter, and at last broke out in the seizure and destruction of several cargoes of dutiable tea in Boston Harbour. The Declaration of Independence was signed by the representatives of the thirteen colonies on the 4th July, 1776. The die was cast, and the great American catastrophe was brought about by the ruinous policy of "an infatuated King, a stone-blind Cabinet and a corrupt Parliament." The battle of Bunker's Hill, the surrender of General Burgoyne's army at
Saratoga, the surrender of Lord Cornwallis' army at Yorktown, the mismanagement of British generals, the bravery of British soldiers, the pluck and patriotism of the colonial forces under George Washington, the recognition of the Independence of America in 1783, and the adoption of the federal constitution in 1787, are stirring events which can be only alluded to here for the purpose of urging a closer study — Cassell's History of England, Vol. V., pp. 71–100.

BRITAIN'S SECOND COLONIAL EMPIRE. — During one of the exciting debates which took place in the British Parliament on the subject of the American War, Lord Shelburne exclaimed, "When the Independence of America is admitted, the sun of England will have set for ever." That prediction was doomed to be falsified. No doubt the loss of her American colonies was a fearful blow to the Britain of 1783. But the world was wide, and colonization was still young. Canada, a vast tract of country extending from the Atlantic to the Pacific Ocean, still belonged to Britain. Many loyalists fled from the southern colonies during the revolutionary wars and commenced the foundation of new settlements in Canada, which promised to be as great in wealth and population as some of the colonies that were lost.

In 1791, by the Act 31 Geo. III. c. 31, Canada was divided into two provinces, Upper Canada, afterwards Ontario, and Lower Canada, afterwards Quebec. In each province representative institutions were established, but the Executive was vested exclusively in the Crown. This system lasted until 1840, when the Canada Union Act, 3 and 4 Vict. c. 35, was passed. (R. R. Garran, The Coming Commonwealth, p. 81.) Under this Act the two provinces were united in one Constitution. A new Parliament, consisting of a Legislative Council, nominated by the Crown, and a Legislative Assembly, elected by the qualified inhabitants, coupled with Responsible Government, was constituted for the United Provinces. The new machinery of government was brought into operation under the Governor-Generalship of Mr. C. Powlett Thompson (afterwards Lord Sydenham) on 30th June, 1811. By the British North America Act, 1867 (30 and 31 Vict. c. 3) the two Canadas, Nova Scotia and New Brunswick, were federally united in one Dominion by the name of Canada. The new Constitution was proclaimed on the 1st July, 1867, Lord Monck being Governor-General. The new province of Manitoba joined the Union in 1870, British Columbia and Vancouver Island in 1871, and Prince Edward Island in 1873. Newfoundland is the only British colony in North America which has not joined the Dominion.

The southern hemisphere was destined to present to Great Britain a new Colonial Empire to replace the one that was lost. The same year, during
which the Americans were welded "into a more perfect union" by their federal constitution of 1787, saw Captain Arthur Phillip, with the "first fleet," on his way to the Southern Ocean in order to establish a settlement on the eastern shores of Australia, which had just been discovered and explored by Captain Cook.
(2) In Australasia.

FROM MAGELLAN TO COOK. — No one man, no one nation, can exclusively claim the honour of having discovered Australia. Justice demands the acknowledgment that many brave mariners and the Governments of several pioneering and exploring countries assisted in the gradual unfolding of the situation and outlines of the great continent. See Barton, "History of New South Wales," Vol. I., pp. 25–39. In his interesting work, "The Discovery of Australia" (1895) Mr. George Collingridge (Sydney) propounds the thesis that either Spaniards or Portuguese discovered and charted the continent as early as 1508. He publishes a copy of what purports to be a French map of the world by Oronce Finé, dated 1531, in which "Terra Australis" is represented as forming part of an extensive ant-arctic land, and another, dated 1546, in which it is described as Java-la-Grande, with a small channel dividing it from the true Java. In an article in the Geographical Journal, October, 1899, Mr. George Heawood expresses the opinion that there is no authentic evidence that Australia was discovered before 1606. A number of events and incidents have, however, been commonly associated with the history of Australian discovery prior to 1606; these cannot be passed over or disregarded; they may be here mentioned with the observation that the evidence on which they are based is vague.

It is said by some writers that in 1527 a Portuguese mariner named Menezis penetrated the Southern Ocean and touched at a group of rocky islands to which he gave the name of Abrolhos, and which may now be seen marked on the map, lying to the westward of Champion Bay, Western Australia. (Australian Hand Book, 1897, p. 363.) From maps and documents in the British Museum and the War Office of Paris, it would appear that a Provencal navigator, named Gillaume le Testu, a native of the French city of Grasse, discovered some portion of the Australian continent in the year 1531. Early in the year 1542 an expedition was despatched from Spain under the command of Luis Lopez de Villalobos to follow up the voyage of Magellan in the Pacific Ocean. He took possession of the Philippines for Spain, and coasted along a large island to which he gave the name of New Guinea, and which was then thought to be a part of the Great Unknown Southern Land, which Ptolemy, the geographer, supposed to exist south of the Indian Ocean. The next record is that in 1598, a Portuguese mariner named Houtman reached the Abrolhos, with which his name became associated. In 1605, Pedro de Quiros was despatched by the Court of Spain to the South Sea in command of a fleet of three vessels. On
April 20th, 1606, he discovered one of the islands of the New Hebrides, which he believed formed part of the Southern Continent, and to which he gave the name of "La Austrialia del Espiritu Santo." In a memorial to Philip III. of Spain (the head of the house of Austria) de Quiros explained that he had named it "for the happy memory of your Majesty and for the sake of the name of Austria, because on your birthday I took possession of it." — Collingridge, Discovery of Australia, p. 248. One of his ships, commanded by Luis Vaez de Torres, became separated from the rest, and sailing westward he saw land which he believed to be the eastern extremity of New Guinea. He skirted along its southern coast and saw land to the south as he proceeded westward and passed through those straits which now bear his name. Torres was probably the European who first caught sight of the continent, afterwards to be known as Australia. The stories with respect to Menezis and Houtman are unsatisfactory. — Story of Geographical Discovery, Joseph Jacobs (1899), p. 158.

Other writers have, however, claimed for Dutch mariners the credit of being the first Europeans to sail in Australian waters. Whilst the Spaniards and Portuguese were engaged in exploring the South Seas the Dutch were not idle. From Batavia, the central station of their Indian trade, they sent out ships in search of islands and commerce. On 18th November, 1605, the Dutch despatched the ship Duyfhen (Dove) from Bantam in Java, to explore New Guinea. It is claimed for the Duyfhen that she skirted the west and south coast of New Guinea for nearly one thousand miles, sighted Cape York, touched the eastern shore of the great indentation, afterwards known as Carpentaria; and that some of her crew landed on the shores of the Gulf and were killed by the natives. "The exact dates of the respective discoveries of Torres and the commander of the Duyfhen cannot now be ascertained; but as the Dutch vessel had arrived in the island of Banda, on her return to Bantam, in the month of June 1606, while the letter of Torres, communicating an account of his voyage to the Spanish Admiralty, is dated at Manilla, in the month of August following, Captain Flinders conjectures, with every appearance of probability, that the honour of the discovery of Australia is due to the Dutch, and that it must have taken place in the month of March, 1606, a few months before the discovery of Torres." — Lang's History of New South Wales (1875), p. 3.

Referring to the conflicting claims for the honour of the discovery of Australia, Dr. Lang wrote: - "Whether these allegations, however, are well founded or not, we have to console ourselves, as Britons, with the comfortable reflection that, while neither the French nor the Dutch, neither the Spaniard nor the Portuguese, ever made any account of their alleged discoveries, we, the only practical people in the lot, have already, by
following and settling in the track of our own great navigator, Captain Cook, founded a whole series of noble empires of the future in the Great South Land." — History of New South Wales (1875), p. 4.

Many Dutch navigators explored the west and southern coast line of the supposed continent during the seventeenth century, and left behind them lasting evidences of their visits, in the shape of names of islands, capes, and bays, which now figure prominently on the map of Australia. The first authentic discovery of any part of the west coast of the continent is said to have been made by Captain Dirk Hartog, who sailed from Amsterdam, in the *Endraaght* (Concord), in 1616. To the land on the west coast near the 25th parallel, which he visited, he gave the name of his vessel: *Endraaght's Land*. To one of the islands off the main coast be gave his own name, Dirk Hartog, and to another the name of Dorre, one of his sailors. The bay adjoining the island was afterwards named by Dampier Shark's Bay. In 1619 Captain Jan Edel visited that part of the coast south of *Endraaght's Land*. The south-west cape was rounded by Dutch mariners in 1622, and received the name of the vessel, "Leeuwin" (Lioness), in which the discovery was made. In 1627 Captain Van Pieter de Nuyts in the *Gulde Zeepaert* (Golden Serpent) cruised along a considerable part of the south coast of the continent, which he called Nuyts Land. Captain Pieter Carpenter, an officer in the service of the Dutch East India Company, in 1627, explored and gave his name to the Gulf of Carpentaria. In 1628–9 Captain Pelsart, in command of the *Batavia*, was wrecked on the west coast at the spot known as Houtman's Abrolhos. The most important discovery made by the Dutch navigators, in the seventeenth century, was that of Abel Janssen Tasman. In 1642, Anthony Van Diemen, the Dutch Governor-General of Netherlands India, organized an expedition to explore the coast of Australia, which had been sighted by so many Dutch adventurers, but which still remained a *terra incognita*. Tasman was placed in command. He sailed from Batavia on 16th August, 1642, proceeding southward until he almost reached the 44th parallel. On 24th November, 1642, land was seen, to which he gave the name of Van Diemen's Land. The land first seen by Tasman is supposed to have been Point Hibbs. He saw and named Storm Bay; discovered and named Maria Island, and then sailed eastward. On 18th December he discovered land, which he called Staaten Land, but which afterwards acquired the name of New Zealand; he anchored in a bay in the Strait, between the North and Middle Islands. He then sailed northward, passed and named Cape Maria Van Diemen, and made for the tropics, where he discovered the Tonga Islands. Had Tasman sailed from Van Diemen's Land northward instead of eastward, he would have anticipated Cook's discovery of eastern Australia by one hundred
years. In 1664, the country, whose leading outlines were yet dimly understood, was named New Holland by the States-General, and the discoveries of Tasman were proudly inscribed on the map of the world, cut in stone upon the New Staathaus in Amsterdam.

In 1683, William Dampier, one of a company of bold buccaneers, started off on a voyage round the world. After passing through many wild adventures, Dampier obtained the command of a vessel called the Cygnet, in which he reached the Philippines, and thence he proceeded on a voyage to New Holland. He reached the west coast in latitude 16° 50' on 4th January, 1688. In his narrative he said: "New Holland is a very large tract of land. It is not yet determined whether it is an island or a main continent, but I am certain that it joins neither Asia, Africa or America." Dampier returned to England on 2nd September, 1691. In 1699, King William III. organized an expedition for the discovery of unknown lands. Dampier was placed in command, the name of the ship in which he sailed being the Roebuck. He reached the coast of New Holland on 4th July, 1699, and on the 1st August his ship struck the Abrolhos rocks, but escaped being wrecked. A harbour was found, which proved to be that of Dirk Hartog, who had anchored there in 1616. To this harbour Dampier gave the name of Shark's Bay. Afterwards Dampier sailed northward, passing in his course the archipelago which now bears his name. The coastline traced by him was apparently sterile and inhospitable. Dampier was the first Englishman who landed on the shores of New Holland. By some historians he has been styled the "prince of voyagers" and "the Cook of a former age." European writers like Humboldt have borne testimony to his bravery, his skill, and his genius as a mariner, and to the value and accuracy of his reports concerning his discoveries. — Blair's History of Australia (1879), pp. 29-34.

The only voyage of consequence between Dampier's time and that of Cook was one by Willem de Vlamingh, a Dutch navigator, who, in 1699, was ordered by his Government to search for the Dutch ship Ridderschap, which was lost in 1684. In his search along the west coast, in the Geeliruk, Vlamingh discovered and entered Swan River.

COOK'S DISCOVERIES. — To Captain James Cook, one of Britain's bravest and most illustrious mariners was reserved the immortal fame of commencing and completing a voyage of discovery next in importance to those of Columbus and Magellan, by which he solved the problem of the Great Southern Continent, discovered and explored the eastern shores of Australia — or New Holland, as it was then called — and took possession of it in the name of the British Crown. The immediate occasion and motive of Cook's first voyage was not a thirst for gold or empire on the part of the
British Government, but the conduct of a scientific expedition to the island of Otaheite, now called Tahiti, in the South Sea, for the purpose of observing the transit of the planet Venus across the sun's disc. On 26th August, 1768, Captain Cook sailed from Plymouth in the *Endeavour*, a barque of 360 tons, originally built for the coal trade. The barque was victualled for an eighteen months' voyage. Among those on board wore Mr. (afterwards Sir) Joseph Banks, President of the Royal Society; Mr. Charles Green, Assistant Astronomer; Dr. Solander, a Swedish Botanist; Zackary Hicks, lieutenant; Robert Molineux, master; Charles Clerke, mate; John Guthrey, boatswain; Stephen Forwood, gunner; John Satterly, carpenter; William B. Monkhouse, surgeon; Richard Orton, clerk. Cook's instructions were to sail to Otaheite, and after the completion of the astronomical observations to proceed south as far as the 40th parallel — with a view to ascertaining the existence of the supposed "Terra Australis," or Great Southern Continent (quite distinct from New Holland) which geographers believed to exist in polar regions — and then to steer westward until he reached New Zealand, after which he was to return to England.

The transit of Venus having been successfully observed, Cook and his party left Otaheite in the *Endeavour* on 13th July, 1769. He reached a latitude of 40° 12' without finding the imaginary continent, and then proceeded westward. After a run of about sixty-eight days, a lad on board the *Endeavour*, named Nicholas Young, saw land from the masthead, which afterwards proved to be the south-west point of Poverty Bay, New Zealand. That was on 6th October, 1769. Various parts of the island were visited, and on 10th November, 1769, Cook took formal possession of the country in the name of King George III. Having circumnavigated New Zealand and passed through the Straits which now bear his name, Cook, on 31st March, 1770, sailed from Cape Farewell towards the west, his plan being to steer westward until he should reach the east coast of New Holland, and then to follow the direction of that coast northward. On 18th April, Lieutenant Hicks caught sight of a projection of land which was named after him, Point Hicks. The name was subsequently changed to Cape Everard; it is situated between Cape Howe and the entrance to the Snowy River. Proceeding northward, on 28th April, a bay was discovered and entered, and a landing effected. The name given to it at the time — as appears from Cook's private log — was "Sting-ray Harbour;" and its present name of Botany Bay, obviously suggested by Banks' botanical discoveries, appears for the first time in Dr. Hawkesworth's embellished narrative of Cook's voyages See Historical Records of N.S.W., Vol. I., p. 161. During his stay in Botany Bay Cook caused the British flag to be
displayed on the shore; and the ship's name and the date of his visit were inscribed on one of the trees near the watering place. On 6th May, 1770, the *Endeavour* resumed her voyage northward, and at noon on the same day Cook observed an opening in the coast which he called "Port Jackson," probably in honour of Mr. (afterwards Sir) George Jackson, one of the Secretaries of the Admiralty. See Historical Records of N.S.W., Vol. I., pp. 170–2.

In the voyage northward all the prominent features of the coast were noted and named, including Smoky Cape, Port Macquarie, Moreton Bay, Cape Capricorn, and other bays and capes. After skirting the dangerous coast for a distance of about thirteen hundred miles, the *Endeavour* narrowly escaped shipwreck by striking some coral rocks. On 21st October, 1770, Cape York was reached. The Coast was followed in order to determine whether there was a passage between New Holland and New Guinea. A channel having been found, it was named Endeavour Straits — a name which has since been dropped in favour of Torres, the intrepid Portuguese who is supposed to have first sailed through. Cook landed and took formal possession of the whole country along which he had coasted. Cook's log, as "written up" by Hawkesworth, contains the following entry:-

"I once more hoisted English colours, and though I had already taken possession of several parts, I now took possession of the whole eastern coast in right of His Majesty King George III., by the name of New South Wales, with all the bays, harbours, rivers and islands situated upon it; we then fired three volleys of small arms, which were answered by the same number from the ship. Having performed this ceremony upon the island we called it Possession Island." — Hawkesworth, Voyages, Vol. III., p. 616.

Legend has it that Cook gave this name to the country owing to a fancied resemblance to the Welsh coast about Swansea. It is remarkable, however, that neither his official log nor his private log, nor any of the journals of the ship's company, mentions the name of New South Wales. It seems either to have been an after-thought, or to have originated with Hawkesworth. See Historical Records of N.S.W., Vol. I., pp. 169–70.

The first voyage of the *Endeavour* and Cook's discoveries, constitute a story full of thrilling interest to Australians. His heroic services and his great work have not yet been adequately recognized by those of the British race who now possess and enjoy the glorious heritage, the Australian continent, which he helped so materially to bequeath to them. Whilst we are now celebrating the establishment of the Australian Commonwealth, and rejoicing at the beginning of a new era of national life which shall give us a more exalted citizenship, and a wider patriotism, let us not forget James Cook and his courageous comrades, who in a frail barque of 360
tons dared the storms of two oceans in search of new homes for the unborn millions of the British race. All honour to the name of Captain Cook!

Cook's second great voyage was commenced on 13th July, 1772, in the Resolution, 462 tons burthen; he was accompanied by Captain Tobias Furneaux, in the Adventure, 336 tons. The object was to make further search for the supposed Southern Continent of the geographers. In this voyage Cook and Furneaux directed their course towards the South Pole, and penetrated beyond the Antarctic Circle. On 8th February, 1773, the two vessels became separated. Cook then directed his course to Queen Charlotte's Sound, New Zealand, the appointed rendezvous. Captain Furneaux followed a more northerly course, coasted along the southern and eastern shores of Van Diemen's Land, and met Cook at Queen Charlotte's Sound. Subsequently Cook cruised in the Pacific, visited and named the New Hebrides group, landed on and named New Caledonia, discovered and named Norfolk Island. He returned to England on 30th July, 1775, after an absence of over three years, having conclusively proved that no Polar Continent existed in navigable seas. See Historical Records of N.S.W., Vol. I., pp. 333, 380.

In 1776 Cook commenced his third and last voyage. On this occasion he was again in command of the Resolution, and was accompanied by Captain Clarke, in the Discovery, 300 tons. On 26th January, 1777, he arrived off the coast of Van Diemen's Land and anchored in Adventure Bay, which had been so named by Captain Furneaux. On 30th January the Resolution and Discovery left Van Diemen's Land and sailed for New Zealand. Thence they left for the Society Islands. Cook's tragic death took place at Hawaii, one of the Sandwich Islands, on 14th February, 1779. His work was done. Australia, Tasmania and New Zealand were by his labours for ever secured to the inheritance of the British people.

PROJECTS FOR SETTLEMENT. — The project of a settlement on the east coast of New Holland seems to have been due to the enthusiastic reports of Sir Joseph Banks as to the fertility and capacity of the country. Before a Committee of the House of Commons, appointed in 1779 to enquire into the question of transportation, he gave evidence that if it were thought expedient to establish a penal settlement in a distant land, "the place which appeared to him best adapted for such a purpose was Botany Bay, on the coast of New Holland." — Barton, History of N.S.W., Vol. I., p. xlv. The Committee, without recommending any particular locality, reported in favour of establishing a convict colony in some distant part of the globe.

The existing laws, however, only authorized transportation to the colonies and plantations of North America (see the Act 4, George I. c. 11);
and as the independence of the American colonies had now been recognized, further legislation was necessary. Accordingly in 1784 the Act was passed under which the first settlement of Australia took place, and which is dealt with in Part III of this introduction.

Mention may here be made of a proposal by an Englishman, James Maria Matra, to establish in New South Wales a free settlement for the American loyalists who had suffered for their allegiance to the Crown during the war, and who might wish to remain under the British flag. This plan, though it received the hearty support of Sir Joseph Banks, was not favourably received by the Government, and New South Wales thus missed the opportunity of being founded as a free and settled colony — Barton, History of N.S.W., Vol I., pp. 1–10.

FROM COOK TO FLINDERS. — On 20th January, 1788, Captain Arthur Phillip arrived at Botany Bay with "the First Fleet," consisting of His Majesty's frigate *Sirius*, in command of Captain John Hunter, accompanied by one armed tender, three store ships, and six transports, conveying six hundred male and two hundred female prisoners, a guard consisting of one Major Commandant, three captains of marines, twelve sub-lieutenants, twenty-four non-commissioned officers, and one hundred and sixty-eight privates. There were also among them forty-two women, wives of the marines, together with their children. It was found that Botany Bay was not suitable for the proposed settlement. The ships remained in the harbour whilst Captain Phillip sailed along the coast in a boat for the purpose of examining the opening recorded by Captain Cook, and by him named Port Jackson. It was found to be a noble and beautiful harbour. In one of its many bays a site suitable for a settlement was selected, and named "Sydney Cove" in honour of Viscount Sydney, one of the members of Pitt's administration. Returning to Botany Bay, Captain Phillip proceeded to make arrangements to send the ships around to Sydney Cove. Meanwhile two ships, flying the French colours, appeared on the scene. They proved to be the French exploring vessels *Boussole* and *Astrolabe*, under the command of La Perouse; they came there for wood and water. After delivering to Captain Phillip despatches to be forwarded to the French Government, La Perouse sailed away across the Pacific, and was never again seen or heard of, but in 1826 traces of his wrecked ship were found on the island of Vanikoro, near the Fijis. On 26th January the fleet sailed into Port Jackson. The people were disembarked at Sydney Cove. The British colours were hoisted. The Royal Proclamation and Commission constituting the colony of New South Wales were read. A salute was fired. The work begun by Cook was about to bear its fruit in the shape of Australian settlement and colonization.
In April, 1791, George Vancouver, an English navigator, who accompanied Captain Cook on his second and third voyages, made a careful survey of the south-west coast of Australia, in the course of which he inspected a harbour which he named King George's Sound in honour of the reigning sovereign.

In 1792, a French expedition, under Admiral Bruni D'Entrecasteaux in the *Recherche*, accompanied by Captain Huon Kermadec in the *Esperance*, discovered Recherche Archipelago and Esperance Bay, W.A., and then visited the coast of Van Diemen's Land in search of the lost La Perouse. They passed through the channel bearing the name of the Admiral, and sailed up the Huon and the Derwent.

In 1795 Captain John Hunter arrived in New South Wales, in the *Reliance*, to commence his duties as Governor in succession to Captain Phillip. There came with him two young men whose names have become honoured by their association with memorable events in connection with Australian maritime discoveries — Matthew Flinders, midshipman, and George Bass, surgeon. They afterwards took a leading part in exploring previously unknown tracts in Australian waters, and in solving geographical problems of great importance. On 3rd December, 1797, whilst Flinders was engaged on a surveying voyage at Furneaux's Islands, Bass, obtaining from the Governor the use of a whaleboat, a crew of six men, and provisions for six weeks, started from Sydney, cleared the heads and sailed southwards; explored the coast, discovered Twofold Bay, passed southward beyond the great projection of land, now called Wilson's Promontory, and then proceeded further westward until he discovered the harbour now known as Western Port. He had entered the channel which runs between Van Diemen's Land and Australia, though he was not certain of its continuity. In October, 1798, Flinders, associated with Bass, sailed from Sydney in a small decked vessel named the *Norfolk*, 25 tons; made for Van Diemen's Land; steered along its northern coast; discovered and entered Tamar heads and anchored in Port Dalrymple; rounded the north-west headland (Cape Grim) and eventually circumnavigated the island, for the first time determining its insularity. The name of Bass is immortalized in the Straits, to which, on the recommendation of Flinders, it was given. In 1799, Flinders was sent by Governor Hunter to explore the coastline north of Port Jackson. In the sloop *Norfolk* he proceeded along the coast, examined Moreton Bay and afterwards went as far as Hervey's Bay.

On 17th March, 1800, Lieutenant James Grant was sent from England, in command of the surveying ship *Lady Nelson*, 60 tons, for the purpose of exploring the southern coast of New Holland. On rounding the West Australian cape, he shaped his course to reach Sydney through the Straits
discovered by Bass and Flinders, instead of proceeding via Van Diemen's Land. On 3rd December, 1800, Grant sighted a part of the coast of South Australia, to which he gave the name of Cape Northumberland. He also sighted and named other points, including Cape Bridgewater and Cape Otway. The Lady Nelson was the first ship to pass through Bass Straits from the westward. Afterwards Grant, in the *Lady Nelson*, surveyed the coast between Wilson's Promontory and Western Port. Lieutenant Murray succeeded Grant in command of the *Lady Nelson*. On 12th November, 1801, Murray started from Sydney for the purpose of prosecuting a more minute exploration along the south coast. This voyage resulted in the discovery of an opening between Western Port and Cape Otway; it was first seen on 5th January, 1802, but owing to unfavourable weather it could not be entered for several weeks. It was first inspected in a launch, by Mr. Bowen, the mate of the *Lady Nelson*, who entered it on 1st February. The *Lady Nelson* was then brought round from Western Port, and on 15th February passed through the narrow channel. This proved the gateway to what Murray described as "a noble harbour," which he named Port King, but the name was afterwards changed to Port Phillip, in honour of the first Governor of New South Wales.

At about this time Flinders was on his way back from England in the flagship *Investigator*, 334 tons. He reached Cape Leeuwin on 7th December, 1801; entered King George's Sound; surveyed the coast eastward; discovered and named Fowler's Bay, Smoky Bay, Streaky Bay, Port Lincoln, Spencer's Gulf, Hardwick Bay, Point Marsden, Nepean Bay, the Gulf of St. Vincent, Yorke Peninsula, Mount Lofty, Kangaroo Island, and Backstairs Passage. At Encounter Bay he came across Commodore Baudin, in command of the French ship *Geographe*.

In 1801 a French expedition commenced an exploration of the Australian coast which has left enduring traces of its investigations on the map of the continent. It consisted of three ships — the *Geographe*, the *Naturaliste*, and the *Casurina*. It was under the command of Commodore Baudin and his first lieutenant, M. Freycinet. They appeared to have examined a part of the west coast of the continent, and also the eastern coast of Van Diemen's Land, where they were engaged so long that Flinders, in the *Investigator*, had almost completed his survey of the southern coast when Baudin proceeded to explore from the east to westward. Referring to the meeting of Flinders and Baudin, Mr. David Blair wrote: "Flinders subsequently found that the French, by the orders of the Emperor Napoleon, claimed all the south coast as their discovery, and had named the various points along it by the names of the emperor and his courtiers. They even gave the whole territory the name of Napoleon Land. The officers of the *Geographe* knew
well that all this was done without warrant, for one of them — M. Freycinet, first lieutenant to Captain Baudin — said afterwards to Flinders at Sydney Government House: ‘Captain, if we had not been kept so long picking up shells and catching butterflies in Van Diemen's Land, you would not have discovered the south coast before us.’ It is but justice to the French people to say that all idea of appropriating Flinders's discoveries has long since been abandoned by them." - Blair's History of Australia, p. 115.

Flinders proceeded on his voyage eastward, and on reaching Cape Otway he proceeded to explore the great indentation which Grant had reported. Flinders then discovered the opening within which was situated Port Phillip, which he entered on 27th April, 1802, without having any knowledge of its having been previously (15th February, 1802) entered by Lieutenant Murray. "Strangely enough," wrote Dr. Lang, "Port Phillip was afterwards discovered, on 30th March of the same year, by Captain Baudin, of the French expedition; and again, on the 27th April following — all independently — by Captain Flinders; but the honour of the discovery is unquestionably due to Lieutenant Murray, who had preceded Captain Baudin six weeks and Captain Flinders ten." — History of New South Wales, p. 82. After quitting Port Phillip, Flinders proceeded on his journey to Sydney, which he reached on 9th May, 1802. On his arrival there, he found the French ship *Naturaliste* in the harbour, to the commander of which, Captain Hamlin, he showed his charts of the coast between Cape Nuyts and Encounter Bay. — Blair's History of Australia, p. 116.

In 1802, Governor King despatched Surveyor-general Grimes in the *Cumberland* to examine Port Phillip and to warn off Commodore Baudin, who was known to be in the neighbourhood, with the *Geographe* and the *Naturaliste*, and meditating annexation of the south coast for the French Government. Grimes fell in with Baudin on 8th December at King's Island. Grimes delivered his despatches to Baudin, and after exploring King's Island he entered Port Phillip and proceeded to examine its coast line. On 2nd February, 1803, he ascended the Yarra. He was the first white man who trod the destined site of the city of Melbourne.

THE NAME "AUSTRALIA." — The continent of Australia was not yet known by that name. It was usually described, either by the old name, "Terra Australis," given by the geographers, or by the Dutch designation of "New Holland." In 1606 de Quiros gave to an island in the New Hebrides, which he believed to be part of the Great Southern Continent, the name of "La Australia, del Espiritu Santo" (see p. 24 supra). De Brosses, in his *Histoire des Navigations aux Terres Australes* (1756), coined the name
"Austral-Asia" to describe the islands in a part of the South Pacific. The word "Australia" seems to have been first used by Dalrymple, in his Collection of Voyages in the South Pacific, published in 1770, when Cook was actually in Australian waters. Dalrymple, however, applied the name, not to New Holland alone, but to "all the lands and islands to the westward of South America." The application of the word "Australia" to the Continent seems to have been first suggested by Matthew Flinders in 1814, and in about 1820 it came into general use. — Barton, History of N.S.W., vol. 1, pp. 86–93. In 1829 it first appeared in the Imperial Statute Book in the Act 10 Geo. IV. c. 22, which made legal provision for the settlement of "Western Australia, on the western coast of New Holland."

GREATER BRITAIN. — The limits of our space will not permit us to trace the progress of exploration and settlement along the shores and through the interior of Australia during the first century of its history. We can only present a brief sketch of the beginning and gradual development of Provincial Government in each colony leading up to the movement in favour of federal union. We bring to a close our review of the progress of British colonization with a few general observations on the relations of British colonies to the empire of which they form a part. The people of Australia are in the undisputed enjoyment and possession of one of the fairest countries beneath the sun, with all the rights and privileges of free institutions, political equality and local self-government. They are now entering upon that higher act of political union at all times contemplated, with the inestimable advantage of forming an integral part of the British Empire. That Empire is much vaster in dominion, much richer and more populous than when Great Britain lost the United States. "The sun of England" has not set for ever. It shines brighter than ever; brighter by reason of the passing away of political darkness, misgovernment, corruption, and despotism; brighter by reason of the enlightened views of her statesmen and the enfranchisement of her toiling masses; brighter by reason of the democratic constitutions which have been granted to her colonies and dependencies in all parts of the earth. The red line of British frontier has been creeping in advance of all the other national colours on the map; stretching into distant "regions Caesar never knew." But in all this the policy of the nation has been colonization, not conquest; the planting of people on the soil, and enabling them to build homes for themselves and reclaim the wilderness from the savage for their own benefit and the comforts and delights of existence; not for the glorification of princes, or the enrichment of families in Europe, as was the case in the Spanish and French systems.

Consider for a moment the vast magnitude, the enormous wealth, and the
surprising population of the British Empire at the present time. There are about 56 colonies and dependencies recognizing the sovereignty of the Queen. The area at home and abroad amounts to 11,712,171 square miles; the coast line of this area exceeds in length the entire circumference of the earth, being 28,500 miles; the total annual public revenue of Great Britain and her colonies and her dependencies for the year 1897–8 was £256,452,167; the annual value of exports £515,730,000, and imports £746,407,484; the population was 385,280,140. Such is the majestic fabric of the British Empire of to-day, of which Daniel Webster, the American orator, said so long ago as May 1834, that she was the "power which dotted the surface of the whole globe with her possessions and military posts, whose morning drum-beat, following the sun and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England."

From the contemplation of these facts we can, to some extent, realise the greatness of the birth-right which has descended to us through the labours, the enterprise, the patriotism, and the sacrifices of the pioneers of British colonization, and the builders of the British Empire.
Part III. Colonial Government in Australia.
(1) New South Wales.

EARLIEST STATUTORY AUTHORITY. — In 1784 the Imperial Parliament passed the statute, 24 Geo. III. c. 56, intitled "An Act for the effectual transportation of felons and other offenders, and to authorize the removal of prisoners in certain cases, and for other purposes therein mentioned." This law empowered the King, with the advice of the Privy Council, to appoint places to which felons might be transferred. By an Order in Council bearing date 6th December, 1786, His Majesty's "territory of New South Wales situated on the east part of New Holland" was appointed a place for the reception of persons within the meaning of the Act.

By letters patent and commission dated 2nd April, 1787, Captain Arthur Phillip was appointed Governor and Vice-Admiral of the territory. It was declared that the limits of his authority extended "From the north cape or northern extremity of the coast called Cape York, in latitude of 10° 37' south, to the south cape or southern extremity of the coast in latitude of 43° 39' south, and inland to the westward as far as 135° east longitude, reckoning from the meridian of Greenwich; including all the islands adjacent in the Pacific Ocean within the latitudes aforesaid." The western or inland boundary was afterwards (1827) extended to the 129th meridian. The Governor was empowered to make orders for the good government of the settlement. In the shape of ordinances, he created offences and crimes previously unknown to the law; he made regulations; he modified the application of the law of England in matters relating to police, tolls, and convict labour. His legislative powers were assumed to be founded on and justified by the prerogatives of the Crown. There is now reasonable ground for entertaining a doubt whether the Crown had authority to delegate such a power to the Governor — Mr. Commissioner Bigge's Report (1823), p. 10; Bentham's Plea for the Constitution, IV., p. 255–60; Webb's Imperial Law, p. 25.

The Judicial authority necessary for the government of the new settlement was derived partly from statute and partly from prerogative, similarly assumed to exist. The Act 27 Geo. III. c. 2, intitled "An Act to enable His Majesty to establish a Court of Criminal Jurisdiction on the eastern coast of New South Wales and the parts adjacent thereto," authorized the Crown by letters patent to erect a criminal court for the trial and punishment of treasons, felonies, and misdemeanours. This court, which was similar in its constitution to a court of Admirtalty in its criminal jurisdiction, was composed of a Judge-Advocate and six naval or military
officers to be selected by the Governor. There was thus ample statutory authority for the administration of criminal law according to a procedure suitable enough, perhaps, for a penal settlement, but not for a free community. There was no statutory authority whatever for the creation of civil courts. The Imperial authorities seem to have considered that the Crown, in the exercise of its prerogative, could constitute civil courts. By letters patent, dated 2nd April, 1787, the Crown created a court of civil jurisdiction having power to deal in a summary way with personal actions and probate and administration proceedings "according to the law of England." The civil court was presided over by the Judge-Advocate and two inhabitants of the settlement, appointed by the Governor. This civil procedure continued in operation until 4th February, 1814, when fresh letters patent were issued, formulating a new plan of administration, by which the civil and criminal jurisdictions, previously united in the Judge-Advocate, were separated. A primary civil court, presided over by the Judge-Advocate and two inhabitants appointed by the Governor, was established and endowed with jurisdiction in personal actions in which the amount involved did not exceed £50. A Supreme Court, presided over by a Judge and two magistrates, was erected and clothed with jurisdiction in personal actions in which the amount involved exceeded £50, and with general jurisdiction in equity, probate, and administration matters. Eminent jurists are now of opinion that these civil courts were established by the Crown without any constitutional authority. The legislative power exercised by the Governor is also believed to have been equally unconstitutional. — Webb's Imperial Law, p. 24.

The Governor was endowed with almost absolute power. His rule was a despotism, tempered by his own discretion and by the knowledge that he was liable to be called to account by the Imperial authorities for any maladministration. His oath of office principally required him to observe the law relating to trade and plantations. — Jenks' Government of Victoria, p. 11. Such was the legal authority under which, on 26th January, 1788, a penal settlement was established and for many years afterwards maintained at Sydney Cove. It was not at first intended to be a colony or plantation within the ordinary meaning of those terms, viz., for the purpose of trade and cultivation — Clarke's Colonial Law, p. 1. Lubbock v. Potts, 7 East 449. Webb's Imperial Law, p. 12.

By the Acts 59 Geo. III. c. 114, 1 and 2 Geo. IV. c. 8, and 3 Geo. IV. c. 96, the Governor of New South Wales was given limited powers to impose local taxation in the shape of Customs duties on spirits, tobacco and other goods imported into the colony.

A RUDIMENTARY CHARTER. — The temporary Act 4 Geo. IV. c. 96
(1823), which became law during the governorship of Sir Thomas Brisbane, was the first legislation passed by the Imperial Parliament conferring anything like the rudiments of local self-government on the New South Wales community. It was intituled "An Act to provide until the 1st day of July, 1827, and until the end of the next session of Parliament, for the better administration of justice in New South Wales and Van Diemen's Land, and for the more effectual government thereof;" but it went a little beyond its title. The old Military Courts of 1787 were abolished, and a Supreme Court and Court of Appeal, on something like the English model, were authorized to be erected. The Crown was empowered to create, by warrant, a Council consisting of from five to seven persons charged with certain legislative powers of a limited character. They were to be appointed during the pleasure of the Crown; they could advise but not overrule the Governor in matters of legislation, and all laws and ordinances passed with their approval were required to be laid before the British Parliament. On 17th May, 1824, a charter of Justice, bearing date 13th October, 1823, was promulgated, creating the Supreme Court of New South Wales, and appointing Francis Forbes, Esq., to be the first Chief Justice. On 1st December, 1823, five persons were appointed members of the Council, consisting of the principal Government officials, viz., the Lieutenant-Governor, the Chief Justice, the Colonial Secretary, the Principal Surgeon, and the Surveyor-General for the time being. On 17th July, 1825, the Council was re-constituted and increased to its full number of members, including three private persons, residents of the colony.

Up to the passing of the Act 4 Geo. IV. c. 96 (1823), Van Diemen's Land was a dependency of New South Wales. By sec. 24 of that Act the Crown was authorized to proclaim Van Diemen's Land a separate colony independent of New South Wales. The history of New South Wales and Van Diemen's Land (afterwards Tasmania), as constitutional colonies, begins with the Act 4 Geo. IV. c. 96, which was their first charter of Government.

The Act 9 Geo. IV. c. 83 (25th July, 1828), intituled "An Act for the Administration of Justice in New South Wales and Van Diemen's Land, and for the effectual government thereof," was the second constitutional charter of Australia. It was passed during the governorship of Lieutenant-General Sir Ralph Darling. It re-enacted the main provisions of the temporary measure and made better provision for the administration of justice. The civil and criminal jurisdictions of the courts were amended and improved, power being given to the respective Legislative Councils to introduce trial by jury in all criminal cases. It contained the well-known section (24), which enacts "That all laws and statutes in force within the
realm of England at the time of the passing of this Act (not being inconsistent herewith, or with any charter, or letters patent, or Order in Council, which may be issued in pursuance hereof), shall be applied in the administration of justice, in the courts of New South Wales and Van Diemen's Land respectively, so far as the same can be applied within the said colonies; and as often as any doubt shall arise as to the application of any such laws or statutes in the said colonies respectively, it shall be lawful for the Governors of the said colonies respectively, by and with the advice of the Legislative Councils of the said colonies respectively, by ordinances to be by them for that purpose made, to declare whether such laws or statutes shall be deemed to extend to such colonies, and to be in force within the same, or to make and establish such limitations and modifications of any such laws and statutes within the said colonies respectively, as may be deemed expedient in that behalf."

Another interesting and important section of this Act was sec. 20, in which it was recited that "it may be necessary to make laws and ordinances for the welfare and good government of the said colonies of New South Wales and Van Diemen's Land, and the dependencies thereof, the occasions of which cannot be foreseen, nor without much delay and inconvenience provided for, without entrusting that authority for a certain time, and under proper restrictions, to persons resident there." It was also recited that "it is not at present expedient to call a Legislative Assembly in either of the said colonies." It then proceeded to enact "That it shall and may be lawful for His Majesty, his Heirs and Successors, by warrants under his or their sign manual, to constitute, and appoint in New South Wales and Van Diemen's Land respectively, a Council, to consist of such persons resident in the said colonies respectively, not exceeding fifteen nor less than ten, as His Majesty, his Heirs and Successors, shall be pleased to nominate."

The Governors of the colonies of New South Wales and Van Diemen's Land, with the advice of the Legislative Councils so created, were authorized "to make laws and ordinances for the peace, welfare, and good government of the said colonies respectively, such laws and ordinances not being repugnant to this Act, or to any charter or letters patent or Order in Council which may be issued in pursuance hereof, or to the laws of England." This included certain limited powers of levying customs and excise taxation for local purposes, but it conveyed no control over the waste lands of the Crown. No proposed law could be passed by either of these Councils unless it was first laid before such Council by the Governor of the colony. The members of these legislative bodies held their seats at the pleasure of the Crown, and they had no control over the administration,
which was exclusively vested in the Governor.

At this time the official staff of the New South Wales Government consisted of a Chief Justice, an Archdeacon, a Colonial Secretary, an Attorney-General, a Collector of Customs, an Auditor-General, a Principal Surgeon, and a Surveyor-General. These appointments were made by the Imperial Government. During this period we find some of the earliest traces of a colonial Executive Council, a body which subsequently acquired in the Australian colonies a position analogous to that of the Privy Council in England. In the Commission appointing Sir Richard Bourke Governor of New South Wales (25th June, 1831), he was authorized to nominate an Executive Council. This Council consisted of such of the leading government officials as the Governor thought fit to consult with in matters of local administration. — Jenks' Government of Victoria, p. 17.

FIRST REPRESENTATIVE LEGISLATURE. — The third important charter regulating the Government of New South Wales was 5 and 6 Vic. c. 76 (30th July, 1842), passed during the Governorship of Sir George Gipps. It was intituled "An Act for the Government of New South Wales and Van Diemen's Land," but it principally concerned, and was for the benefit of, New South Wales. The Legislative Councils established by previous Acts were purely nominee and irresponsible bodies. This Act established, for the first time in Australia, a legislature partly, but not wholly, representative in its character. It was enacted that there should be within the colony of New South Wales a Legislative Council to consist of 36 members, 12 of whom were to be appointed by Her Majesty and 24 elected by the inhabitants of the colony. The Governor with the advice and consent of the Council was authorized to make laws for the peace, welfare and good government of the colony, including the power to impose duties of customs, provided that such laws were not to be repugnant to the law of England; nor were they to interfere with the sale or appropriation of lands belonging to the Crown or with the revenue arising from the same. Bills imposing duties of customs had to be reserved for the Queen's assent. The Council was to be presided over by a Speaker elected by itself. There was to be a session of the Council once every year, and every Council was to continue for five years from the day of the return of the writs and no longer, subject to be sooner dissolved by the Governor. Power was given to the Governor to establish, by letters patent, district Councils for the purpose of carrying on local government in such counties or other divisions of the colony as he might deem fit. Elective members of the Council were required to be the owners of freehold land of the clear annual value of £100, or of the capital value of £2,000. They had to be chosen by the votes of electors being owners of freehold land of the clear capital value of £200, or householders occupying
dwellings of the clear annual value of £20. This Act also contained provisions relating to the giving or withholding by the Governor of the Royal assent to Bills passed by the Council, the disallowance of Bills assented to by the Governor, and the assent to Bills reserved by the Governor, and enacting that the Queen, by the advice of the Privy Council, or through one of her principal Secretaries of State, might convey instructions to the Governor for his guidance.

This Act did not grant to New South Wales the system known as Responsible Government. The Governor was still his own prime minister, and the heads of the Departments and other public officers still continued to receive and hold their appointments from the Crown; their tenure of office depended, not on their possession of the confidence of the Legislative Council, but on the pleasure of the Crown represented by the Governor. Although it was only a half measure and an instalment of political freedom, it marked the dawn of a new system. It contained the feeble germs of Representative Government, whence has since sprang the splendid fabric of the Parliamentary institutions in Australia. It was the first concession made by enlightened British statesmen to the growing wealth and importance of the Australasian colonies. Limited as were the provisions of this Constitutional Act, meagre as were the liberties conferred, it was nevertheless drawn on lines capable of development and expansion with the growing wants and aspirations of the young community. The Council was built partly on the representative principle, and the qualified electors of the colony had the predominant power of constituting twenty-four members, as against twelve nominated by the Crown. The new Council was opened by Sir George Gipps on 1st August, 1843, and among the elective members were — William Charles Wentworth and William Bland, for the city of Sydney; John Dunmore Lang, Charles Nicholson, Thomas Walker, among the members for the District of Port Phillip (now Victoria); Charles Cowper, Richard Windeyer, George Robert Nichols.

The next important charter of Representative Government in Australia was 13 and 14 Vic. c. 59 (5th August, 1850) intituled "An Act for the better government of Her Majesty's Australian colonies," and commonly known as the Australian Colonies Government Act. The Bill, of which this Act was the outcome, was first introduced into the House of Commons in June, 1849. The two main objects of the Act were the separation of the Port Phillip District from New South Wales, and the establishment in all the colonies of an improved system of Provincial Government. The Legislative Council, erected in New South Wales by the Act of 1842, was not materially disturbed. Its powers were in some respects increased, and the
franchise on which its representative members were elected was liberalized.

The Governor and Legislative Council of New South Wales were empowered to increase the number of members of that body, subject to the condition that one-third of its members were to be, nominated by Her Majesty and the remaining members to be elected by the inhabitants of the colony. The property qualification of electors was reduced in the case of freeholders from £200 to £100, capital value, and in the case of occupiers of dwellings from £20 to £10 per annum. The qualification of members remained as under the Act of 1842.

Two new powers were conferred on the Governor and Legislative Council by this Act, which they did not possess by the Act of 1842. The Governor, with the advice of the Council, was authorized to impose and levy duties of Customs on the importation of goods, wares and merchandise imported into the colony from any part of the world, subject to the limitation that no differential duties could be imposed (sec. 27). There was no provision requiring Customs Bills to be reserved for the Queen's assent; and all doubts whether such reservation was still necessary were afterwards removed by the declaratory Act 29 and 30 Vic. c. 74. Power was given to the Governor and Legislative Council, in common with the Governors and Legislative Councils of the other Australian colonies, to alter the qualifications of electors and of members as fixed by the Act, or to establish, instead of the Legislative Council, a Council and a House of Representatives, or other separate legislative Houses, to be appointed or elected by such persons and in such manner as should be determined, and to vest in such Houses the powers and functions of the old Legislative Council, provided that such Bill should be reserved for the signification of the Queen's pleasure (sec. 32). The Council was still unable to pass laws repugnant to the law of England or relating to the sale and appropriation of the waste lands of the Crown, which continued to be dealt with under Imperial Legislation (sec. 14).

The Act 13 and 14 Vic. c. 59 was forwarded by Earl Grey to Governor Fitzroy, accompanied by a despatch dated 30th August, 1850, in which the Secretary of State explained the views of the Home Government. The Act reached the colony on 11th January, 1851, and was immediately proclaimed. In June following Governor Fitzroy received a commission under the Great Seal appointing him Captain-General and Governor-General of all Her Majesty's Australian possessions; a commission appointing him Governor of New South Wales; and three separate commissions appointing him Governor of the colonies of Van Diemen's Land, South Australia and Victoria respectively; also commissions for the appointment of Lieutenant-
Governors of Van Diemen's Land, South Australia and Victoria, together with warrants delegating to the Governor of New South Wales and the Lieutenant-Governors of the other colonies the power to nominate non-elective members of their respective Legislative Councils. Each commission was accompanied by royal instructions.

On 8th April, 1851, the Legislative Council of New South Wales, under the leadership of Mr. W. O. Wentworth, adopted a report of its select committee, which protested against the new Constitution Act on the grounds that it did not place the control of all revenue and taxation entirely in the hands of the Colonial Legislature; that all offices of trust and emolument should be filled by the Governor and Executive Council, unfettered by instructions from the Secretary of State for the Colonies; and that plenary powers of legislation should be conferred on the Colonial Legislature. It concluded by "solemnly protesting against these wrongs, and declaring and insisting on these our undoubted rights; we leave the redress of the one and the assertion of the other to the people whom we represent and the legislature which shall follow us." — Tregarthen's Australian Commonwealth (1893), p. 139.

An Electoral Bill for New South Wales was passed increasing the number of members of the Council from 36 to 54, of whom 36 were to be elective members and 18 nominee members. An Electoral Bill for Victoria was passed providing that the Legislative Council of that colony should consist of 30 members, 10 nominated by the Crown and 20 elective.

DEMAND FOR RESPONSIBLE GOVERNMENT. — A new election of the Legislative Council of New South Wales, on the liberalized franchise, then took place. The newly-constituted Council affirmed the opinion of its predecessor and passed a resolution that it was "prepared upon the surrender to the Colonial Legislature of the entire management of all our revenues, territorial as well as general, in which we include mines of every description, and upon the establishment of a constitution similar in its outline to that of Canada, to assume and provide for the whole cost of our internal government, whether civil or military." In a despatch addressed to Governor Fitzroy, dated 15th December, 1852, Sir John Pakington, the Secretary for the Colonies, stated that Her Majesty's Government had been greatly influenced by the considerations arising from the extraordinary discoveries of gold in the Australian colonies, which had imparted new and unforeseen features to their political and social conditions. Such a state of affairs had no parallel in history, and in all human probability there would be an advance in, the population, wealth and material prosperity, with a rapidity unprecedented. Her Majesty's Government had further observed with satisfaction the general order and
good conduct which distinguished the behaviour of the multitudes attracted to the gold deposits, and they were also bound to recognize the firmness and good judgment of the local authorities. With this evidence before them Her Majesty's Government could not but feel that, whilst it was more urgently necessary than before to place the full power of self-government in the hands of the colonies, it was equally plain that the extraordinary increase in wealth and prosperity testified to their fitness to regulate their own affairs. In reply, therefore, to the desire expressed by the Legislative Council of New South Wales in favour of a Constitution similar in its outlines to that of Canada, it was the wish of Her Majesty's Government that there should be established, in each colony, a new legislature on the basis of an Elective House and a Legislative Council nominated by the Crown or appointed subject to the approval of the Crown. Upon the receipt of such a constitutional enactment, framed by the existing Councils, with civil lists for the payment of salaries of permanent officers attached, the Imperial Government would undertake forthwith to propose to Parliament such measures as would be necessary to carry into effect the entire arrangement, viz.:— (1) By the repeal of the Land Sale Act, under which the sale of lands was vested in the Imperial authorities, and could not be regulated by colonial legislatures; and (2) by the requisite alteration in the Constitutional Act of 1850 with the schedules annexed thereto. It was added that the civil lists should provide permanent appropriation for the maintenance of the salaries of the principal officers of Government, such as the Governor, heads of departments, judges, &c. "It is my wish," concluded Sir John Pakington, "that the change should be speedily and satisfactorily effected."

THE NEW CONSTITUTION. — On the receipt of Sir John Pakington's despatch a committee was appointed by the Council to draft a Constitution. Of that committee Wentworth was one of the leading spirits. By the terms of the Enabling Act 13 and 14 Vic. c. 59 s. 32, the Governor, with the advice of the Legislative Council, had been authorized to establish in the colony, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses, to consist of such members to be appointed or elected by such persons and in such manner as might be determined, and to vest in such Houses the powers and functions of the Legislative Council for which the same were substituted. The Select Committee appointed to frame a new Constitution were not contented to establish a bi-cameral legislature capable of exercising only the powers and functions of the old Council. They considered it necessary that the new legislature should have "increased powers and functions;" and the Bill drafted by them was designed to confer on the new legislature increased
powers and functions. In so doing the framers of the Constitution acted in excess of the authority conferred by section 32, and they ran the risk of the Royal assent being refused. This was what actually occurred to the first Constitution framed by the Legislative Council of South Australia. Nevertheless the leaders of political thought in New South Wales, believing that the measure of power granted by the Constitutional Act of 1850 was not sufficient to meet the requirements of the colony, proposed that the new legislature should have an express and enlarged grant of powers and functions, without reference to the limitations of the Act of 1850.

The opening section of the Bill provided that there should be, in place of the Legislative Council then subsisting, a Legislative Council and a Legislative Assembly, and that Her Majesty should have the power, by and with the advice and consent of the said Council and Assembly, to make laws for the "peace, welfare and good government of the said colony in all cases whatsoever." Members of the Legislative Council were to be nominated by the Governor with the advice of the Executive Council. The first nominees were to hold their seats for five years only, but subsequent nominees were to be appointed for life. The members of the Assembly were to be chosen by the electors upon the franchise prescribed in the Bill. Section 45 specially enabled the legislature so constituted to impose and levy duties of Customs. Section 47 provided that all revenue should form a consolidated fund to be appropriated by the legislature in the manner directed. Two other sections conferred power to amend the Constitution, subject to certain conditions; another section declared that, subject to provisions therein contained, the legislature could make laws regulating the sale and disposition of the waste lands of the Crown. The final section stipulated that the Bill should not have any force or effect until inconsistent Imperial Acts were repealed and the entire management and control of the waste lands of the colony were vested in the proposed legislature. These grants of powers may be thus summarized:-

1. To make laws in and for New South Wales in all cases whatsoever.
2. To impose taxation, including duties of Customs.
3. To appropriate revenue.
4. To legislate concerning the waste lands of the Crown.
5. To amend the Constitution of the Council and Assembly subject to certain conditions.

Accompanying these grants there were certain restrictions:-

1. That duties were not to be levied on supplies for Her Majesty's land and sea forces.
2. That no fiscal and commercial laws should be passed inconsistent with
treaties concluded by Her Majesty with any foreign power.

3. That no differential or preferential duties of Customs should be imposed.

4. That all Bills for appropriating any part of the public revenue or for imposing any new rate, tax or impost should originate in the Legislative Assembly.

5. That it should not be lawful for the Assembly to originate or pass any vote, resolution or Bill for the appropriation of any part of the consolidated revenue fund to any purpose which should not have been first recommended by a message of the Governor to the said Assembly.

The Bill contained provisions relating to electoral matters; respecting the assent of the Governor to Bills, and the disallowance of Bills by Her Majesty; also respecting the boundaries of the Australian colonies. Another section of some significance was one which provided that the appointment to all public offices, whether salaried or not, should be vested in the Governor, with the advice of the Executive Council, "with the exception of the appointments of the officers liable to retire from office on political grounds as hereinafter mentioned, which appointments shall be vested in the Governor alone." — Sec. 37.

On 21st December, 1853, the new Constitution was adopted by the Council and transmitted to the Secretary of State for the Colonies. As it contained provisions in excess of the power conferred by 13 and 14 Vic. c. 59 s. 32, the Bill could not receive the Royal assent. It was decided by the Imperial Government to strike out the clauses relating to the reservation and disallowance of Bills. In that amended shape it was made a schedule to a Bill introduced into the Imperial Parliament, entitled "A Bill to enable Her Majesty to assent to a Bill, as amended, by the legislature of New South Wales, to confer a Constitution on New South Wales and to grant a civil list to Her Majesty." Section 2 of this Bill conferred on the Parliament of New South Wales the entire management and control of the waste lands of the Crown; section 3 preserved the provisions of former Acts respecting the allowance and disallowance of Bills; section 4 preserved to the Parliament of New South Wales the power to make laws amending the Constitution, subject to the provisions contained therein; section 5 declared that the whole water-course of the river Murray from its source to the eastern boundary of South Australia should be deemed to be within the territory of New South Wales. In this shape the Bill was passed by the Imperial Parliament and received the Royal assent on 16th July, 1855. Its number is 18 and 19 Vic. c. 54, and it is now known as the New South Wales Constitution Statute, whilst the Act contained in the Schedule is known as the New South Wales Constitution Act.
The Act conferring a Constitution on Victoria was assented to on the same day. These Acts were transmitted to the respective colonies, accompanied by explanatory despatches from the Secretary of State, Lord John Russell, in which the Governors were instructed as to the introduction of Responsible Government.

RESPONSIBLE GOVERNMENT. — "That great change in our colonial system which is known as the introduction of Responsible Government was," wrote Dr. Hearn, "effected solely by a despatch from a Secretary of State. This despatch did not even affect the legal tenure of colonial offices; it merely described the circumstances in which the Crown would exercise its right of displacing at its pleasure certain classes of its servants. In the body of the Act, for example, which conferred upon Victoria its present form of government (and these remarks apply equally to the New South Wales Act) the words Responsible Minister, or any equivalent terms, never once occur. Were it not for a marginal note, which forms no portion of the Act, not even a hint would be given by this statute of the important changes which it was intended to effect." — Hearn's Government of England, pp. 8–9.

Sir Richard C. Baker, President of the Legislative Council of South Australia, has expressed a similar opinion as to the method and circumstances in which Responsible Government was introduced into the colonies. "It is evident," he writes, "that the enormous power exercised by the Ministry rests on a very small legal basis, and it is curious to note that this system of Responsible Ministry, that is, of advisers, theoretically responsible to the Governor and constitutionally and practically responsible to the Parliament, was introduced into Australia simply in pursuance of a few words contained in a despatch of Sir R. Peel to one of our colonial Governors, and that it was originally introduced into Canada simply in pursuance of a conversation between Sir Francis Head and a Secretary of State for the Colonies." — Notes on the Constitution of South Australia, "Adelaide and Vicinity," p. 27.

The theory maintained by Dr. Hearn, and by Sir Richard Baker, has not been concurred in by all the leading constitutional authorities. Mr. George Higinbotham (afterwards Chief Justice of Victoria) held the view, during his official career as Attorney-General of Victoria, that the existence of Responsible Government in a constitutional colony was dependent, not upon instructions to the Governor, but on the statute law under which the Constitution was established in such colony. These principles he afterwards affirmed judicially in the great constitutional case of Ah Toy v. Musgrove (1888), 14 V.L.R. p. 349. In his opinion the Imperial statute law was the sole source of the public rights of every dependency of the British
Crown possessing powers of internal self-government. Those rights could not be legally derived from the commission and instructions issued by the Crown to successive Governors of a colony. The commission and instructions were issued to the Governor by Her Majesty on the advice of her Imperial Ministers, and the powers and commands contained in those instruments were as revocable as they were grantable by the Sovereign. — Id. p. 379. It was in the Constitution Acts and other Imperial legislation applicable to the colonies that the system of Executive administration, generally described as Responsible Government, could alone be found. The increased powers of legislation conveyed to New South Wales, Victoria, and the other colonies, in and by their Constitution Acts, necessitated the far greater change introduced by the same Acts into the system of government by the application to the enlarged functions of government of the new principle of Ministerial responsibility. Mr. Higinbotham did not acquiesce in the contention of Dr. Hearn and other learned constitutional jurists, that Responsible Government could not be found in the Constitution Acts of such colonies as New South Wales and Victoria. On the contrary, he was able to find in those constitutional charters abundant evidences of the intention of their framers, ratified by the Imperial Parliament, to establish such a plan of Executive Government.

It was true that in those Constitutions the Cabinet was not mentioned; that the expression "Responsible Ministers" occurred only in the marginal note — which formed no part of the law — annexed to one of the sections of the Victorian Constitution (sec. 18); that mention was made of the Executive Council, but nothing was said about its legal constitution or personal composition; that the nature of Responsible Government was nowhere described; that the extent of its application was nowhere expressly declared. But the Chief Justice considered that in sec. 37 of the Constitution Act of Victoria, which was drawn on exactly the same lines as sec. 37 of the Constitution Act of New South Wales, there were provisions which assumed, if they did not originate, the operation of some plan of Ministerial Government. Both those sections declared that "The appointment of all public offices hereafter to become vacant or to be created, whether such offices be salaried or not, shall be vested in the Governor with the advice of the Executive Council, with the exception of the appointments of the officers liable to retire from office on political grounds, as hereinafter mentioned, which appointments shall be vested in the Governor alone." The Constitution Acts of South Australia, Queensland, and Western Australia contained substantially similar sections. But sec. 18 of the Constitution Act of Victoria, and sec. 32 of the Constitution Act of South Australia — amended and enlarged by
subsequent legislation — contained provisions which caused those Constitutions to go much further in the direction of express recognition and actual introduction than anything in the Constitution of New South Wales. Those sections enacted that a certain number of the officers of the Governments in those colonies, for the time being, should be members of the Parliaments created by the new Constitutions. The requirement of the presence in Parliament of a certain number of Ministers in charge of public departments has been generally looked upon as one of the leading features of Responsible Government; their presence in the parliamentary arena brings them into personal contact and direct communication with the representatives of the people, who may there interrogate them on questions of public interest and express their approval or disapproval of the manner in which those Ministers conduct the government of the country.

"These provisions most plainly, in my opinion, though indirectly, give adequate expression to an intention of the Legislative Council that the principle of Responsible Government should be established by law. In contrast with this power of appointment of responsible officers which is vested ‘in the Governor alone,’ all other powers and functions are vested either in the Governor, or in the Governor and Executive Council (secs. 49, 51, and 53), or in the Governor with the advice of the Executive Council (sec. 37). The provisions in these last-mentioned sections appear to apply to cases where, in addition to the advice, assistance, and approval of the responsible Ministers, the nature of the power to be exercised seems to require that that exercise should be formally recorded or publicly announced. There is no indication in the Act that it was designed to create a single power or function in the Governor, except the power of appointing his Ministers, as a personal power to be exercised on his own individual judgment or discretion, or otherwise than in accordance with the advice of those whom he selects to advise and carry into act and operation the constitutional exercise of the powers given to him by the statute law as the appointee and representative of the Crown. The Imperial Government has never, I believe, even in the boldest of its attempts to interfere illegally with the Victorian Constitution, suggested that the Governor ought to exercise any of his statutory powers without receiving the advice of Her Majesty's Government for Victoria. It has only asserted for itself the right to disregard that advice, and to order the Governor, as its officer, to act in defiance of it. I think that the rule of responsibility applies to every one (if to any) of the powers of the Crown created by Statute in the Crown's representative, the Governor, and that none of them can be lawfully exercised except through and by the advice, or with the knowledge and approval, of the responsible Ministers appointed by the Governor. What
are those powers? Some of them are merely formal, and their exercise and the approval of Ministers would ordinarily be a matter of course (see secs. 8 and 32). Others are of a very different nature. Thus the appointment to public offices (sec. 37), including the general control of the Public Service, is a power not only of the highest importance, but of a very large scope. Again, the power of convening and proroguing Parliament and of dissolving the Legislative Assembly (sec. 28) is one of large significance, and the exercise of it, undisturbed by any external influence, by the Ministers whom the Governor is pleased to retain in the service of the Crown as his advisers, is a matter of moment to the whole community as well as to political parties and the movements of opinion in Parliament. Sections 57 and 58 indicate, in my opinion, more clearly than all the others the intended scope and the legal and actual extent of the principle of Responsible Government established by the Constitution Act. It is from the powers of the Crown express and necessarily to be implied from these sections as well as from the powers of control over the Public Service, granted by sec. 37, that all the ordinary general functions of Responsible Government spring. From these powers the legal existence and the rightful exercise of those functions may, and, in my opinion, must be inferred. It has been seen that the Legislature obtained by the Act not only the right to dispose by legislation of the waste lands of the Crown, but also the control, for the use and benefit of the people of Victoria, by means of appropriations for specific purposes, of all the consolidated revenues derived from that and all other sources. This power covers, directly and indirectly, the whole field of Parliamentary action outside the field of general legislation." — Per Higinbotham, C.J., Ah Toy v. Musgrove, 14 V.L.R., 392–4.

On 22nd May, 1856, the first Parliament of New South Wales under the new Constitution was opened by Sir William T. Denison. The first Responsible Ministry was composed of Mr. (afterwards Sir) Stuart Alexander Donaldson, Colonial Secretary and Premier; Mr. Thomas Holt, Treasurer; Mr. (afterwards Sir) William Montagu Manning, Attorney-General; Mr. J. B. Darvall, Solicitor-General; Mr. George R. Nichols, Auditor-General; and Mr. W. C. Mayne, Representative of the Government in the Legislative Council.

AMENDMENT OF THE NEW CONSTITUTION. — The power conferred on the Parliament of New South Wales to alter the Constitution has not been very extensively exercised. The first amendment was made in 1857, when a Bill was passed to repeal so much of the Constitution Act as required the concurrence of unusual majorities in the passing of Bills to alter the constitution of the Council or the number and apportionment of
members of the Assembly. By section 15 of the Constitution the Legislature was authorized to alter the electoral districts and the electoral divisions of the Assembly, and to alter the apportionment of Representatives, provided that such alterations were passed by a majority of the Council and by two-thirds of the members of the Assembly. By section 36 the legislature was authorized to alter the law concerning the Legislative Council and to provide for the nomination or election of another Council, subject to the condition that such alteration was passed with the concurrence of two-thirds of the members of the Council and of the Assembly respectively. By the Act 20 Vic. No. 10, reserved on 20th January, 1857, proclaimed on 19th October, 1857, these unusual majorities were abolished, so that it is now competent for the Parliament of New South Wales to pass Bills to amend the Constitution in the same manner and by the same majorities of members as other laws for the good government of the colony, provided that such Bills must be reserved for the signification of the Queen's pleasure. By the Act 22 Vic. No. 20 (N.S.W.) section 20 of the Constitution Act, disqualifying ministers of religion from becoming members of Parliament — an inhibition notoriously directed against the late Dr. Lang — was repealed. By the same Act the number of members of the Assembly was increased and the qualification of the electors was lowered. By the Act 37 Vic. No. 7 (N.S.W.) the clause in the Constitution Act providing that the Assembly should continue for five years from the date of the return of the writs, subject to be sooner dissolved by the Governor, was repealed, and it was enacted that every future Assembly of New South Wales should continue for three years from the day of the return of the writs subject to be sooner dissolved by the Governor.

REFORMS. — The structure and composition of the Legislative Council of New South Wales, as established by the Constitution Act, have not since been altered; except that by the Constitution Act Amendment Act of 1890 (54 Vic. No. 1) the quorum was reduced from one-third to one-fourth of the members. There is no legal limit to the number of its members, but its average numerical strength is about 65. The qualifications of members are: male; 21 years; natural born or naturalized subject. The tenure of office is for life, or until resignation, or forfeiture by absence or other disability. There are now 125 members of the Legislative Assembly, each representing a single electorate. The suffrage is manhood; every natural born or naturalized male subject, resident twelve months in the colony and three months in an electoral district, being entitled to an elector's right for the district. No elector can have more than one vote. Every holder of an elector's right is qualified as a candidate. Members of the Assembly receive
£300 a year each; members of the Council are unpaid.

ENLARGED LEGISLATIVE POWERS. — Under the provisions of Imperial Acts applicable to the colonies the legislative powers and functions of the Parliament of New South Wales, like those of the Parliaments of the other Australian colonies, are much larger than they appear on the face of the constitutional instruments. The Acts so applicable may be considered as contributory charters of self-government in Australia; among them may be mentioned the following:-

1. Enabling the legislature of any British possession to make provision for securing to British authors protection within such possession, and in such case authorizing Her Majesty to declare by Order in Council that so long as such provision continues in force the prohibitions contained in the Copyright Act, 5 and 6 Vic. c. 45, are suspended as regards such colony or possession. — Colonial Copyright Act, 1847; 10 and 11 Vic. c. 95.

2. Enabling the legislature of any British possession to pass laws for the punishment of offences relating to the coinage. — Coinage Offences (Colonies) Act, 1851; 16 and 17 Vic. c. 48, s. 4.

3. Enabling the legislature of any British possession to apply or adapt to any British ship, registered in such possession, any of the provisions of the Merchant Shipping Acts "which do not otherwise so apply," and providing that such law shall have effect throughout Her Majesty's dominions. — 17 and 18 Vic. c. 104, s. 288; re-enacted in the Merchant Shipping Act, 1894, 57 and 58 Vic. c. 60, s. 264.

4. Authorizing the legislature of any British possession to repeal any provision of the Merchant Shipping Acts (other than parts thereof which relate to emigrant ships) relating to ships registered in that possession. — 17 and 18 Vic. c. 104, s. 547; re-enacted in the Merchant Shipping Act, 1894, 57 and 58 Vic. c. 60, s. 735.

5. Enabling the legislature of any British possession to make laws for the trial and punishment of offences committed within such possession, but resulting in death on the sea, or beyond the limits of such possession. — Admiralty Offences (Colonial) Act, 23 and 24 Vic. c. 122 (28th August, 1860).

6. Empowering the legislative authority of any colony, with the approval of Her Majesty in Council, to make laws for providing and maintaining vessels of war, and for raising and maintaining seamen for the naval defence of the colony, and for enforcing order and discipline among the men and officers whilst ashore or afloat within the limits of the colony. — Colonial Naval Defence Act, 28 and 29 Vic. c. 14, s. 3. (7th April, 1865).

7. Repealing the old common law doctrine that colonial legislatures could not pass any law repugnant to the law of England, and enacting that
no colonial law shall be void or inoperative on the ground of repugnancy to the law of England, unless the same be repugnant to some Act of the Imperial Parliament applicable to the colonies. — Colonial Laws Validity Act, 28 and 29 Vic. c. 63 (29th June, 1865).

8. Declaring the validity, throughout the empire, of laws made by the legislature of any British possession establishing the legality of marriages contracted in any such possession, provided that at the time of such marriage both of the parties thereto were, according to the law of England, competent to contract the same. — Colonial Marriages Act, 28 and 29 Vic. c. 64 (29th June, 1865).

9. Removing doubts as to the necessity of reserving for the Queen's assent Bills passed by Australian legislatures, altering or repealing laws for the imposition of duties of customs — 29 and 30 Vic. c. 74 (6th August, 1866).

10. Enabling the legislature of any British possession to provide for the examination of, and to grant certificates of competency to, persons intending to act as master, mate or engineer on board British ships. — 32 and 33 Vic. c. 11, s. 38; re-enacted in the Merchant Shipping Act, 1894, 57 and 58 Vic. c. 60, s. 102.

11. Authorizing the legislature of any British possession to regulate the coasting trade of that possession, subject to the condition that all British ships shall be treated in exactly the same manner as ships of the possession, and subject to Her Majesty's treaty obligations, with respect to ships of foreign states. — 32 and 33 Vic. c. 11, s. 4; re-enacted in the Merchant Shipping Act, 1894, 57 and 58, Vic. c. 60, s. 736.

12. Confirming the Acts of legislatures of British possessions in imparting the privileges of naturalization to aliens within the limits of such possessions. — Naturalization Act, 33 and 34 Vic. c. 14, s. 16 (12th May, 1870).

13. Authorizing the legislature of any British possession to make provision for carrying into effect the Imperial law relating to surrender of fugitive criminals, from foreign countries, suspected to be in such British possession. — Extradition Act, 33 and 34 Vic. c. 52, s. 18 (9th August, 1870).

14. Enabling the Parliaments of the Australian colonies to pass laws imposing preferential and differential duties on goods, wares and merchandise, the produce of the Australian colonies. — Australian Colonies Duties Act, 36 and 37 Vic. c. 22 (26th May, 1873).

15. Enacting that where the legislature of any British possession provides for the survey of and grants certificates for passenger steamers to the satisfaction of the Board of Trade, such certificates are to be in force as if
granted under the Imperial Act — 39 and 40 Vic. c, 80, s. 17; re-enacted in the Merchant Shipping Act, 1894, 57 and 58 Vic. c. 60, s. 280.

16. Enacting that where any force of volunteers, or of militia, or any other force, is raised in a colony, any law of the colony may extend to the officers, non-commissioned officers, and men belonging to such force, whether within or without the limits of the colony; and that where any such force is serving with Her Majesty's regular forces, then so far as the law of the colony has not provided for the government and discipline of such force, the Imperial law shall apply. — Army Act, 1881; 44 and 45 Vic. c. 58, s. 177.

17. Authorizing the legislature in any British possession to constitute courts to make enquiries into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, in cases occurring within or outside the limits of such possessions — 45 and 46 Vic. c, 76; re-enacted in the Merchant Shipping Act, 1894, 57 and 58 Vic. c. 60, s.478.

18. Enacting that where the legislature of any British possession provides for the fixing and certifying of load lines on British ships registered therein, and such provision is satisfactory to Her Majesty, certificates given thereunder shall be as effective as if given under the Imperial Act — 53 Vic. c. 9, s. 3; re-enacted in the Merchant Shipping Act, 1894, 57 and 58 Vic. c. 60, s. 444.
(2) Victoria.

FOUNDATION. — On 5th January, 1802, Lieutenant Murray, in command of the Lady Nelson, whilst exploring the great indentation in the southern coast reported by Lieutenant Grant, discovered the heads leading into an expanse of inland water, to which he gave the name of Port King, in honour of Governor King, but which the Governor afterwards altered to Port Phillip, as a compliment to his predecessor, the founder of the Sydney settlement. On 9th March, "the united colours of Great Britain and Ireland" were hoisted on the ship and on the shores of the port, a volley was fired, and the place was taken possession of in the name of King George III. On 20th January, 1803, Mr. Charles Grimes, Surveyor-General of New South Wales, entered the port in the Cumberland, explored the coast line, and ascended the Yarra as far as Dight's Falls (Studley Park). During the same year Lieutenant-Colonel David Collins was sent from England to Port Phillip in charge of an expedition, consisting in all of 400 souls, with instructions to establish a penal settlement on the shores of the port. The first ship of the expedition, the Ocean, arrived on 7th October, and the second, the Calcutta, on 11th October. Collins was not satisfied with the place, and on 27th January, 1804, with the consent of the Sydney Government, he abandoned the attempt to form a settlement at Port Phillip, and removed his charges to Sullivan's Cove, on the Derwent, Tasmania.

The Port Phillip District was first reached overland from Sydney by Hume and Hovell, in 1824. In November, 1834, Messrs. Edward and Francis Henty established a pastoral station at Portland. They are considered to have been the pioneer settlers of the southern part of the continent. In 1835, an association was formed in Van Diemen's Land to colonize Port Phillip. On 31st May, 1835, John Batman sailed up the Yarra. In the same year John Pascoe Fawkner followed. A settlement was formed on the banks of the Yarra. On 29th September, 1837, Captain William Lonsdale arrived at Port Phillip, being appointed to act as Resident Magistrate; with him was Captain Hobson, after whom Hobson's Bay was named. Captain Lonsdale selected the site on which was built a town that afterwards grew into the city of Melbourne. On 1st October, 1839, Mr. Charles Joseph La Trobe became the head of the Port Phillip community under the title of Superintendent, a post which he occupied for fifteen years; Captain Lonsdale acted as secretary to the local Government.

In 1840, the territory of New South Wales was, for all purposes connected with the disposal of Crown lands, divided into three districts, known respectively as the North District, the Middle or Sydney District,
and the Southern or Port Phillip District. The first of these Districts practically comprised all the lands north of latitude 32°, but it was expressly noted that its northern limits were not yet fixed. The second comprised nineteen counties, bounded on the north by the southern boundary of the first District and on the south by the southern boundaries of the counties of St. Vincent and Murray, "and thence by the rivers Murrumbidgee and Murray to the eastern boundary of the Province of South Australia." The third, or Port Phillip District, included all the lands to the south of the southern boundary of the Sydney District. — Jenks' Gov. of Vict., p. 40.

By the Act 5 and 6 Vic. c. 76 (30th July, 1842) New South Wales was granted a Legislative Council consisting of 30 members, 12 of whom were to be appointed by Her Majesty, and 18 to be elected by the qualified inhabitants of the colony. The old Council was authorized to divide the colony into electoral districts for the return of elective members, but the Imperial Act specially provided that the District of Port Phillip, the town of Sydney, and the town of Melbourne should be electoral districts; that the district of Port Phillip should return at least five members, the town of Sydney two members, and the town of Melbourne one member, and that for the purpose of the Act, the northern and north-eastern boundary of the Port Phillip District should be a "straight line drawn from Cape Howe to the nearest source of the river Murray, and thence the course of that river to the eastern boundary of the Province of South Australia." It was by this Act that the colony of Victoria, afterwards to be created, lost the Murrumbidgee as its northern boundary.

SEPARATION. — By the Act 13 and 14 Vic. c. 59 (5th August, 1850), intituled "An Act for the better Government of Her Majesty's Australian colonies," it was provided "that after such provisions as hereinafter mentioned shall have been made by the Governor and Council of New South Wales, and upon the issuing of the writs for the first election in pursuance thereof, as hereinafter mentioned, the territories now comprised within the said District of Port Phillip, including the town of Melbourne, and bounded on the north and north-east by a straight line drawn from Cape Howe to the nearest source of the river Murray, and thence by the course of that river to the eastern boundary of the colony of South Australia, shall be separated from the colony of New South Wales, and shall cease to return members to the Legislative Council of such colony, and shall be erected into and thenceforth form a separate colony, to be known and designated as the colony of Victoria." The Legislative Council of New South Wales was empowered to determine the number of members of which the Legislative Council of Victoria should consist. It was also
authorized to pass an Electoral Act fixing the electoral districts for which the elective members should be returned.

The powers and functions of the Victorian Legislative Council were, by this Constitutional Act, similar to those of the re-organized Legislative Council of New South Wales and the newly constructed Councils of Van Diemen's Land and South Australia, viz., (1) to make laws for the peace, order, and good government of the colony; (2) to impose taxation, including the imposition of customs duties; (3) to appropriate to the public service the whole of the public revenue arising from taxes, duties, rates, and imposts. Her Majesty was authorized by letters patent to appoint a Court of Judicature to be styled "the Supreme Court of the Colony of Victoria." The restrictions on the powers and functions of the Legislative Council of Victoria were similar to those of the Councils of New South Wales, Van Diemen's Land, and South Australia, viz., (1) that no such law should be repugnant to the law of England; (2) that no such law should interfere with the sale and appropriation of the waste lands of the Crown within the colony; (3) that no customs duties of a differential character should be imposed; (4) that it should not be lawful for the Council to pass any Bill appropriating to the public service any sum of money for any purpose unless the Governor should have previously recommended that provision for such appropriation be made.

The qualifications of electors and of elective members of the proposed Legislative Council of Victoria were to be the same as those of the electors and elective members of the Legislative Council of New South Wales, under the Act 5 and 6 Vic. c. 76, as amended by 13 and 14 Vic. c. 59.

This Act was proclaimed on 11th January, 1851. The old Legislative Council of New South Wales met on 28th March for the purpose of making electoral and judicial arrangements required to bring the new Act into force in Victoria. Two Acts were passed specially concerning Victoria. The first was 14 Vic. No. 45 (N.S.W.), which provided that "all justices of the peace, and other officials holding office or commonly resident within the Port Phillip District at the passing of the Act, shall continue to act as though the Separation Statute had not been passed, until removed or re-appointed by the Government of Victoria." The other Act was 14 Vic. No. 47 (N.S.W.), which provided that "the Legislative Council of Victoria shall consist of 30 members, 10 nominee and 20 elective."

These arrangements having been made, the old Legislative Council of New South Wales was dissolved and re-elected on the lower franchise. On 1st July, 1851, the writs for the election of 20 elective members of the Legislative Council of Victoria were issued. On 15th July Mr. La Trobe announced his appointment as Lieutenant-Governor of the colony. In this
manner the colony of Victoria was called into existence and received the first pulsation of autonomous political life.

POLITICAL PROGRESS. — The Act of 1850, by the liberality of its provisions in creating so many new Australian Constitutions, as well as giving scope and room for the development of the best energies of the young Commonwealth, was a recognition, on the part of the Imperial Government and Parliament, of the success of the experimental legislation in British North America in 1840, and in the senior settlement of Australia in 1842. In one particular the Act of 1850 contained a very large and important grant of power to the newly-created legislatures. By section 32, it was lawful for the Governors and Legislative Councils of New South Wales, Victoria, Van Diemen's Land, South Australia, and Western Australia respectively to amend the provisions or laws for the time being in force, under the Act or otherwise, concerning the election of elective members of such Legislative Councils respectively, or the qualification of electors and elective members of the same; or to establish in the said colonies respectively, instead of the Legislative Council, a Council and a House of Representatives, or other separate Legislative Houses. The only proviso to this power was that such bills should be reserved for the signification of Her Majesty's pleasure. It was under this section that a few years afterwards the present Constitution Act of Victoria was drawn up and sent to the Imperial Government for ratification by the British Parliament. This was, indeed, an important concession. It was the first grant of power to the Australian colonists to alter the form and structure of their Constitutions, subject to Imperial control. Thus were continued the foundations of Parliamentary Institutions in Australia, commenced by the Act of 1842. They were truly miniature legislatures to start with, but it was certain that their progress and development would be guided by the natural laws of growth and evolution; and time has demonstrated the elasticity and vitality of the transplanted political system of the mother country.

The new Legislative Council of Victoria, partly nominated and partly elected was convened for the despatch of business on 11th November, 1851. The official members were:- Mr. W. Lonsdale, Colonial Secretary; Mr. (afterwards Sir) W. F. Stawell, Attorney-General; Mr. (afterwards Sir) Redmond Barry, Solicitor-General. Mr. C. H. Ebden, Auditor-General; and Mr. R. W. Pohlman, Chairman of the Court of Requests. Mr. J. F. Palmer was elected Speaker. In his inaugural speech to the Council the Lieutenant-Governor said:- "In now formally opening this first session, I would offer to you, and through you, to the inhabitants of the colony at large, my most hearty congratulations upon the event which, after much delay, has at length crowned your wishes. Under the provisions of the recent Imperial
Act, and Her Majesty's favour, you meet here to-day as the representatives of the people of an independent colony of the British Empire, with power to watch over the general interests and to control your own affairs, which has hitherto been, from circumstances, in a great measure denied to you; and it is my earnest prayer to God that you may be endowed with wisdom and prudence, which are requisite for the due discharge of the important duties entrusted to you."

THE NEW CONSTITUTION. — The next important stage in the constitutional history of Australia was that which was consummated by the attainment of complete local legislative independence coupled with complete local Executive authority. The Legislative Councils, partly nominated and partly elected, together with the system of personal government, were doomed to be swept away, and to give place to a more perfect type of legislature, and to a responsible administration according to the British model. The discovery of gold, which was announced to the world a few months after the separation of Victoria from New South Wales, soon began to attract a large and ever-increasing population to the shores of Australia, and new and exciting events followed one another in rapid succession. The legislature of New South Wales took the lead in the movement for an extension of Constitutional power, and the Home Government promptly and willingly agreed to grant the reform of the Constitution asked for.

Reference has been made to, and an extract given from, Sir John Pakington's despatch to the Governor of New South Wales promising to give effect to the wishes of the Legislative Council of New South Wales, that a Constitution resembling that of Canada, based on a bi-cameral legislature, should be adopted, and suggesting that the Legislative Council should proceed to frame one. A similar despatch, dated 18th January, 1853, offering the same concessions, was received by the Lieutenant-Governor of Victoria. The Victorian Legislative Council appointed a select committee of twelve members, chosen by ballot, to consider and report on the best form of government for the colony. The committee subsequently brought up a report accompanied by a Draft Bill. On 25th January, 1854, the Bill was read a second time, committed and reported. On 24th March it was passed, and on the 28th it was reserved for the Queen's assent.

The Constitution, so sent to England, proposed to create a bi-cameral legislature, consisting of a Legislative Council, to be composed of 30 members, elected by qualified voters, and a Legislative Assembly, consisting of double that number, elected on a more liberal franchise. The Queen, with the advice and consent of this legislature, was authorized "to make laws in and for Victoria in all cases whatsoever;" to impose and levy
duties of Customs; to appropriate public revenue for specific purposes. All Bills for appropriating any part of the revenue or imposing any duty, rate, tax, rent, return, or impost, were required to originate in the Assembly and could be passed or rejected but not altered by the Council. The Assembly could not originate any vote, resolution, or Bill for the appropriation of the consolidated revenue for any purpose which should not have been first recommended by a message of the Governor to the Assembly. The appointment to public offices was to be vested in the Governor with the advice of the Executive Council, excepting in the case of officers liable to retire on political grounds, whose appointment was vested "in the Governor alone." Sec. 37. See p. 46, supra. The Bill also contained clauses similar to those of the New South Wales Bill, relating to the assent of the Governor to Bills and Her Majesty's power to disallow the same; relating to boundaries of the Australian colonies; and providing that it should not come into force until the control of the sale and appropriation of the waste lands of the Crown within the colony should be vested in the legislature to be created. The legislature was authorized to amend the Constitution, subject to the condition that Bills altering the Constitution of the two Houses should be passed by an absolute majority in each House and should be reserved for the Queen's assent.

The Constitution, so drawn, granted powers to the proposed bi-cameral legislature in excess of the authority conferred by 13 and 14 Vic. c. 59. "In this respect the Select Committee of the Victorian Council were influenced by the same political considerations as the Select Committee of the New South Wales Council. They wished to secure under the new Constitution "other and additional powers and functions "beyond those vested in the old Council. In so doing they ran the same risk of having the Royal assent withheld. In fact it was known that, owing to the excess of powers proposed to be granted by the Constitution, the Royal assent could not be legally given, and that fresh Imperial legislation would be required in order to legalize the Constitution. The powers and functions granted by the Bill were:

1. To make laws in and for Victoria in all cases whatsoever.
2. To impose taxation, including duties of customs.
3. To appropriate revenue.
4. To legislate concerning the waste lands of the Crown.
5. To amend the Constitution of the Council and Assembly, subject to certain conditions.

Accompanying these grants were several restrictions and other provisions relating to electoral matters similar to those embodied in the New South Wales Bill. As the Bill contained matters in excess of the powers conferred
by the Enabling Act, the law officers of the Crown advised that it was not competent for Her Majesty to assent to the Bill without the authority of Parliament. In order to enable that assent to be given, a Bill was brought into Parliament, to which the proposed Constitution was added as Schedule A; amended, however, by the omission of clauses relating to the assent of the Governor to Bills, Her Majesty's power to disallow Bills, and respecting the boundaries of the Australian colonies. It was intituled "A Bill to enable Her Majesty to assent to a Bill, as amended, by the legislature of Victoria to establish a Constitution in and for Victoria." Section 1 enabled Her Majesty to assent to the Bill. Section 2 repealed Imperial Acts inconsistent with the Constitution, and vested the entire management and control of the waste lands of the Crown in the new legislature. The provisions of former Acts relating to the disallowance of Bills were preserved. The new legislature was authorized to repeal or alter all or any of the provisions of the reserved Bill subject to the conditions therein prescribed.

RESPONSIBLE GOVERNMENT. — The Bill was passed and assented to on 16th July, 1855; it is known as the Victorian Constitution Statute; whilst the Act contained in the Schedule is known as the Victorian Constitution Act. The new Constitution was proclaimed on 23rd November, 1855. The first Responsible Government was composed of Mr. W. C. Haines, Chief Secretary; Mr. (afterwards Sir) W. F. Stawell, Attorney-General; Mr. (afterwards Sir) C. Sladen, Treasurer; Mr. C. Pasley, Commissioner of Public Works; Mr. H. C. E. Childers, Commissioner of Trade and Customs; Mr. (afterwards Sir) A. Clarke, Surveyor-General; and Mr. (afterwards Sir) R. Molesworth, Solicitor-General; Mr. (afterwards Sir) Wm. H. F. Mitchell (without office). The Ministers were all returned to seats in the first elections for the Legislative Assembly, which took place in the spring of 1856; they met the new Parliament as a Cabinet, and resigned on the passing of an unfavourable resolution upon the subject of the Estimates, in March, 1859. Mr. (afterwards Sir) John O'Shanassy, the mover of the resolution, was then, in accordance with Cabinet practice, invited to form a Ministry — Jenks' Gov. of Victoria, p. 215.

ENLARGED LEGISLATIVE POWERS. — The Constitution of Victoria, like that of the other Australian colonies, was subsequently enlarged and improved by further grants of power, contained in Imperial Acts applicable to the colonies, of which a summary has been given, under the heading of "New South Wales," pp. 49–51, supra.

REFORMS. — By the Legislative Council (Reform) Act, 1881 (45 Vic. No. 702), the number of members of the Council was increased from 30 to
41; and by the Act 52 Vic. No. 995, passed in 1888, the number was increased to 48, distributed among the fourteen provinces. The term of membership has been reduced from ten years to six years, and the qualification of members and electors has been lowered. Members of the Council must be of the full age of 30 years, natural born or naturalized subjects, and possessed of freehold property in Victoria of the annual value of £100. Electors of the Council must be adult males, natural born or naturalized subjects, and possessed of a qualification either (1) as freeholders or mortgagors in possession of land of the annual value of £10, or leaseholders to the annual value of £25; or (2) as graduates, members of the learned professions, or military or naval officers. No property qualification is required for membership of the Assembly; members of that House are paid at the rate of £300 per annum for their services. The franchise for the Assembly is manhood; every natural-born or naturalized male subject of the age of 21 years, if resident for 12 months in Victoria and for one month in an electoral district, is entitled to be enrolled as a voter for that district. Every such person is also entitled to vote in every electoral district in which he is seised in fee of lands worth £50, or of the annual value of £5, or in which his name is entered on a municipal roll as a ratepayer. By the Act 22 Vic. No. 89 (1859), the duration of the Assembly was reduced from five years to three years. The number of members of the Assembly has been increased from 60 to 95.

CONSTITUTIONAL STRUGGLES. — Since the adoption of the Victorian Constitution it has been subjected to some severe strains, consequent on disputes between the two Houses respecting their powers in matters of taxation and appropriation. During those controversies questions of great Constitutional importance were raised and discussed. Among these may be mentioned the action of the Assembly in tacking the proposed new tariff to the annual Appropriation Bill in 1865; its rejection by the Council and the consequent deadlock; the insertion of the proposed grant to Lady Darling in the Annual Appropriation Bill in 1867; its rejection by the Council and consequent deadlock; the insertion of provision for payment of members in the annual Appropriation Bill of 1877; its rejection by the Council and the consequent deadlock, leading to "Black Wednesday" dismissals; the Victorian delegation to England in October, 1879, and Sir Michael Hicks-Beach's despatch of 3rd May, 1879. In that famous despatch the Colonial Secretary said:

"I observe that the address of the Legislative Assembly of February 14th, 1878, dwells almost exclusively on the necessity of securing to that House sufficient financial control to enable adequate supplies to be provided for the public service, and it is prominently urged in Mr. Berry's letter of
February 26th, in proof of the necessity for finding some solution of the present constitutional difficulty, that ‘scarcely a year passes but it becomes a question whether the supplies necessary for the Queen's service will be granted.’ But this difficulty would not arise if the two Houses of Victoria were guided in this matter, as in others, by the practice of the Imperial Parliament, the Council following the practice of the House of Lords, and the Assembly that of the House of Commons. The Assembly, like the House of Commons, would claim and in practice exercise the right of granting aids and supplies to the Crown, of limiting the matter, manner, measure, and time of such grants, and of so framing the Bills of Supply that these rights should be maintained inviolate; and as it would refrain from annexing to a Bill of Aid and Supply any clause or clauses of a nature foreign to or different from the matter of such a Bill, so the Council would refrain from any steps so injurious to the public service as the rejection of an Appropriation Bill." — Todd, Par. Gov. Col., 2nd Ed., p. 746.
(3) Tasmania.

FOUNDATION. — This island, which down to the year 1853 was known as Van Diemen's Land, was, until its circumnavigation by Flinders and Bass in 1798, thought to be connected with the mainland. In 1803, in consequence of the presence of French exploring vessels in Australian waters, an apprehension was felt that the French meditated the annexation of unoccupied territory along the Australian coast. In order to remove any impression that Van Diemen's Land was unclaimed by the British nation, the Sydney Government decided to formally take possession of it. Accordingly Governor King despatched Lieutenant John Bowen to the Derwent in charge of the Albion and the Lady Nelson, which conveyed a number of soldiers and prisoners thither to form the nucleus of a settlement. The pioneering party anchored off Risdon Cove on the left bank of the Derwent on 12th September, 1803. In 1804, Colonel David Collins abandoned an attempt to form a settlement on the shores of Port Phillip, and removed with his charges to the Derwent. Not approving of the site chosen at Risdon Cove by Bowen, he selected another one on the south bank of the Derwent, known as Sullivan's Cove, which in after years grew into the city of Hobart, so named after Lord Hobart, the Secretary of State for the colonies. In 1804, Collins superseded Bowen as commandant of the Derwent settlement. In the same year Colonel Patterson, by direction of Governor King, planted a camp at George Town on the Tamar, but it was subsequently removed to a better situation at York Town, and eventually to the present site of Launceston. In 1805, it was decided to abandon the prison settlement on Norfolk Island, and some of the free colonists were transferred to the Derwent, where "New Norfolk" was founded.

SEPARATION. — By Section 44 of the Act 4 Geo. IV. c. 96 (19th July, 1823), intituled "An Act to provide...for the better administration of Justice in New South Wales and Van Diemen's Land," the Crown was empowered to constitute and erect the island of Van Diemen's Land into a separate colony independent of New South Wales. On the 13th October, 1823, a charter of Justice was issued by the Crown instituting a Supreme Court for Van Diemen's Land. Mr. John Lewis Pedder became the first Chief Justice of the colony. The Court was opened for business on 24th May, 1824. Pursuant to an Order in Council dated 14th June, 1825, the separation and independence of Van Diemen's Land were proclaimed. The new colony then received a Lieutenant-Governor, an Executive Council, and a Legislative Council of its own. The Governor of New South Wales was entitled the "Captain-General and Governor-in-Chief" of the eastern part of
the continent, and the Lieutenant-Governor of Van Diemen's Land exercised all the powers and functions of Governor when the Governor of New South Wales was not present on the Island. The Executive Council consisted of the Lieutenant-Governor, the Chief Justice, the Colonial Secretary, the Colonial Treasurer, and the Chief Military Officer. The Legislative Council consisted of seven members nominated by His Majesty, its functions, under sec. 24 of the Imperial Act, being to make laws and ordinances for the peace, welfare and good government of the colony, provided that such laws were not repugnant to the law of England.

By the Act 9 Geo. IV. c. 83 (28th July, 1828), the Crown was authorized to re-model and improve the Supreme Courts of New South Wales and Van Diemen's Land. The remaining sections of the Act providing for the constitution, appointment, and powers of the Legislative Councils in and for both colonies, and providing for the introduction and operation of "all laws and statutes in force within the realm of England," were made applicable alike to New South Wales and Van Diemen's Land. See "New South Wales," pp. 37–8, supra.

The Act 5 and 6 Vic. c. 76 (30th July, 1842), intituled "An Act for the Government of New South Wales and Van Diemen's Land," created a new Legislative Council for New South Wales, but it did not do so for Van Diemen's Land. The whole of the provisions of that Act, with several minor exceptions, were confined to New South Wales.

FIRST REPRESENTATIVE LEGISLATURE. — For their first instalment of the Representative System of Government, the people of the southern island had to wait till the passing of that important Act 13 and 14 Vic. c. 59 (1850), intituled "An Act for the better government of Her Majesty's Australian colonies." By section 7 of this Act, it was provided that the legislature already existing in Van Diemen's Land, under the Act of 1828, might establish within the colony a Legislative Council, to consist of not more than 24 members, of whom one-third should be nominated by Her Majesty and the remainder elected by the inhabitants of the colony. Upon the issue of the writs for the election of the new Legislative Council, all prior legislation relating to the constitution, appointment and powers of the old Legislative Council should be repealed. The Governor of Van Diemen's Land, with the advice and consent of the new Legislative Council so established, had authority to make laws for the peace, welfare and good government of the colony; to appropriate to the public service the whole of the revenue arising within the colony from taxes, duties, rates and imposts, and to impose duties of customs. The Council, however, could not pass any laws repugnant to the law of England, or interfere in any manner with the sale or appropriation of the waste lands of the Crown; nor could it pass any
Bill appropriating to the public service any sum of money, unless the Governor first recommended that provision for the appropriation should be made (sec. 14). Section 7 of this Act was an enabling section, valuable in its immediate grant of power, but especially valuable as a precedent, showing the inclination of the Imperial Government to entrust the people of the colonies not only with representative institutions, but also with the power of drafting their own constitutional instruments. The old Council of 1828 was to establish the new Council and make arrangements for dividing the colony into convenient electoral districts. The qualifications of members and of electors for the new Council were made similar to those of the members and electors of the Legislative Council of New South Wales, under 5 and 6 Vic. c. 76 as amended by 13 and 14 Vic. c. 59.

THE NEW CONSTITUTION. — During the governorship of Sir William Denison, the new Legislative Council of Van Diemen's Land, in the exercise of power conferred by 13 and 14 Vic. c. 59 s. 32, proceeded to draft a Constitution "for the establishment of the Parliament of Van Diemen's Land." It was proposed that the new Parliament should consist of a Legislative Council and a House of Assembly in place of the existing Council. The Council was to consist of 15 members, elected by the qualified voters of the colony. The House of Assembly was to consist of 30 members elected on a more popular franchise than that of the Council. Bills for appropriating any part of the revenue, or imposing any tax, rate, duty, or impost, were required to originate in the Assembly, and the Assembly could not originate or pass any vote, resolution, or Bill for the appropriation of any part of the public revenue for any purpose which should not have been first recommended by the Governor to the House.

The Bill so drawn did not, on its face, disclose the powers and functions of the proposed bi-cameral legislature. For those powers and functions reference has to be made to sec. 14 of the Act 13 and 14 Vic. c. 59, which defines the powers and functions of the Legislative Council created under that Act. The bi-cameral legislature created to replace that Council could, under sec. 32, exercise only "the powers and functions of the Legislative Council for which the same may be substituted." No law-making power was ever given to this bi-cameral legislature, except by reference, and to this day the laws of Tasmania are made in pursuance of the powers given by the original Enabling Act (13 and 14 Vic. c. 59), and not by the so-called Constitution. In fact it is not a Constitution; it is a graft on, or a development of a pre-existing Constitution, viz., the Enabling Act 13 and 14 Vic. c. 59, secs. 7, 14, and 32. See Notes on the Constitution of South Australia by the Hon. Sir R. O. Baker, p. 10.

RESPONSIBLE GOVERNMENT. — The Bill so drawn, and called "the
Constitution," was passed by the Legislative Council on 31st March, 1854, and was reserved by the Lieutenant-Governor for the signification of Her Majesty's pleasure. It was assented to and proclaimed on 24th October, 1856, and the first Parliament was opened on 2nd December, 1856. Sir Henry Edward Fox Young was appointed the first Governor-in-Chief of the colony under the new system of Responsible Government. The first Responsible Ministry was composed of Mr. William T. N. Champ, Colonial Secretary and Premier; Mr. T. D. Chapman, Colonial Treasurer; Mr. F. Smith, Attorney-General; Mr. J. W. Rogers, Solicitor-General; Mr. H. F. Anstey, Secretary for Lands and Works; Mr. W. E. Nairn (without office).

ENLARGED LEGISLATIVE POWERS. — At about the same time an Imperial Act was passed (18 and 19 Vic. c. 56) authorizing the legislature of each of the Australian colonies to sell, dispose of, and legislate concerning the waste lands of the Crown in the colony. In 1865 the Colonial Laws Validity Act (28 and 29 Vic. c. 63) removed the common law restriction which prevented colonial legislatures from passing any law repugnant to the law of England. In 1875 the prohibition contained in the Act 13 and 14 Vic. c. 59, preventing colonial legislatures from passing any law providing for the imposition of differential duties, was by the Australian Colonies Duties Act (36 and 37 Vic. c. 22) abolished, as far as intercolonial duties were concerned. Other Imperial Acts applicable to the colonies and enlarging the powers of the Parliament of Tasmania, in common with those of the other Australian Parliaments, are specified under the heading of "New South Wales," pp. 49-51, supra.

CHANGE OF NAME. — In the year 1853, on the acquiescence of the Imperial Government in the cessation of transportation (finally abolished in 1857 by 20 and 21 Vic. c. 3), the name "Tasmania" was generally and voluntarily adopted instead of Van Diemen's Land. A despatch from the Duke of Newcastle, giving the approval of the Colonial Office to the change, was published in the Gazette of 3rd May of that year. But it was not until an Act, 19 Vic. No. 17, was passed in December, 1855, that the change was legalized. This is intitled "An Act to obviate any doubts which might otherwise arise from the change in the name of the colony of Van Diemen's Land to Tasmania," and it came into operation on 1st January, 1856.

REFORMS. — There are at present 18 members of the Legislative Council of Tasmania. The qualifications of members of the Council are: male; 30 years; natural born or naturalized subjects; resident three years in the colony. The tenure is six years; one-sixth of the members retiring each year. The qualifications of electors for the Council are: male; 21 years;
natural born or naturalized subjects, possessed of freehold estate of the annual value of £15 or leasehold estate of the annual value of £30; or University graduates, barristers, solicitors, or medical practitioners. The qualifications of electors of the House of Assembly, of which there are 37 members, are: male; 21 years; natural born or naturalized subjects; owners or occupiers of property whose names appear on an assessment roll in the district for which the vote is claimed or who are in receipt of an income of £40 per annum, and who have continuously resided in the district for over twelve months. In the city districts of Hobart and Launceston a modification of the Hare system of preferential voting is in force. Members of both Houses receive £100 per year each.

In Tasmania the elective Legislative Council has claimed absolute equality of power with the Legislative Assembly, except in the origination of Money Votes. Not only has it claimed, but it has been permitted, to amend Tax Bills, Supply Bills, and even Bills for the appropriation of Supplies for the annual services of the Government.
South Australia.

FIRST STATUTORY AUTHORITY. — This province originally comprised that part of the colony of New South Wales lying between the meridians of 132° and 141° of east longitude, bounded on the south by the Southern Ocean, and on the north by 26° parallel of south latitude. By the Act 24 and 25 Vic. c. 44, a strip of territory, comprising 80,000 square miles, lying between South Australia and Western Australia, called "no man's land," was on 10th October, 1861, added to the province, thus extending its western limits to 129° east longitude, the former western boundary of New South Wales. On 6th July, 1863, the vast tract of country known as the Northern Territory, formerly a part of New South Wales, was, by letters patent, added to the province.

In 1829, Mr. Edward Gibbon Wakefield published a pamphlet under the title of "A Letter from Sydney," in which he propounded a new system of colonization, the essence of which was that the Crown should sell the waste lands of Australia at substantial prices for cash and apply the proceeds to the promotion of immigration and the making of roads. In 1831, a company was formed in England with the object of promoting systematic colonization in South Australia on the lines laid down by Mr. Wakefield. Objection was taken to giving legislative power to an irresponsible company, and the scheme fell through. Amended proposals were afterwards submitted to the Imperial Government, and on 15th August, 1834, the Act 4 and 5 Will. IV. c. 95 was passed, intituled "An Act to empower His Majesty to erect South Australia into a British possession or province, and to provide for the colonization thereof." This Act enabled His Majesty, with the advice of the Privy Council, to erect and establish South Australia into a British province and to authorize and empower one or more persons resident in the province to make, ordain, and establish such laws, institutions, and ordinances, to impose such duties and taxes, and to appoint such officers and to constitute such courts as might be necessary for the peace, order, and good government of the people of the province. It also empowered the King, with the advice of the Privy Council, to appoint colonization commissioners, who were to have the control of the Crown lands. Power was given to make orders and regulations for the survey and sale of the lands, and to employ portion of the money so derived in conducting the immigration of labourers from Great Britain. In the exercise of these powers the province was erected and established, and a Governor, a Judge, seven Commissioners, and other officials were appointed. The Governor, with the concurrence of the Chief
Justice, the Colonial Secretary, and the Advocate-General, or two of them, was authorized to make laws and impose taxes.

Captain (afterwards Admiral Sir) John K. H. Hindmarsh, R.N., was appointed the first Governor; Colonel Light, Surveyor-General; Colonel Torrens, Chairman of the Commission in England; Mr. (afterwards Sir) James Hurtle Fisher, Resident Commissioner; Colonel Goudge, Colonial Secretary; Sir J. W. Jeffcott, Judge; Mr. Charles Mann, Advocate-General; Captain Thomas Lipson, Naval Officer; Mr. George Stevenson, Governor's Secretary and Clerk of Council. The first ship despatched to South Australia by the Commissioners was the *Cygnet*, which in July, 1836, arrived at Kangaroo Island, where there was a small whaling station.

Among the passengers was Mr. (afterwards Sir) George Strickland Kingston, who was one of a party of survey officers. The ships *Duke of York* and *Lady Mary Pelham*, conveying immigrants, sailed in February, 1836, and arrived at Kangaroo Island in August following. Shortly afterwards the *Rapid* arrived with an additional survey party under Colonel Light. Not satisfied with Kangaroo Island, he searched along the mainland for a site suitable for the settlement. A tract on the Torrens River was eventually selected at a suitable spot. It was called Adelaide in honour of the Queen of William IV. On 28th December, 1836, Governor Hindmarsh arrived in the *Buffalo*. He issued a proclamation at Glenelg, announcing the establishment of the Government. Thus began colonization in South Australia.

A CROWN COLONY. — In May, 1841, the settlement being in considerable financial difficulties, Governor Gawler was recalled, being succeeded by Captain (afterwards Sir) George Grey. The British Government decided to lend the colony sufficient money to pay its debts, to re-model the system of government and to abolish the colonization commission. South Australia then became a Crown colony. In 1842 the Act 5 and 6 Vic. c. 61 was passed, intituled "An Act to provide for the better government of South Australia." Her Majesty was empowered to constitute a nominated Legislative Council consisting of the Governor and seven other persons resident therein, with power to make laws for the government of the colony.

That system of government continued in force until the inauguration of a new scheme under the Constitutional Act, 13 and 14 Vic. c. 59 (5th August, 1850), already referred to. Section 7 of that Act authorized the legislature, then by law established in South Australia, to establish a Legislative Council consisting of not more than 24 members, of whom one-third were to be appointed by Her Majesty, and the remainder were to be elected by the qualified inhabitants. Section 14 gave the Governor, with
the advice and consent of this Legislative Council, power to make laws for the peace, welfare, and good government of the province, and to appropriate to the public service the whole of the revenue arising from taxes, duties, rates, and imposts, provided that no such law should be repugnant to the law of England, or interfere with the sale or appropriation of the waste lands of the Crown. The qualifications of members and electors of the new Council were to be the same as those of the members and electors of the Legislative Council of New South Wales, under the Act 5 and 6 Vic. c. 76, as amended by 13 and 14 Vic. c. 59. The Council could not pass any law appropriating to the public service any sum of money unless the Governor should first recommend to the Council that provision should be made for such appropriation. On 21st July, 1851, the Legislative Council, consisting of 24 members, was constituted.

THE NEW CONSTITUTION. — In 1853 the Legislative Council of South Australia, in pursuance of the power conferred by sec. 32 of the Act 13 and 14 Vic. c. 59, passed a Bill to establish a bi-cameral legislature for South Australia, consisting of a Legislative Council of not less than 12 members to be nominated by the Crown, and a House of Assembly of 36 members to be elected by the inhabitants. The qualifications of electors and members were defined in the Bill, which, inter alia, contained a provision limiting the right of the Crown in the disallowance of Bills. The Bill was passed by the Council and reserved for the Queen's assent, which was refused on the ground that its provision limiting the Crown's right of disallowance of Bills was in excess of the power conferred in sec. 32.

On 15th August, 1855, the old Council of 1851 was dissolved by proclamation, and a new Council was duly constituted, partly by election and partly by nomination. In the meantime a copy of the Constitution which had been passed by the Tasmanian Legislative Council was forwarded by the Secretary of State for the Colonies to the Governor, Sir Richard Graves McDonnell, with an intimation that a Bill drawn on similar lines would be sanctioned. A second Bill to create a bi-cameral legislature for South Australia was then introduced into the newly-constituted Council. It provided for the creation of two elective Houses to take the place of the Council created by the Act 13 and 14 Vic. c. 59. This Bill was to be called a Constitution Act. Like its Tasmanian model, however, it conferred no law-making power on the bi-cameral legislature, except by reference. In order to ascertain the principal legislative powers and functions of the Parliament of South Australia, reference has to be made to the Act 13 and 1.4 Vic. c. 59, defining the legislative powers and functions of the Council for which it was substituted.

According to that Act the Parliament was authorized to make laws for the
peace, order, and good government of South Australia; to raise revenue by various methods of taxation, including the imposition of duties of customs, and to appropriate the public revenue for public purposes. By the proposed new Constitution all Bills for appropriating any part of the revenue of the province, or for imposing altering, or repealing any rate, tax, duty, or impost, were required to originate in the House of Assembly. Neither House could pass any vote, resolution, or Bill for the appropriation of any part of the revenue for any purpose, unless the Governor should have first recommended to the House of Assembly that provision should be made for such appropriation. The appointment to all public offices under the Government of the province was vested in the Governor, with the advice and consent of the Executive Council, except the appointment of certain political officers, required to be members of Parliament, whose appointment and dismissal was vested in the Governor alone. After the first general election no person could hold the office of Chief Secretary, Attorney-General, Treasurer, Commissioner of Crown Lands or Commissioner of Works, for any period longer than three months, unless he were a member of the Council or of the House of Assembly. This Bill, though described as a Constitution, was in fact not a Constitution, but, like that of Tasmania, a graft on, or a development of a pre-existing Constitution. — Sir R. C. Baker, Notes on the Constitution of South Australia, "Adelaide and Vicinity," p. 10. It was passed by the Council on 4th January, 1856, and was reserved by the Governor for the signification of the Queen's pleasure. It received the Royal assent, and was proclaimed on 24th October, 1856.

ENLARGED LEGISLATIVE POWERS. — At about the time when the Bill received the Royal assent, the Imperial Act (18 and 19 Vic. c. 56) was passed, authorizing the legislature of each of the Australian colonies to sell, dispose of, and legislate concerning the waste lands of the Crown in the colony. In 1865, the Colonial Laws Validity Act (28 and 29 Vic. (1. 63) removed the common law restriction which prevented colonial legislatures from passing any law repugnant to the law of England. In 1873, the prohibition contained in the Act 13 and 14 Vic. c. 59, preventing colonial legislatures from passing any law providing for the imposition of differential duties, was by the Australian Colonies Duties Act (36 and 37 Vic. c. 22) abolished as far as intercolonial duties were concerned. A list of other Imperial Acts enlarging the powers of the Parliament of South Australia, in common with those of the Parliaments of the other Australian colonies, will be found under the heading of "New South Wales," pp. 49–51, supra.

RESPONSIBLE GOVERNMENT. — The election of members of the
two new Houses took place in March, 1857. The first session of the new Parliament commenced on 22nd April, 1857, during the Governorship of Sir Richard Graves McDonnell. The first Responsible Ministry was formed by Mr. B. T. Finnis, Chief Secretary, and his colleagues were Mr. R. D. Hanson, Attorney-General; Colonel R. R. Torrens, Treasurer. Mr. C. Bonney, Commissioner of Crown Lands and Immigration; and Captain A. H. Freeling, Commissioner of Public Works, succeeded by Mr. (afterwards Sir) Samuel Davenport. Mr. James Hurtle Fisher was appointed President of the Council; and Mr. George Strickland Kingston first Speaker of the House of Assembly.

RELATIONS OF THE TWO HOUSES. — In 1857, a dispute arose between the two Houses of the South Australian Parliament as to their respective powers in dealing with Money Bills. A Bill to repeal certain duties of tonnage was passed by the Assembly and sent to the Council. The Council amended it as it would an ordinary Bill. The Bill as amended was sent back to the Assembly, which raised a question of privilege. The Assembly contended that the Council had no right to modify any Money Bill, but that it could only either pass or reject such a Bill. The Council replied that it had an undoubted right to amend all Bills whatsoever sent up to it by the Assembly. The dispute was eventually settled by a compromise, commonly called "the Compact of 1857," which was adopted by resolutions of both Houses. This "Compact" defines those Bills, which the Council cannot amend in the ordinary way, as being "all Bills the object of which shall be to raise money, whether by way of loan or otherwise, or to warrant the expenditure of any portion of the same," and provides "that it shall be competent for the Council to suggest any alteration in any such Bills, except that portion of the Appropriation Bill which provides for the ordinary annual expenses of the Government."

In 1881, an Act to amend the Constitution of South Australia (No. 236) was passed, which provided that "Whenever any Bill for any Act shall have been passed by the House of Assembly during any session of Parliament, and the same Bill, or a similar Bill with substantially the same objects and having the same title, shall have been passed by the House of Assembly during the next ensuing Parliament, a general election of the House of Assembly having taken place between such two Parliaments, the second and third reading of such Bill having been passed in the second instance by an absolute majority of the whole number of members of the said House of Assembly, and both such Bills shall have been rejected by, or fail to become law in consequence of any amendments made therein by the Legislative Council, it shall be lawful for, but not obligatory upon, the Governor of the said province, by proclamation to be published in the
Government Gazette, to dissolve the Legislative Council and House of Assembly, and thereupon all members of both Houses of Parliament, shall vacate their seats, and members shall be elected to supply the vacancies so created; or for the Governor to issue writs for the election of one, or not more than two, new members for each district of the Legislative Council: Provided always that no vacancy, whether by death, resignation, or any other cause, shall be filled up while the total number of members shall be 24 or more;" and that "in the event of the Council being dissolved, six members shall be elected for each of the said districts, and the names of such members shall be placed on the roll of members for the said districts in the order provided for in Section 12 of this Act, and thereafter the several periodical retirements of members referred to in Sections 8 and 13 of this Act shall date from the day of their election." Hitherto no double dissolution has taken place under this section.

REFORMS. — By the Constitution Amendment Act, 1894 (No. 613, assented to in 1895), the South Australian Parliament granted to women possessing the necessary qualification the right to vote for members of both Houses of Parliament.

The Legislative Council of South Australia at present is composed of 24 members who are theoretically elected for nine years. Every three years eight members whose names stand first on the roll retire and are eligible for re-election. The qualifications of members of the Council are: male; 30 years; natural-born or naturalized subjects; resident in the Province for three years if natural-born, and five years if naturalized; no property qualification. The qualifications of electors for the Council are: adults; natural-born or naturalized subjects; ownership of freehold property of the clear value of £50; or ownership of leasehold estate of the clear annual value of £20; or occupation of a dwelling house of the clear annual value of £25. The Assembly consists of 54 members, elected for a period of three years, subject to be sooner dissolved by the Governor. They, as well as members of the Council, are entitled to £200 per year each for their services. Manhood suffrage for Assembly elections was adopted in 1856; and in 1895 the franchise was extended to women. Under the Electoral Code, 1896, all British subjects of the age of 21 years, inhabitants of South Australia, who have been registered upon any Assembly roll for six months, may vote for members of the Assembly. There is no plural voting; and provision is made for absent electors to poll their votes.
Western Australia.

FIRST STATE AUTHORITY. — During the French scare of 1826, when the French were suspected of designs to annex unoccupied portions of the Australian continent, Governor Ralph Darling despatched from Sydney a detachment of the 39th Regiment with a number of convicts, in all seventy-five persons, in command of Major Lockyer, to occupy King George's Sound, with a view to taking possession of the western part of the continent. In 1827–8, Captain James Stirling, in H.M.S. Success, surveyed the coast from King George's Sound to Swan River, and being favourably impressed with its suitability for settlement, he recommended the formation of a colony there. In 1829, Captain Fremantle, in H.M.S. Challenger, was sent to do pioneering work; he hoisted the British flag on a spot near the mouth of Swan River, which now bears his name. On 1st June, 1829, Captain (afterwards Sir) James Stirling arrived at Swan River in the Parmelia, with 800 intending settlers, from which date the history of the colony commences. Captain Stirling was the first Lieutenant-Governor, and the officials associated with him were:- Mr. Peter Brown, Colonial Secretary; Lieutenant J. S. Rowe, R.N., Surveyor; Mr. C. Sutherland, Assistant-Surveyor; Mr. H. Morgan, Storekeeper; Mr. W. Shilton, Clerk to the Secretary; Mr. J. Drummond, Agriculturist; and the Rev. J. B. Wittenoom, first colonial Chaplain.

In the same year the first Imperial Act applicable to Western Australia was passed, viz., 10 Geo. IV. c. 22. It was intituled "An Act to provide until the 31st day of December, 1834, for the government of His Majesty's settlements in Western Australia, on the western coast of New Holland." It will be noticed that the name "Australia," first suggested for the continent in 1814 by Matthew Flinders, is here used and for the first time sanctioned by an Imperial Act. Sec p. 33, supra. By that Act the King, with the advice of the Privy Council, was empowered to make, ordain, and to authorize any three or more persons resident within the settlements, to make, ordain, and constitute laws, institutions, and ordinances for the peace, order, and good government of His Majesty's subjects and others within the settlements.

In 1831 Captain Stirling was appointed "Governor and Commander-in-Chief of His Majesty's settlements on the west coast of Australia," and, by letters patent, Vice-Admiral, with authority from Cape Londonderry (lat. 13° 44' S.) to West Cape Howe, in lat. 35° S. S., and from Dirk Hartog Island (long. 112° 52' E.) to long. 129° E. He was authorized to appoint an Executive Council, to provide for the defence of the colony, to institute local government and dispose of the land according to British law. The
members of the first Council were:- Colonial Secretary and Military Commander, Captain Irwin; Surveyor-General and Advocate-General, Mr. G. F. Moore; Commissioner of Civil Courts and Chairman of Sessions, Mr. W. H. Mackie; Resident Magistrates, Mr. G. Leake, Mr. H. Whitfield, Colonel J. Molloy, and Sir R. Spenser. Under the Act of George IV., a Legislative Council was formed consisting of members of the Executive Council and two nominated members, the Governor being President and Mr. (afterwards Sir) Luke S. Leake Speaker. In 1839 Mr. John Hutt succeeded Captain Stirling as Governor. For fifty years the history of the colony was uneventful except for the explorations of Major Warburton, Mr. Ernest Giles, and Mr. (afterwards Sir) John Forrest.

A REPRESENTATIVE LEGISLATURE. — By the Act 13 and 14 Vic. c. 59 (5th August, 1850) sec. 9, it was enacted "that upon the presentation of a petition signed by not less than one-third in number of the householders within the colony of Western Australia, praying that a Legislative Council according to the provisions of this Act be established within such colony, and that provision be made for charging upon the revenue of such colony all such part of the expenses of the civil establishment thereof as may have been previously defrayed by Parliamentary grants, it shall be lawful for the persons authorized and empowered to make, ordain, and establish laws or ordinances for the government of the said colony, by any law or ordinance to be made for that purpose, subject to the conditions and restrictions to which laws or ordinances made by such persons are now subject, to establish a Legislative Council within such colony, to consist of such number of members as they shall think fit, and such number of the members of such Council as is equal to one-third part of the whole number of members of such Council, or, if such number be not exactly divisible by three, one-third of the next greater number which is divisible by three, shall be appointed by Her Majesty, and the remaining members of the Council shall be elected by the inhabitants of the said colony." Under this Act Western Australia, in 1870, was granted a Legislative Council consisting of 26 members, nine of whom were nominated and 17 were elected.

RESPONSIBLE GOVERNMENT SOUGHT. — Three years after the grant of this instalment of Representative Institutions a movement was commenced in Western Australia in favour of Responsible Government as it existed in the Eastern colonies. Earl Kimberley, in reply to the first application, said: "Her Majesty's Government would not be disposed to resist any widespread and sustained desire which might prevail in the colony for Responsible Government." In 1874 a draft of a Constitution Bill was sent to the Secretary of State for the Colonies, who, however, decided that the colony was not yet ready for the change. On 9th April, 1884, the
Governor, Sir Napier Broome, reported that though he saw no valid reason for withholding free institutions from the colony, after its inhabitants should have expressed a general and decided wish to take upon themselves the burden and responsibility of that form of government, he was strongly of opinion that, until such a wish was expressed, which certainly it had not been as yet, it would be a mistake to make such a great and irretrievable change. He also said that Western Australia must be separated into two parts, and that the northern portion, above the 26th degree of latitude, should remain for the present a Crown colony. On 6th July, 1887, the Legislative Council of Western Australia (1) affirmed the desirability of the concession of self-government, but (2) protested against the division of the colony. On 12th July, 1887, the Governor reported that having carefully considered the whole matter, he strongly supported the first and second of the resolutions, and gave his reasons why he had changed his opinion in respect to the suggested division of the colony in his despatch of three years previous, but added that it was only a matter of time when Western Australia would be separated into two or more colonies.

In a despatch, dated December 1887, the Secretary of State intimated that Her Majesty's Government favoured the view that, in any new constitutional scheme, the colony should be divided at about latitude 26° (or in the neighbourhood of the Murchison River); that it should be lawful for the legislature of Western Australia to regulate, by Act passed in the usual way, the sale, letting, and other disposal of the waste lands of the Crown south of that line, and the disposal of proceeds arising therefrom; and that all the regulations affecting the sale, letting, disposal and occupation of waste lands of the Crown in the territory north of that line should remain under the control of Her Majesty's Government, the proceeds of all land sales being invested at interest, to form a fund of which the principal would be reserved for the benefit of any colony or colonies, which might thereafter be created in such northern territory, except so far as it might from time to time be expended for the special advancement of the district in which it was raised.

PREPARATION OF A NEW CONSTITUTION. — In 1889, the Legislative Council was dissolved and a general election took place, the principal question being the introduction of Responsible Government. The new Council passed a resolution, without dissent, in favour of the proposed change. A new Constitution was then drafted by the Council. It provided for the creation of a bi-cameral legislature, composed of an elective Upper House of 15 members, and an elective Lower House of 30 members. To this legislature it was proposed to give powers and functions similar to those vested in the legislatures of the eastern colonies, including the
disposition of the waste lands of the Crown. It was further provided that, notwithstanding anything in the Constitution, Her Majesty might divide the colony of Western Australia by separating therefrom any portion thereof, and either erect the same or any part thereof into a separate colony or colonies, or subdivide any colony so erected, or re-unite to the colony of Western Australia any part of any colony so created. The sum of £5,000 per year was appropriated for the benefit of the aboriginal natives within the colony, to be expended in providing them with food and clothing and in promoting their education. Pensions were provided for Sir Malcolm Fraser, Colonial Secretary; Mr. Charles N. Warton, Attorney-General; Mr. A. O'Grady Lefroy, Colonial Treasurer; and Mr. John Forrest, Surveyor-General and Commissioner of Crown Lands upon their retirement from office on political grounds.

The Bill was forwarded to the Secretary of State for the Colonies, who, on 31st August, 1888, returned it with suggested amendments - the principal being that the members of the Council should be nominated, instead of elected. The Legislative Council agreed to accept the proposed amendments, subject to the provision that after the expiration of six years, or as soon as the colony acquired a population of 60,000, the Upper House should be constituted by election, instead of nomination. The Bill was passed and reserved on 29th April, 1889. This compromise was accepted by the Secretary of State for the Colonies, Lord Knutsford, and on 11th July, 1889, he moved the second reading of a Bill to enable Her Majesty to assent to a Bill for conferring a Constitution on Western Australia. One of the grounds suggested, as justifying the change, was that it was desirable that all the colonies on the Australian continent should, as soon as practicable, be placed on the same footing. Until there was uniformity of government, there could be little chance of any system of federation, to which he looked forward as a change which would largely tend to increase the wealth and strength of the colonies. The Bill was passed by the House of Lords, but it encountered strong opposition in the House of Commons, where the principal objection raised was the inadvisability of handing over such a vast area of country, viz., 978,000 square miles, to a Government responsible to only a small population, not exceeding 40,000 inhabitants. On the 26th August the Bill was withdrawn.

RESPONSIBLE GOVERNMENT. — In the next session of Parliament however, the Bill received the concurrence of both Houses. It became law on the 25th July, 1890; the new Constitution was proclaimed on 21st October, 1890. It is embodied in the Imperial Act, 53 and 54 Vic. c. 26. The first Responsible Ministry was composed of Sir John Forrest, Colonial Treasurer and Premier; Mr. Geo. Shenton, Colonial Secretary

(succeeded
by Mr. Stephen Hy. Parker); Mr. Edward Horne Wittenoom, Minister of Mines; Mr. Stephen Burt, Q.C., Attorney-General (succeeded by Mr. R. W. Pennefather); Mr. William Edward Marmion, Commissioner of Crown Lands (succeeded by Mr. Alexander Robert Richardson); Mr. Harry Whittall Venn, Commissioner of Railways and Public Works.

REFORMS. — On 18th July, 1893, the population of the colony being then beyond 60,000, the legislature of Western Australia passed an Act, 57 Vic. No. 14, to amend the Constitution, abolishing the nominee Council and substituting one elected by the qualified inhabitants of the colony.

In the session of 1899 a "Constitution Acts Amendment Act" was passed by both Houses of the West Australian Parliament, and reserved on 16th December for the Royal assent. This Act, when assented to, will introduce several important changes. Besides consolidating previous Constitution Amendment Acts, it increases the numbers of both Houses, extends the franchise for both Houses to women, reduces the period of residence in the colony necessary in order to qualify as an elector, and reduces the duration of the Assembly to three years from the date of its first meeting. The Legislative Council is to consist of 30 members, returned by 10 electoral provinces. Under this Act the qualifications of Councillors are:- Male; 30 years; a British subject, either natural-born and resident in the colony two years, or naturalized and resident for five years. Every adult person, being a natural-born or naturalized British subject, resident six months in the colony, is entitled to be registered as a Council elector in every Province in which he or she has a freehold qualification of £100 capital value, a household or leasehold qualification of £25 a year, or a Crown lease or license of £10 a year. For membership of the Assembly, of which there are to be 50 members, the qualifications are: male; 21 years; a British subject, either natural-born and resident in the colony for one year, or naturalized for five years and resident two years. Every adult person, being a natural-born or naturalized British subject, is entitled to be registered as a voter if he or she has resided in the colony for six months, and is entitled to vote after being registered for six months; and is also entitled to a property vote in every district in which he or she has a freehold qualification of £50 capital value, a leasehold or household qualification of £10 a year, or a Crown lease or license of £5 a year.
FOUNDATION. — In 1823 Lieutenant Oxley, the Surveyor-General of New South Wales, was directed by Sir Thomas Brisbane, Governor of New South Wales, to inspect Port Bowen, Port Curtis, and Moreton Bay, in order to ascertain which, if any of them, was suitable for the establishment of a new penal settlement. In the course of his explorations he discovered a large river flowing into Moreton Bay, which he named the Brisbane, and explored for the distance of fifty miles. He was so satisfied with the country that he reported in favour of the establishment of a penal depot on the banks of the Brisbane. In September, 1824, in company with Lieutenant Miller, who was in charge of a detachment of the 40th regiment, Oxley returned to the Brisbane River and formed the nucleus of a prison settlement, comprising thirty convicts, near the present site of the city of Brisbane. In the following year the Brisbane River was further examined by Major Lockyer of the 57th regiment. Captain Miller was the first Commandant. In 1839 it was determined to abandon Moreton Bay as a penal settlement. Sir George Gipps laid out the plan of Brisbane in 1841. On the 4th May, 1842, free settlement commenced; in the same year Captain J. C. Wickham was appointed Police Magistrate and afterwards Government Resident.

PROVISION FOR SEPARATION. — The Act 5 and 6 Vic. c. 76 (30th July, 1842) empowered Her Majesty, by letters patent, to separate from New South Wales any part of the territory of that colony lying to the northward of 26° south latitude, and to erect such territory into a separate colony or colonies. It was subsequently found that the 26th parallel was not far enough south to meet the requirements of a new colony, and by the Act 13 and 14 Vic. c. 59 s. 34 it was declared that upon the petition of the inhabitant householders of that part of the territory of New South Wales lying to the northward of the 30° of south latitude, Her Majesty might detach such territory from the colony of New South Wales and erect it into a separate colony or colonies. By the Constitution Statute and Act of New South Wales, 18 and 19 Vic. c. 54 (16th July 1855), the power previously granted to alter the northern boundary of New South Wales was distinctly preserved, and Her Majesty was authorized, by letters patent, to erect into a separate colony or colonies any territory which might be so separated from New South Wales. It was further enacted that Her Majesty, by such letters patent or by Order in Council, might make provision for the government of any such new colony, and for the establishment of a legislature therein, in manner as nearly resembling the form of government and legislature
established in New South Wales as the circumstances of the new colony would permit. In 1843, the Moreton Bay settlers found themselves included in a large electoral district constituted under the Act 5 and 6 Vic. c. 76 for the purpose of returning representative members to the new Legislative Council of New South Wales. In 1851, Moreton Bay was made a separate electoral district, and was assigned one elective member in the Council of New South Wales; in 1853, it was assigned an additional member. When the new Constitution of New South Wales came into force in 1856 the Moreton Bay district was divided into eight electorates, returning nine members to the Legislative Assembly of New South Wales.

SEPARATION. — Petitions in favour of separation from the parent colony were signed and forwarded to the Imperial Government so early as the year 1851. It was not until 1859 that it was decided to grant a separation. On 6th June, 1859, letters patent were issued erecting the Moreton Bay district into a separate colony, under the name of Queensland, and appointing Sir George Ferguson Bowen to be Captain-General and Governor-in-Chief thereof. The boundary of the new colony was defined as a line commencing on the seacoast at Point Danger, in latitude about 28° 8' south, running westward along the Macpherson and Dividing Ranges and the Dumaresq River, to the McIntyre River, thence by the 29th parallel of S. latitude to the 141st meridian of E. longitude; on the west, the 141st meridian of longitude from the 29th to the 26th parallel, and thence the 138th meridian north to the Gulf of Carpentaria, together with all the adjacent islands, their members and appurtenances in the Pacific Ocean. The Governor was authorized to appoint an Executive Council to advise and assist him in the government of Queensland. The Constitution of Queensland was embodied in an Order in Council bearing the same date as the letters patent.

THE CONSTITUTION. — The Order in Council provided that there should be within the colony of Queensland a Legislative Council and a Legislative Assembly, with the advice and consent of which Her Majesty should have power to make laws for the peace, welfare, and good government of the colony in all cases whatsoever. The Legislative Council was to be composed of persons appointed by the Governor, subject to the proviso that not less than four-fifths of the members so appointed should consist of persons not holding any office of emolument under the Crown except as naval or military officers. The members of the Council were to hold their seats for the term of their natural lives. The Legislative Assembly was to consist of members elected by the qualified inhabitants of the colony. The Assembly was to continue for five years from the day of the return of the writs for choosing the same, subject, however, to be
sooner dissolved by the Governor.

The powers and functions granted to this legislature were substantially the same as those granted to New South Wales, Victoria, South Australia, and Tasmania, and similar restrictions were imposed. With reference to the relative powers of the two Houses in financial matters, the Council could not originate any Bills for appropriating any part of the public revenue, or for imposing any new rate, tax, or impost. The Assembly could not originate or pass any vote, resolution, or Bill for appropriation of any part of the public revenue to any purpose which should not have been first recommended by a message from the Governor.

The formation of the new colony was proclaimed in the London Gazette on 3rd June, 1859; Sir George Bowen arrived in Brisbane on 10th December, 1859. The Order in Council was published in the Queensland Government Gazette on 29th December, 1859. The first Parliament under the new Constitution was convened for the despatch of business on 29th May, 1859. The first Responsible Ministry was composed of the Hon. Robert George Wyndham Herbert, Colonial Secretary; Mr. Ratcliffe Pring, Attorney-General; Mr. Robert Ramsay McKenzie, Colonial Treasurer; Mr. Maurice Charles O'Connell, without portfolio. The Act 24 and 25 Vic. c. 44 (22nd July, 1861) was passed to validate and effectuate the Order in Council establishing the Government of Queensland, and to remove all doubts as to the legality of arrangements made by the Crown upon the erection of Queensland into a separate colony. On 28th December, 1867, the Queensland legislature passed an act to consolidate the law relating to the Constitution of the colony. The Act begins with a long recital, referring to the Order in Council ordaining the Constitution; the Act 5 and 6 Vic. c. 76, relating to the Royal assent to Bills, the disallowance of Bills reserved, and the Governor's conformity to instructions; and the Act 13 and 14 Vic. c. 59, relating to the reservation of Bills. It then proceeds to re-enact the Order in Council, in the shape of a local statute, in which is embodied, in addition to the Order in Council, all the constitutional law of the colony passed up to that date.

RELATIONS OF THE TWO HOUSES. — In 1885 a dispute arose between the two branches of the legislature with reference to their relative rights and powers concerning money Bills. The two Houses had agreed to the following joint standing order: "In all cases, not herein provided for, having reference to the joint action of both Houses of Parliament, resort will be had to the rules, powers, and practice of the Imperial Parliament." The following questions were referred to the Judicial Committee of the Privy Council for their determination:- (1) Whether the Constitution Act, 1867, confers on the Legislative Council powers co-ordinate with those of
the Legislative Assembly in the amendment of Bills, including money Bills? (2) Whether the claims of the Legislative Assembly as set forth in its message of 12th November, 1885, are well founded? The answer of the Privy Council was as follows:- "Their Lordships agree humbly to report to your Majesty that the first of these questions should be answered in the negative, and the second in the affirmative."

REFORMS. — The number of members of the Legislative Council of Queensland is about 41; their qualifications and tenure being the same as those of the members of the Legislative Council of New South Wales. The duration of the Legislative Assembly was, in 1890, reduced to three years. There are 72 members of the Assembly, returned by 61 electorates; they are entitled to payment of £300 a year each for their services. Every person qualified to vote at the election of members of the Assembly is qualified to be a member thereof. The qualifications of electors are: male; 21 years; natural-born or naturalized subjects; resident in an electoral district for six months. Owners of freehold estate of the clear value of £100, or £10 leaseholders, have the right to vote in every district in which the property is situated.
(7) New Zealand.

FOUNDATION. — In 1823, New Zealand was under the nominal protection of the Government of New South Wales, and the jurisdiction of the Supreme Court of that colony was extended to embrace the crude groups of settlements which were gradually being formed along the coasts of the islands. In 1826, Captain Herd arrived at Hauraki Gulf with sixty settlers, but he had to abandon the attempt to settle on account of the hostility of the natives. In 1831, thirteen chiefs appealed to the English Government for protection against traders and others with whom they had come into conflict. Accordingly, in 1833, Mr. James Busby was appointed Resident at the Bay of Islands, and shortly afterwards Lieutenant McDonell, R.N., was appointed to act in a similar capacity at Hokianga. European population continued to increase at the Bay of Islands until 1837, when the Government of New South Wales despatched Captain Hobson to enquire into the lawless state of affairs at Kororareka, the main settlement. No action was taken to establish a government in any part of New Zealand until 1839, when the New Zealand Company sent a colonizing expedition, under the command of Colonel William Wakefield, to Port Nicholson, where he took possession in the name of the company, fired a royal salute, and hoisted "the New Zealand flag." Other adventurers subsequently arrived at the same locality and the town of Wellington was founded.

THE QUEEN'S SOVEREIGNTY. — This action of a private company forced the hands of the Imperial Government, and it was then decided to annex the islands to New South Wales. Letters patent were prepared extending the jurisdiction of New South Wales so as to include New Zealand, and Captain Hobson was appointed Lieutenant-Governor under Sir George Gipps, the Governor of New South Wales. Captain Hobson proceeded to the Bay of Islands, and Kororareka, which he named Russell, became the seat of government. Captain Hobson convened a conference of native chiefs and British subjects, at which he read his commission and a proclamation, asserting the Queen's authority in the islands and declaring that transactions in land which had not received confirmation by the Government would be considered illegal. Subsequently Captain Hobson entered into negotiations with the native chiefs of the north island, resulting in the Treaty of Waitangi being signed by a number of chiefs, ceding the sovereignty of New Zealand to Great Britain; and in consideration thereof they were guaranteed the preservation of their proprietary interests in the soil, subject to the condition that the Crown was to have the right of pre-emption — that is the first right of purchase — of
all Maori lands. On 21st May, 1840, the sovereignty of the Queen over the islands was proclaimed.

SEPARATION. — By the Act 3 and 4 Vic. c. 62 (7th August, 1840), Her Majesty was empowered to erect into a separate colony or colonies any islands comprised within the colony of New South Wales. By letters patent bearing date 16th November, 1840, Her Majesty erected the islands of New Zealand into a separate colony, independent of New South Wales, and the Governor and certain other residents of the colony were appointed a Legislative Council with power to make laws for the peace, order, and good government thereof. The new colony was proclaimed on 3rd May, 1841. Captain Hobson was the first Governor of New Zealand, a post which he occupied until his death in 1842. He was succeeded by Captain (afterwards Admiral) R. Fitzroy. The seat of government was, on account of outrages by the natives, removed from Russell to Auckland. Governor Fitzroy was succeeded in 1845 by Captain (afterwards Sir George) Grey.

In 1846 an Act for the Government of New Zealand (9 and 10 Vic. c. 103) was passed by the Imperial Parliament. This Act contained a scheme for the division of the colony into two provinces, one styled New Ulster, comprising almost the whole of the northern island; and the other New Munster, comprising the middle and southern islands; each province having a separate Lieutenant-Governor, and a separate Executive Council charged with the administration of local affairs. For the whole of the colony there was to be a Governor-in-Chief and a Legislative Council having power to make laws of general application. This plan of government, however, did not work satisfactorily, and the operation of the Act was suspended. The movement in favour of Representative and Responsible Government made considerable progress during Governor Grey's term of office. In 1851 he recommended the Imperial Government to pass an amending law granting a new Constitution in place of that embodied in the suspended Act.

THE NEW CONSTITUTION. — On 30th June, 1852, the Act 15 and 16 Vic. c. 72 came into force in New Zealand, under which a system of provincial and general government was inaugurated. Six provinces were established, viz., Auckland, Canterbury, New Plymouth, Nelson, Otago, and Wellington, the number being subsequently increased to nine. Each province was to be ruled by a Superintendent and a provincial Council. The Superintendent was to be elected by the qualified inhabitants of each province voting as one body; each Council was to consist of not less than nine members elected by the qualified inhabitants of its province voting in districts. The Superintendent, with the advice and consent of the Council of each province, was empowered to make all such laws and ordinances as
might be required for the peace, order, and good government of the province, provided that the same were not repugnant to the law of England, or to the law of the colony otherwise enacted. Generally speaking the powers and functions of the Councils were of a local and municipal character. The Superintendent could, according to his discretion, assent to a Bill passed by the Council of his province, or he could withhold his assent or reserve the Bill for the signification of the Governor's pleasure. The Act further provided that there should be within the colony of New Zealand a General Assembly, to consist of the Governor, a Legislative Council, and a House of Representatives. Members of the Council, of whom there were to be not less than 10, were to be appointed by the Queen; they were to hold their seats for life, subject to resignation, forfeiture for non-attendance, and other disabilities. The House of Representatives was to consist of not less than 24 nor more than 42 members, elected by the qualified inhabitants of the colony. Each House of Representatives was to continue in existence for five years, unless sooner dissolved by the Governor. The General Assembly was to have power to make laws for the peace, order, and good government of New Zealand, provided that no such laws should be repugnant to the law of England, and that Bills passed by the General Assembly should control and supersede any law or ordinance in any way repugnant thereto passed by the provincial councils. Under subsequent Imperial legislation the powers and functions of the General Assembly of New Zealand were, in common with those of the Parliaments of Australia, greatly enlarged.

Sir George Grey was, on 13th September, 1852, appointed Governor of the colony under the new Constitution; he, however, was appointed Governor of Cape Colony before the arrangements were completed for the inauguration of the new Representative system. To Colonel Wynyard, the officer commanding the Imperial troops, was assigned the important task of bringing the new machinery of government into operation.

RESPONSIBLE GOVERNMENT. — The first session of the General Assembly was opened at Auckland on 25th May, 1854. Great dissatisfaction was expressed when it was found there was no provision in the Constitution, or in the Governor's instructions, for the introduction of Responsible Government. The official members of the old Executive Council continued to hold office, although none of them were members of the new Parliament, which had no control of the Executive except by the refusal of supplies. The Constitution did not make it obligatory that official members of the Executive Council of the legislature should be members. The Governor informed the House of Representatives that he had no power to supersede the Executive Council which was in existence before the
Constitution was passed. During the first three months of the session no business was done by the new Parliament. The Governor then sent a message informing the Parliament that he would urge the Imperial Government to amend the Constitution by making provision for the appointment of Responsible Ministers. The Parliament was then prorogued for a fortnight. In the meantime, four members of the House of Representatives were made members of the Executive Council. Upon the re-opening of Parliament, an amendment to the Address-in-Reply was carried, in the House of Representatives, by 22 votes to 4, declaring that the House had no confidence in a mixed Executive consisting partly of members of Parliament and partly of Government officials. The four new ministers then resigned. As the result of the action of the House of Representatives the Governor subsequently received authority from the Imperial Government to appoint Responsible Ministers, subject to the condition that the official members of the old Executive Council were to be granted pensions to which they were entitled by Imperial regulations.

In September, 1855, Colonel Gore Browne became Governor of New Zealand, and in his first message to the General Assembly he communicated the desire of Her Majesty's Government that the colony should enjoy "the fullest measure of self-government which is consistent with its allegiance to the British Crown," and that accordingly he would, as speedily as possible, "carry out in its integrity the principle of ministerial responsibility, being convinced that any other arrangements would be ineffective to preserve the harmony between the legislative and executive branches of the government, which is so essential to the successful conduct of public affairs." In April, 1856, the Governor commenced negotiations with one of the leaders of the House of Representatives for the formation of his first Government, with the result that the Bell-Sewell Ministry took office, which they held from 7th May to 20th May, 1856; they were succeeded by the Fox Ministry, which held office from 20th May to 2nd June, 1856, which was followed by the Stafford Ministry, holding office from 2nd June, 1856, to 12th July, 1861.

The system of Provincial Government remained in force as an integral part of the Constitution until the 1st November, 1876, when it was abolished by an Act of the General Assembly, and most of the powers and functions previously exercised by Superintendents and Councils were vested in municipal institutions of the ordinary type. In 1865 the seat of Government was, by an Act of the General Assembly, removed from Auckland, and, on the recommendation of certain commissioners, appointed by the Australian Governors at the request of the General Assembly, Wellington became the capital.
REFORMS. — The Constitution of the Legislative Council was altered by an Act which came into operation on 17th September, 1891; under which all members added subsequently to that date were appointed for the limited period of seven years instead of for life. They are, however, eligible for re-appointment. Members of the Council are paid £150 per year for their services. For membership of the House of Representatives no property qualification is required, and every adult person whose name is properly registered is entitled to vote at the election of members of the House. The House consists of 74 members, including four Maori representatives, who are paid at the rate of £240 per year. Its duration from the return of the writs was, in 1879, reduced from five years to three years, subject to being sooner dissolved by the Governor.
Part IV. The Federal Movement in Australia.
(1) The Germ of Federation.

THE BEGINNINGS OF SEPARATION. — Early Australian history, naturally enough, is a history of isolation; of the separate progress of widely distant coast settlements, and their endeavours to become self-sufficient and to obtain independent self-governing institutions. As we have already seen, New South Wales once comprised (nominally) the whole of the continent of Australia east of the 129th meridian (the present eastern boundary of Western Australia), together with the "adjacent islands," and Tasmania. But for many years it meant little more than the settlement at Sydney. Hobart was founded in 1803, and Moreton Bay in 1824, both being administered from Sydney. The first actual separation was in 1825, when Van Diemen's Land was erected into a separate colony. Western Australia in 1829, and South Australia in 1836, were also founded as separate colonies. The mainland of Australia was thus parcelled out into three great divisions, while the island of Van Diemen's Land formed a fourth. The Port Phillip settlement, definitely colonized in 1836, and the Moreton Bay settlement, continued to form part of New South Wales. In 1839 New Zealand was also proclaimed a dependency of New South Wales; but in 1841 it was proclaimed as a separate colony.

INTERCOLONIAL RECIPROCITY ATTEMPTED. — The actual isolation of these settlements prevented any need of union being felt; and the settlers were too absorbed in their daily needs to give much attention to the political wants of the future. Nevertheless some early attempts were made to secure reciprocal freetrade between the colonies - attempts which were unfortunately thwarted by unsympathetic Secretaries of State. All the colonies imposed import duties for purposes of revenue; and as trade developed, these duties began to wear a protective aspect. For many years after the separation of Van Diemen's Land it was the practice in New South Wales — contrary to the strict letter of the law — to admit imports from Van Diemen's Land free, though levying duties on similar goods from elsewhere; whilst Van Diemen's Land reciprocated by inserting in her Customs Duties Acts an exemption in favour of imports from New South Wales. The separation of New Zealand made the need of intercolonial freetrade more apparent; and in 1842 the Legislative Council of New South Wales passed an Act to permit goods the produce or manufacture of New Zealand or Van Diemen's Land to be imported free of duty. In debate the Collector of Customs suggested that, to prevent jealousy, the exemption should be extended to South Australia also, though the trade with that colony was as yet inconsiderable. The suggestion, however, was not
adopted. In fact South Australia, as the pet colony of the Colonial Office, was not regarded with too much favour in New South Wales.

This attempt to introduce an instalment of intercolonial freetrade was frustrated by the disallowance of the Act. Lord Stanley, the Secretary of State for the Colonies, first sent a circular despatch, dated 28th June, 1843, to the Governors of all the colonies, dealing generally with the subject of differential duties. He took the ground that a policy of discrimination would involve the commercial treaties and the foreign relations of Great Britain, and could not be satisfactorily dealt with except by the Home Government; and stated roundly that "Her Majesty's Government decidedly object in principle to the assumption by the colonial legislatures of the office of imposing differential duties on goods imported into the respective colonies." In a subsequent despatch to the Governor of New South Wales, announcing the disallowance of the Act, Lord Stanley further objected to the principle of differential duties on the ground that they would lead to retaliation, and to a system of protection and preferences.

GOVERNOR FITZROY'S SUGGESTION. — Intercolonial barriers were thus allowed to grow up, and the fiscal policies of the colonies gradually drifted apart. In 1843, we find the Legislative Council of New South Wales carrying, on the motion of Mr. Richard Windeyer, a resolution asking for the disallowance of certain Acts of the Legislature of Van Diemen's Land, imposing a duty on tobacco and coal imported from New South Wales. And in 1846 the Legislative Council of Van Diemen's Land passed an Act abolishing the exemption of imports from New South Wales, and thus subjecting them to an *ad valorem* duty of 15 per cent. This step was taken ostensibly to comply with Lord Stanley's wishes; but really (according to Sir John Eardley Wilmot, the Governor of Van Diemen's Land) to secure protection to the local farmers. Once more, on Mr. Windeyer's motion, the Legislative Council of New South Wales protested, asking that the Act should be disallowed; and Governor Fitzroy, in a despatch dated 29th September, 1846, forwarding this resolution to the Colonial Office, made the first recorded suggestion of the need of some central intercolonial authority — a suggestion which we may shrewdly suspect to have been inspired by his Colonial Secretary, Mr. E. Deas-Thomson. He wrote:- "I feel much diffidence in offering an opinion so soon after my arrival in this part of the world; but it appears to me that, considering its distance from Home, and the time that must elapse before the decision of Her Majesty's Government upon measures passed by the Legislatures of these colonies can be obtained, it would be very advantageous to their interests if some superior functionary were to be appointed, to whom all measures adopted by the local Legislatures,
affecting the general interests of the mother country, the Australian colonies, or their intercolonial trade, should be submitted by the officers administering the several Governments, before their own assent is given to them."
(2) Earl Grey's Schemes.

EARL GREY’S DESPATCH. — Meanwhile the agitation for the separation of the Port Phillip district, and for more completely representative institutions, was going on; and Lord John Russell's administration had begun, with Earl Grey as Secretary of State for the Colonies. Earl Grey, in his famous despatch of 31st July, 1847, announced his Government's intention to bring in a Bill to erect the southern part of New South Wales into a separate colony, to be called Victoria. Incidentally, he foreshadowed some changes in the Constitution of New South Wales. He proposed to establish a Legislature of two Houses instead of one, and made the startling suggestion that the House of Assembly should be elected by District Councils, or municipal bodies, instead of directly by the people. But to us to-day the most interesting part of his constitutional scheme was that which at the time received the least attention — the idea, previously hinted at by Governor Fitzroy, of a General Assembly to deal with matters of common Australian interest. We must give Earl Grey credit for recognizing that besides municipal and provincial interests on the one hand, which would be the care of the local Legislatures, and Imperial interests on the other hand, which would be the care of the Imperial Government, there must be general Australian interests which would need to be regulated by a central Australian authority. He wrote accordingly the first recorded statement of the case for Australian union:

"The principle of local self-government (like every other political principle) must, when reduced to practice, be qualified by many other principles which must operate simultaneously with it. To regulate such affairs with reference to any one isolated rule or maxim would, of course, be an idle and ineffectual attempt. For example, it is necessary that, while providing for the local management of local interests, we should not omit to provide for a central management of all such interests as are not local. Thus, questions co-extensive in their bearing with the interests of the Empire at large are the appropriate province of Parliament.

"But there are questions which, though local as it respects the British possessions in Australia collectively, are not merely local as it respects any one of those possessions. Considered as members of the same Empire, those colonies have many common interests, the regulation of which, in some uniform manner and by some single authority, may be essential to the welfare of them all. Yet in some cases such interests may be more promptly, effectively, and satisfactorily decided by some authority within
Australia itself than by the more remote, the less accessible, and in truth the less competent authority of Parliament."

And in due course he went on to outline his project for union:-

"Some method will also be devised for enabling the various legislatures of the several Australian colonies to co-operate with each other in the enactment of such laws as may be necessary for regulating the interests common to those possessions collectively, such, for example, are the imposition of duties of import and export, the conveyance of letters, and the formation of roads, railways, or other internal communications traversing any two or more of such colonies.....The subject of your own despatch of the 29th September, 1846, viz., the imposition of discriminating duties, in any Australian colony, on goods, the growth, produce, or manufacture of any other Australian colony, will also be adverted to, and provided for, in that part of the contemplated Act of Parliament which will relate to the creation of a central legislative authority for the whole of the Australian colonies."

RECEPTION OF THE DESPATCH. — This despatch was greeted in New South Wales with a storm of indignation. The colonists resented the idea of constitutional changes as to which they had not been consulted, and were especially alarmed at the suggestion of indirect election, which would take away the instalment of representative institutions which they had lately won. Public meetings were held everywhere to express "apprehension and dismay" at the proposed changes, and to protest against any change about which the people of the colony had not been consulted. But amidst all this uproar very little was said about the federal proposal. When mentioned at all, it was usually in a tone of mild approval — as being unobjectionable, and possibly even useful, but of little immediate importance.

In May, 1848, Mr. William Charles Wentworth brought before the Legislative Council of New South Wales a set of resolutions affirming that the separation of Port Phillip might be effected without, any material change in the Constitution of New South Wales, and protesting generally against Earl Grey's proposals. One of these, resolutions was "That the only useful amendment in our present Constitution suggested in the despatch is the proposition relative to a Congress from the various colonial legislatures in the Australian colonies, with power to pass laws on intercolonial questions; that such a Congress, if not too numerous, might be got together for short periods at certain intervals." A set of resolutions framed by a Committee of the Council was ultimately substituted, and these were considered in Committee. One of them, which was passed "almost without remark," declared "That this Council cannot acquiesce in any plan of an
intercolonial Congress, in which the superior wealth and population of New South Wales, as compared with the other colonies of the Australian group, both individually and collectively, shall not, be fully recognized as the basis of representation." These resolutions, however, never got beyond the Committee stage. Mr. Edward Deas-Thomson, Mr. Robert Lowe (afterwards Viscount Sherbrooke), and others, wished to express approval of the proposal for a two-chambered legislature; and in spite of the protests of Wentworth, who complained that this introduced a debatable detail into a question of constitutional principle, they succeeded in carrying it. On this rock the Council Split. On Wentworth's motion, the resolutions were shelved by leave being obtained to sit again that day six months. Consequently, though the wish to protest was unanimous, no protest was ever made by the Council.

The "apprehension and dismay," however, had their effect. In a despatch of 31st July, 1848, Earl Grey disclaimed any wish to impose unwelcome constitutional changes on the colonies. The project of making District Councils serve as constituencies to the Legislature would be given up; and the division of the Legislature into two Houses would be left for the colonists themselves to effect whenever they wished. The idea of an intercolonial Legislature, however, was adhered to. Earl Grey pointed out that communication by land between New South Wales and Port Phillip was already completely established; that the trade of Port Phillip with South Australia was becoming not inconsiderable; and that the intercourse would yearly increase. If these portions of Australia were under independent legislatures, tariff differences would inevitably grow up. The extreme inconvenience of this would necessitate some means of providing for a uniform commercial policy, in order to give free scope for the development of their resources and their trade. How this could best be done was a question of some difficulty, which he reserved for more mature consideration.

COMMITTEE OF THE PRIVY COUNCIL. — The details of Earl Grey's scheme were soon forthcoming. In 1849 a Committee of the Privy Council — the Committee on Trade and Plantations — was commissioned to enquire into the constitutional changes which it might be advisable to make in the Government of the Australian colonies. (For the nature and history of this Committee, see Jenks' Government of Victoria, p. 3) The Committee brought up a report in which it recommended that the southern part of New South Wales should be established as a separate colony, to be called Victoria; that each of the colonies of New South Wales, Victoria, South Australia, and Van Diemen's Land should have a legislature of one House, of whose members one-third were to be nominated by the Crown,
and two-thirds elected; and that the Legislature of each colony should be empowered to alter its own Constitution. On the subject of a uniform tariff and a federal legislature the Committed reported as follows:-

"There yet remains a question of considerable difficulty. By far the larger part of the revenue of the Australian colonies is derived from duties on customs. But if, when Victoria shall have been separated from New South Wales, each province shall be authorized to impose duties according to its own wants, it is scarcely possible but that in process of time differences should arise between the rates of duty imposed upon the same articles in the one and in the other of them. There is already such a difference in the tariffs of South Australia and New South Wales, and although, until of late, this has been productive of little inconvenience, yet with the increase of settlers on either side of the imaginary line dividing them, it will become more and more serious. The division of New South Wales into two colonies would further aggravate this inconvenience, if the change should lead to the introduction of three entirely distinct tariffs, and to the consequent necessity for imposing restrictions and securities on the import and export of goods between them. So great indeed would be the evil, and such the obstruction of the intercolonial trade, and so great the check to the development of the resources of each of these colonies, that it seems to us necessary that there should be one tariff common to them all, so that goods might be carried from the one into the other with the same absolute freedom as between any two adjacent counties in England.

"We are further of opinion that the same tariff should be established in Van Diemen's Land also, because the intercourse between that island and the neighbouring colonies in New Holland has arisen to a great importance and extent, and has an obvious tendency to increase. Yet fiscal regulations on either side of the intervening strait must of necessity check, and might perhaps to a great extent destroy, that beneficial trade.

"If the duties were uniform, it is obvious there need be no restrictions whatever imposed upon the import or export of goods between the respective colonies, and no motive for importing into one goods liable to duty which were destined for consumption in another; and it may safely be calculated that each would receive the proportion of revenue to which it would be justly entitled, or at all events that there would be no departure from this to an extent of any practical importance.

"Hence it seems to us that a uniformity in the rate of duties should be secured.

"For this purpose we recommend that a uniform tariff should be established by the authority of Parliament, but that it should not take effect until twelve months had elapsed from the promulgation in the several
colonies of the proposed Act of Parliament. That interval would afford
time for making any financial arrangements which the contemplated
change might require in any of them, and by adopting the existing tariff of
New South Wales (with some modifications, to adapt it to existing
circumstances) as the general tariff for Australia, we apprehend that there
would be no risk of imposing upon the inhabitants of these colonies a table
of duties unsuited to their actual wants. We should not, however, be
prepared to offer this recommendation, unless we proposed at the same
time to provide for making any alteration in this general tariff which time
and experience may dictate, and this we think can only be done by creating
some authority competent to act for all those colonies jointly.

"For this purpose we propose that one of the Governors of the Australian
colonies should always hold from Your Majesty a commission constituting
him the Governor-General of Australia. We think that he should be
authorized to convene a body to be called the General Assembly of
Australia, at any time and at any place within Your Majesty's Australian
dominions which he might see fit to appoint for the purpose. But we are of
opinion that the first convocation of that body should be postponed until
the Governor-General should have received from two or more of the
Australian legislatures addresses requesting him to exercise that power.

"We recommend that the General Assembly should consist of the
Governor-General, and of a single House, to be called the House of
Delegates. The House of Delegates should be composed of not less than 20
nor of more than 30 members. They should be elected by the legislatures of
the different Australian colonies. We subjoin a schedule explanatory of the
composition of this body, that is, of the total number of delegates, and of
the proportions in which each colony should contribute to that number.

"We think that Your Majesty should be authorized to establish
 provisionally, and in the first instance, all the rules necessary for the
election of the delegates, and for the conduct of the business of the General
Assembly, but that it should be competent for that body to supersede any
such rules and to substitute others, which substituted rules should not,
however, take effect until they had received Your Majesty's sanction.

"We propose that the General Assembly should also have the power of
making laws for the alteration of the number of delegates, or for the
improvement in any other respect of its own constitution. But we think that
no such law should come into operation until it had actually been
confirmed by Your Majesty.

"We propose to limit the range of the legislative authority of the General
Assembly to the ten topics which we proceed to enumerate. These are:-

1. The imposition of duties upon imports and exports.
2. The conveyance of letters.
3. The formation of roads, canals, or railways, traversing any two or more of such colonies.
4. The erection and maintenance of beacons and lighthouses.
5. The imposition of dues or other charges on shipping in every port or harbour.
6. The establishment of a General Supreme Court, to be a Court of original jurisdiction or a Court of Appeal for any of the inferior Courts of the separate provinces.
7. The determining of the extent of the jurisdiction, and the forms and manner of proceeding of such Supreme Court.
8. The regulation of weights and measures.
9. The enactment of laws affecting all the colonies represented in the General Assembly, on any subject not specifically mentioned in the preceding list, but on which the General Assembly should be desired to legislate by addresses for that purpose presented to them from the Legislatures of all those colonies.
10. The appropriation to any of the preceding objects of such sums as may be necessary, by an equal percentage from the revenue received in all the Australian colonies, in virtue of any enactments of the General Assembly of Australia.

"By these means we apprehend that many important objects would be accomplished which would otherwise be unattainable, and by the qualification which we have proposed, effectual security would, we think, be taken against the otherwise danger of establishing a central legislature in opposition to the wishes of the separate legislatures, or in such a manner as to induce collisions of authority between them. The proceedings also of the Legislative Council of New South Wales, with reference to the proposed changes in the Constitution, lead us to infer that the necessity of creating some such general authority for the Australian colonies begins to be seriously felt."

The schedule referred to was as follows:-

"Each colony to send two members, and each to send one additional member for every 15,000 of the population according to the latest census before the convening of the House.

"On the present population the numbers would be as follows:-

<table>
<thead>
<tr>
<th>Colony</th>
<th>Population by last Census</th>
<th>Number of Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales...</td>
<td>155,000</td>
<td>12</td>
</tr>
<tr>
<td>Victoria...</td>
<td>33,000</td>
<td>4</td>
</tr>
<tr>
<td>Van Diemen's Land (deducting convicts)...</td>
<td>46,000</td>
<td>5</td>
</tr>
</tbody>
</table>
THE AUSTRALIAN COLONIES GOVERNMENT BILL. — This report was adopted by the Privy Council, and Earl Grey forwarded it to the Governors of the three colonies with a despatch dated 24th May, 1849, in which he announced that a Bill, passed in strict accordance with the recommendations of the Committee, would be introduced forthwith into Parliament. This was done; and the "Bill for the Better Government of the Australian Colonies," as first introduced in 1849, not only provided for the separation of Victoria, and for the establishment of a General Assembly on the lines of the report, but actually prescribed, and set out in a schedule, a uniform tariff for the four colonies of New South Wales, Victoria, Van Diemen's Land, and South Australia.

The colonies, however, did not take kindly to Earl Grey's well-meant constitutional schemes and "didactic despatches." The Legislature of New South Wales, strangely enough, held its peace altogether, after the shelving of the discussion mentioned above. But the Legislative Council of South Australia, on 15th December, passed a resolution condemning the proposed General Assembly for the following reasons:-

1. There is a great dissimilarity in the pursuits and interests of the several provinces.
2. The overwhelming preponderance that the larger colonies would have in the Assembly would be greatly injurious to the lesser.
3. The Council cannot see any point upon which benefit would accrue to any of the provinces by the establishment of such an Assembly.

This opinion was endorsed by a public meeting held in Adelaide on 21st December to protest against the proposed constitutional changes. And from Tasmania Governor Denison, in a despatch of 28th December, though agreeing that "an absolute and unrestricted freedom of intercourse is most advantageous," expressed a fear that the proposed uniform tariff would operate injuriously on the revenue of his colony.

Nor was the reception of the scheme in England more favourable. The Parliamentary Agent for New South Wales, Mr. Francis Scott, included the proposed General Assembly in a sweeping disparagement of the whole scheme (see despatch published in the Sydney Morning Herald, 26th November, 1850); whilst a writer in the Spectator (9th May, 1850; reprinted in the Sydney Morning Herald, 30th October) waxed sarcastic over the presumption of Downing-street in venturing to frame a tariff to suit all the Australian colonies. The Bill was dropped for the session; and in a despatch of 18th August, 1850, Earl Grey wrote that it would be reintroduced as soon as Parliament reassembled, but with one important
modification. The provision for "a uniform tariff to be established by the Act itself, and unalterable except by the General Assembly when convoked," would be omitted. He emphasized the importance of intercolonial freetrade, but admitted that "enquiry and discussion have rendered it evident that the proposed uniformity could not be carried into practical effect without a variety of subsidiary arrangements which could only be well considered and matured on the spot."

The Bill, therefore, when reintroduced in 1850, did not impose a uniform tariff, but merely empowered the General Assembly to frame one. The scheme was also modified in other respects. The General Assembly was only to take effect as to such colonies as should signify their desire for its establishment. And one remarkable addition was made to the list of its powers by enabling it to make laws "for selling, demising, granting licenses for the occupation of, and otherwise disposing of, waste lands of the Crown in the colonies represented in such General Assembly, and for appropriation of money to arise from the disposition."

Both in the Commons and in the Lords the federal clauses were critically discussed, and the debates are interesting because they show a keen appreciation of the importance of the question. Both sides of the argument were well represented. On the one hand, the advantages of uniform legislation were urged; on the other, the measure was denounced as "republican," and as a step towards a declaration of independence. It was objected that the large colonies would overwhelm the small — to meet which argument the basis of representation was altered in Committee by increasing the element of equality, at the expense of the proportional element; that is to say, by allowing each colony four members, and an additional one for every 20,000 of population. And then it was objected that the small colonies would dominate the large. The weightiest arguments against the clauses, however, were that they were not asked for, and indeed were protested against, by the colonies, and that the scheme was premature. Earl Grey contended that these objections were met by the provision which left each colony free to join the General Assembly or not; and he claimed that within a few years such an Assembly would probably be found desirable, though he admitted that it was not likely to be established at once. The clauses were carried in Committee in both Houses; but the opposition which they had aroused ultimately induced the Government to abandon them before the Bill became law. The separation of Victoria, and the establishment of the new Constitutions were accordingly effected without any provision for an intercolonial legislature.

DESPATCH ACCOMPANYING CONSTITUTION. — When sending out the new Constitutional Act (13 and 14 Vic. c. 59), Earl Grey wrote as
follows of the federal clauses:—

"24. The clauses giving power for the establishment, under certain circumstances, of a General Assembly for two or more of the colonies were omitted from the Bill in its progress through the House of Lords. This omission was not assented to by Her Majesty's Government in consequence of any change of opinion as to the importance of the suggestions on this point which are contained in the report of the Committee of the Privy Council. But it was found on examination that the clauses in question were liable to practical objections, to obviate which it would have been necessary to introduce amendments entering into details of legislation which there were no means of satisfactorily arranging without further communication with the colonies.

"25. Her Majesty's Government have been the less reluctant to abandon, for the present, this portion of the measure which they proposed, inasmuch as even in New South Wales it appeared, as far as they could collect the opinion which prevails on the subject, not to be regarded as of immediate importance, while in the other colonies objections had been expressed to the creation of any such authority.

"26. I am not, however, the less persuaded that the want of some such central authority to regulate matters of common importance to the Australian colonies will be felt, and probably at a very early period; but when this want is so felt, it will of itself suggest the means by which it may be met. The several legislatures will, it is true, be unable at once to give the necessary authority to a General Assembly, because the legislative power of each is confined of necessity within its territorial limits; but if two or more of these legislatures should find that there are objects of common interest for which it is expedient to create such an authority, they will have it in their power, if they can settle the terms of an arrangement for the purpose, to pass Acts for giving effect to it, with clauses suspending their operation until Parliament shall have supplied the authority that is wanting. By such Acts the extent and objects of the powers which they are prepared to delegate to such a body might be defined and limited with precision, and there can be little doubt that Parliament, when applied to in order to give effect to an arrangement so agreed upon, would readily consent to do so." (Despatch, 30th August, 1850; N.S.W. Votes and Proc., 1851, p. 37.)

REASONS OF FAILURE. — It is matter for regret that this opportunity was missed of sliding, from the first, into some form of federal union; but Earl Grey's scheme was foredoomed to failure. In the first place, it was unfortunate in its author. The colonists, struggling for self-governing institutions, had many grievances against the Colonial Office; and Earl Grey, in particular, had made himself intensely unpopular by his well-
meant, though injudicious, attempts to remodel their institutions. Consequently the merits of this particular proposal hardly received due recognition. But apart from this, it is probable that the colonies, though recognizing the abstract advantages of a partial union, would have rebelled against any concrete proposal that could have been submitted. Each colony was chiefly bent on securing absolute power to manage its own affairs, and the importance of union was rather future than present. The whole ineffectual episode, however, is interesting for two reasons. In the first place, it showed that a satisfactory scheme of Australian union must be worked out in Australia, not in England. And in the second place, the different criticisms made upon the scheme in the different colonies afford an instructive parallel with the anti-federal objections of our own time, and show that the real difficulties of the problem were inherent from the first. Then, as now, Tasmania was more dependent than New South Wales upon a revenue tariff. Then, as now, New South Wales claimed predominance, and the smaller colonies feared being swallowed up. By constructing the General Assembly on a basis intermediate between equal representation and proportional representation, Earl Grey had done the best he could with a single Chamber; but to be effectual, each basis required a separate Chamber, and probably a two-chambered Federal Legislature would have been out of the question at that time. The Home Government can hardly be blamed for deciding that the problem was one which they could not solve, but which the colonies must be left to work out for themselves.

THE GOVERNOR-GENERAL. — Earl Grey, however, did not give up his federal idea altogether. The establishment of a Federal Legislature was unavoidably postponed; but something like a Federal Executive could be created without statutory authority. Accordingly Earl Grey sent out to Sir Charles Fitzroy, the Governor of New South Wales, four separate Commissions appointing him Governor of New South Wales, Van Diemen's Land, South Australia, and Victoria respectively; and also another Commission appointing him "Governor-General of all Her Majesty's Australian possessions, including the colony, of Western Australia." The Queen's representatives in the three colonies of Van Diemen's Land, South Australia, and Victoria were given the title of "Lieutenant-Governors" (Jenks' Government of Victoria, p. 155). In an accompanying despatch, dated 3rd January, 1851, it was explained that the Governor-General was not expected to interfere with matters affecting merely the internal administration of the other colonies. But the expanding interests and increasing relations of the colonies with each other would require concert on a variety of subjects, and the Governor of the mother colony ought to have a general authority to superintend the initiation and
foster the completion of measures calculated to promote the common welfare. The Lieutenant-Governors would be instructed to communicate with the Governor-General as to all measures affecting intercolonial interests, and to be guided by his judgment on all such matters. Especially, as the relations of Victoria with New South Wales would necessarily be intimate, there should be no alteration of the import duties of either colony without previous communication between them. If any necessity should arise for the Governor-General to visit any of the colonies of Van Diemen's Land, South Australia, or Victoria, he would, by virtue of his commission as Governor of such colony, supersede the Lieutenant-Governor, and assume the Government during his stay (Parl. Papers, 1851, xxxv., 40).

The Governor of New South Wales was thus constituted a sort of advisory over-lord of the whole of Australia; and was also empowered in an emergency to exercise the functions of Governor of any of the three colonies of Van Diemen's Land, South Australia and Victoria. In other words, a kind of Federal Executive was, in name at least, actually constituted. But without a Federal Legislature the Governor-Generalship was little more than an empty title. The visiting power was never used at all — and indeed was never meant to be used except in some unforeseen emergency. When Sir Charles Fitzroy's term ended, the system of giving the Governor of New South Wales separate Commissions as Governor of the other colonies was dropped, and the Lieutenant-Governors were raised to the rank of full-blown Governors. The title of Governor-General continued to be borne by the Governor of New South Wales until the Governorship of Sir John Young in 1861, but, it seems to have had little practical value. The only notable occasion on which the Governor-General concerned himself with intercolonial interests was when Sir W. Denison (then Governor of New South Wales) endeavoured in 1855 to secure harmony between the tariffs of New South Wales and Victoria. Shortly afterwards responsible government was inaugurated in both colonies, and the Commission of Governor-General fell into disuse. Its last shred of utility was, of course, gone when the several Governors ceased to have active control of the administration.
(3) The Constitutional Committees of 1853.

Meanwhile suggestions for federal union had come from statesmen in both New South Wales and Victoria. The colonists had been deeply disappointed with the Constitutions of 1850 (13 and 14 Vic. c. 59), and continued to agitate for the grant of responsible government similar to that which had been conceded to the Canadian provinces between 1841 and 1848. The Legislatures began by "Remonstrances," but soon proceeded to the more practical work of framing the desired Constitutions for themselves, according to the powers recently conferred on them.

WENTWORTH'S CONSTITUTIONAL COMMITTEE. — In New South Wales, a Select Committee of the Legislative Council was appointed in 1853, on Wentworth's motion, to prepare a new Constitution. On 28th July it brought up its report, with a draft Constitution Bill annexed. The Bill itself contained no federal provision; but the report concluded with the following recommendation:-

"One of the more prominent legislative measures required by this colony, and the colonies of the Australian group generally, is the establishment at once of a General Assembly, to make laws in relation to the intercolonial questions that have arisen, or may hereafter arise, among them. The questions which would claim the exercise of such a jurisdiction appear to be as follows:-

1. Intercolonial tariffs, and coasting trade.
2. Railways, roads, canals, &c., running through any two of the colonies.
3. Beacons and lighthouses on the coast.
4. Intercolonial penal settlements.
5. Intercolonial gold regulations.
6. Postage between the said colonies.
7. A general Court of Appeal from the courts of such colonies.
8. A power to legislate on all other subjects which may be submitted to them by addresses from the Legislative Councils and Assemblies of the other colonies; and to appropriate to any of the above objects the necessary sums of money, to be raised by a percentage on the revenues of all the colonies interested.

"As it might excite jealousy if a jurisdiction of this importance were to be incorporated in the Act of Parliament, which has unavoidably become a necessary part of the measures for conferring a Constitution on this colony, in consequence of the defective powers given by Parliament to the Legislative Council, your Committee confine themselves to the suggestion that the establishment of such a body has become indispensable, and ought
no longer to be delayed; and to the expression of a hope that the Minister for the Colonies will at once see the expediency of introducing into Parliament, with as little delay as possible, a Bill for this express object."

In this suggestion nothing was definite except the list of federal subjects. There was no hint of an opinion as to the shape which the Assembly ought to take; and we must suppose either that the Committee had not considered the matter, or that they were satisfied with the scheme already proposed by the Home Government. One thing is clear; however, that Wentworth himself did not at that time contemplate a real national unity for Australia, or indeed anything more than a General Assembly to secure uniform legislation on a few matters of common interest. In the course of the debate on the Constitution, he took occasion to ridicule the scheme propounded by Dr. Lang of a "great federation of all the colonies of Australia, of New South Wales, Victoria, Tasmania, and South Australia; each State to have a separate local government and sending members to Congress to form a great central government." These words, according to the report, were greeted by the House with "shouts of laughter" — directed in part, no doubt, at Dr. Lang's republican ideas of "cutting the painter." An elaborate scheme of Federation would certainly have been premature; but to a prophetic eye it need have had nothing of the ridiculous.

VICTORIAN CONSTITUTIONAL COMMITTEE. — The Committee appointed in Victoria in September, 1853, to draft a new Constitution for that colony, also dealt with the question, but in an even vaguer way. Its report contained these passages:—

"From the great extent of Australia, and the widely differing circumstances of its several colonies, your Committee do not think it essential for local legislation that uniformity of institutions should prevail. They have followed, as far as principle permitted, the Bills proposed in New South Wales and South Australia. . . .

"But they do feel most strongly that there are questions of such vital intercolonial interest that provision should be made for occasionally convoking a General Assembly for legislating on such questions as may be submitted to it by the Act of any Legislature of one of the Australian colonies."

This report was dated 9th December, 1853, when the report of Wentworth's Committee had been available for some five months; but in place of Wentworth's list of eight subjects, it only proposed to give the General Assembly power to legislate on questions "submitted to it" by the legislatures.

LORD JOHN RUSSELL's REPLY. — The Home Government, however, in enacting the Constitutions, did not think proper to make any
provision for a General Assembly. The Constitution Acts (18 and 19 Vic. c. 54 and c. 55) were passed in 1855, and in the despatch accompanying them to Australia Lord John Russell, then Secretary of State for the Colonies in Lord Palmerston's Ministry, wrote:- "I need scarcely say that the question of introducing into the measures lately laid before Parliament clauses to establish a federal union of the Australian colonies for purposes of common interest has been very seriously weighed by Her Majesty's Government; but they have been led to the conclusion that the present is not a proper opportunity for such enactment, although they will give the fullest consideration to any propositions on the subject which may emanate in concurrence from the respective legislatures."

There is no reason to suppose that Lord John Russell had changed his opinion as to the desirableness of a federal union; but Earl Grey's adventures had taught him that devising colonial constitutions, even with the best intentions in the world, was thankless work for an English statesman. Two of the Australian colonies had expressed opinions in favour of a General Assembly, but there had been no concurrence — and indeed no conference — on the subject between the colonies, and no definite scheme was before him. The colonies had, by dint of much remonstrance, obtained recognition of the right to frame their own constitutions; and the Home Government naturally preferred to await more definite propositions.
In its next stage the movement began to take a more definite shape. Already in 1852 Dr. Lang had propounded an elaborate scheme of federation on the American plan ("Freedom and Independence for the Golden Lands of Australia"); but his bellicose tone and his clamour for separation from the mother-country robbed him of influence. In 1854 a series of thoughtful letters in the Sydney Morning Herald, over the signature of "John Adams," dealt convincingly with the need of union, and discussed many of the details. The writer of these letters was the Rev. John West, then residing in Tasmania, but afterwards editor of the Sydney Morning Herald. Two years later the Herald returned to the theme, discussed the difficulties and the advantages, and recommended that the Home Government should take action by passing a law enabling the colonies to establish a federation. (Leading article, 23rd October, 1856. In Wentworth's Memorial the article is wrongly attributed to the Melbourne Argus.) And in the following week, on 29th October, 1856, Deas-Thomson, who had for many years been Colonial Secretary under the old official system, and who then represented the Parker Government in the Upper House, spoke hopefully in the House of the near probability of some federal arrangement. There were seven great questions, he said, which ought to be submitted to a representative Federal Assembly; namely, a uniform tariff, the land system, the management of the goldfields, postal communication, intercolonial railways, intercolonial telegraphs, and coast lighthouses.

WENTWORTH'S MEMORIAL. — These hints were not lost upon Wentworth, who was then living in England, and whose farewell words when leaving Australia in 1854 had been:-- "Whatever maybe my destiny, believe me that my latest prayer shall be for the happiness and prosperity of the people of Australia, and for its rapid expansion into a nation, which shall rule supreme in the southern world." (Sydney Morning Herald, 21st March, 1854.) He lost no time in showing not only that these words were sincere, but that his convictions of the importance of Australian union were deepening. He prepared a Memorial to Mr. Henry Labouchere, Secretary of State for the Colonies, and also the draft of a short Enabling Bill; and at a meeting of the "General Association for the Australian Colonies," held in London on 31st March, 1857, with Wentworth himself in the chair, the Memorial and the Draft Bill were adopted. For the Memorial and correspondence see Votes and Proc., Leg. Ass. of N.S.W., 1857, i. 383.

The Memorial emphasized the need of a Federal Assembly, and the
inconvenience resulting from the want of it, and illustrated the the clumsy contrivances "that had to be resorted to where intercolonial action was necessary. It was "not to be wondered at that a strong feeling of discontent should be growing up among the inhabitants of these colonies; from their being compelled to resort to such indirect, tedious, and illegal expedients in substitution of that federal authority without which their several Constitutions must continue incomplete as regards all measures and undertakings which require the joint action and co-operation of any two or more of them." It referred to Earl Grey's scheme, to the report of the Constitutional Committee, to Deas-Thomson's recent speech, and to other indications of opinion, and besought the Government to anticipate graver inconveniences by taking action at one. A Federal Assembly could only originate in an Imperial Act of Parliament, which might either constitute such a body directly, or give to the Legislatures of any two or more colonies a permissive power to form a federation themselves. The latter course — the passing of a permissive Act — was what the Memorialists thought "the most desirable, if not the only course which can now be adopted." They expressed the opinion that "a complete equality of representation, as between all the Australian colonies, should be insisted upon, without reference to the extent of their population." They also suggested that to prevent jealousy the Federal Assembly might, in the first instance, be "perambulatory."

The Bill which was subjoined, and which contained only five short clauses, was merely an "Enabling Bill," with a few constitutional outlines thrown in. It empowered any two or more of the Legislatures of New South Wales, Victoria, South Australia, and Tasmania, to send four persons to form a Convention "for the purpose of creating a Federal Assembly." The only rules laid down by the Act for the constitution of the Assembly were — (1) that when created it should have power to amend its own constitution; (2) the extent of its legislative powers was defined, practically on the basis of Deas-Thomson's speech; (3) the Federal Assembly should be summoned by the Governor-General (or Senior Governor), and its Acts were to be subject to the Royal assent; (4) the Federal Assembly was to appoint its own president, and fix its own expenses and the salaries of its officers; (5) the necessary expenses were to be apportioned by the Federal Assembly among the several colonies and were to be provided for by the several Legislatures; (6) any colony which did not join at the outset might afterwards join the Federation, and have the right of sending the same number of representatives as should be fixed for all the other colonies.

It is to be noticed that this Bill, whilst it provided for equal representation in the preliminary Convention, did not expressly bind the Convention to
establish equal representation in the Federal Assembly; though the provision as to the representation of colonies which might afterwards join seemed to contemplate equal representation. It is also to be noticed that the Convention was empowered actually to establish a Federal Assembly, without further reference to the Imperial Parliament; and in the constitution of that Assembly it was to have a free hand, subject only to the conditions already mentioned. The use of the term "Federal Assembly" in place of "General Assembly" marks a distinct stage in advance, as showing that the national aspect was becoming more prominent. The scope of the legislative power of the Assembly was also enlarged, being defined to extend to tariffs, lighthouses, gauges of connecting railways, navigation of connecting rivers, intercolonial telegraphs and postage, the upset or minimum price of land, management of the goldfields, coinage, weights and measures, defence, a court of appeal, penal settlements, and any other matter which might be submitted to it. On the other hand it was not to have any power of raising revenue for itself, but was to rely on contributions levied from the Legislatures of the colonies.

This notable scheme met with a discouraging reception from Labouchere, who, in acknowledging the Memorial, admitted the inconvenience arising from the want of means of joint action, but said that after weighing the reasons for and against the scheme, he had "arrived at the decided opinion that Her Majesty's Government would not in reality promote the object of the Memorialists by introducing such a measure as that of which the outlines are given in the Memorial, notwithstanding its purely permissive character." He thought that the colonies would not consent to entrust such large powers to an Assembly thus constituted, or to be bound by federal laws imposing taxation or involving appropriation; and even if they did consent to establish such a system, the result would probably be dissension and discontent. He would not think himself warranted in making such a proposal — merely permissive though it was — unless he were himself satisfied that it was founded on just and constitutional principles, and also that it was likely to be acceptable to the colonies concerned. He promised, however, to send copies of the correspondence to the several Governors, and to give his best attention to any suggestion which he might receive from the colonies in reply; and meantime he hoped that even if a federal scheme should prove impracticable and premature, much might be done by negotiation and concerted legislation.

Under the circumstances, Wentworth could do nothing but express his regret at the delay which the reference to the Governors would cause, and his hope that the reference would be made as soon as possible, that the opinions of the several Legislatures might be obtained.
Disappointing as Labouchere's decision may have seemed, the justness of his criticisms can to-day hardly be disputed. There were very slight indications that the colonies asked for a General Assembly at all — merely the reports of a couple of committees, the opinions of one or two statesmen, and some newspaper extracts. And there were no indications at all that the basis outlined in the Bill had any sanction from Australia. Nor is it certain that the colonies would have taken advantage of the Act if passed. In view of the extent to which colonial rights of self-government had already been conceded, postponement for further consideration by the colonies was no more than prudent.

VICTORIAN SELECT COMMITTEE. — Meanwhile the question of union was already being considered in Australia. In January, 1857, Mr. (afterwards Sir) Charles Gavan Duffy, who had recently arrived in Victoria, obtained the appointment of a Select Committee of the Legislative Assembly of that colony "to enquire into and report upon the necessity of a federal union of the Australasian colonies for legislative purposes, and the best means of accomplishing such an union if necessary." The Committee held five sittings, at only two of which a quorum was obtained — either from a want of interest in the question, or perhaps, as Mr. Rusden suggests in his History of Australia, from a suspicion that Mr. Duffy, like Dr. Lang, was aiming at a separation from the mother-country. Its report, which is a most interesting one, was not brought up till September. The Committee were unanimous as to the ultimate necessity of a federal union. As to the time of accomplishing it they differed; but they were all agreed that it was "not too soon to invite a mutual understanding on the subject," and they added that "most of us conceive that the time for union is come."

On the best means of originating the union they were also unanimous. No single colony ought to dictate the programme of union; the delicate and important questions involved could be solved only by a conference of delegates from all the colonies. The course they recommended, therefore, was "that such a Conference be immediately invited." As to the form which the union should take, they expressed no opinion at all; but they went on to state, in the form of queries, some of the questions which the Conference would have to face: whether there should be "merely a Consultative Council authorized to frame propositions for the sanction of the State Legislatures, or a Federal Executive and Assembly with supreme power on national and intercolonial questions, or some compromise between these extremes;" whether the Federal Legislature should consist of one or two branches; whether it was to have the power of taxation, or only of assessment on the several states; where the federal body should sit, or
whether it should be rotatory, and so forth.

With regard to the Conference, they recommended specifically that each Legislature should send three delegates, two of whom might be members of Assembly and one member of Council; and that the Conference be empowered to frame a plan of federation to be afterwards submitted for approval, either to the Legislatures or directly to the people, or to both, and to receive final legislative sanction. The report concluded with the remark — apparently aimed at Wentworth's Memorial — that "your Committee are fully convinced that a negotiation demanding so much caution and forbearance, so much foresight and experience, must originate in the mutual action of the colonies, and cannot safely be relegated even to the Imperial Legislature."

The recommendations of the Committee were shortly afterwards adopted by both Houses of the Victorian Parliament, and were transmitted to the other colonies.

NEW SOUTH WALES SELECT COMMITTEE. — In August of the same year (1857) Deas-Thomson had obtained a Select Committee of the Legislative Council of New South Wales, "to consider and report on the expediency of establishing a Federal Legislature invested with the necessary power to discuss and determine all questions of an intercolonial character arising in the Australian colonies generally, and to suggest the manner in which the object can be best obtained." This Committee began their proceedings by agreeing that it was expedient to establish a Federal Assembly, and then went on to sketch out a scheme. They had before them Wentworth's Memorial, and followed in the main his suggestions. The initiative was taken by Sir W. W. Burton, an ex-judge of the Supreme Court, on whose motion it was resolved that the Federal Assembly should consist of delegates chosen by the several Legislatures; that each colony should be represented by an equal number of delegates, namely, four; and that the Assembly should have power to legislate on all intercolonial subjects which might be submitted to it by the Legislatures of two or more colonies interested, "and on no other subject." This last was the only substantial point on which the Committee's scheme differed from Wentworth's. Deas-Thomson then brought up a series of resolutions taken almost bodily from Wentworth's Bill — to which the Committee acknowledged their obligations — and these were carried. The Committee had evidently intended to embody this scheme in their report; but at this stage they received the report of the Victorian Select Committee, and determined to fall into line with it.

Their report, which was brought up in October, stated that the Committee had become forcibly impressed with the expediency of adopting some
comprehensive measure for a Federal Assembly at as early a date as possible. They recognized the difficulties of suggesting a measure acceptable to all the colonies, but conceived that these difficulties would rather increase than diminish with delay. They were confident that when the advantages were considered, there would be such a concurrence of opinion as would lead to the adoption of some safe and practicable measure. They had no hesitation in recommending immediate action, in the firm belief that the Federal Union of the Australian colonies would contribute more effectually to their general prosperity and advancement than any other measure that could be devised.

They pointed out that the matter could not be definitely settled without Imperial legislation, "to which there would, of course, be no objection if the general principles of the measure were previously agreed upon" — a phrase which indicates their acquiescence in Labouchere's reply to Wentworth. They also referred to that reply "as establishing the fact that no measure providing for federal union will be adopted unless initiated and recommended by the colonies themselves."

They heartily endorsed the Victorian proposition of a Conference, which they unanimously recommended to the House. They explained that before receiving the Victorian report they had made some progress in drawing up the outlines of a scheme, and they referred to these proceedings, not with the intention of dictating their views, but in the hope of assisting the delegates, if appointed.

Finally, they expressed a decided opinion that the matter could no longer be postponed without the danger of creating serious antagonism and jealousy, which would embarrass, if not entirely prevent, its future settlement on a satisfactory basis. Accordingly, they urged that the concurrence of the Assembly be invited, and farther steps taken without delay.

The Committee were evidently in earnest; and had they been well backed up, union might have been achieved. Unfortunately, however, other influences were at work. During the deliberations of the Committee, the Parker Government, of which Deas-Thomson was a member, had been replaced by the Cowper administration, with Mr. (afterwards Sir) James Martin as Attorney-General and the dominating personality of the Cabinet. Neither Cowper nor Martin cared anything for federal union; and the colony, in the exercise of newly-won responsible government, was engrossed in such questions as the franchise, the reform of the Upper House, and the land question. Moreover the rivalry between New South Wales and Victoria was already leading to jealousy and bad feeling. The stream of immigration to the goldfields had suddenly given Victoria the
lead in population; and Duffy's overtures were received with suspicion, as part of a scheme of Victorian aggrandisement. Deas-Thomson succeeded in securing the adoption of his report by the Council, which then sent a message to the Assembly, asking its concurrence in joint resolutions. Joint resolutions, based on the Victorian recommendations, were agreed to in conference, and their consideration by the Assembly was fixed for 18th December; but on 17th December the Cowper Government was defeated on a Crown Lands Bill, and a dissolution followed. On the reassembling of Parliament in March, 1858, the federal question was shelved. The Governor's speech announced that "the question of a Federal Legislature is still under discussion by the Legislatures of the neighbouring colonies, but I am of opinion that the consideration of this subject may, without inconvenience, be deferred to future consideration." This announcement was received without protest. In the Address-in-Reply, the Assembly agreed that the discussion "may, under existing circumstances, be deferred;" whilst the Council resolved more emphatically that it must, under existing circumstances, be deferred." No hint was given of what the "circumstances" were; but they doubtless comprised suspicion of Victoria, and an engrossing interest in domestic legislation. Deas-Thomson seems to have resigned himself to the inevitable.

SOUTH AUSTRALIAN SELECT COMMITTEES. — In South Australia, Select Committees of each House were appointed in 1857 to consider the question of federal union, and in November they brought up reports couched in identical terms. They were of opinion that under existing circumstances the formation of a Federal Legislature would be premature, but that nevertheless there were so many topics in which the colonies had a common interest, and in which uniform legislation would be desirable, that it was expedient to adopt some measures to secure these objects. They mentioned, as subjects which might be added to Wentworth's list, the following:- Patents and copyrights, law of insolvency, professional qualifications, uniform time of meeting of Parliaments. With a view to the discussion of the question, they adopted the Victorian suggestion that a Conference should be held; but they recommended that it should not be authorized to bind the Legislature, but only to discuss and report. These recommendations were adopted by both houses, and delegates were appointed to represent South Australia at any Conference which might be held.

OTHER PROCEEDINGS. — Notwithstanding the backwardness of New South Wales, Mr. Duffy kept up his exertions, and in December, 1857, obtained a second Select Committee of the Victorian Assembly, which in the following February brought up a progress report, urging that
delegates should be appointed to meet the delegates from other colonies. This report was adopted by both Houses. Shortly afterwards the Tasmanian Parliament took the question up. The House of Assembly resolved "That in the event of the Conference of delegates from the Australian colonies assembling previously to the next meeting of Parliament, it will be expedient that this colony should be represented at such Conference." The Council concurred, and delegates were appointed, to act in such capacity only until the next session.

In January, 1860, Mr. Duffy obtained a third Select Committee, which in February brought up a progress report recommending a renewal of negotiations with New South Wales, South Australia, and Tasmania, for a Conference on the subject of Federal Union. It was pointed out that the two latter colonies, when a Conference was first proposed, had promptly acceded; and "though an objection originated with New South Wales which retarded any joint action," there was reason to believe that it was of a temporary nature, and had disappeared before the urgency with which the question was invested by the necessity of a united defence of Australia in case of war. The disappearance of the "temporary objection" in New South Wales is presumably an allusion to the downfall of the Cowper Ministry; and Mr. Duffy's renewed invitation seems to have been inspired by the hope that Mr. William Forster, the new Premier of New South Wales, would be more favourable. But he was once more disappointed. The resolutions were forwarded to the other colonies, and the Governments of South Australia and Tasmania promised to give the matter attention. But New South Wales took no steps whatever. Dr. Lang, indeed, in the Legislative Assembly, obtained Select Committees in two consecutive sessions to consider the question; but though the Committees met and deliberated, no report was brought up.

QUEENSLAND. — In 1859 the Moreton Bay district was severed from New South Wales and became the new colony of Queensland. The Victorian Government accordingly included Queensland in their last invitation. The Colonial Secretary of that colony, Mr. (afterwards Sir) R. G. W. Herbert, in reply, stated that his Executive Council approved of the Conference, as a means of ascertaining the views of the colonies, and determining how far a federal union would be either practicable or expedient. On both these points the Council, with the information before them, entertained serious doubts. Without wishing to prejudge the question, they saw grave obstacles to the creation of a central authority which might "tend to limit the complete independence of the scattered communities peopling this continent," or interfere with their direct relations with the mother-country. At the same time, they were alive to the
importance of uniform legislation on certain subjects, and were willing to discuss the matter in Conference. Queensland, in short, was not enamoured of the federal idea. She was enjoying her new isolation, and looked on federation as a kind of re-annexation. "Complete independence" was her ideal for the moment.

FAILURE OF FEDERAL PROPOSALS. — For the time, therefore, the project of a federal union failed. That there was no Conference on the subject was due to the backwardness of New South Wales; but even had a Conference been held, it is more than doubtful whether there would have been any practical result. In no colony was there any general enthusiasm, or even interest, in the subject; though in all there were a few far-sighted statesmen who recognized the essential unity of Australia. Even in Victoria, whose statesmen showed the most eagerness for union, there was nothing approaching a real federal movement. Local politics, and the development of local institutions, engrossed the attention of the people; and probably no colony would have been prepared to accept the compromises and the partial sacrifice of local independence which a federal union would have involved. The best justification of the inaction of the Imperial Government is the want of interest shown by the colonies themselves.
The Tariff Question, 1855-1880.

Though Federation proved unattainable for the time, continued efforts were made to mitigate the evils arising from conflicting tariffs and intercolonial duties. These constituted the chief practical inconvenience of disunion; and there were many attempts to establish border treaties, commercial reciprocity, intercolonial freetrade, or customs unions. To take up the story of these it is necessary to go back a few years.

TARIFF DIFFERENCES. — We have seen (p. 79, supra) how the tariffs of the colonies drifted apart from the first. In August, 1852, shortly after the separation of Victoria, Deas-Thomson succeeded in greatly simplifying the tariff of New South Wales by restricting it to a very few articles — chiefly stimulants, narcotics, tea, coffee, and sugar. In the same month an almost identical tariff was established in Victoria. South Australia and Tasmania, however, retained longer lists of dutiable articles; and so early as 1854 Victoria began to increase her duties. Deas-Thomson, however, still hoped to see uniformity established; and in September, 1855 — on the eve of the establishment of Responsible Government — the Governor-General, Sir W. Denison (presumably at Deas-Thomson's suggestion), sent a message to the Legislative Council recommending the assimilation of the New South Wales tariff to that of Victoria. (Notes and Proc., Leg. Ass. of N.S.W., 1855, i. 233.) He pointed out the objections which existed to the maintenance of custom-houses on the Murray border, and to differences between the tariffs of the two colonies. At the time of separation an attempt had been made to provide against these difficulties by creating a General Assembly; but this attempt had failed. The result had been the adoption of different tariffs in the two colonies, and as a corollary the establishment of custom-houses on the common border. That system, if continued, would lead to great annoyance; and he had suggested to Sir Charles Hotham, the Governor of Victoria, that it would be desirable for the Governments of the two colonies to agree not to levy any duties on goods passing by land from one colony to the other. The difference between the tariffs of the two colonies would, however, throw difficulties in the way of such an agreement; and seeing that the state of the revenue in New South Wales required a revision of the tariff, he suggested that it was a favourable opportunity to bring the two tariffs into harmony by adopting the Victorian tariff. In his letter to Sir Charles Hotham, Sir William Denison expressed his expectation that, when uniformity was once secured, future modifications of the respective tariffs would be discussed between the two Governments.
The Council, however, did not altogether accept this advice, and modified the Governor-General's tariff; but the tariff as finally adopted was still a rough approximation to that of Victoria.

MURRAY CUSTOMS TREATIES. — Two kinds of traffic had to be dealt with in connection with the collection of customs on the Murray. First, there was the traffic across the river between the colonies of New South Wales and Victoria. Then there was the traffic up and down the river, which, when the navigability of the Murray had once been established, soon became considerable, and which involved the three colonies of New South Wales, Victoria, and South Australia. Immediately after the adoption of the New South Wales tariff of 1855, an agreement was made between the Governments of New South Wales, Victoria, and South Australia, that no duties should be collected on goods crossing the Murray, and that duties on goods carried up the Murray from South Australia, for consumption in New South Wales or Victoria, should be collected by the South Australian Government according to the South Australian tariff, the proceeds being divided equally between New South Wales and Victoria. These arrangements were validated by statute in each colony. (In Victoria, by the Customs Regulation Act, 1854, 17 Vic. No. 17; in New South Wales by the Murray Customs Duties Act, 1855, 19 Vic. No. 21; in South Australia by the Murray Customs Act, 1856, No. 6.) Accordingly, on 1st November, 1855, trade between New South Wales and Victoria, across the river Murray, became free. At that time the balance of trade was with New South Wales, and the freedom of the Murray was conceded by Victoria at the request of New South Wales. Dissatisfaction, however, soon arose. New South Wales complained that by the adoption of the South Australian tariff on Murray-borne goods she was losing revenue — especially on tobacco. Victoria complained that equal distribution of the duties collected by South Australia was not fair, seeing that most of the Murray-borne goods were for consumption in Victoria. In 1857, after much correspondence (Votes and Proc., L. A. of N.S.W., 1862, ii. 647), during which an assimilation of tariffs was unsuccessfully mooted, a new arrangement was made, by which the New South Wales tariff was adopted as that which the Government of South Australia should levy on Murray-borne goods. This arrangement was sanctioned in New South Wales by the River Murray Customs Act, 1857, and in South Australia by the Murray Customs Act, 1857, No. 2, and remained in force until 1864.

UNIFORM TARIFF PROPOSALS. — In March, 1862, the Colonial Secretary of South Australia opened a correspondence with the other colonies on the subject of the desirability of a uniform tariff in all the colonies. (Votes and Proc., Leg. Ass. of N.S.W., 1862, ii. 647.) He
expressed the opinion that, until the means of communication improved, complete Federation would be impossible. Meanwhile, as one step towards union, his Government intended to seek legislative authority for admitting free of duty the produce of any colony which made a reciprocal concession; and he suggested an intercolonial Conference at Melbourne to consider the question of a uniform tariff. The proposal was favourably received. Mr. Duffy, still intent on a Federal Union, promptly obtained a fourth Select Committee, which brought up a report urging that the Conference on a uniform tariff would afford a favourable opportunity to consider the larger question of Australian Federation. This report was adopted by both Houses of the Victorian Parliament, but met with no response from the other colonies. The Conference, after some delay, met at Melbourne in March, 1863, being attended by three delegates from each of the colonies of New South Wales, Victoria, South Australia, and Tasmania. The subject of Federation was not considered at all; the Conference reporting that "although the question has, during some years, occupied the attention of several of the Legislatures, the delegates had no instructions in the matter, and it did not seem probable that its discussion at present would be attended with any benefit." Several subjects of intercolonial administration and legislation were dealt with; but the most important part of the business was the discussion of the question of a uniform tariff, intercolonial freetrade, and the fair distribution of the customs duties.

The Conference resolved that it was "desirable to settle the basis of a uniform tariff for the Australian colonies, and also for Tasmania." They agreed that the ad valorem mode of levying duties was open to so many objections that it ought not to be resorted to; and they framed a tariff, the adoption of which they undertook to urge upon their respective Parliaments. They also gave it as their opinion that the tariff which had been agreed upon, after the fullest deliberation, ought not to be altered by any one colony, nor without consideration at a future Conference.

Then came the question of intercolonial duties and their distribution. On this point the Conference resolved that "customs duties ought to be paid to the revenues of those colonies by whose population the dutiable articles were consumed." The strict fulfilment of this would have involved the maintenance of the objectionable border custom-houses; so they added a resolution to the effect that the colonies of New South Wales, Victoria, and South Australia ought to co-operate to secure to each the revenue to which it was legally entitled, either by distribution of the revenue in proportion to population, or by some other mode which might be considered equitable and practicable.

New South Wales and Victoria, however, failed to agree on any
"equitable mode" of distributing the revenue. Cowper, for New South Wales, offered to accept any one of three methods: either (1) division according to population; or (2) keeping entries of border imports and making periodical settlements between the Governments; or (3) payment of a fixed annual sum to New South Wales, estimated on the excess of revenue lost by New South Wales, as compared with Victoria, by the freedom of the border. None of these propositions, however, satisfied the Victorian Premier, Mr. (afterwards Sir) James McCulloch, who "failed to discover any equitable grounds for disturbing the existing arrangement entered into at the instance of the Government of New South Wales." The "existing arrangement" was the freedom of the border without any adjustment of accounts. This did not suit New South Wales. The claim of that colony to receive the revenue on imports consumed in the colony arose from the fact that the balance of intercolonial trade was at that time with Victoria. As Victoria definitely rejected all the terms proposed, the New South Wales Government put an end to the "existing arrangement," and on 19th September, 1864, began to collect duties on the Murray, having previously passed an Act (7 Vic. No. 24) to remove doubts as to the legality of this course.

In April, 1865, at the instance of New South Wales, a Conference was held at Sydney between representatives of the two colonies to reconsider the matter. (Votes and Proc., L.A. of N.S.W., 1865, i. 675). As a result a new agreement was entered into, by which on 1st September, 1865, the Murray border again became free, subject to a yearly payment of a fixed sum by Victoria to New South Wales. The duties on Murray-borne goods from South Australia were to be collected by Victoria, according to the Victorian tariff. This agreement was revised in 1867, and expired on 1st February, 1872. (Votes and Proc., L.A. of N.S.W., 1867–8, ii. 305; N.S.W. Act, 31 Vic. No. l.) At the Conference of 1873 a new agreement was entered into; but Victoria, retired from it on 31st January, 1873, owing to the abolition, under the Parkes Administration, of the New South Wales ad valorem duties which had been imposed by the Cowper Administration seven years previously. Since that date all attempts at agreement have failed, owing to the great difference between the tariffs of the two colonies, and duties have been collected on the border. For attempts at a similar agreement with Queensland, see N.S.W. Act, 25 Vic. No. 20; Votes and Proc., L.A. of N.S.W., 1871–2, i. 873. In 1876 an Act was passed in New South Wales (Border Duties Convention Act) to authorize Conventions with any of the adjoining colonies, but without any definite result.

INTERCOLONIAL CONFERENCES, 1863–1880. — During the whole of this period Intercolonial Conferences were resorted to, with varying
success, as the only available method of securing uniform legislation and concerted administration on subjects of common concern. A certain amount of joint action was thus secured with respect to such matters as lighthouses, ocean postal services, telegraphic communication with Europe, alien immigration, defence, and so forth. Most of these Conferences had no direct bearing on the question of Federation, except to show the utter inadequacy of this method of dealing with intercolonial questions. (See G. B. Barton, Historical Sketch of Australian Federation, pp. 12–14.)

One of these Conferences, which was held at Melbourne in March, 1867, is of special interest, as it brings Mr. (afterwards Sir) Henry Parkes — then Colonial Secretary of New South Wales in the second Martin administration — into prominent notice as an advocate of Federation. The Conference met to discuss the question of postal communication with Europe, the Imperial Government having offered to pay half the subsidy for a steam postal service between Point de Galle (in Ceylon) and Australia. The Conference, however, had larger ideas; it passed resolutions in favour of establishing a fortnightly service by three routes — Torres Straits, Suez, and Panama — the colonies undertaking to pay half the necessary subsidy. A memorial to the Queen was drawn up, and it was resolved that a Federal Council should be established to carry the resolutions into effect. Mr. Parkes addressed to the Conference these notable words:—

"I think the time has arrived when these colonies should be united by some federal bond of connection. I think it must be manifest, to all thoughtful men, that there are questions projecting themselves upon our attention, which cannot be satisfactorily dealt with by any one of the individual Governments. I regard this occasion, therefore, with great interest, because I believe it will inevitably lead to a more permanent federal understanding. I do not mean to say that, when you leave this room to-night, you will see a new constellation of six stars in the heavens. I do not startle your imagination, by asking you to look for the footprints of six young giants in the morning dew, when the night rolls away; but this I feel certain of, that the mother-country will regard this congress of the colonies just in the same light as a father and mother may view the conduct of their children when they first observe those children beginning to look out for homes and connections for themselves. I am quite sure that the report of this meeting in your city of Melbourne, little as it may be thought of here, will make a profound impression upon the minds of thoughtful statesmen in England. They will see that, for the first time, these offshoots of Empire in the Southern Hemisphere can unite, and that, in their union, they are
backed by nearly 2,000,000 souls." — Melbourne Argus, 18th March, 1867.

A Bill to establish the proposed Federal Council was shortly afterwards introduced by Mr. Parkes in the Legislative Assembly of New South Wales. This Bill, to which the resolutions of the Conference were annexed in the schedule, was carried through both Houses, and reserved for the Royal assent. It was, however, shelved by the Home Government. The Duke of Buckingham, then Secretary for State, informed the Governor of New South Wales, in a despatch dated 5th January, 1868, that if the resolutions in the schedule had received Imperial assent, or had continued to command the assent of the colonies, or if the Act had created a Federal Council to deal generally with postal communication or any other subject of intercolonial interest, he would have recommended that it be assented to; but as the powers of the Council were confined to a definite scheme, to the details of which Her Majesty's Government could not agree, he was unable to submit it to the Queen. — Votes and Proc., Leg. Ass. of N.S.W., 1868–9, i. 535.

COMMERCIAL FEDERATION. — Besides the border treaties, continued efforts were made to secure some more comprehensive scheme of customs union or commercial reciprocity. The Constitutions of all the Australasian colonies, except New Zealand, contained a prohibition — originating in the Australian Colonies Government Act of 1850 (13 and 14 Vic. c. 59, see. 31) — against any duties upon imports from "any particular country or place" which were not equally imposed on imports from "all other countries and places whatsoever." These prohibitions stood in the way of colonial legislation for reciprocity; and in 1866 the Executive Council of New South Wales adopted a minute asking for their repeal so far as to allow free importation from any one colony. (See despatch from Sir John Young to the Secretary for State, 21st December, 1866; Votes and Proc., L.A. of N.S.W., 1868–9, ii. 109.) Lord Buckingham, the Secretary of State for the Colonies, replied in a despatch of 7th January, 1868, that the Home Government would gladly aid the establishment of a Customs Union embracing all the adjacent colonies, and providing for a uniform tariff, intercolonial freetrade, and an equal division of the customs duties; they might even consider any partial relaxation of the existing rule; but they could not propose the repeal of the clause which prevented differential duties. That would enable the colonies to discriminate against foreign nations, and even against the mother-country, and might seriously embarrass treaty relations. Thereupon the Government of New Zealand proposed an intercolonial Conference to consider the question of a Customs Union. In 1870 Tasmania renewed the proposal; and a
Conference was accordingly held at Melbourne, in June and July, 1870, between delegates from New South Wales, Victoria, South Australia, and Tasmania, at which the most important question considered was the establishment of a Customs Union, with a uniform tariff and intercolonial freetrade. (Votes and Proc., L.A. of N.S.W., i. 583.)

This time the uniform tariff was the stumbling-block. All the colonies agreed that a uniform tariff was desirable; but when they proceeded to frame such a tariff, the fiscal policies of New South Wales and Victoria proved irreconcilable. The Victorian delegates (Messrs. J. G. Francis and James McCulloch) absolutely declined to surrender the principle, recognized by the Victorian tariff, of discriminating between raw materials and manufactured goods. The New South Wales delegates (Messrs. Charles Cowper and Saul Samuel) declined to consider any proposition to amend their tariff in the direction of such a principle. On articles subject to a "fixed" duty — such as spirits, wines, beer, tobacco, tea, &c. — an agreement could probably have been arrived at; but the determination of each colony to adhere to its fiscal principles made a Customs Union between them impossible.

An effort was then made to patch up an agreement between Victoria, South Australia, and Tasmania; but here again insuperable difficulties disclosed themselves. With a Customs Union of all the colonies, Victoria had been willing to agree to intercolonial freetrade and the distribution of revenue on a population basis. But with New South Wales standing out, Victoria considered that "the prospective advantages were diminished," and offered very different terms -namely, that distribution should be governed by contribution, that the Victorian tariff should be accepted as the common basis, and that the Victorian Parliament should retain the power to alter the tariff. The other colonies promptly rejected this proposal, and all hope of a Customs Union fell through.

The Conference reported, however, that though they had not arrived at a definite conclusion, they had a deep conviction of the importance of the question; and they prepared a memorial to the Home Government praying for the removal of the existing restrictions on intercolonial commercial treaties.

On 31st July, 1871, Lord Kimberley, the Secretary of State for the Colonies, sent a circular despatch to the several Governors on the subject of colonial tariffs. (Votes and Proc., L.A. of N.S.W., 1871–2, i. 845.) He had received despatches from several of the Governors, intimating a desire for reciprocal agreements, and had received reserved Bills from New Zealand and Tasmania dealing with the subject. Like the Duke of Buckingham, he objected to conceding a general power to make reciprocal
arrangements, but was favourable to a Customs Union with a uniform tariff. He cited the British treaty with the German Zollverein, to show that differential duties in the colonies would infringe the treaty obligations of the Empire.

Thereupon a further Conference was held at Melbourne in September, 1871, at which New South Wales, Victoria, South Australia, Queensland, and Tasmania were represented. Lord Kimberley's despatch was discussed, and some very plainly-worded resolutions were passed, claiming that the colonies had a right to enter into arrangements for reciprocity, that no Imperial treaty should limit this right, and that Imperial interference with colonial fiscal policies should absolutely cease. Lord Kimberley replied in a lengthy despatch of 19th April, 1872, in which he invited a "friendly discussion" of the whole question. He argued that compliance with the request would involve not only the repeal of the prohibition in the various Constitutions, but also the exclusion of the colonies from future commercial treaties containing stipulations against differential duties. (Votes and Proc., L.A. of N.S.W, 1872, i. 1015.)

Finally, a Conference convened by Sir Henry Parkes, was held at Sydney in January and February, 1873, at which all the seven colonies were represented. With regard to intercolonial reciprocity, it was resolved to urge on Lord Kimberley the claims of the colonies, and to adopt a memorial to the Home Government for the removal of the restrictions which prevented the colonies agreeing to admit the products of any colony into any other colony free of duty. As to a Customs Union, it was resolved by a majority of one that such a union would be desirable, on the understanding that customs duties ought only to be levied for purposes of revenue, and not for purposes of protection. (Votes and Proc., L.A. of N.S.W., 1872–3, i. 1161.)

Lord Kimberley, though he maintained his own opinion, yielded to these repeated demands of the colonies, and introduced the Australian Colonies Duties Bill of 1873, which was passed, though Earl Grey and others opposed it as a step to commercial disunion. It merely provides that the legislature of any of the Australian colonies shall, for the purpose of carrying into effect any agreement with any other of such colonies, have full power to make laws for the remission or imposition of import duties on articles imported from such other colonies.

The colonies thus obtained full statutory powers to enter into arrangements for reciprocity, but the power was never used. The constitutional obstacle was removed, but the practical difficulties in the way of any customs union, short of the establishment of a Federal Parliament, remained.
VICTORIAN ROYAL COMMISSION, 1870. — After the failure of Deas-Thomson's and Duffy's Select Committees, very little was heard of any real proposal for Federation until 1870, when Mr. Duffy made a final effort. He secured the appointment, on 31st August, of a Royal Commission "to consider and report upon the necessity of a Federal Union of the Australian colonies for legislative purposes, and the best means accomplishing such a union." On 3rd October the Commission brought up a "first report." As usual, there was unanimity as to the advantages of a Federal Union. As to the means of effecting a union, it was recognized that the form of union must be left to be decided by an accredited intercolonial Conference, and by the several legislatures. Opinion in the colonies seemed to be divided between a Constitution like that of the recently created Canadian Dominion on the one hand, or a mere Federal Council on the other. But they thought that a preliminary step, as to which there would probably be little difference of opinion, would be a permissive Imperial Act, authorizing the Queen to establish a Federal Union of any colonies which should agree upon terms. They thought that the best means of accomplishing a union was to remove, by such an Act, all legal impediments to it, and leave the colonies to determine, by negotiation among themselves, how and when they would avail themselves of the opportunity. They proposed to frame, and print with their second report, a Bill of this kind for transmission to the Imperial Parliament. Then followed some rather startling suggestions as to granting the colonies "sovereign rights" of making treaties, and remaining neutral in time of war — suggestions to which some of the delegates declined to subscribe. Neither the promised "second report" nor the proposed Bill were ever issued; and though the above report was circulated, no further steps were taken.

CONFERENCE OF 1880–1. — A distinct stage in the Federal movement is marked by a Conference which met at Melbourne in November and December, 1880, and afterwards at Sydney in the following January. (Votes and Proc., L.A. of N.S.W., 1881, i. 329.) At its first meeting only the three colonies of New South Wales, Victoria, and South Australia were represented. Sir Henry Parkes submitted the "basis of a possible agreement as to customs duties." Briefly, it was to the effect that uniform duties of customs and excise should be levied on spirits, tobacco, and beer — such duties to be fixed, for the most part at the highest rates then prevailing; that no customs duties should be levied except at the seaports; and that balances should be adjusted between the Governments on the basis of the intercolonial trade statistics of 1878–80. He declared that New South Wales was prepared to sign a Convention for three or five years on such a basis. The restriction of uniformity to the articles
mentioned, of course, shirked the burning question of freetrade and protection. Mr. (afterwards Sir) Graham Berry, for Victoria, maintained that the only satisfactory solution of the border question was a completely uniform tariff — more than hinting, however, that the tariff must be mainly that of Victoria. The matter was discussed, and postponed to the Sydney session.

Resolutions were also passed, at the instance of Sir Henry Parkes, affirming (1) that the time had arrived when a Federal Council should be created to deal with intercolonial matters; (2) that such Council might be constituted, with limited powers, by Acts of the several Parliaments, each colony having an equal number of representatives: (3) that the control of each colony over its own revenue should be preserved intact; and (4) that New South Wales should be requested to prepare the necessary Bill, to be submitted to the Conference at its next meeting.

The Sydney session in January was joined by delegates from all the seven colonies. The proposal of a uniform tariff ended with a mere recommendation that a joint commission should be appointed to frame a common tariff, and that the number of commissioners from each colony should be — Victoria, three; New South Wales, New Zealand, South Australia, and Queensland, two each; Tasmania and Western Australia, one each. No such commission was ever appointed, so that the proposal, like every other proposal for a uniform tariff, ended in talk.

The scheme for a Federal Council got a little further. Sir Henry Parkes brought up the promised Bill, together with the following interesting memorandum: "In respect to the Federal Council Bill now submitted, the following positions are assumed as hardly open to debate:-

1. That the time is not come for the construction of a Federal Constitution, with an Australian Federal Parliament.

2. That the time is come when a number of matters of much concern to all the colonies, might be dealt with more effectually by some federal authority than by the colonies separately.

3. That an organization which would lead men to think in the direction of federation, and accustom the public mind to federal ideas, would be the best preparation for the foundation of Federal Government.

"The Bill has been prepared to carry out the idea of a mixed body, partly legislative and partly administrative, as the forerunner of a more matured system of Federal Government. Care has been taken throughout to give effective power to the proposed Federal Council within prescribed limits, without impairing the authority of the colonies represented in that body.

"No attempt has been made to constitute the proposed council on any historical model, but the object has been to meet the circumstances of the
present Australian situation, and to pave the way to a complete federal organization hereafter."

This memorandum, and Sir Henry Parkes' previous resolutions, define very clearly his federal policy at that time. The main obstacle to complete Federation was the difference in fiscal policy between New South Wales and Victoria. Victorian statesmen would not listen to any uniform tariff proposal except on the basis of protection; New South Wales statesmen were equally determined to maintain freetrade; and neither were willing to entrust the question to the free decision of a Federal Legislature. Neither a simple customs union, nor a Federation involving a customs union, was for the time attainable. Sir Henry Parkes believed that a time would come when the people of both colonies would place Federation above the fiscal question, and would be ready to entrust the settlement of that question to their joint representatives; but meanwhile the only form of Federation possible would be one which left the fiscal question out altogether. He believed that such a preliminary union would prepare the way for a more complete Federation.

The correctness of Sir Henry Parkes' judgment, that the time was not come for a more complete Federation, was strikingly shown in the Conference itself. An apple of discord was thrown into the discussion by Mr. Graham Berry, who made the startling proposition that, as the Council would need revenue of some kind, the revenues arising from the sale and occupation of public lands should be transferred to it. This suggestion received no support except from the Victorian delegates. It was presumably intended to prove, by a *reductio ad absurdum*, the uselessness and impracticability of a Federation which did not control the customs revenue.

A motion, that the Conference should agree to the Bill, and recommend it to the legislatures, was then put, and resulted in an equal division. New South Wales, South Australia, and Tasmania voted for it; Victoria, Queensland, and New Zealand against; whilst the West Australian delegates did not vote at all. The proposal for a Federal Council had, therefore, to be abandoned.

The only federal institution as to which the Conference could agree was an Australian Court of Appeal. A Bill for this purpose was framed and approved, and a resolution was passed recommending the Legislatures to memorialize the Home Government with a view to Imperial legislation on the subject. But recommendation is one thing, and action another; nothing further was done.
EVENTS OF 1883. — Up to the year 1883 every proposal for any kind of Federation — complete or partial — had failed altogether. Some small degree of uniform legislation had been attained by conference; some temporary border treaties had been entered into between individual colonies; but no basis had been agreed on for any form of political union. But the events of 1883 helped to draw closer the bonds between the colonies, and to emphasize the need of joint action.

In June, 1883, the last section of the railway line between Sydney and Melbourne was completed, and the long-delayed junction between the railway systems of the two colonies was thus effected at the Murray River. A banquet held at Albury on that occasion, and attended by the Governors of both colonies and by many prominent statesmen, affords an interesting historical record of the after-dinner views of prominent men on the subject of Federation. The union of railways irresistibly suggested the greater political union; but most of the speakers spoke of Federation as a "far-off divine event" rather than as a practical policy. The Governors, of course, welcomed the joining of hands across the Murray as a step towards Federation. The speakers from the mother-colony did not respond very heartily. Sir John Robertson, in a characteristic speech, alluded to a "something called Federation," said that Victoria had separated of her own free will, and invited her to return as a repentant child to her mother. Mr. (afterwards Sir) Alexander Stuart, the New South Wales Premier, expressed his belief in slow development, and did not think that Federation could be "precipitated in a moment." Mr. James Service, the Victorian Premier, was the most ardent federalist of the gathering. "We want Federation" he said, "and we want it now. I have been now 30 years almost in public life, and I decline to subscribe to the doctrine that I am to die before I see the grand Federation of the colonies. There is no earthly reason for its being delayed. We imagine there are supreme difficulties in the way, but I believe they will crumble into dust; and I take this opportunity of telling my friend, the Premier of New South Wales, that we intend to test the question." Other Victorian speakers were less definite. Mr. Duncan Gillies said that a customs union must precede any other kind of Federation; whilst Mr. Graham Berry, though announcing that Victoria was "quite ready to unite," stipulated that Victorian manufacturing industries must be considered. In a word, every one was willing to federate; but Sir John Robertson's idea of Federation was the re-annexation of Victoria, Mr. Berry's idea was union under the Victorian tariff, and most of the others
regarded it as a topic of after-dinner oratory rather than a matter of practical politics.

But whilst the development of intercolonial relations was deepening the conviction that union was needed, the real motive power — the stimulus to an active public interest — came from outside. Hitherto Australia had regarded foreign complications as antipodean matters which did not much concern her; but the external need of union was brought home to all the colonies by the increased activity of foreign Powers in the Pacific. In 1883 rumours became current of intended annexations by France and Germany. The Germans were credited with designs on New Guinea; and to forestall them Sir Thomas McIlwraith, Premier of Queensland, sent a magistrate to that island in April to take possession in the name of the Queen. His action, though generally approved in the colonies, was disavowed by the Home Government. The French, moreover, were openly coveting the New Hebrides, and were reported to be arranging to transport to New Caledonia a large number of recidivistes, or habitual criminals.

In this emergency the colonies found that disunion hampered them in making proper representations to the Imperial Government, and weakened the effect of what representations they made. Here was a practical and convincing argument for Federation; and it was made the most of. The Executive Council of Queensland, on 17th July, 1883, resolved that the Home Government should be invited to move in the direction of a federal union. What was wanted, however, was not Imperial action, but Australian action; and Mr. James Service — true to his promise at the Albury banquet — took the more practical step of urging an intercolonial conference. Accordingly, on 25th November, a "Convention" met in Sydney, at which the seven colonies were represented, and also Fiji.

Mr. Service immediately submitted a set of resolutions urging the annexation of, or a protectorate over, East New Guinea and the West Pacific Islands from the equator to the New Hebrides, in order to prevent them falling into the hands of foreign powers; affirming that the colonies were willing to bear a share of the cost; protesting against the French recidiviste proposals; and concluding with the following resolution:— "That, in view of the foregoing resolutions, and of the many subjects of pressing importance on which the colonies, though of one mind, are unable to obtain united action owing to the absence of some common authority, the time has now arrived for drawing closer the ties which bind the colonies to each other by the establishment of a Federal Union in regard to such matters as this Convention shall specifically determine."

It is certain that Mr. Service had in his mind the establishment of a real federal Government. The other delegates, however, were not prepared to
go to this length; and Mr. (afterwards Sir) Samuel Griffith, Premier of Queensland, submitted the following resolution in favour of a Federal Council:

"That it is desirable that a Federal Australasian Council should be created for the purpose of dealing with the following matters:-

"1. The marine defences of Australasia, beyond territorial limits.
"2. Matters affecting the relations of Australasia with the islands of the Pacific.
"3. The prevention of the influx of criminals.
"4. The regulation of quarantine.
"5. Such other matters of general Australasian interest as may be referred to it by Her Majesty or by any of the Australian Legislatures."

Mr. Griffith's resolution was adopted, and on 3rd December a Committee was appointed, with Mr. William Bede Dalley (then Attorney-General of New South Wales in the Stuart Ministry) as chairman. The following day the Committee brought up its report, together with a "Bill to establish a Federal Council of Australasia," of which Mr. Griffith was the draftsman. The Bill was somewhat altered in Committee, the powers of the Federal Council (partly in consequence of outside criticism) being considerably reduced. The Bill provided for a Federal Council, and was to affect only those colonies whose legislatures passed Acts adopting it. It was not to come into force until four colonies at least had passed such adopting Acts. Each colony was to have two representatives, except Crown colonies, which were to have one each; and the mode of their appointment in each colony was left to the legislature. The first session was to be at Hobart, and subsequent sessions wherever the Council itself should decide.

The Council was to be a legislature merely, with no executive powers, and no control over revenue or expenditure. And even its legislative powers were very scanty. The matters over which it was given an independent legislative authority were only seven. Foremost of these were "the relations of Australasia with the islands of the Pacific," and "prevention of the influx of criminals" — the two burning questions which had led up to the Convention. The others related to fisheries in Australasian waters outside territorial limits, the service of civil process beyond the limits of a colony, the enforcement of judgments and of criminal process beyond the limits of a colony, the extradition of offenders, and the custody of offenders on Government ships beyond territorial limits. Those were the only matters on which the Council could legislate of its own motion. But there was a second list of matters which the legislatures of two or more colonies might refer to the Council, and on which the Council might then legislate, but only so as to affect the referring or adopting colonies. This
list of matters, as to which the Council could only legislate by request, comprised defence, quarantine, patents and copyright, bills of exchange and promissory notes, weights and measures, recognition of marriage and divorce, naturalization, status of corporations, and "any other matter of general Australasian interest with respect to which the legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application." All laws of the Council were to be presented, for the Royal assent, to the Governor of the colony in which the Council was sitting.

The Bill was adopted by the Convention in the following resolution:-
"That this Convention, recognizing that the time has not yet arrived at which a complete federal union of the Australasian colonies can be attained, but considering that there are many matters of general interest with respect to which united action would be advantageous, adopts the accompanying draft Bill for the Constitution of a Federal Council, as defining the matters upon which such united action is both desirable and practicable at the present time, and as embodying the provisions best adapted to secure that object, so far as it is now capable of attainment." A resolution was also passed pledging the Governments of the several colonies to invite their Legislatures to pass addresses to the Queen praying for legislation on the lines of Draft Bill.

Meanwhile the proceedings of the Convention, and the Constitution of the proposed Federal Council, were being severely criticised in the Sydney press, and also in the New South Wales Parliament. The Convention had sat with closed doors; and it seems that at one time, in its zeal for prompt action, it had contemplated asking the Home Government to pass the Bill at once, without reference to the Legislatures. Even the agreement arrived at only gave the Legislatures the option of accepting or rejecting the scheme as it stood, and gave them no voice in deciding its details. There was a strong feeling in Sydney against making so important a constitutional change with so little consideration; and the Bill itself was objected to because the Council, to which power was given to override the local Legislatures, was merely a small, peripatetic, and more or less irresponsible body of delegates. Objection was made, in fact, to handing over powers of federal legislation to any less important and less representative a body than a real Federal Parliament.

In July and August, 1884, addresses to the Crown, praying for the enactment of the Federal Council Bill, were passed by the Legislatures of Victoria, Tasmania, Queensland, Western Australia, and Fiji. New South Wales and New Zealand, however, stood aloof. In New South Wales the Government pleaded the pressure of more important business for not
dealing promptly with the matter. In the Legislative Assembly, on 25th March, a resolution had been carried, at the instance of Mr. L. F. Heydon, affirming that no Federal Council Bill should be enacted by the Imperial Parliament until it had been submitted to the Legislature of New South Wales. In the Legislative Council, in July, there had been considerable debate on resolutions moved by the Hon. John Stewart, protesting against any annexation of New Guinea as an unjustifiable interference with the liberty of the natives, and affirming that "any attempt to establish a Federal Government, having legislative jurisdiction over two or more colonies, is not at present necessary or desirable." The resolutions were eventually shelved by the "previous question." On 7th August, in consequence of telegraphic news from London that the Federal Council Bill was likely to be proceeded with shortly, Sir Alexander Stuart, the Premier of New South Wales, telegraphed to the Agent-General that such action would be premature until the Parliament of New South Wales had expressed an opinion. Political opinion in New South Wales was very much divided, and the attitude of the Government was consistently cautious and non-committal. At last, on 30th the resolutions were brought before both Houses — in the Assembly by the Treasurer, Mr. (afterwards Sir) George R. Dibbs, and in the Council by Mr. W. B. Dalley. In the Council the resolutions were carried by 13 votes to 9; in the Assembly they were defeated by one vote. Sir John Robertson and others frankly opposed union on the ground of mistrust of the other colonies; but the most general objection was that the scheme was premature, ill-conceived, and ineffective. The speech to which the most interest attaches was that of Sir Henry Parkes. He had taken no part in the proceedings of the "Convention," having been on a trip to England from early in 1883 until August, 1884. Since 1881, however, he had entirely changed his views as to the desirability of a Federal Council; and in his speech in opposition to the proposal he explained his position. His scheme of 1881 had been tentative, and avowedly designed to awaken interest in the question of Federation. He had long since given it up as impracticable. Federation had since become a living national question, and the proposed scheme for a Federal Council, besides being unauthorized in its origin, was incurably defective. The Council would be a "ricketty body," composed of a very few members, and unfit to be entrusted with the power of overriding the local Parliaments. It would not only cause dissatisfaction and conflict, but it would "impede the way for a sure and solid Federation."

"Is it not better," he said, "to let the idea of Federation mature, to grow in men's minds, until the time comes when we can have a solid, enduring Federation? No good object can be served by creating a body such as this
Council. It will add to our strife, it will add to our dissatisfaction with the working of our institutions, it will lead to endless complications, and it must result, at a very early stage, in an entire breakdown. It has not any inherent power, the Legislatures of these free countries will never give it inherent power, and it can never exist, for any useful purpose. Considering the proud position in which we stand now — as free as any country in the world, with power to govern ourselves and maintain an attitude which commands the respect of great nations — we had better avoid joining in making a spectacle before the world which would cover us with ridicule." (See also Parkes' "Fifty Years in the Making of Australian History," P. 503.)

New South Wales and New Zealand, therefore, stood out of the Federal Council scheme. Nevertheless the Home Government, acting on the addresses passed in the other colonies, decided to carry it through; and on 23rd April, 1885, the Earl of Derby introduced the Bill, somewhat apologetically, in the House of Lords. He admitted that it was a rudimentary and imperfect measure, but it was what the colonies had asked for, and would make a beginning. A good deal hung on whether New South Wales would come into the union or not, but he hoped that the objections of the Legislature would not be permanent. A real Federation was impossible for a time, owing to, the difference of fiscal policy; the colonists themselves did not wish it, and did not think themselves ripe for it.

The Bill thus introduced differed in a few respects from the Bill by the "Convention." In the first place, a provision was inserted giving any colony the power to secede from the Council. This was done in the hope that New South Wales might thereby be induced to join, one of the objections of that colony being the irrevocableness of the compact. Next, power was given to the Queen, at the request of the colonies, to increase the number of members of the Council. It was hoped that this might lead to the gradual expansion and development of federal institutions. Lastly, the Council was given an additional power to legislate on any matter which, at the request of the colonial legislatures, the Queen should think fit to refer to it. The Home Government had further suggested a clause dealing with the question of expenditure involved in the action of the Council; but this was so strongly objected to by the colonial Governments that, it was dropped, and in matters involving expenditure the Council was left powerless to do anything but advise or recommend.

The Bill passed through the British Parliament with very little debate. In the Lords it was supported by the Earl of Carnarvon, who had actively promoted the Canadian Union in 1867, and had endeavoured to secure a
similar result among the South African colonies and States by the abortive "South African Union Act, 1877." In the Commons, it was opposed by Sir Geordie Campbell on the ground that the colonies would do better by developing their own territory than by meddling with the islands of the Pacific; and it was severely criticised by Mr. James Bryce, who regarded it as "a very scanty, fragmentary, and imperfect sketch of a Federal Constitution," which did not seem to have been satisfactorily discussed in the colonies.

The Federal Council of Australasia Act, 1885, became law on 14th August. Between September and December in the same year the five colonies of Western Australia, Fiji, Queensland, Tasmania, and Victoria, in that order, passed adopting Acts; and all those colonies sent representatives to the first meeting of the Federal Council, which was held at Hobart from 25th January to 5th February, 1886. It began in a business-like way by passing an Interpretation Act, to govern the interpretation of federal statutes, and an Evidence Act to prescribe the mode of proving them in Court. It then began its substantive legislative work by passing Acts for the intercolonial service of civil process and enforcement of judgments. At its second session, in January, 1888, it passed an Act to regulate the Queensland Pearl-shell and Bêche-de-mer fisheries beyond territorial limits; and at its third session in 1889 it passed a similar Act with respect to West Australian fisheries. Meanwhile, in December, 1888, South Australia passed an adopting Act agreeing to join the Council for a period of two years. From 1891 to 1899 it met in alternate years, but did little to justify its existence; a fact which its friends ascribed to the aloofness of New South Wales. Possibly if New South Wales had joined, there might have been a few more federal statutes passed; but the powers of the Council were too scanty to enable it to be of any great service.

Fiji, though not withdrawing from the Council, was never represented after the first meeting. In 1892 Mr. F. W. Holder, Premier of South Australia, introduced a Bill to enable his colony to re-enter the Federal Council; but it was rejected by the Upper House. The new movement for a national Convention had already made it clear that the road to Australian Federation lay in another direction. Efforts, however, were still made to extend the sphere of the Council's work. Acts referring different matters to the Council were passed in some of the colonies, but without practical result. In 1893, also, the Legislatures of all the colonies represented requested the Queen to increase the number of members; and accordingly, by Order-in-Council of 3rd March, 1894, it was directed that each colony (excepting Crown colonies) should have five representatives. But all efforts to galvanize the Council into life were unavailing; and in January,
1899, it met at Melbourne for the last time.
(7) The Commonwealth Bill of 1891.

FEDERAL DEFENCE. — The great effort at Federation which led to the framing of the Commonwealth Bill of 1891 had for its immediate stimulus the recognized need of a national system of defence. The history of the new movement may, therefore, be appropriately introduced with a brief review of the attempts to deal with this subject.

The question of colonial defence began to assume prominence in 1878. In the previous year Lord Carnarvon (Secretary of State for the Colonies) had commissioned Lieutenant-General Sir W. D. Jervois to report upon the defences of the Australian colonies — a task which he carried out with the assistance of Lieutenant-Colonel Sir Peter Scratchley. As a result, the several colonies re-organized and increased their military forces, and devoted large sums to harbour defences and fortifications. The naval defence of Australia, and of Australian trade, was still left almost wholly to the Imperial Government; though Victoria established a small navy for the defence of Port Phillip, and New South Wales spent considerable sums upon the naval station at Sydney.

At the Intercolonial Conference held in Sydney in 1881 (see p. 107, supra) it was resolved that the Australian squadron ought to be increased and ought to be the sole charge of the Imperial Government; the colonies on their part undertaking their own land defences. The Home Government, however, thought that Australia ought to contribute towards the naval defence of her own trade; and a Royal Commission which had been appointed in England in 1879, with Lord Carnarvon as chairman, "to enquire into the defence of British possessions and commerce abroad," endorsed this view in its second report, dated 23rd March, 1882. In 1885 Admiral Sir George Tryon was appointed to the command of the Australian station, with instructions to discuss the matter; and owing to his negotiations some approach was made to an understanding. At the Colonial Conference held in London in April and May, 1887, presided over by Sir Henry Holland, and attended by representatives from all the British possessions, the basis of an agreement was settled, subject to ratification by the Australian Parliaments.

This agreement provided for an auxiliary fleet to be equipped and maintained at the joint expense of Great Britain and the colonies. No reduction was to take place in the normal strength of the Imperial fleet on the Australian station. The auxiliary fleet was to consist of five fast cruisers and two torpedo gunboats of the Archer (improved type) and Rattlesnake classes; of which three cruisers and one gun-boat were to be kept always in
commission, and the remainder held in reserve in Australasian ports. Great Britain was to pay the first cost of these vessels, and the colonies were to pay interest at five per cent. on the first cost to a sum not exceeding £35,000, and also the actual cost of maintenance, not exceeding £91,000, making a total of £126,000 a year, which was to be contributed by the colonies on a population basis. The fleet was to be under the control of the Naval Commander-in-Chief on the Australian Naval Station, and was to be retained within the limits of the station, which is bounded as follows:

(N.) On the north, from the meridian of 95° E. long. by the parallel of 10° S. lat. to the meridian of 130° E. long.; thence northward on that meridian to the parallel of 2° N. lat., and thence on that parallel to the meridian of 136° E. long.; thence northward to 12° N. lat., and along that parallel to 160° W. long.

(W.) On the west by the meridian of 95° E. long.

(S.) On the South by the Antarctic circle.

(E.) On the east by the meridian of 160° W. long.

In peace or war, the ships were not to be employed beyond those limits without the consent of the colonial Governments. The agreement was to be for ten years, and only terminable, after that time by a two years' notice.

This agreement was ratified, within a few months, by "Australasian Naval Force Acts," passed in the colonies of Victoria, South Australia, New South Wales, Tasmania, New Zealand, and Western Australia. The Queensland Parliament at first declined to ratify, but eventually came into line with the other colonies by passing the Australasian Naval Force Act, 1891. The Imperial Parliament made provision for its share of the expenditure by the Imperial Defence Act, 1888 (51 and 52 Vic. c. 32). The auxiliary fleet arrived at Sydney on 5th September, 1891.

With respect to naval defence, therefore, some degree of federal action had been attained; but with regard to military defence it was otherwise. Each colony had a separate military force, consisting chiefly of partially paid or unpaid volunteers, with a small permanent force. There was no uniformity of organization or equipment, and no cooperation. The (Imperial) Army Act, 1881 (44 and 45 Vic. c. 58, s. 177), provided that "where any force of volunteers or of militia, or any other force, is raised in India or a colony, any law of India or the colony may extend to the officers, non-commissioned officers, and men belonging to such force, whether within or without the limits of India or the colony." There was some doubt, however, whether this section was sufficient to authorize the employment of the troops of one colony in another colony. See remarks by Sir Samuel Griffith, Proceedings of the Colonial Conference of 1887, pp. 294, 438–40.
The Colonial Conference of 1887 suggested that an Imperial officer should be appointed to report on the defences of the Australian colonies. In 1889 Major-General Sir J. Bevan Edwards was commissioned by the Home Government to inspect the military forces and defences of the Australian colonies, and to report on them. He accordingly made separate reports (dated 9th October, 1889) in respect of each colony, to which he attached a memorandum containing propositions for the re-organization of the forces of all the colonies. The points on which he laid stress were:-

1. The federation of the forces of all the Australian colonies.
2. The appointment of an Imperial officer, to advise and inspect in peace, and to command in war.
3. A uniform system of organization and armament, and a common Defence Act.
4. Amalgamation of the permanent forces into a fortress corps.
5. A federal military college for the education of officers.
6. The extension of the rifle clubs.
7. A uniform gauge for railways.
8. A federal small-arms manufactory, gun-wharf, and ordnance store.

SIR HENRY PARKES. — Earlier in 1889 Sir Henry Parkes, in a confidential correspondence with Mr. Duncan Gillies, Premier of Victoria, had suggested the creation of a Federal Parliament and Executive. In reply, Mr. Gillies had expressed the fear that the fiscal difficulty was insuperable at present, and had urged the claims of the Federal Council as the first step towards union.

On receipt of Major-General Edwards' memorandum, Sir Henry Parkes, on 15th October, telegraphed to the other Premiers suggesting a consultation on the subject. On the 22nd Mr. Gillies telegraphed a reply to the effect that a mere Conference would probably be barren of results, as the local Parliaments had no power to frame the necessary federal legislation. He pointed out that the necessary Imperial authority was already provided by the Federal Council Act, which enabled the Federal Council, upon a reference by the local Parliaments, to legislate as to "general defences." He therefore urged that Sir Henry Parkes should recommend his Parliament to give in its adhesion to the Federal Council.

This suggestion did not meet Sir Henry Parkes' approval. He had been watching the signs of the times, and had come to the conclusion that the popular sentiment was now ripe for a definite federal movement, at the head of which he resolved to place himself. At the time he was on a short visit to Brisbane, where he had been in consultation with and had received encouragement from, the leading men of both political parties; and on his return journey he was no sooner within the territory of New South Wales
than he opened out, at Tenterfield, with his famous speech of 24th October. He seized the opportunity of Major-General Edwards' report to emphasize the necessity of federal defence. For this purpose the Federal Council would be altogether inadequate, because it had no executive power, and it was not directly representative. Nor would it be enough to ask the Imperial Parliament to pass an Act authorizing the troops of the colonies to unite in one federal army under Imperial control. What was wanted was a strong central executive, under the control of the Australian people.

He believed that federal defence was necessary to the security of the colonies; and "feeling this, and seeing no other means of attaining the end, it seemed to him that the time was close at hand when they ought to set about creating a great national Government for all Australia....As to the steps which should be taken to bring this about, a conference of the Governments had been pointed to, but they must take broader views in the initiation of the movement than had been taken hitherto; they must appoint a Convention of leading men from all the colonies — delegates appointed by the authority of Parliament who would fully represent the opinion of the different Parliaments of the colonies. This Convention would have to devise the Constitution which would be necessary for bringing into existence a Federal Government with a Federal Parliament for the conduct of national business."

Having thus set the ball rolling, Sir Henry Parkes, on 30th October, wrote to Mr. Gillies, reiterating his views as to the Federal Council, and making a definite proposition for the summoning of a Convention. "Believing that the time is ripe for consolidating the Australias into one, this Government respectfully invites you to join in taking the first great step — namely, to appoint representatives of Victoria to a National Convention for the purpose of devising and reporting upon an adequate scheme of Federal Government." He suggested that, in order to avoid any sense of inequality in debate or any party complexion, the number from each colony should be the same, and should be equally chosen from both sides in political life; and he further suggested six members from each colony as a convenient number. The form of union he had in mind is best described in his own words:-- "The scheme of federal government, it is assumed, would necessarily follow close upon the type of the Dominion Government of Canada. It would provide for the appointment of a Governor-General, for the creation of an Australian Privy Council, and a Parliament consisting of a Senate and a House of Commons. In the work of the Convention, no doubt, the rich stores of political knowledge which were collected by the framers of the Constitution of the United States would be largely resorted to, as well as the vast accumulations of learning on cognate subjects since
that time." Copies of this despatch were also forwarded to all the other
Australian Premiers, with requests for their concurrence.

Mr. Gillies, however, was still diffident as to the immediate practicability
of a full-blown Federal Government. That the matter might be fully
considered, yet without altogether passing over the Federal Council, he
proposed to Sir Henry Parkes, in a letter of 13th November, that instead of
a Parliamentary Convention the representatives of the various colonies to
the Federal Council should meet representatives from New South Wales to
discuss and, if deemed necessary, to devise and report upon a scheme of
Federation. He also suggested that, as the adoption of any such scheme
would take time, New South Wales might advantageously join the Federal
Council in the meantime. The most pressing problems of defence could be
dealt with by mere federal legislation, such as the Council could effect,
without the need of any executive authority. The other Premiers wrote in
much the same strain; and on 28th November Sir Henry Parkes replied to
Mr. Gillies consenting to "an informal meeting of the colonies for the
purposes of preliminary consultation."

MELBOURNE CONFERENCE OF 1890. — Accordingly a Conference
met in Melbourne on 6th February, 1890, at which the seven colonies were
represented by the following delegates, accredited by their respective
Governments:- New South Wales, Sir Henry Parkes (Premier) and Mr.
William McMillan (Colonial Treasurer); Victoria, Mr. Duncan Gillies
(Premier) and Mr. Alfred Deakin (Chief Secretary); Queensland, Sir
Samuel Walker Griffith (Leader of Opposition) and Mr. John Murtagh
Macrossan (Colonial Secretary); South Australia, Dr. (afterwards Sir) John
Alexander Cockburn (Premier) and Mr. Thomas Playford (Leader of
Opposition); Tasmania, Mr. Andrew Inglis Clark (Attorney-General) and
Mr. Bolton Stafford Bird (Treasurer); Western Australia, Sir James George
Lee Steere (Speaker); New Zealand, Captain William Russell Russell
(Colonial Secretary) and Sir John Hall. Mr. Geo. H. Jenkins, C.M.G., Clerk
of the Parliament (Victoria), acted as clerk of the Conference. At a banquet
held in celebration of the assembling of the Conference, two famous
phrases originated. Mr. James Service, proposing the toast of "A United
Australasia," spoke of the tariff question as "the lion in the path," which
federalists must either slay or be slain by; and Sir Henry Parkes, in
responding, made his historic utterance, "The crimson thread of kinship
runs through us all."

It was recognized from the first that the Conference was only preliminary
to a more representative and a more fully authorized gathering. Mr.
Duncan Gillies was elected President of the Conference, and the course of
procedure adopted was to frame resolutions in committee and to admit the
public to the ensuing debates. The principal debate, which occupied four out of the seven sitting days of the Conference, was on a motion by Sir Henry Parkes:- "That in the opinion of this Conference, the best interests and the present and future prosperity of the Australian colonies will be promoted by an early union under the Crown, and while fully recognizing the valuable services of the Convention of 1883 in founding the Federal Council, it declares its opinion that the seven years which have since elapsed have developed the national life of Australia in population, in wealth, in the discovery of resources, and in self-governing capacity to an extent which justifies the higher act, at all times contemplated, of the union of the colonies, under one legislative and executive government, on principles just to the several colonies."

This resolution met with no opposition. Everyone recognized the need of a Federal Executive, and admitted the insufficiency of the Federal Council. The "lion in the path" was made light of, most of the delegates sharing Sir Henry Parkes' confident belief that the colonies would be willing to entrust the tariff question to the free decision of the Australian people; whilst Sir Samuel Griffith contended that a federal tariff, though desirable, was not absolutely essential, and that Federation without intercolonial freetrade would be better than no Federation at all. Mr. Playford expressed himself disappointed at Sir Henry Parkes' "bald resolution," and would have liked a series of resolutions indicating the proposed constitution in outline. He also introduced "one or two notes of discord" by questioning the federal motives of Victoria, and the federal sincerity of New South Wales. Sir James Lee Steere also asked for more practical detail, and complained that "this motion was a kind of blank shot fired across our bows by Sir Henry Parkes to make us show our colours." He doubted whether Western Australia could afford to sacrifice her provincial tariff, and he advocated a very limited Federation, by a process of development out of the Federal Council. The other delegates heartily supported the motion, though some of them still hoped that, pending the achievement of a national Federation, New South Wales would join the Federal Council. Sir Henry Parkes replied in an eloquent speech, in which he defined, for himself and his colony, the high national standpoint from which he always looked, and tried to urge others to look, at this great question. "The main object for which, representing New South Wales, I stand here, is to say that we desire to enter upon this work of Federation without making any condition to the advantage of ourselves, without any stipulation whatever, with a perfect preparedness to leave the proposed Convention free to devise its own scheme, and if a central Parliament comes into existence, with a perfect reliance upon its justice, upon its wisdom, and upon its honour. I think I
know the people of New South Wales sufficiently to speak in their name; and I think I can answer for it that an overwhelming majority of my countrymen in that colony will approve of the grand step being taken of uniting all the colonies under one form of beneficent government, and under one national flag.

The debate was closed by Mr. Duncan Gillies, the President, who was now beginning to take a more hopeful view of the prospects - "lions" notwithstanding. "Now there is no one who is more anxious to see a great Federation — a Federation complete in the largest sense - than I am; but I confess that I see great difficulties — not insuperable, but great difficulties — in the way of bringing about this Federation, and I am very much afraid that even when delegates are appointed to the Convention our troubles will only have just begun. And when we meet, as I hope we shall shortly meet, in Convention, I believe we shall be able, in thrashing out the whole of these questions, to come to a solution that will be satisfactory to the whole of our Parliaments. In fact, on the subject of the tariff, I feel perfectly confident that, if we are not able at once to level the barriers between the colonies so far as customs duties are concerned, we shall be able to arrive at some modification which will be satisfactory to all, and that modification may be a very reasonable one." Sir Henry Parkes' resolution was then unanimously agreed to, as were also the three following resolutions:-

"2. That to the union of the Australian colonies contemplated by the foregoing resolution, the remoter Australasian colonies shall be entitled to admission at such times and on such conditions as may be hereafter agreed upon.

"3. That the members of the Conference should take such steps as may be necessary to induce the Legislatures of their respective colonies to appoint, during the present year, delegates to a National Australasian Convention, empowered to consider and report upon an adequate scheme for a Federal Constitution.

"4. That the Convention should consist of not more than seven members from each of the self-governing colonies, and not more than four members from each of the Crown colonies."

It was also agreed that the Premier of Victoria should convene the Convention, and arrange, after consultation with the other Premiers, the time and place of meeting.

Mr. Deakin then moved a further resolution, affirming that as the adoption of a Federal Constitution must take some time, and united action for defence and other purposes was a matter of urgency, "it is advisable that the Federal Council be employed for such purposes so far as its powers
will permit, and with such an extension of its powers as may be decided upon, and that all the colonies should be represented on the Council." This was, of course, an invitation for New South Wales and New Zealand to reconsider their attitude with regard to the Federal Council, and join that tentative body pending the adoption of a Federal Constitution. He thought that this would not only confer immediately the benefits of a partial union, but would also facilitate and hasten a more complete union. "If the two outstanding colonies," he said, "would only seek to induce their Parliaments to enter temporarily into the Federal Council, and wed with us from to-day, instead of putting off our marriage for two or three years, they would give striking evidence of the strength of the federal spirit." The representatives of the two truant colonies, however, declined to entertain the proposal for two reasons: - First, that they believed public opinion in those colonies to be against entering the Federal Council; and next, that if the motion were carried, there was danger that the lesser issue would overshadow the greater — or, as Captain Russell put it, it was possible that if they were satisfied to go into "the shanty of the Federal Council, they might never enter the palatial mansion of a Dominion Governor." At the suggestion of several delegates, Mr. Deakin withdrew the motion. The proceedings closed with an address to the Queen, informing Her Majesty of the resolutions arrived at.

RESOLUTIONS OF THE PARLIAMENTS. — The Conference having thus recommended a National Convention, the next step was to obtain the requisite Parliamentary action. New South Wales led the way. On 7th May, Sir Henry Parkes introduced in the Legislative Assembly a series of resolutions, affirming the concurrence of the House in the resolutions of the Conference, appointing four members to act with three members of the Legislative Council as delegates to a National Convention to frame a Federal Constitution, and requiring "that the Constitution, as adopted by the Convention, be submitted as soon as possible for the approval of the Parliament of this colony." On the same day similar resolutions were introduced by Mr. W. H. Suttor in the Legislative Council. In both Houses a protracted debate followed, extending with many adjournments, over several months. In the Assembly Mr. George R. Dibbs, the leader of the Opposition, opposed them strongly, announcing himself as in favour of an ultimate "complete union" of Australia as an independent nation, but condemning the scheme outlined by Sir Henry Parkes. Mr. J. H. Want also opposed the whole scheme as being a fashionable fad. Mr. G. H. Reid, while admitting the advantages of Federation, was not prepared to sacrifice the freetrade policy of the colony, and suggested an amendment to make it clear that when the Constitution was drafted it should be submitted to
Parliament, not merely for approval or disapproval as a whole, but for consideration in detail. Mr. T. M. Slattery moved an amendment recommending a "mutual system of defence," and joint action on a basis somewhat similar to that of the Federal Council, with the addition of a general Court of Appeal; but this was defeated by an overwhelming vote of 92 against 10. The resolutions were finally agreed to, on the voices, on 10th September. Some discussion occurred over the delegates nominated by Sir Henry Parkes, inasmuch as Mr. Dibbs, though opposed to the scheme, claimed a right to be nominated. The question was settled by balloting for the delegates in the Council, the resolutions were not finally passed until the 8th October. The whole discussion, in both Houses, showed a general passive assent to the general principle of Federation, coupled, however, with very divergent views as to the basis of union, considerable jealousy and mistrust of the other colonies, and a disinclination on the part of many members to any compromise on the tariff and other vital questions. Theoretical federalists were many, but earnest federalists were few; and there was as yet no popular impetus behind the movement — nothing more than a vague intellectual and sentimental assent to the principle.

In Victoria the matter was much more expeditiously dealt with. Resolutions similar to those carried in New South Wales were introduced in the Legislative Assembly by Mr. Gillies on 10th June, and carried on the same day. An amendment moved by Sir Bryan O'Loghlen, demanding a definite outline of the proposed scheme of Federation before the House concurred in the resolutions, received little support. In the Legislative Council, the resolutions were introduced by Mr. (afterwards Sir) H. Cuthbert on 1st July, and carried on 2nd July. Five delegates were appointed by the Assembly, and two by the Council, the Council carrying a resolution regretting that its right to a larger representation had not been recognized. In the South Australian Assembly, the resolutions were moved by Dr. Cockburn (Premier) in the Assembly on 26th June, were supported by Mr. Thomas Playford (Leader of Opposition), and carried after considerable debate on 22nd July. In the Council they were moved by Mr. J. H. Gordon on 24th June, and carried on 2nd July. Five delegates were appointed by the Assembly and two by the Council.

In Tasmania, the resolutions were moved in the House of Assembly by Mr. B. S. Bird (Colonial Treasurer) on 3rd July, and passed on the following day. They were then concurred in by the Council, and delegates elected — four by the Assembly, two by the Council, and one by both Houses together.

In Queensland, the resolutions were moved in the Assembly by Mr. B. D.
Morehead (Premier) on 9th July, and carried on the 15th. In the Council, they were moved by Mr. A. J. Thynne, on 23rd July, and carried on 6th August. Five delegates were appointed by the Assembly and two by the Council.

In New Zealand, Federation was a matter of remote interest, and in spite of repeated inquiries by Sir George Grey as to the intentions of the Government, nothing was done till 6th September, when Captain Russell introduced the resolutions in the House of Representatives, with an addendum "that the delegates so appointed shall not be authorized to bind this colony in any way." The debate showed a friendly but non-committal interest in the question, the balancing considerations being, the Australasian trade of the colony on the one hand, and its foreign trade on the other. The resolutions were carried on the 12th September, and on the 15th were moved and carried in the Council. Two delegates were appointed by the House of Representatives and one by the Council.

In Western Australia nothing was done until the 23rd February, 1891, when the Federal Convention was on the point of meeting. The resolutions were then moved and carried in both Houses on the same day, and seven delegates were appointed — five members of the Assembly and two of the Council.

THE SYDNEY CONVENTION OF 1891. — The first National Australasian Convention, "empowered to consider and report upon an adequate scheme for a Federal Constitution," was duly convened at Sydney on the 2nd March, 1891. The delegates from the several colonies were:-

**New South Wales:** Sir Henry Parkes (Premier), Mr. W. McMillan (Treasurer), Sir J. P. Abbott (Speaker), Mr. G. R. Dibbs (Leader of Opposition), Mr. W. H. Suttor (Vice-President of Executive Council), Mr. Edmund Barton, and Sir Patrick Jennings.

**Victoria:** Mr. Alfred Deakin (ex-Chief Secretary), Mr. James Munro (Premier), Lieutenant-Colonel W. Collard Smith, Mr. H. J. Wrixon (ex-Attorney-General), Mr. Duncan Gillies (ex-Premier), Mr. H. Cuthbert (ex-Minister of Justice), and Mr. Nicholas Fitzgerald.

**Queensland:** Mr. J. M. Macrossan (ex-Colonial Secretary), Mr. John Donaldson (ex-Colonial Treasurer), Sir S. W. Griffith (Premier), Sir Thomas McIlwraith (Treasurer), Mr. A. Rutledge, Mr. A. J. Thynne (ex-Minister for Justice), and Mr. Thomas Macdonald-Paterson.

**South Australia:** Mr. Richard Chaffey Baker, Mr. John H. Gordon (ex-Minister of Education), Sir John O. Bray (Chief Secretary), Dr. John A. Cockburn (ex-Premier), Sir John W. Downer, Mr. Charles O. Kingston, and Mr. Thomas Playford (Premier).

**Tasmania:** Mr. William Moore (President of Legislative Council), Mr.
Adye Douglas (ex-Premier), Mr. A. Inglis Clark (Attorney-General), Mr. W. H. Burgess, Mr. Nicholas J. Brown (Speaker), Mr. Bolton S. Bird (Treasurer), and Mr. Philip O. Fysh (Premier).

Western Australia: Mr. John Forrest (Premier), Mr. W. E. Marmion (Commissioner of Crown Lands), Sir James G. Lee Steere (Speaker), Mr. John A. Wright, Mr. John W. Hackett, Mr. Alexander Forrest, and Mr. W. T. Loton.


In each colony the delegates had been chosen from both sides of political life; so that, although in three colonies (Victoria, Queensland and South Australia) there had been a change of Ministry since the appointment of delegates, yet the Premier of each colony was among its representatives. Of the other delegates, nine were ex-Premiers, whilst nearly all either were or had been Ministers of the Crown. The first business done by the Convention was to appoint Sir Henry Parkes as President — an honour accorded to him as being not only the Premier of the colony where the Convention sat, but also "the immediate author of the present movement."

Sir Samuel Griffith was appointed Vice-President. Mr. Frederick William Webb, Clerk of the Legislative Assembly of New South Wales, was appointed Secretary to the Convention. The question of the admission of the press and public was then dealt with. The general feeling was that the debates, whether in Convention or in Committee of the whole, ought to be public; and it was resolved "that the press and public be admitted, unless otherwise ordered, during the sittings of the Convention, on the order of the President."

PARKES' RESOLUTIONS. — Before entering on the task of drafting a constitution, the Convention proceeded to debate at length, a series of resolutions proposed by Sir Henry Parkes, with the object of obtaining a preliminary interchange of ideas, and of laying down a few guiding principles. The discussion of these resolutions, first in a general debate, and then in Committee, occupied eleven sitting days, and fills more than half of the printed debates of the Convention. These resolutions enunciated a few essential federal principles, and outlined the basis of a federal legislature, judiciary, and executive; the text of them, as introduced, being as follows:-

"That in order to establish and secure an enduring foundation for the structure of a federal government, the principles embodied in the resolutions following be agreed to:-

"1. That the powers and privileges and territorial rights of the several existing colonies shall remain intact, except in respect to such surrenders as
may be agreed upon as necessary and incidental to the power and authority of the National Federal Government.

"2. That the trade and intercourse between the federated colonies, whether by means of land carriage or coastal navigation, shall be absolutely free.

"3. That the power and authority to impose customs duties shall be exclusively lodged in the Federal Government and Parliament, subject to such disposal of the revenues thence derived as shall be agreed upon.

"4. That the military and naval defence of Australia shall be entrusted to federal forces, under one command.

Subject to these and other necessary provisions, this Convention approves of the framing of a federal constitution, which shall establish:-

"1. A parliament, to consist of a senate and a house of representatives, the former consisting of an equal number of members from each province, to be elected by a system which shall provide for the retirement of one-third of the members every years, so securing to the body itself a perpetual existence combined with definite responsibility to the electors, the latter to be elected by districts formed on a population basis, and to possess the sole power of originating and amending all bills appropriating revenue or imposing taxation.

"2. A judiciary, consisting of a federal supreme court, which shall constitute a high court of appeal for Australia, under the direct authority of the Sovereign, whose decisions, as such, shall be final.

"3. An executive, consisting of a governor-general and such persons as may from time to time be appointed as his advisers, such persons sitting in Parliament, and whose term of office shall depend upon their possessing the confidence of the house of representatives, expressed by the support of the majority."

The first draft of these resolutions had been framed by Sir Henry Parkes before the Convention met, and submitted by him to an informal meeting of the New South Wales delegates. (See Parkes' Fifty Years in the Making of Australian History, pp. 603–6.) This original draft differed in several important respects from the resolutions as moved. The clause as to the reservation of the "powers and privileges and territorial rights" of the colonies was absent from the original draft; but there was a clause providing for a federal High Commission to devise "an equitable scheme for the distribution of the public lands, and the satisfying of existing territorial rights," such scheme keeping in view both the necessary strength of the National Government and the just claims of the respective provinces. This High Commission was to be appointed by at least a two-thirds majority of the colonies, and was to report within two years; the final
settlement to be made by a federal law, approved by a majority of the provincial Parliaments. In drafting this clause, Sir Henry Parkes had in view the vast unoccupied areas in North Queensland, the Northern Territory of South Australia, and Western Australia; but his colleagues urged that any mention of the public lands would be inadvisable, and he deferred to their opinion. The first draft moreover provided for the disposal of customs revenues not merely "as shall be agreed upon," but "as shall be approved by the Federal and Provincial Parliaments." The clause as to defence provided for the raising of bodies of Militia or Volunteers by the Federal Parliament. As to the Senate, the retirement of members was to be "one-third every seven years." The provision that the House of Representatives was to "possess the sole power of originating and amending all Bills appropriating revenue or imposing taxation" was absent; as were also the words requiring that the members of the federal executive should sit in Parliament. And lastly, the federal Supreme Court was to consist of "not fewer than ten judges." The resolutions as submitted were therefore the President's own draft, as amended after consultation with his colleagues. He proposed them, not as embodying his final convictions, but as a ground-work of debate, and as expressing an outline of the required Constitution as it existed in his own mind. They were based, beyond all doubt, on a comparative study of the Constitutions of the United States and Canada. The fundamental principles of union thus laid down were - intercolonial freetrad, a federal tariff, federal defence, and the reservation of provincial rights in provincial matters; whilst the essential features of the proposed national machinery were a complete national government, with legislative, judicial, and executive departments; a legislature of two chambers, representing respectively the States and the nation; and a system of responsible government. Sir Henry Parkes prefaced his exposition of these resolutions by an appeal to the Convention to enter upon the work "in a broad federal spirit." "We cannot hope for any just conclusion — we cannot hope reasonably for any amount of valid success — unless we lose sight, to a large extent, of the local interests which we represent at the same time as we represent the great cause. There can be no Federation if we should happen, any of us, to insist upon conditions which stand in the way of Federation ..... It does seem to me in the highest degree necessary that we should approach the general question in the most federal spirit that we can call to our support."

In the general discussion which followed, most of the delegates took part. As to the greater part of the resolutions there was practical unanimity. The discussion turned mainly on the powers of the two Houses, and their relation to the executive. Sir Samuel Griffith began by arguing that the
double principle of representation logically involved the proposition that every federal law should receive the assent of a majority of the people and a majority of the States. The Senate ought to have an absolute power of veto, and to refuse it the power of amending money bills was to refuse it the power of "veto in detail" as to those Bills. He admitted that the principle of two co-ordinate Houses was new in conjunction with responsible government, and thought that the Constitution should be elastic enough to allow the problem of the responsibility of Ministers to Parliament to work out its own development. The Senate's power to amend money bills was supported by the representatives of all the smaller colonies, but was vehemently opposed by the Victorian delegates (with the exception of the veteran Legislative Councillor, Mr. Nicholas Fitzgerald). The New South Wales representatives were divided on the subject. In Victoria — which, curiously enough, was the only colony whose Constitution expressly forebade the Upper House to amend money bills — there had been serious deadlocks on financial matters, and the financial predominance of the Lower House was a prominent article of political faith. Mr. Deakin, however, admitted that the degree of power which might be entrusted to the Senate would depend largely on the mode of election adopted; and Mr. Cuthbert threw out the idea that the matter might be compromised by the South Australian method of allowing the Senate to "suggest" amendments. The problem of responsible government with a strong Senate was discussed, and Mr. Hackett propounded the dilemma that "either responsible government would kill federation, or federation would kill responsible government." Mr. Munro raised the difficulty that the Senate's power of absolute veto meant power for the minority to rule. Mr. Deakin objected to the veto being extended to all kinds of legislation, whether State-rights were involved or not; and Mr. Barton pointed out that State-interests as well as State-rights were involved. In fact, all the elements of the subsequent discussions on "State-rights" and "majority rule" were present at the outset — except that there was no suggestion as yet of constituting the Senate in any other way than by equal representation.

The fiscal question was also prominent in the debate. Some of the Victorians suggested a "guarantee" against ruthless interference with the vested interests created by their protective policy. They asked that it should be made clear that intercolonial freetrade was not to come about until the federal tariff was in force, and further suggested that for the first few years it should not be possible to reduce existing duties too suddenly. The latter suggestion, however, was somewhat satirically criticised by the representatives of other colonies, and was not pressed. The general feeling
was that the fiscal policy of Australia must be absolutely entrusted to the Federal Parliament. One or two other elements of discord obtruded themselves during the debate. Sir George Grey, following the precedent of the original Constitution of New Zealand, proposed to place no limits on the legislative scope of the Federal Parliament — thus reducing the State legislatures to subordinate bodies; he also advocated the election of the Governor-General by the people, and believed it to be "the duty of the Convention" to give the electors of each State full power to reform their own Constitutions — an end which should be achieved by the simple process of giving them elective Governors and elective Legislative Councils. This proposal to meddle with the State Constitutions received no support at all. Mr. Dibbs next threw into the Convention the "bombshell" of the federal capital — a bombshell which, however, failed altogether to explode.

THE RESOLUTIONS IN COMMITTEE. — The Convention then, on 13th March, went into Committee of the Whole to consider the resolutions in detail. Some discussion took place on the advisability of amplifying the resolutions for the better guidance of those who might be appointed to draft a Bill. On Mr. Deakin's motion, the paragraph vesting exclusively in the Federal Parliament the power to impose customs duties was extended to duties of excise, but with the limitation - designed to prevent the unfair treatment of the products of any colony — that such duties should only be imposed "upon goods the subject of customs duties." On Mr. Gordon's motion, the paragraph was further extended to include the offering of bounties.

But the main debate, extending over two days, was on the power of the Senate with regard to money bills. This was the critical question which divided the Convention, and as to which the watch-word of "compromise" was not at first listened to. Sir Henry Parkes' resolution proposed to give the House of Representatives "the sole power of originating and amending all Bills appropriating revenue or imposing taxation." The smaller States, however, claimed for the Senate "co-equal powers," with the sole exception of initiating money Bills; they asked for full powers of amendment and rejection - of "veto in detail" and "veto in bulk." An amendment by Sir John Downer, to strike out the words "and amending," was agreed to, by way of preliminary, not as deciding the question, but as leaving it open for discussion. The real battle then took place on two amendments: one by Sir John Downer, giving the Senate "the power of rejecting in whole or in part any of such last-mentioned Bills;" the other by Mr. Wrixon, providing (1) that the powers of the Houses should be equal except with regard to money Bills, which the Senate should be entitled to
affirm or reject, but not to amend; and (2) that it should be unlawful to "tack" anything to the annual appropriation Bill. Sir John Downer's amendment represented practically the extreme claims of the small States; Mr. Wrixon's that of the large States, with the provision against "tacking" thrown in as a concession. The debate became warm; neither side seemed inclined to give way, and hints were thrown out that the delegates might as well "pack up their portmanteaux." At last, however, the "spirit of compromise" was successfully appealed to; and though no basis of compromise could as yet be found, it was agreed not to press the matter to a vote at that stage, but to withdraw both amendments and let the decision stand over.

The resolution dealing with the executive was amended by leaving out the words which provided that Ministers should sit in Parliament, and that their term of office should depend on the confidence of the House of Representatives. It was not deemed advisable to stereotype the conventional rules of responsible government in this way. Sir Samuel Griffith thought it ought to be distinctly provided, as in the Constitutions of the colonies, that Ministers "may" sit in Parliament; but it was decided to leave the whole question open till a later stage.

The judiciary resolution was amended by omitting the provision that the decisions of the Supreme Court should be final, and this question also was left open. On Mr. Barton's motion, a resolution was added to forbid the subdivision or amalgamation of States without the consent of the Legislatures of the States concerned. Sir George Grey moved a resolution to allow the people of each State "to adopt, by the vote of a majority of voters, their own forms of State Constitution." This was objected to, as being an interference with the States. It was agreed, however, that the States ought not to have to go to the Imperial Government for power to change their Constitutions, and it was resolved "that provision should be made in the Federal Constitution which will enable each State to make such amendments in its Constitution as may be necessary for the purposes of the Federation." The resolutions, as amended, were then reported and agreed to.

APPOINTMENT OF COMMITTEES. — So far, the formal result of the Convention's work was merely a few resolutions, dealing with matters of general principle, and no decision had been reached upon any of the critical questions. The discussion, however, had pretty well tested the feelings of the Convention, and the time was now ripe to formulate the details of a complete scheme in the shape of a Bill. Accordingly, on 18th March, resolutions were passed for the appointment of three Committees; one, consisting of three members from each delegation, to consider
constitutional machinery; a second, consisting of one member from each
delegation, to consider finance, taxation, and trade regulation; and a third,
consisting of one member from each delegation, to deal with the judiciary.
The two latter Committees were to report to the Constitutional Committee,
which was to prepare and submit to the Convention a Bill for the
establishment of a Federal Constitution. The different delegations made
their own nominations to these Committees, which were composed as
follows:-

**Constitutional Committee**: Sir H. Parkes, Mr. Barton, Mr. Gillies, Mr.
Deakin, Sir Samuel Griffith, Mr. Thynne, Mr. Playford, Sir John Downer,
Mr. Clark, Mr. Douglas, Sir Geo. Grey, Captain Russell, Mr. John Forrest,
Sir James Lee-Steere.

**Finance Committee**: Mr. McMillan, Mr. Munro, Sir Thomas McIlwraith,
Sir John Bray, Mr. Burgess, Sir Harry Atkinson, Mr. Marmion.

**Judiciary Committee**: Mr. Dibbs, Mr. Wrixon, Mr. Rutledge, Mr.
Kingston, Mr. Clark, Sir Harry Atkinson, Mr. Hackett.

These Committees set to work on 19th March, and in the course of the
next twelve days was framed the first draft of a Bill to constitute the
Commonwealth of Australia. The framing of that Bill marks an epoch in
the history of the movement. In those few days Federation came down
from the clouds to the earth; it changed from a dream to a tangible reality.
The idea was once for all crystallized into a practical scheme, complete in
all its details. As to many of the details, and even many of the principles,
there was still, to be keen and protracted dispute; but with their definition
the era of vague generalities ended, and the era of close criticism began.

So important was the work of the Convention, and so great was its
influence in the development of the Constitution, that it is necessary to
review the material which the Convention had at their disposal. First of all,
they had the Constitution Acts of the several colonies — all drawn from
the common model of the British Constitution, but all differing from it and
from one another in many important respects. Then they had their own
experience, as practical politicians, of the working of those Constitutions,
and a close familiarity with their merits and defects. As some guide to the
form of union needed, they had the various reports and debates which
made up the history of the federal movement in Australia — a history in
whose more recent stages many of the delegates had been actors. As a
warning of faults to avoid, they had the example of the weak and impotent
Federal Council — just as the Philadelphia Convention of 1787 had the
example of the earlier confederation. Lastly, as models of federal
government, they had the constitutions of the United States of America and
the Dominion of Canada — and, in a less degree, of the Swiss Republic -
together with all the critical, historical, philosophical, and constitutional literature on the subject of federal systems and institutions. They were better equipped than the framers of the American constitution by the variety of federal examples available to them, and by a whole century's advance in political science. The Convention numbered many constitutional students who had deeply interested themselves in the subject — among whom may be specially mentioned Sir Samuel Griffith of Queensland, Sir Henry Parkes and Mr. Barton of New South Wales, Mr. Deakin and Mr. Wrixon of Victoria, Mr. R. C. Baker and Mr. Kingston of South Australia, and Mr. Inglis Clark of Tasmania. Mr. Baker had prepared a "Manual of Reference to Authorities" for the use of the Convention; whilst Mr. Clark had prepared an entire draft Constitution.

The deliberations of the Committee were private. The last stage in the process of drafting was completed on board the S.S. Lucinda, on the Hawkesbury River, from 27th to 29th March, by a sub-committee consisting of Sir Samuel Griffith, Mr. Kingston, Mr. Barton, and Mr. Inglis Clark. On 31st March Sir Samuel Griffith, who had been appointed Chairman of the Constitutional Committee, and who had the chief hand in the actual drafting of the Bill, brought up the Report of that Committee, together with a draft Bill to constitute the Commonwealth of Australia. The reports of the Finance and Judiciary Committees were also appended.

The real work of the Convention was now practically finished; for although the subsequent discussion in Committee occupies nearly half the printed volume of debates, not half a dozen substantial amendments were made. Indeed, with the single exception that the mode of distributing the surplus was readjusted, the Bill as it came from the draftsmen was, with a few verbal and minor alterations, adopted in its entirety. A good number of amendments were moved; but so well had the Constitutional Committee gauged the sense of the Convention that these were nearly all defeated. Only 21 divisions were taken in all; and of these only three resulted in favour of a modification.

The framework of the Bill was on the lines which have since become familiar by being adopted in all the subsequent stages of the movement. It was cast in the shape of a Bill for submission to the Imperial Parliament — the few clauses dealing with the establishment of the Federation being placed first by themselves, and the Federal Constitution itself following as a separate document. The Constitution provided for the machinery of a complete central government, with a federal legislature, executive, and judiciary. In the matter of nomenclature, the only novelty was the use of the word "Commonwealth", which was at first adopted provisionally for want of a better, but which was so apt and descriptive, so simple and dignified,
that it came to stay. It is not too much to say that this grand old word, rich in meaning and tradition, and intimately associated with the literature and history of the English people, did more to arrest the public attention and kindle the public imagination than any other word in the English language could have done. For a little while, indeed, it jarred upon some ears with a slight revolutionary echo, owing to association with Cromwell's Protectorate; but its older and deeper meaning soon prevailed, and it stands to-day for the type and the ideal of Australian nationhood. For the component members of the union, the word "States" was preferred to either "provinces" or "colonies;" and for the two Houses of the Federal Parliament the words "Senate" and "House of Representatives" — sanctioned by the usages of more than one English-speaking community — were adopted.

THE MAIN COMPROMISES. — The serious "lions in the path" were of course the differences of population, and the differences of fiscal policy; and accordingly the chief issues in the Convention were (1) between large States and small States, and (2) between a high-tariff policy and a low-tariff policy.

As regards the former question, the necessity of equal representation of States in the Senate was conceded from the outset, and Sir Henry Parkes, in his preliminary resolutions, had voluntarily offered it. This concession was made, however, subject to the definite and unequivocal condition that the House of Representatives should have the predominating voice in finance and in the control of the executive. "I offered voluntarily, as far as I was individually concerned," he had said (Convention Debates, 1891, p. 448), "an equal representation to Western Australia as either Victoria or New South Wales would have in the Senate. But I stipulated that that power which is held by the House of Commons should be held by the House of Representatives - that is in as effective a way as the words of a written resolution could prescribe." But some of the colonies, not content with equal representation in the Senate, had claimed equal power for the Senate, and round these two standards the real battle of the Convention was fought. The draft Bill embodied what was subsequently referred to as the "compromise of 1891". The Senate was given equal power with the House of Representatives, except that Appropriation Bills and Taxation Bills were to originate in the House of Representatives alone; and that the Senate was forbidden to amend Taxation Bills or Bills "appropriating the necessary supplies for the ordinary annual services of the Government," or to amend any Bill "in such a manner as to increase any proposed charge or burden on the people." As some compensation for these restrictions, the Senate was given, with respect to Bills which it might not amend, a power to suggest
amendments. That is to say, the Senate might at any stage return any such Bill to the House of Representatives "with a message requesting the omission or amendment of any items or provisions therein." As a further compensation and as a guarantee to the Senate of some measure of "veto in detail," Taxation Bills were to deal with taxation only, and with only one kind of taxation; and no extraordinary appropriations were to be tacked to the ordinary Appropriation Bill. As regards the responsibility of the executive, Sir Henry Parkes' original proposition requiring Ministers to sit in Parliament and to hold office subject to their "possessing the confidence of the House of Representatives, expressed by the support of the majority," was not adopted; but responsible government was indicated by the provisions that there should be a "Federal Executive Council" to advise the Governor-General, and that the chief heads of departments should hold office during the Governor-General's pleasure, should be capable of sitting in either House of Parliament, and should be members of the Federal Executive Council. The intention was (to quote Sir Samuel Griffith's words of a later date) "so to frame the Constitution that responsible government may — not that it must — find a place in it."

The compromise with regard to the tariff was of a different kind. It was obviously out of the question for the Convention to frame a tariff, or even to fix the principles on which the Federal Parliament should frame a tariff. Yet the Victorians were anxious for some "guarantee" that their manufacturing interests should not be injured by a sudden reversal of their protectionist policy; whilst the free trade majority of New South Wales were equally afraid that their fiscal faith would not be shared by the Federal Parliament. Sir Henry Parkes had always taken the high federal ground that the fiscal question must be left unreservedly and unconditionally to the Australian people to decide for themselves. He placed Federation above any fiscal policy, and claimed that the other colonies should do the same. Vested interests — whether they were the interests of manufacturers or the interests of importers and consumers — must be entrusted on both sides to the good faith of the Parliament and people whom they were about to create. This settlement, which was the only one possible, was embodied in the draft Bill. The Federal Parliament was given full powers of raising money, not only by customs and excise, but by every other mode of taxation; and the only conditions imposed upon this power were that federal taxation must be uniform in all the colonies, and that, on the adoption of a uniform tariff, trade between the colonies should be free. Until the adoption of a federal tariff, the provincial tariffs were to remain, not only as against the outside world, but as between the States; and after that event the power to impose customs and excise was to
be vested exclusively in the Federal Parliament, though the States were to retain concurrent powers of raising money by every other mode of taxation.

OTHER PROVISIONS. — For the rest, the Bill will be best described, not by a complete summary of its provisions, but by reference to its main points of difference from the Constitution as now enacted.

Federal Parliament. — The Senators were to be elected by the Parliaments of the several States. The number from each State was fixed at eight; and equal representation was conceded, not only to original States, but to all the existing colonies. In the House of Representatives, each State was to have one member for every 30,000 of its people; but this quota was alterable by Parliament. Each State was to have a minimum of four representatives. There was no ratio fixed between the number of members of the two Houses; the size of the Senate depending upon the number of States, whilst the size of the House of Representatives would depend upon the quota fixed by the Constitution or by Parliament. Each State was to determine its own electoral divisions, and was to elect its members upon its own provincial franchise. Plural voting was not prohibited, and the Federal Parliament was not empowered to frame a uniform franchise. There was no express provision for the settlement of deadlocks between the two Houses.

The legislative powers of the Federal Parliament were substantially the same as at present, with the following exceptions:- Astronomical and meteorological observations, insurance, invalid and old age pensions, conciliation and arbitration, and the acquisition of property for public purposes, were not included. In the "banking" sub-clause there was no exception of State banking. The river question was only represented by a power to legislate as to "river navigation with respect to the common purposes of two or more States, or of the Commonwealth." There was no clause providing for the acquisition of State railways, or railway construction and extension; but the power to make laws for the control of railways "with respect to transport for the purposes of the Commonwealth" was not limited, as it now is, to "naval and military purposes."

Federal Supreme Court. — The Federal Supreme Court was not established by the Constitution itself, but was left to be established by the Federal Parliament. The form of the judiciary clauses was somewhat different from what it is now; but the only important difference of substance was with regard to appeals. Not only was the Supreme Court given a general jurisdiction to hear appeals from the Supreme Courts of the States, but Parliament was empowered to abolish, in part or in whole, the existing right of appeal from the State Courts direct to the Privy Council. The judgment of the Supreme Court was made final in all cases; except
that the Queen might, "in any case in which the public interests of the Commonwealth, or of any State, or of any other part of the Queen's dominions are concerned," grant leave to appeal to the Privy Council.

Finance. — With regard to finance, the question which gave the Committees the most trouble was the basis of apportionment of surplus revenue among the States. It was recognized that the customs revenue must be collected by the Commonwealth; but as it was decided that the Commonwealth was not, at the outset, to be saddled with the public debts of the States, it was soon seen that only a fraction of the revenue would be needed for federal expenditure, whilst the States would require much of it to meet their own expenditure. "The great difficulty" (said Sir Samuel Griffith in introducing the Bill) "and it is a difficulty peculiar to this Constitution, so far as I have any knowledge — is that the customs revenue of the colonies in all cases forms a very large share of the means of meeting the expenses of government; and as we should take over only a very small part of the expenditure, the Commonwealth would start with an enormous annual surplus of many millions, which it could not retain or expend, but must return to the different States. That is a difficulty almost as great as the difficulty of making a levy upon the different States as States. It is a great difficulty, but we have to face it, and the question is, what is to be done?" (Conv. Deb., Syd., 1891, p. 528.) Should revenue be credited to the several States in proportion to their populations, or in proportion to their contributions? Should expenditure be charged against the several States in proportion to their populations, or on the basis of services rendered? So far as revenue was concerned, the population basis of adjustment seemed the most federal, but not the most fair. Statistics showed that the consumption of dutiable articles varied greatly in the different colonies, and it anticipated that even under a uniform tariff considerable differences might continue. The contribution basis seemed fairer, but less federal; and it was open to the objection that with intercolonial freedom of trade it would be difficult to ascertain accurately what share of dutiable articles was consumed in each State.

Here, at the outset, was the whole financial difficulty which was afterwards to cause so much trouble. The recommendation of the Finance Committee had been as follows:— "That after a uniform tariff has come into operation, the surplus revenue may fairly be distributed amongst the various colonies according to population; but as the duties contributed by the various colonies are so unequal, it would be unfair at the present time to distribute the surplus on this basis; it is, therefore, recommended that the revenue from customs and excise be devoted, first, to the payment of all expenditure authorized by the Federal Government, such expenditure to be
charged to the several colonies according to population; the balance to be returned to the colonies in such a way that the amount paid by each colony for such federal expenditure, added to the amount returned, be, as nearly as can be ascertained, the total amount contributed by each colony on the dutiable articles consumed." (It seems that the resolution had originally run "that some time after," &c.; but the words "some time" were eventually omitted. See Conv. Deb., Syd., 1891, p. 814.)

In other words, the Committee recommended that the federal expenditure, both before and after the uniform tariff, should be charged against the colonies in proportion to population. The revenue, however, was to be credited differently for the two periods. As long as the provincial tariffs remained in force, each State was to get back the amount of its contribution, subject to a deduction of its population share of the federal expenditure. But as soon as the uniform tariff came into force, and the border custom-houses disappeared, the "contribution" basis was to be done away with, and population was to be the basis for distributing revenue as well as for charging expenditure.

The Constitutional Committee, however, in framing the Bill, departed altogether from these recommendations. They provided that the federal revenue, both before and after the uniform tariff, should be applied in the first instance to paying the federal expenditure, and the surplus should be returned to the several States "in proportion to the amount of revenue raised therein respectively," subject to certain provisions that taxes should be "taken to be collected" in the State where the dutiable articles were consumed; or, in the case of direct taxation, where the taxable property was situated. In other words, they cut the "population" basis out altogether, and made "contribution" the basis, not only for distributing the surplus, but also for charging expenditure — and after as well as before the uniform tariff.

Trade and Commerce. — As to trade and commerce, the only provisions explanatory of the federal power (in addition to the clause as to "river navigation" already mentioned) were two short clauses; one, copied from the United States Constitution (Art. L, see. ix., 5), forbidding any preference to be given to the ports of one State over those of another; and the other empowering the Federal Parliament to annul State laws derogating from freedom of inter-state trade. The questions of preferential railway rates, and of the possible conflicting claims of river navigation and irrigation, were as yet only vaguely recognized as difficulties, and no attempt was made to define the basis of a settlement.

Federal Capital. — The federal capital was left to be determined by the Federal Parliament; and until such determination, the Parliament was to meet at such place as should be appointed by a majority of the Governors
— or, if they were equally divided, by the Governor-General.

Amendment. — The mode prescribed for the amendment of the Constitution introduced the American principle of ratification by elected State Conventions — not, as now provided, by the electors directly. Any law for amendment was first to be passed by an absolute majority of both Federal Houses, and then submitted to Conventions chosen in each State on the Parliamentary franchise; and if approved by Conventions of a majority of the States, it was to become law, subject to the Queen's power of disallowance.

Summary. — The foregoing sketch shows that in the first draft of 1891 the whole foundation and framework of the present Constitution was contained. Its general characteristics, as compared with the Constitution as it now stands, may be summed up in a few words. In the first place — as is natural in a first draft — it followed more closely, in substance and in language, the literary models — American, Canadian, and Australian — which were available to the Convention. In the next place, it was in some few respects less essentially democratic in its basis — a circumstance which is also natural, in view both of the continuous development of democratic ideas, and of the more completely popular impulse of the later stages of the federal movement. And lastly, it was less definite and less elaborate in its treatment of some of the vexed problems — problems which had not yet been the subject of exhaustive discussion, and some of which had only been mooted in vague and general terms. The peculiarities of our railway development, the unique characteristics of our river system, the special difficulties arising out of our tariff policies and requirements, had not yet been adequately studied.

The constitutional problem of reconciling the representation of State interests with British principles of legislation and finance — of bringing into harmony the conflicting elements of State rights and interests on the one hand, and of national rights and interests on the other — in short, of securing responsible government, legislative finality, and the general predominance of the House of Representatives, without "killing Federalism," was as yet incompletely solved. All these things were inevitable at the first attempt to grapple practically with the question. But in spite of imperfections, the first draft stands as a convincing monument of the wisdom, the statesmanlike ability, and the patriotism of its framers. In those few days they laid down the main lines from which the movement has never since wavered. On 2nd March, 1891, Australian Federation was a misty abstraction; on 31st March it had definite outlines and a practical policy.

COMMONWEALTH BILL IN COMMITTEE. — The Bill was brought
up by the Constitutional Committee on 31st March, and a short "second reading" debate took place on Sir Samuel Griffith's motion to refer it to Committee of the Whole. The Convention was anxious to get to close quarters with the Bill, and the only members who followed Sir Samuel Griffith in the general debate were Mr. Wrixon, Mr. Baker, and Mr. Inglis Clark. Mr. Wrixon's speech was specially remarkable for its almost prophetic insight into the modifications that would be necessary before the Bill could be wholly acceptable; reading his criticisms, it is hard to believe that they bear so early a date as 1891.

The motion to go into Committee was passed, and from 1st to 8th April the Convention was occupied with the discussion of the clauses of the Bill. The debates of those days are interesting, as being the first discussion in public of the details of the proposed Constitution. The amendments carried were few, and in most cases unimportant; but a good deal of light is thrown on the views of the Convention by some of the proposals that were rejected — and also by the lack of debate on some questions which afterwards assumed prominence.

The word "Commonwealth," though somewhat apologetically supported, was retained on division by a large majority; none of the alternative suggestions — such as "Federated States," "Federation," "United Australia" — finding many friends. An amendment moved by the veteran democrat, Sir George Grey, for the purpose of providing that the Governor-General should be elected by the Australian people, was sympathetically received, but summarily dealt with; and a tentative amendment by Mr. Baker, to define in a schedule some of the powers and functions of the Governor-General, was withdrawn after a short debate on the question of ministerial responsibility.

Election of Senators. — In place of the provision for the election of Senators by the State Parliaments, Mr. Kingston proposed to leave each State free to elect its own Senators in its own way. He argued that uniformity was not attained by the clause as it stood, because the various Upper Houses, which would share in the election, were not uniformly constituted. If uniformity were the all-important thing, he would have preferred to prescribe direct election by the people in large constituencies; but the chief consideration was to satisfy the several States. The proposal, however, was negatived by a large majority. The Convention felt that a want of homogeneity in the Senate would be undesirable; and as the alternative system of uniform election by the people did not as yet find enough favour to be worth proposing, the American plan was adhered to.

Federal Franchise. — The franchise for the House of Representatives was the subject of two unsuccessful amendments, for which the hour was
not yet ripe. Dr. Cockburn moved an amendment to forbid property qualifications, and to give each elector a vote only for one electorate — in other words, to embody the principles of manhood suffrage and "one man one vote." And Mr. Barton moved an amendment to allow the Parliament to prescribe a uniform federal franchise. "It does seem to me," he said, "that if you are going to trust the Parliament of the Commonwealth at all, you must trust it to fix its own franchise." Both these amendments, though they received some support, met with much opposition. The suggestion that either the Federal Constitution or the Federal Parliament should meddle with the franchise — though only for federal purposes — was criticized as an invasion of State rights; and though this argument was answered, it prevailed. Mr. Gillies appealed to the Convention to "abandon these fads," for which there was no practical necessity, and which would throw difficulties in the way of Federation. Mr. Barton's amendment was put first and negatived without division; and Dr. Cockburn's was then defeated on division by 28 votes to 9.

Trade and Commerce. — The clause defining the powers of the Federal Parliament opened up several questions of which more was afterwards to be heard. On the "trade and commerce" sub-clause, Mr. Gordon — confessedly with an eye to South Australian interests in the Broken Hill trade — asked whether the power to regulate trade and commerce gave any authority to regulate railway rates on intercolonial lines. Mr. Clark argued that the American interpretation showed that the clause implied considerable power of control; but Mr. Gordon asked that the powers intended should be definitely given, and announced his intention of framing a sub-clause for the purpose. Sir Samuel Griffith feared there was no middle course between giving the Commonwealth complete "control of railway tariffs," and leaving the States to do as they liked; and said that the only federal control which the Constitutional Committee had seen fit to recommend was contained in the clause empowering the Federal Parliament to annul State laws "having the effect of derogating from freedom of trade or commerce" between the States. Mr. Donaldson suggested that the real solution both of the "differential rates" problem and of the "distribution of surplus" problem was to federate the debts and railways. The discussion was merely a preliminary one, and no amendment was proposed in the sub-clause; but shortly afterwards Mr. Gordon proposed a new sub-clause giving the Federal Parliament power to regulate railway traffic and traffic charges where required "for freedom of trade and commerce, and to prevent any undue preference to any particular locality within the Commonwealth, or to any description of traffic." These words were criticized as being much too wide, and as giving the Federal
Parliament excessive powers of interfering with State railway management. It was argued that so long as the States retained the financial responsibility over the railways, they must retain full control except so far as their action might interfere with the federal principle. Mr. Deakin pointed out that rates which "derogated from freedom of trade" were already prohibited; and Mr. McMillan argued that differential rates which did not so derogate might be perfectly legitimate. There was a general agreement that some kinds of differential rates should be prohibited, but no satisfactory clause could be suggested; so Mr. Gordon's amendment was negatived. A similar fate befell a clause proposed by Mr. Clark to prevent "discriminating rates" which gave a preference to any locality, or any description of traffic; and the "trade and commerce" power was left unexplained, save for the "derogation" clause.

Rivers. — The river question also raised some debate. The Finance and Trade Committee — foreseeing that federal control might be needed for other purposes than navigation — had recommended a federal legislative power as to "Intercolonial rivers and the navigation thereof;" but the Constitutional Committee had cut this power down to "River navigation with respect to the common purposes of two or more States." Mr. McMillan argued that federal powers with regard to the use of the water for irrigation and conservation should be added; and accordingly Sir Samuel Griffith moved tentatively to insert the words "and conservation of water." This was objected to as affecting property and riparian rights; though on the other hand it was argued by Mr. Deakin that powers of conservation for the purpose of maintaining and improving navigability were conferred by the clause as it stood. Discussion showed that the question was too difficult to be dealt with off-hand, and the amendment was withdrawn.

Powers of Senate. — The chief debate, however, was on the vexed question of the powers of the Senate. When the clause embodying the Committee's compromise on this matter was reached, Mr. Baker at once raised the whole question by submitting an amendment for the purpose of giving the Senate absolutely co-equal powers with the House of Representatives. Dr. Cockburn supported him, on the broad ground that "the principle of Federation" required, not merely equal representation in the Senate, but the equal power of both Houses; and that centralization was incompatible with, and State-rights were essential to, a real democracy. This doctrine was upheld, more or less, by most of the representatives of the small States; whilst, apart altogether from the question of State-rights, the principle of a strong Upper House was favoured by the more Conservative representatives, not only of the small States, but of New South Wales as well. Both these aspects were vigorously combated by the
solid phalanx of Victorian representatives, by Sir Henry Parkes and others for New South Wales, and by Mr. Playford for South Australia. Mr. Deakin denounced the combination of "reactionary radicals and iconoclastic conservatives" who would place an absolute veto in the path of the people. Mr. Munro warned the Convention that the clause as it stood was the utmost limit of compromise which Victoria would accept. Adherence to the compromise reached was urged by Sir Samuel Griffith for Queensland, by Mr. Bird for Tasmania, by Mr. Playford and Mr. Kingston for South Australia, by Mr. Hackett for Western Australia. From large States and small States alike came the appeal "keep to the compromise;" and the amendment was defeated on division by 22 votes to 16. Mr. McMillan then moved an amendment with the object of giving the Senate full power to amend, in the first instance, all Bills except Appropriation Bills; but forbidding it to amend Taxation Bills a second time. This also was rejected. Mr. Wrixon, however, feared that even the power of suggestion might lead to deadlocks; and to guard against this he put forward an embryo "deadlock provision," to the effect that if a "suggestion" of the Senate were declined by the House of Representatives, the Senate might request a joint meeting of the two Houses, at which a majority should decide. It should be noticed that this proposition was fundamentally different from the joint sitting as now embodied in the Constitution. It was only available to deal with suggestions by the Senate — the precise subject which a joint sitting is now forbidden to consider. The suggestion failed to find favour with the friends of either House. It was criticized as dangerous and "mechanical," and was negatived with little debate.

Responsible Government. — With regard to the Executive Government, the only debate of importance arose on the question of the best words in which to suggest the responsibility of Ministers. The Bill as drafted provided that the chief departmental heads should be members of the Federal Executive Council; to which Mr. Wrixon proposed to add, "and responsible Ministers of the Crown." The word "responsible," however, was criticized as being of uncertain meaning; and on Sir Samuel Griffith's suggestion the phrase "the Queen's Ministers of State for the Commonwealth" was adopted.

Finance. — The finance clauses gave rise, not only to an important debate, but to some important alterations. The "contribution" basis of apportioning expenditure and revenue came in for severe criticism, and the members of the Finance Committee wanted an explanation of the reasons why their recommendation had been departed from. So far as expenditure was concerned, no satisfactory explanation was forthcoming, except that
Sir Samuel Griffith and some others seemed to think there would be some inconsistency in charging expenditure against the several States on a different basis from that on which revenue was credited. This idea, however, was demolished by Sir Thomas McIlwraith, on whose motion an amendment was carried providing that federal expenditure, from the outset, should be borne by the several States in proportion to population. The apportionment of revenue caused more difficulty. Sir John Bray objected to the "contribution" basis, as requiring an account to be kept of the ultimate destination of dutiable goods, and argued that as soon as a federal tariff was adopted, revenue ought to be credited on the basis of population. "We ought to assume" he said "that any uniform customs tariff that bears fairly on the inhabitants of Australia will result in the inhabitants of each colony paying the same per head pro rata as the inhabitants of Australia generally pay." Sir Thomas McIlwraith and Sir Samuel Griffith were prepared to admit that there might ultimately be an approximation to equality, but argued that for many years to come there would be inequality of contribution, and that meanwhile the population basis would be unfair. Mr. McMillan agreed that there would be some inequality of incidence, but was inclined nevertheless to favour the population basis as being the most federal. However, he suggested a compromise; to leave the contribution basis in force, after the adoption of a federal tariff, until the Federal Parliament should decide to alter it. This suggestion found favour and was adopted. The Convention recognized that the Federal Parliament, with experience of the working of a federal tariff, would have a solid foundation to build upon, which was lacking to the Convention. Some figures had indeed been prepared by the statisticians as an estimate of what each colony would contribute under different tariffs — the Victorian tariff being taken as the basis of one estimate, and an "imaginary tariff" of fixed duties on narcotics and stimulants, with an all round ad valorem duty of 13 per cent. on other imports, as the basis of another. These figures had been before the Finance Committee, but were not printed with its report; and they were the cause of some skirmishing in the Convention, being alluded to by their friends as the "suppressed tables" and by their critics as "imaginary tariffs." In fact the battle of statistical forecasts, which was afterwards to be the fiercest fight of all, had its small beginnings in this debate.

But though the problem of the distribution of the federal surplus had been thus dealt with, the Convention was awake to the difficulties and dangers which might arise from the fact that the revenues controlled by the federal government would be immensely greater than the liabilities imposed upon it. Some need was felt of a "guarantee" that this surplus revenue would not
be wastefully expended, but would be applied to the necessary purposes of the State Governments. Any such guarantee must be based on one of two principles — either an obligation on the Commonwealth to return some part of its revenue to the States, or an obligation to take over some of the liabilities of the States. The former plan was not mooted at all in 1891; but the latter one came up in the shape of a proposal by Sir John Bray to make the Commonwealth liable for the existing public debts of the States — each State being in turn liable for the amount (if any) by which its debt exceeded a fixed sum per head of its population. There was a disposition on the part of the Convention, however, to think that this was going too far. Some of the delegates thought that the debts ought not to be handed over without the "assets" which they represented; and though Mr. Bird pointed out that the federal revenue powers were a sufficient asset, the argument that the debts ought not to be separated from the reproductive works in which they were sunk carried great weight. But over and above this, the proposal was unpalatable to New South Wales for a reason which was only hinted at, but which probably was the deciding factor. To saddle the Commonwealth with the interest on the public debts would practically have meant imposing on the Federal Parliament the duty of raising a large amount through the Customs, and would have placed the free-trade party at a disadvantage in federal politics. It was seen that the amendment touched on dangerous ground, and it was accordingly negatived without division.

State Governors. — The clauses relating to the Governors of States gave some trouble, and showed a marked difference of opinion. The clause providing that communications between the State Governors and the Queen should be made through the Governor-General was on the one hand approved as a necessary consequence of the unity of Australia as regards the outside world; it was objected to on the other hand as a wanton interference with matters of purely State concern. On division, the clause was carried by a small majority. The clause providing that "in each State of the Commonwealth there shall be a Governor" was criticized as an unnecessary and inadvisable dictation to the States. Sir Samuel Griffith had no definite apology for the clause, except the somewhat unsatisfactory suggestion that it indicated that the States were sovereign; however, it was retained. Finally, the clause giving the Parliament of each State power to determine the mode of appointment of its Governor, and his tenure of office, was objected to as another unnecessary interference with the State Constitutions, and supported on the other hand as being merely the gift of a discretionary power. On division, the clause was carried by a majority of one.

Amendment. — In the clause dealing with the amendment of the
Constitution, several members pointed out that the provision for ratification by "Conventions of a majority of the States" gave a second veto to the States, but none to the people as a whole. Sir Samuel Griffith admitted the force of the argument, and proposed to add a requirement that the people of the affirming States must contain a majority of the people of the Commonwealth. Mr. Playford pointed out that this was a clumsy contrivance, and that the whole difficulty arose from the false principle of taking the voice of the people indirectly through Conventions instead of directly at the polls. He advocated the Swiss plan of a referendum, requiring the assent of a majority of the people, and separate majorities in more than half the States. This view was supported by Dr. Cockburn and Mr. Deakin; but an amendment to that effect moved by Dr. Cockburn was defeated by a large majority, and Sir Samuel Griffith's suggestion was adopted. The Committee stage ended with Mr. Dibbs' "bomb-shell" — an amendment providing that the site of the federal capital, instead of being left for the Federal Parliament to determine, should be fixed at Sydney. This was promptly rejected by 26 votes to 4 — Mr. Dibbs alone, of the New South Wales delegation, voting for it; and the Bill was reported with amendments.

ADOPTION OF THE BILL. — A short debate then followed on a motion by Sir Samuel Griffith that the Bill as reported from the Committee be adopted by the Convention. The debate showed that, on the whole, the Convention were satisfied with their work. Sir Henry Parkes thought it "a wise, temperate, and successful compromise," and ventured upon the prophecy that all the colonies would accept it. At the same time, he warned his hearers of the opposition to be expected from opponents of Federation outside the Convention. "We may be sure," he said, "that the Bill will meet with perhaps virulent opposition. We know with what violence of feeling, with what violence of expression, every great work at every period of history has been assailed by those who were opposed to it, and still more by those who assailed it for no reason at all, and under no guidance that could be intelligible." He reminded them that already they had been accused of "giving away the liberties of New South Wales" of "giving the lands," of "giving up the control of the inland rivers;" and similar accusations would probably be made against the representatives of the other colonies. But in spite of the "anathemas hurled at us by certain people out of doors," and based either upon ignorance or upon wilful misrepresentation, he expressed his firm belief that the Bill would be ratified. And even assuming the contrary — assuming that the day of Federation had not yet come — "it cannot," he said, "be far off; and whenever the time comes, this admirably-drawn Bill, so clear, so instinct
with a spirit of well-ordered liberty, so instinct with a true appreciation of stable and sober laws, so pervaded by the very spirit of toleration and mutual consideration — come whenever that time may, this Bill must be in the foundation of the edifice of federal liberty. It can never be forgotten, it can never be depreciated, it can never be made less than it is to-day; and supposing another Constitution should be framed by other men, to a very large extent the provisions of this Bill must be embodied in that Constitution, so that this Convention has breathed into this Bill the breath of an immortal life." Other delegates spoke more critically, but no less hopefully. Mr. Baker and Dr. Cockburn, from the Small State point of view, regarded the Bill less cheerfully. Sir John Downer feared that the powers of the Senate were defined in words which were designedly ambiguous, and would lead to discord. Sir George Grey lamented that plural voting was not abolished. But doubts and fears were over-borne by the general chorus of satisfaction. Nearly every member was prepared, on the whole, to accept the Bill as it stood, as a good Constitution and a fair compromise; and it was adopted by the Convention without division.

THE MODE OF SUBMISSION. — The draft Constitution having been passed, the next thing to consider was what steps should be taken to secure its acceptance by the several colonies. Sir George Grey had already, immediately the Committee stage was over, moved a resolution that it should be "submitted to and adopted by a majority of a plebiscite of the people of Australia." This had been objected to as inconsistent with the idea of a voluntary acceptance by each individual colony, and Sir George had accepted an amendment providing for a plebiscite in each separate colony; but the motion as amended was rejected. As soon as the Convention had adopted the Constitution, Sir Samuel Griffith moved "That this Convention recommends that provision be made by the Parliaments of the several colonies for submitting for the approval of the people of the colonies respectively the Constitution of the Commonwealth of Australia as passed by this Convention." He argued — and the Convention as a whole agreed with him — that it was not for them to dictate to the colonies the manner in which they should accept the Constitution; all they could do was to refer that question to the several Parliaments. The question arose, however, whether the Constitution ought to be submitted to some ratifying body to accept or reject as a whole, or whether opportunity ought to be allowed for further reconsideration of its provisions. Most of the members were very averse to any re-opening of the decisions arrived at by the Convention. The work of the Convention had involved compromise and concession, and they feared that to allow each colony to pick it to pieces in its own interests, and undo all that had been done, would lead to endless
confusion and delay. A few voices, however, were raised to urge them to "hasten slowly." Sir John Bray suggested consideration in detail by the Parliaments, and a second Convention, if necessary, to harmonize differences. To prevent the colonies from thinking that the Bill was being "crammed down their throats" he moved to substitute "consideration" for "approval." Mr. Wrixon supported the amendment, arguing that "this subject comes down on the people from above," and that a few years' delay was nothing compared with the importance of thorough consideration. The amendment, however, only secured seven supporters, and Sir Samuel Griffith's resolution was carried. It was followed by a further resolution recommending that as soon as the Constitution were adopted by three colonies, the Home Government should be requested to take steps to establish it in respect of those colonies. After some complimentary resolutions, Sir Henry Parkes, on 9th April, 1891, declared the Convention dissolved.
(8) The Fate of the Commonwealth Bill of 1891.

RECEPTION OF THE BILL. — The framing of the Commonwealth Bill marked a notable advance in the movement. In place of vague abstractions, federationists had now a definite rallying ground, anti-federationists a definite line of attack. Advocacy and criticism became at once more direct, more circumstantial, more practical. The text of the Bill itself obtained a wide circulation, and was studied and preached upon by politicians of every class and type, by the metropolitan and provincial press, by debating societies, and political associations. An annotated edition, in pamphlet form, by Mr. G. B. Barton, was issued from the Government Printing Office of New South Wales; and the idea of Federation began to assume a definite shape in the minds of the people as a whole. Federation had long been in the air; it now came down to the earth. It had long been dreamed of, and sung of, as a destiny one day to be realized; it now could be examined and analyzed as a practical political scheme.

There can be no doubt that many members of the Convention had hoped that the work of construction was complete, and that the Bill as it stood might be adopted without delay as the Federal Constitution of Australia. But they were doomed to disappointment. It soon became clear that neither the Parliaments nor the people would accept the work of the Convention as final. The Parliaments, naturally enough, resented the idea that a constitutional change of such vast importance should be effected without their having any voice in the details of the scheme. And in the minds of many of the people there was a vague feeling of distrust of the Constitution, as the work of a body somewhat conservative in composition, only indirectly representative of the people, and entrusted with no very definite or detailed mandate even by the Parliaments which created it. The consequence was that while the Bill received unstinted praise in some quarters, it was subjected to unsparing criticism in others.

One circumstance in particular swelled the chorus of discontent, especially in New South Wales — the colony which was thenceforth to be the main battle-field of the movement. The "new democracy" was just then trying its wings. In 1891 the Labour Party made its first appearance in the Parliament of New South Wales, with great zeal for reform, with constitutional theories of its own, but with scanty political experience. To this party and its constituents the draft Constitution seemed to bristle with imaginary dangers. It conferred "enormous powers" on the Governor-General; it was steeped in "Imperialism;" it meant the crushing of the workers by a "military despotism." These unreal terrors had much to do
with the want of enthusiasm for Federation displayed at that stage by the Labour Party and its adherents.

Of course, however, there were other and less flimsy grounds of opposition. The Constitution was a compromise, with the faults as well as the merits of a compromise; the federal principles it contained were new to Australia, and their application to new circumstances gave room for much difference of opinion. In the large colonies, the composition and powers of the Senate were especially criticized. Equal representation, the power to suggest amendments in money bills, the absence of any provision for solving deadlocks, were in turn condemned and defended. The inadequacy of the financial provisions - the possibility that, under the trade and commerce power, trade might be unfairly diverted from one colony to another — the risk that the federal tariff might be too protective, or not protective enough - these and many other questions of constitutional principle and provincial interest were raised and debated.

DELAY IN NEW SOUTH WALES. — New South Wales was expected to take the lead in dealing with the Bill; and when Parliament opened on 19th May, the Governor's speech announced that no time would be lost in submitting a resolution for that purpose. On the same day Sir Henry Parkes gave notice of the following resolutions:-

"That this House reaffirms its opinion in favour of the Federation of the Australian colonies, and taking into consideration all the circumstances of the constitution of the National Convention which met in Sydney in March last, as a duly authorized body appointed by all the Parliaments of Australia, and having due regard for the difficulties and the necessity for compromise in reconciling conflicting interests and coming to a common ground of agreement, it hereby approves of the scheme for an adequate Federal Constitution embodied in the draft Bill of the Convention. But it reserves to itself the right to propose amendments, to be fully set forth by the proposer in each case in a schedule, and to be fully considered, if deemed advisable, by another Convention similarly constituted, and in like manner repre- senting all the colonies.

"2. That this House is further of opinion that the question, as dealt with by this Parliament, should be submitted to the people in their electoral capacity for final approval."

The somewhat elaborate and argumentative form of these resolutions, and the haste to give notice of them before the debate on the Address in Reply, were strategic devices to answer in advance the expected attack. The attack came from Mr. G. H. Reid, who moved an amendment on the address, to the effect that the House recognized the distinguished ability and zealous labours of the Convention, and was desirous of federal union
"on principles just to the several colonies," but affirmed that the Bill was not just "in some important respects, two of which we desire to indicate, namely:-(1) The powers over revenue, taxation, and expenditure conferred on the proposed Senate; (2) the rejection by the Convention, and the omission from the Bill of responsible government as a necessary part of the Constitution." The amendment also complained that the federal power of legislative interference with the general commercial management of the railway and river systems, without any provision for assuming obligations in respect of them, was not founded upon just principles. In the course of his speech, Mr. Reid laid great stress on the danger to which the freetrade policy of New South Wales would be exposed by Federation. He compared New South Wales to a teetotaler who contemplated keeping house with five drunkards. "I will not put my principle of freetrade," he said, "in the power of the Victorian protectionists." He resented any attempt to "cram this Bill down the throats of Parliament," but at the same time expressed himself ready to accept the right kind of Bill. The amendment was negatived on division by a substantial majority.

Sir Henry Parkes, however, was not destined to move the resolutions of which he had given notice. The House was within eight months of expiry by effluxion of time, and the Ministry were anxious, for obvious political reasons, not to neglect "urgent local legislation" for the sake of what their opponents termed the "fad" of Federation. Then came a motion of censure, resulting in an equal division and on 6th June the Assembly was dissolved.

The new Parliament met in July, with the new element — the Labour Party — some 30 strong in a House of 141. The new party cared little for Federation, and less for the Convention Bill; they were elected to secure "urgent provincial legislation" in the interests of their fellow-workers. They supported the Government; and the Government on its part consented to place Federation third on the programme — where it remained until the defeat and resignation of the Ministry in October. Some weeks previously to this event, a debate had occurred which throws some light on the attitude of the New South Wales Assembly at that time towards Federation. Mr. Henry Copeland, on 1st September, moved a resolution in favour of a protective tariff. Mr. Barton moved an amendment to the effect that anasmuch as the anticipated federal union would bring about a common fiscal policy for all Australia, and as meanwhile the co-operation of all parties was necessary in securing urgent legislation, "the financial requirements of the colony, rather than the rigid doctrines of any system of political economy, should regulate the mode of raising any further revenue through the Customs." During the debate, the labour party reiterated their demand for "useful legislation," and did not commit themselves to any
particular federal views; though they would support Federation on their
own lines. Mr. Reid expressed himself confident that Federation would not
come soon, "because the position taken by several of the smaller colonies,
on certain points, is so firm, that the inevitable amendments that will be
effected in this House, and which have already to some extent been
effected in Victoria, will put off any agreement on the subject for a long
time to come." Though there was actually a majority of protectionists in the
House, the direct protectionist vote could not be carried. Sincere
Federalists on both sides of the House were prepared to forego the fiscal
fight for the sake of Federation; the greater part of the labour party were
prepared to do the same for the sake of social legislation; so that the two
new issues of Federation and Labour combined, for the time being, to keep
the fiscal issue in check. In the end, Mr. Barton's amendment to the
resolution was carried, and the resolution as amended was then defeated.

VICTORIA. — Meanwhile the Parliaments of Victoria, South Australia,
and Tasmania had attempted to make some progress with the discussion of
the Commonwealth Bill. On 30th June, Mr. Munro, in the Victorian
Assembly, moved a resolution "That this House approves generally of" the
Bill; it being understood that there would be an opportunity afterwards for
consideration in detail. The general debate extended over eight sitting days,
and showed the House on the whole to be distinctly favourable, though
there was a determined section of critics led by Sir Bryan O'Loghlen, who
were for insisting on the principle of "one man one vote" as a condition
precedent, and complained bitterly of the excessive powers of the Senate.
The manufacturing interests had long been eager for Federation, for the
sake of wider markets, and were prepared to take their chance with the
competition of the other colonies; but the farming and agricultural
interests, though not anti-federal, were always fighting for more protection
against intercolonial produce, and especially for an increase of the stock-
tax. The resolution having been carried, the discussion in Committee began
on 21st July, and lasted until 27th August, extending over nine sitting days.
Many amendments were proposed — mostly by Sir Bryan O'Loghlen —
but few were carried. The most notable amendment made was the striking
out of the Senate's power to suggest amendments in money bills; a
proceeding which was partly a protest against the claims if the Victorian
Upper House. The right of the Lower House to sole financial control had
long been a prominent article of liberal faith in Victoria; for curiously
enough that colony — the only one in which the Constitution expressly
forbids the Legislative Council to amend Appropriation or Tax Bills — has
seen the most serious "deadlocks" that have occurred in Australia. Another
instructive feature of the debate was the strong opposition shown by the
representatives of Victorian farming interests, to the admission of New Zealand within the magic circle of the Commonwealth. An amendment to substitute "Australian" for "Australasian," and another to omit "New Zealand" from the number of States entitled to adopt the Constitution, were narrowly defeated; but later on an amendment was carried to except New Zealand from the colonies which might be subsequently admitted as "New States."

In the Legislative Council of Victoria, the general resolution was moved by Mr. Cuthbert on 5th July, and carried after a three nights' debate. The Council then waited for the Assembly, and between 29th September and 21st October, with only four sittings, it dealt with the Bill and with the Assembly's amendments. It restored the power of suggestion, which the Assembly had struck out; and it forwarded to the Assembly a message which was never considered.

SOUTH AUSTRALIA. — The South Australian Assembly began the consideration of the Bill simultaneously with the Victorian Assembly. Mr. Playford, on 30th June, moved a resolution approving generally of the Bill, and of a second Convention, if necessary. While New South Wales remained passive, there was no hurry, and the debate proceeded slowly. The six nights which it occupied were spread out over nearly three months; and a fragmentary consideration in Committee, begun on 29th September, was not quite finished when the Assembly prorogued on 19th December. The two chief amendments made were for the election of Senators by the people, and for the submission of constitutional amendments to a referendum in each colony, instead of to a Convention.

In the Legislative Council the debate was even more leisurely. The resolution was moved by Mr. W. Copley on 7th July, debated on nine evenings, and carried on 5th September. The following week its consideration in Committee got as far as the omission of the word "Commonwealth" — for which, however, no substitute could be agreed on. Then the Council decided to wait for the Assembly — with the result that nothing more was done that session. Next year, however, the discussion was resumed, in a somewhat perfunctory way, and in December, 1892, the Bill was reported with amendments.

TASMANIA. — Tasmania, too, made some effort to deal with the question, but on rather different lines. There it was proposed to ask the Houses to consider the Bill first, and then to remit it to the consideration of a provincial Convention elected by the voters of Tasmania. Accordingly in July a "Commonwealth of Australia Bill" was introduced by the Attorney-General (Mr. A. Inglis Clark) providing for 50 representatives being elected, upon the House of Assembly rolls, to consider the Bill. The draft
Constitution was also considered by the House in Committee, and the amendments made were attached to Mr. Clark's Bill, which was passed and sent to the Council. It there reached its second reading, but after several adjournments it was ultimately shelved, on the ground that Tasmania's part in the matter was to follow, not to lead.

NEW SOUTH WALES. — The Parliaments of three colonies had thus found time to deal partially, if somewhat perfunctorily, with the matter; but neither Queensland, Western Australia, nor New Zealand had taken any steps at all. The two latter colonies took little interest in the matter; and indeed in New Zealand an abstract motion by Sir George Grey on the subject of Federation, but having no direct reference to the Convention Bill, was unceremoniously counted out. In Queensland, however, the Chief Secretary, Sir Samuel Griffith, announced his readiness, and that of his colony, to follow the lead of New South Wales. All Australia, in fact, was waiting for New South Wales; and we must now direct our attention once more to the course of events in that colony.

The retirement from office, in October, 1891, of Sir Henry Parkes, the recognized leader of the movement, left but a slender prospect of immediate action being taken by the New South Wales Parliament. Mr. Reid, and a large section of the freetraders, put freetrade before Federation; the labour party put social questions before Federation. Mr. G. R. Dibbs, the new Premier, was no friend of the Commonwealth Bill; nor were most of his colleagues. Mr. Barton, however, who was already recognized as Sir Henry Parkes' federal lieutenant - though in provincial party politics they were on opposite sides - accepted the Attorney-Generalship in the new Ministry, on the understanding that he was to have a free hand in dealing with Federation. Mr. R. E. O'Connor, also an earnest federalist, took the portfolio of Minister of Justice, with a seat in the Upper House. Mr. Barton, at the general election and also at his re-election as Minister, laid down his federal programme clearly, on the following lines:- (1) The draft Constitution to be fully debated; (2) Parliament to specify its amendments; (3) the Bill and desired amendments to be laid before a second Convention; (4) the Bill as amended by the second Convention to be submitted to each Parliament; and (5) to be finally submitted to the people, each man to have only one vote.

But Mr. Barton had a difficult task. He was surrounded by unsympathetic colleagues in an unsympathetic House. The Parliament was interested in "urgent local legislation" — notably the tariff and the Electoral Bill — and was not keenly interested in Federation. Though the general feeling of the community was supposed to be federal, no active political pressure was as yet being brought to bear on members by their constituencies. On 21st
December Mr. Andrew Kelly, a labour member, moved a resolution in the Assembly "That no system for the federation of the colonies will be acceptable to this House until the electoral system provides for the principle of one man one vote at the election for members of the House of Representatives." After half an hour's debate, in a thin House, this was carried.

Early in 1892 Sir Henry Parkes wrote a letter to Mr. Dibbs, informing him that he would propose an entirely new course for dealing with Federation, "founded upon the proceedings of the thirteen original States of the American union." He seems to have lost faith in the possibility of carrying Federation through by Parliamentary action alone; and accordingly, in March, 1892, he moved the adjournment of the House to discuss "the movement in favour of Federation, and the most expedient course to be pursued in bringing it to a successful conclusion." He reviewed the movement, complained bitterly of the tactics of opponents, dealt with the causes of delay, and affirmed that Parliament was a very unfit body to deal with the question, because it was elected for other purposes. Finally he unfolded his new plan:-

"Now, if my contention be at all sustainable, that Parliament is not elected to deal with this question, but that on the contrary it ought to be elected to deal with quite different questions, we are driven to enquire what steps should be taken; and though we may be excused from our inexperience in not adopting this step at an earlier stage, still it seems to me to be the only step that can be taken, if we are in earnest in desiring to bring this great question of the union of the colonies to a successful issue — that is, for the people themselves, the electors who sent us into this Assembly, the electors themselves throughout the colonies, to elect another Convention to revise the draft Constitution of the late Convention, and to frame a new Bill, if in their wisdom they think proper to do so."

Mr. Barton, however, favoured adhering to the lines already laid down of Parliamentary discussion and a second Parliamentary Convention. Shortly afterwards, on 23rd November — not withstanding protests from those whose chief desire was "urgent legislation" — he introduced the federal resolutions, re-affirming the principle of Federation, approving the main principles of the Commonwealth Bill, and expressing the opinion that the Bill should be dealt with in Committee, and the amendments of the several Parliaments remitted to a second Convention, similarly appointed and reporting to the Parliaments, and that the question of final adoption should be submitted to the electors.

The debate which followed was somewhat languid. Mr. J. H. Want moved an amendment, limiting the resolutions to an affirmanace of the
principle of Federation, and the desirability of discussing the Bill in Committee. Mr. Reid announced that he now took a more sanguine view of the prospects of Federation; and that the general movement, in Australia and elsewhere, in favour of freetrade, encouraged "a more rational and better idea that my principles will not be sacrificed." His objections to the Commonwealth Bill, however, remained as strong as ever. The debate was interrupted by a motion of censure, but was resumed on 11th January, 1893. Mr. Kelly again moved his amendment that no Federation would be acceptable that did not provide for "one man one vote;" but the absurdity of dictating conditions was pointed out, and the amendment was negatived. An attempt was made to shelve the question, on the two grounds of "urgent legislation" and the wickedness of the Bill; but this also failed, and the resolutions were carried. Circumstances again conspired to delay the consideration in Committee, but this was promised for the following session.

In the Legislative Council, after several postponements, Mr. R. E. O'Connor on 17th May moved the same resolutions. His speech was noteworthy for a suggestion in regard to "deadlocks" — that if a Bill granting supplies were thrown out by the Senate in one session, and the disagreement continued in the next session, the two Houses should sit together, and some specified majority of the joint sitting should decide the matter finally. The resolutions were carried, but, the end of the session being near, the consideration of the Bill in Committee had to stand over.

In September Parliament was again convened, and on 12th October Mr. Barton moved that the House go into Committee to consider the Bill. Mr. Arthur Rae, a labour member, moved an amendment to the effect that Federation would "do nothing to meet those social and industrial problems so urgently pressing for solution," and that the draft Constitution was "of too rigid a character to suit the progressive spirit of Australian democracy, and should not be proceeded with without a special mandate from the people of New South Wales." Sir Henry Parkes moved the adjournment of the debate, and it was never again reached. In the Council the first few clauses were actually discussed in Committee during November and December, but in a very desultory way; and little progress had been made when a prorogation intervened. A few days later both Mr. Barton and Mr. O'Connor resigned their portfolios, owing to a resolution passed in the Assembly criticizing their action in accepting briefs against the Railway Commissioners; and all hope of Parliamentary action was for the time at an end. In short, the Parliamentary process of dealing with the Commonwealth Bill had broken down hopefully.
The Popular Movement.

GROWTH OF FEDERAL SENTIMENT. — Sir John Robertson's boast that "Federation is as dead as Julius Caesar," was coming to be a favourite saying of anti-federalists; but as a matter of fact the federal spirit was only just beginning to awaken. The Commonwealth Bill, though neglected by the Parliaments, had helped to educate the people. Since 1891, public interest in the question of Federation had been steadily gaining ground; from 1892 onwards it began to advance rapidly, as a result of the collapse of the "land boom," the financial panic, and the resulting commercial depression. The crisis showed plainly that the prosperity of each colony was bound up in that of the others; that disaster to one meant loss to all; and that strength lay in co-operation. These considerations helped to break down the spirit of isolation and mutual jealousy which prosperity had fostered, and to emphasize the dangers of disunion.

Moreover, bad times helped the cause of Federation in another way. The general stagnation of trade set every one enquiring for himself into the causes which clogged the wheels; and the folly of interprovincial barriers became increasingly apparent. Federation began to appeal to the pocket as well as to the heart; and the people began to wake up to the fact that the "fad of Federation," with which politicians and Parliaments had been dallying so long, meant the salvation of Australia.

AUSTRALIAN NATIVES' ASSOCIATION. — It had long become apparent that the Parliaments would accomplish little without a stimulus from their constituents; and the conviction grew that federalists must create a public organization, with the twofold object of demonstrating to the Parliaments the strength of the federal sentiment, and of further solidifying and educating that sentiment. For the chief share in the initiation of that movement, credit must be given to the Australian Natives' Association — an organization which, though less extensive in the other colonies, had in Victoria attained an extraordinary development, and represented the bulk of the political activity and enthusiasm of the younger generation. This Association, which was not only a power in politics, but also a political training school of the greatest value, had always been unswerving in its zeal for Federation; and it was natural that the impulse for organization should spring from it. Under the leadership of such able successive Presidents as Mr. A. J. Peacock (1885–1886), Mr. T. J. Connelly (1887), Mr. J. L. Purves, Q.C. (1888–1889), Mr. D. J. Wheal (1890), Mr. G. H. Wise (1891), this Association had helped to develop the federal sentiment widely throughout the colony, and was persistent in its agitation for
definite action. At the end of January, 1890, a few days before the sitting of the Federal Conference convened by Sir Henry Parkes, a federal demonstration under the auspices of the Association was held in Melbourne. It was composed of delegates from its branches in all the colonies. This gathering, which is regarded by the Association with just pride, was presided over by Sir John Bray, of South Australia. Great enthusiasm and an intelligent interest in the cause of Australian union were displayed, and the following resolutions formulating the basis of a Federal Constitution were passed:-

1. That the time has now arrived for the Federation of the Australian colonies.
2. That a Federal Legislature should be established, to consist of a Governor-General and two Houses of Parliament.
3. That the members of one House should be elected by the Legislatures, and those of the other House by the people of the several colonies.
4. That in one House each colony should be represented by an equal number of members.
5. That the Federal Legislature should be empowered to deal with national matters, including:- (1) General defences; (2) Federal Court of Appeal; (3) relations of Australia with the islands of the Pacific; (4) naturalization; (5) uniform customs duties, after a date to be agreed upon by the Legislatures of the several colonies; (6) railways; (7) post and telegraph; (8) the public debt; (9) federal revenue; (10) the division of any colony; (11) marriage and divorce laws; (12) insolvency; (13) quarantine regulations; (14) coinage; (15) patents, copyrights, and trade marks; (16) all legislation affecting provincial affairs should be left to the Parliament of each colony.

FEDERATION LEAGUES. — In March, 1893, at the annual conference of the Australian Natives' Association, held at Kyneton, the dissatisfaction with Parliamentary dallying found vent, and it was recognized that active popular organization was needed to impress the provincial Parliaments with the necessity for action. As the outcome of the Kyneton Conference, a deputation waited upon Mr. Barton to urge him to form a central Federation League in Sydney.

Mr. Barton himself had already been moving in the same direction. Though he had been unable to do much in Parliament, he had endeavoured by a series of public meetings in different parts of the colony to keep the Federal lamp alight. In December, 1892, he had visited Corowa and Albury on this mission, and had assured the folk on both sides of the Border that a Federal League, on strictly non-party lines, would greatly strengthen the hands of federalists in Sydney and Melbourne. The advice was acted upon;
in January, 1893, Corowa and Albury each formed an "Australian Federation League;" and by the end of May there were 15 branches of the League in the valley of the Murray. But the need was still felt of a central organization to keep all the colonies in touch; and accordingly in June Mr. Barton convened a preliminary meeting of federalists, at which it was resolved to form an Australasian Federation League in Sydney; and at a public meeting in the Town Hall on 3rd July, the League was formed. Its auspices were not at first very favourable. Sir Henry Parkes stood aloof. He claimed that the idea of forming Federal Leagues had originated with himself, and was afterwards appropriated by others who ignored his right to leadership (speech at Liverpool, N.S.W., reported Sydney Morning Herald, 30th July, 1893). A meeting of the freetrade party, called by Mr. G. H. Reid, seemed suspicious of the new League, and resolved that in the then state of party politics no alliances could be formed even on the question of Federation, but that individual members of the party should be left free to use their own discretion. Opposition also turned up in another quarter; the members of the "Democratic Social Federation" made a determined but unsuccessful effort to capture the Town Hall meeting, and to pass resolutions in favour of an Australian Republic.

However, the League was duly formed, with a Constitution which pledged it "to advance the cause of Australian Federation by an organization of citizens owning no class distinction or party influence, and using its best energies to assist Parliamentary action, from whatever source proceeding, calculated to further the common aim of Australian patriotism." It did not commit itself to any particular scheme of Federation, but advocated "the Federal Union of Australasia on such lines as may be constitutionally approved by all the colonies concerned after further deliberation and report by assembled representatives of each." The League never had a sensational history, but thenceforward to the end of the fight it shows a record of steady organizing and educating work. It formed a nucleus for an active body of earnest federalists in Sydney, and a connecting link between the country leagues, which began to spring up in numbers, especially in the border districts. This result was largely due to the indefatigable work of Mr. Edward Dowling, who from first to last was principal honorary secretary to the League. The example spread. At the end of 1893 and the beginning of 1894, leagues were formed in Melbourne, Bendigo, Ballarat, Echuca and other Victorian towns. In August, 1895, a league was formed at Adelaide; in July, 1898, one was inaugurated in Brisbane, and in July, 1899, one was formed in Auckland.

COROWA CONFERENCE, 1893. — In the new movement the Border Leagues at once began to take an active part. The policy of hostile tariffs
and commercial isolation doubtless affected the great cities in an equal
degree; but to the dwellers near the border the disadvantages were more
direct and more obvious. The Border Leagues, therefore, were among the
most active missionaries in the movement; and on their invitation a
Conference was held at Corowa, on 31st July and 1st August, 1893, to
which representatives from trading and commercial bodies, Federation
Leagues, branches of the Australian Natives' Association, and kindred
associations on both sides of the Murray, were invited. The Sydney League
sent two delegates, all the Border Leagues were represented, and
representatives from various branches of the Australian Natives' Association — especially on the Victorian side — mustered in force. The
usual resolutions expressing the urgent need for Federation were proposed
and warmly supported, and united organization were resolved upon; but as
the proceedings drew to a close it was felt that something more was
required. Of enthusiastic speaking there was no end; the demand was now
made for some definite and practical basis of action. To meet this, Dr. John
Quick, a representative of the Bendigo branch of the A.N.A., proposed a
resolution which marked a new epoch and initiated a new mode of dealing
with the question:- "That in the opinion of this Conference the Legislature
of each Australasian colony should pass an Act providing for the election
of representatives to attend a statutory Convention or Congress to consider
and adopt a Bill to establish a Federal Constitution for Australia, and upon
the adoption of such Bill or measure it be submitted by some process of
referendum to the verdict of each colony." This resolution was carried
unanimously, and was the achievement which makes the Corowa
Conference historically important.

Dr. Quick did not leave the resolution to its fate, but, upon his return to
Bendigo, elaborated it into a definite scheme. He framed an "Australian
Federal Congress Bill," which he submitted to the Bendigo League, and
which was discussed and adopted by that body and was published on 1st
January, 1894. This Bill in its main features became the basis of the
Enabling Acts which were afterwards passed in all the colonies, and by
means of which the cause of Australian union was ultimately brought to a
successful issue. It purport to "provide for the representation of Victoria
at an Australasian Congress legally created to frame a Constitution for the
Federation of the Australasian colonies, and further to provide for the
reference of such Constitution when framed to the vote of the people," and
was designed as the model for a series of Acts to be passed, in substantially
uniform shape, in all the colonies. The procedure which such a series of
Acts would have laid down is shortly this:-

(1.) That each colony should elect, on its Parliamentary franchise, ten
representatives to a Federal Congress.

(2.) That the Congress should frame a Federal Constitution.

(3.) That, on a day to be arranged between the Governments, the Federal Constitution should be referred to the electors of each colony for acceptance or rejection.

(4.) That if the Constitution were accepted by majorities in two or more colonies, it should be forwarded to the Imperial Government to be passed into law.

The novel and all-important element in this proposal was the idea of mapping out the whole process in advance by Acts of Parliament - of making statutory provision for the last step before the first step was taken. Hitherto, each successive step in the framing of a Constitution had been left dependent on the concurrence of all the Parliaments or all the Governments for the time being; with the result that every hitch, every discouragement, had led to delay, and all the zeal and labour expended on the Commonwealth Bill of 1891 seemed in danger of being lost, and the prospect of bringing the question to a final issue was as remote as ever. But here was a scheme which, when once launched, would ensure the framing of a Constitution and its submission to the people. Every step in the process would thus be invested, in the minds of the people, with a seriousness and importance otherwise unattainable. Those who had jested at the Convention of 1891 as a body of men engaged in the amiable and amusing task of drawing up a Constitution for the waste-paper basket would have to admit that there was something serious about a Constitution which, when framed, the Government would be obliged by law to submit to the electors for their acceptance or rejection.

Another feature of the scheme, equally important, but not absolutely new, was the principle of the direct popular initiative in the election of the Congress or Convention. The two things now wanted were popular interest in the framing of a Constitution, and popular confidence in the Constitution when framed; and the best guarantee of both these things was that the people should be asked to choose for themselves the men to whom the task was to be entrusted. The adherents of the Parliamentary system had thought that the people would be less likely than the Parliaments to select men who by ability and training were most suited for the work of Constitution-making; but they had forgotten that more important even than the personnel of the Convention was the public confidence in the Convention. The result showed that the chosen representatives of the people were for the most part those who would have been the chosen representatives of the Parliaments; but from the fact of their election by the people they had a power, and they enjoyed a confidence, which election by
the Parliaments could never have given them.

But though Dr. Quick’s scheme meant a new start, it did not mean that the work already done was to be wasted. It was intended to supersede, not the Commonwealth Bill, but the process of dealing with that Bill; not the work of the Sydney Convention, but the abortive attempts to complete that work. The assembling of a second convention — the expediency of having it elected by the people — the necessity of a final referendum — had already been suggested in connection with the Bill of 1891. What had not hitherto been suggested was that all these steps should first be pre-ordained by Enabling Acts in all the colonies.

The new proposals at once attracted attention. They were favourably noticed in the press, they were discussed and reported upon by Federation Leagues and kindred bodies; they were expounded by the framer himself at meetings at various places. In January, 1894, he came to Sydney, and explained his scheme to a meeting of the Central League, which referred it to a Select Committee for consideration and report. This Committee presented its report at a meeting of the League held on 15th March, when the report was unanimously adopted. The report heartily endorsed the idea of mapping out the programme by Enabling Bills in all the colonies, but suggested a modification in the process of framing the Constitution — namely, that each colony should first elect, on its Parliamentary suffrage, a provincial Convention to formulate its own ideas of a scheme of Federation, and that these schemes should then be submitted to a Federal Convention, elected by the Parliaments, which should frame a Federal Constitution in which the views of the several colonies should as far as practicable be harmonized. It was feared that the attempt to strike off a Federal Constitution at one sitting, without consulting the separate colonies except for the final vote on the completed Constitution, might fail to secure adequate adjustment of conflicting interests, and thus lead to the rejection of the Constitution at the polls.

DIBBS’ UNIFICATION SCHEME. — At this stage an interlude occurred in the shape of an alternative scheme of union, drawn up by Sir George Dibbs, the Premier of New South Wales. He had always been a severe critic of the Commonwealth Bill; and on 22nd May, 1894, in a speech to his constituents at Tamworth, he propounded a scheme of complete unification. This scheme was immediately condemned by Sir Henry Parkes and Mr. Barton, and by the federalist press, as being impracticable; but Sir George Dibbs shortly afterwards formulated it in a letter dated 12th June to Sir James Patterson, Premier of Victoria, in which he announced that the consideration he had given to the federal question since the Convention of 1891, but "more especially since the fiasco of the
banking crisis found us so injuriously divided," had led him to the conclusion "that it would be easier first to completely unify the interests of the two great colonies of Victoria and New South Wales, and then to attract neighbouring colonies within the sphere of our extended influence."

He set out his objections to the Commonwealth Bill; it leaned too much to American ideas, too little to Canadian; it involved the expense of State and Federal establishments; its financial provisions were unfair and unworkable; equal representation in the Senate was absurd. On the other hand, it secured no federal control over public debts, railways, or land revenues, and would tend to perpetuate existing rivalries. "How far more beneficial in every way; how far more likely to extend our revenues and minimise our expenditures; how far more impressive to the outside world and to our creditors in England, would be a complete pooling of our debts, our railways, our national establishments generally. We are none of us so badly off that we cannot be permitted to meet each other on equal terms. In such a partnership New South Wales would not be disposed to say to her neighbours, 'Your debts are more burdensome, your railways and lands less productive than ours.' We would give to the United Government that prestige and supreme control which is almost entirely denied under the Commonwealth scheme, wherein the Federal Legislature would be numerically and structurally wholly overshadowed by the provincial Governments; and without haggling over the items, we would be prepared to hand over our Custom-houses, pest offices, and other necessary establishments for the common good, provided others did the same." That there must be local governments in the provinces he admitted; but he would confine these local governments, "as in Canada" within subordinate limits, and to strictly local purposes. He practically admitted that the other colonies could not be induced to join such a union at the outset; but he submitted the following draft outline of a scheme for the consideration of the people of the two colonies of New South Wales and Victoria:-

"Unification of New South Wales and Victoria as a preliminary to complete Australian Union.

Union for all national purposes to be complete as under:--

(1.) One Viceroy, or Governor.
(2.) One Parliament of two Chambers.
(3.) One Customs tariff.
(4.) One scale of excise duties.
(5) One joint debt.
(6.) One railway management.
(7) One land revenue and one land law. Until the laws are consolidated, existing regulations to hold good.
(8.) One Defence Administration.
(9.) One postal and telegraph administration.
(10.) Provincial Government, with wide local powers.
(11.) Surplus revenue of the Supreme Government to be apportioned to the Provinces — partly on a population basis, partly on an occupied mileage area basis.
(12.) Certain departments of the Public Service removed from political influence may have their headquarters in Melbourne, others in Sydney.
(13.) One High Commissioner's establishment in London, representing the whole.
(14.) One Supreme Court.
(15.) Title, 'The United Colonies.' Afterwards, when South Australia and Queensland come in, the title to be 'The Dominion of Australia.'

This letter evoked merely a non-committal reply from Sir James Patterson, but it was printed and circulated, and found a certain number of adherents. Unification — assuming it to be practicable - does undeniably present certain advantages over Federation, and has always, in the minds of many people, seemed a preferable form of Government. Sir George Dibbs, of course, was not the first apostle of unification — an idea which really meant little more than undoing the work of separation and re-establishing the earlier complete unity. Sir John Robertson — a typical New South Wales anti-federalist — had always expressed his willingness to welcome Victoria back as a "repentant child;" and there is reason to believe that even Sir Henry Parkes, at the very outset of his career, had some leaning to a complete amalgamation. He had soon convinced himself, however, that a federal union was the only form of union to which the assent of the Australian colonies could possibly be secured. The history of the colonies as self-governing communities had given rise to local sentiments and local patriotisms; their several free institutions were the results of long and arduous political struggles; and any attempt to abolish the constitutions of the colonies entirely, to overthrow their existing Parliaments and their existing local independence, would be an impossible task. Nor, if possible, is it clear that it would be desirable; for unification has its disadvantages as well as its advantages. The immense areas of the different colonies, and their climatic and industrial conditions, make the preservation of their individuality highly important; whilst they also afford a strong argument against entrusting unlimited powers to a central government which, in the nature of things, cannot have complete knowledge of, nor complete sympathy with, all the different local requirements of the different colonies.

Much that Sir George Dibbs said about the omissions of the
Commonwealth Bill and the desirableness of federating the railways and the debts, had a great deal of force. Still, this was criticism which did not involve the federal principle of the Bill, but merely the extent of federal control. The shortcomings which he mentioned were curable without any departure from the federal principle, and have indeed for the most part been cured by the subsequent elaboration of the Bill.

One serious blemish of the Dibbs scheme was that it deliberately contemplated dividing Australia into two sections — the large States and the small States — and denying to the latter any voice in the form of the union. New South Wales and Victoria were to frame the Constitution, and the other colonies were to accept the terms dictated, or stay outside. The impossibility of getting them willingly to consent to practical annexation was apparent; but whether — if the initial difficulty of amalgamating the two large colonies had been surmounted - the others could ever have been forced in, is highly doubtful. The irritation which such an attempt would have caused would have been, to say the least of it, an unfavourable auspice for union.

The unification idea has undoubtedly had some influence on the structure of the Constitution as it stands to-day; but not enough to satisfy the extreme unificationists, whose weight, curiously enough, has chiefly been thrown into the anti-federal scale. Sir George Dibbs' scheme has been more or less prominent, throughout the whole history of the movement, as a counterblast to the panegyrists of the Federal Constitution. It has afforded an opportunity to assert that the federalists are only half and half unionists — are in fact the "real Provincialists" — and that the real unionists are those who preach an impracticable unification. But it has never been an active mission on its own account and for its own sake.

THE REID MINISTRY. — On 2nd August, 1894, after a general election, the Dibbs Government resigned, and next day the Reid Administration came into office. Mr. Reid immediately placed Federation on his programme, and in his manifesto to the electors of King Division declared that his Government would "lose no time in restoring the subject of Australian Federation to its rightful position of commanding importance and urgency." He soon announced that he was in favour of a new Convention elected by the people of all the colonies, and he communicated with the other Premiers with a view to a preliminary conference. Federation, however, did not occupy the first place in the list. Matters of local legislation, and particularly the question with which the Ministerial party were most closely associated — the repeal of the Dibbs duties and the substitution of a purely freetrade tariff, with land and income taxes — took precedence. On 12th November the Premier was waited upon by a
deputation from the Federation League, which placed before him Dr. Quick's scheme and the League's report upon it. He received them favourably, and declared himself deeply impressed with the merits of the two schemes; but said that as the procedure to be adopted was to be discussed with his brother Premiers, and must be the result of joint deliberations, he could not at that stage commit himself to a definite course.

Next day Sir Henry Parkes moved in the Assembly the following resolution:— "That in view of the rapid growth of Australia in the elements of national life, and the number of questions arising out of that growth which can only be dealt with adequately by a national Legislature, it is in the highest sense desirable that Parliament, without loss of time, should resume the consideration of the Federation of these colonies under one national Government." He emphasized the fact that this motion had no relation to any party, or to any personal feeling — though he hinted that there was somebody of whom he strongly disapproved. In a dignified and statesmanlike speech he urged the importance of prompt action, but oracularly refrained from any definite proposal. He deprecated, however, throwing aside the Convention of 1891, and starting afresh with any less representative body; and he insisted that every step must be made in concurrence with all the other colonies — words which excluded the Dibbs scheme, but which left his attitude with regard to the Enabling Bill process in doubt. Mr. Reid, in reply, reiterated the views he had expressed to the deputation. The debate disclosed little opposition, but not very much enthusiasm; speakers from the labour party especially maintaining that other matters were more urgent. The resolution was carried, after several hours' debate, by 55 votes to 10 — the noes mostly consisting of labour members.

THE PREMIERS' CONFERENCE. — The Conference of Premiers met at Hobart, on 29th January, 1895, the Premiers present being Mr. Reid (New South Wales), Mr. (afterwards Sir) George Turner (Victoria), Mr. (afterwards Sir) Hugh M. Nelson (Queensland), Mr. C. C. Kingston (South Australia), Sir Edward Braddon (Tasmania), and Sir John Forrest (Western Australia). The following resolutions, submitted by Mr. Reid, were carried:—

(1.) That this Conference regards Federation as the great and pressing question of Australasian politics.

(2.) That a Convention, consisting of ten representatives from each colony, directly chosen by the electors, be charged with the duty of framing a Federal Constitution.

(3.) That the Constitution so framed be submitted to the electors for
acceptance or rejection by a direct vote.

(4.) That such Constitution, if accepted by the electors of three or more colonies, be transmitted to the Queen by an Address from the Parliaments of those colonies praying for the necessary legislative enactment.

(5.) That a Bill be submitted to the Parliament of each colony for the purpose of giving effect to the foregoing resolutions.

(6.) That Messrs. Turner and Kingston be requested to prepare a draft Bill for the consideration of this Conference.

Except for Mr. Nelson and Sir John Forrest, these resolutions were carried unanimously. Mr. Nelson agreed to everything except the proposal that the Constitution should be submitted for the approval of the electors of each colony; he thought that the approval of the colonies "should be obtained in such manner as each colony may prescribe in the Act authorizing such Convention." Sir John Forrest appended the following statement:- "While agreeing that Federation is the great and pressing question of Australasian politics, I am opposed to the procedure proposed to be adopted, and I am of opinion (1) that the draft Commonwealth Bill of 1891 should be first considered by the Parliaments of the respective colonies; (2) that any amendments made by the several Parliaments should be referred to a second Convention to be appointed by the several Parliaments after a general election, and that the Bill, as approved by this second Convention, be final, and be submitted for the necessary Imperial legislation."

Mr. Kingston would have preferred to begin with an Imperial Federal Enabling Act which would enable the colonies, without further Imperial legislation, to adopt any Constitution framed as above, subject only to the Royal assent. He did not, however, think that this view ought to prevent South Australia's co-operation in the scheme proposed.

On 6th February the draft Bill prepared by Mr. Turner and Mr. Kingston was "considered, amended, and agreed to as the draft of a type of Bill suitable for giving effect to the resolutions of the Conference." Mr. Reid intimated that "so soon as practicable after the re-assembling of the New South Wales Parliament his Government would introduce a measure providing for the chief objects of the Bill as defined in the draft." Messrs. Turner, Kingston, Nelson, and Sir Edward Braddon intimated that as soon as New South Wales had passed the Bill they would follow suit — Mr. Nelson, however, reserving the right to dispense with the direct reference to the electors. Sir John Forrest was not present, and was not committed in any way.

The draft Bill framed by the Conference provided in detail for the procedure outlined by the resolutions; and it embodied one very important
amplification of them. It provided that the Convention, after framing a
draft Constitution, should adjourn for a period of not less than 30 and not
more than 60 days; and that it should then re-assemble, reconsider the
Constitution with any amendments that might be proposed, and finally
adopt it with any amendments that might be agreed to. This provision
obviated the objections which the Sydney league had made to Dr. Quick's
scheme. It gave time for reflection and reconsideration; it gave an
opportunity for the several colonies, through their legislatures or otherwise,
to formulate their criticisms and objections; and it thus ensured a more
thorough threshing out of all questions of conflicting interest. The
Premiers' plan thus followed in the main the outlines of Dr. Quick's
proposal.

The merits of this scheme were obvious and notable. It avoided all the
great defects of the process of 1891. It secured popular interest, by
providing that the members of the Convention should be elected by the
people themselves, and that the Constitution should be submitted to the
people themselves for acceptance. It conciliated the Parliaments by giving
them a voice in initiating the process, a voice in criticizing the Constitution
before its completion, and a voice in requesting the enactment of the
Constitution after acceptance. In other words, whilst necessarily assigning
to a single body, representative of all the colonies, the task of framing the
Constitution in the first instance and finally revising it, it ensured that both
the peoples and the Parliaments of the several colonies should be consulted
at every stage — in initiation, in deliberation, and in adoption. And lastly,
by making statutory provision in advance for every step of the process, it
ensured that the matter once begun should be brought to an issue. No fuller
security could have been given that the Constitution would be based upon
the will of the people and of the people's representatives.

THE ENABLING ACTS. — There was not even yet an end of all delays.
The fiscal legislation of the Reid Government involved a dispute between
the Houses, a dissolution, and a general election. In December, 1895,
however, the new policy was carried into effect, and Acts imposing taxes
on the unimproved value of land and upon incomes were passed, as well as
a Customs Duties Act, which repealed the Dibbs duties of 1891, and
substituted an extremely freetrade tariff. This fiscal system had afterwards
an important bearing on the criticisms directed against the financial
provisions of the Federal Constitution.

Meanwhile in October an Enabling Bill had been introduced, following
for the most part the lines of the Premiers' draft Bill. The only alteration of
importance was that the interval between the two sittings of the Convention
was increased to "not less than 60 and not more than 120 days," with the
object of allowing ample time for Parliamentary discussion of the Constitution. On the motion to introduce the Bill, Mr. Henry Copeland moved an amendment to the effect that the proper basis for advancing the federal movement was the consideration of the Commonwealth Bill of 1891 by means of the procedure laid down by the Convention. This proposal however received little support, and was defeated on division by 59 votes to 7. On the second reading, Mr. McMillan opposed the principle of a Convention elected by the people, arguing that the selection of a suitable combination of trained men would be better performed by Parliament; and he moved an amendment to refer the question to a Select Committee. This also was defeated, and the second reading was carried on division by 62 votes to 5.

In Committee, an amendment was moved by Mr. A. B. Piddington to provide for the selection of the representatives by a college of federal electors; but this found no favour, and was negatived. Mr. W. M. Hughes (a labour member) moved an amendment to provide that the several colonies, instead of being represented equally in the Convention, should be represented in proportion to population; but with a maximum of ten and a minimum of five representatives. This caused considerable debate; it being argued on the one side that the Convention could not represent the people of Australia fairly unless it represented them proportionately, and pointed out on the other that the Convention did not purport to represent the people of Australia, but only the peoples of the colonies gathered together to confer on equal terms. Ultimately the amendment was negatived on division by 45 votes to 26, the minority consisting for the most part of labour members. On the question of the acceptance of the Constitution by a majority of the voters, it was argued that there ought to be some provision to prevent the Bill being accepted if the number of votes polled was not large enough to be representative. An amendment requiring a total poll of one-third of the electors was defeated by 36 votes to 17; another requiring a total poll of one-fourth of the electors was defeated by 34 votes to 14; but subsequently Mr. Reid agreed to an amendment requiring 50,000 affirmative votes.

On 11th December, the Bill was debated in the Legislative Council. Considerable opposition was manifested, but no division was taken on the Bill, which was passed with unimportant amendments, and received the royal assent on 23rd December.

There can be no doubt that the Enabling Bill would have encountered more serious opposition in both Houses had the opponents of Federation realized the importance of the step that was being taken. They misjudged the vitality of the movement, and did not anticipate the stimulating effect
of placing it on a popular basis. They expected that the new Convention, if it ever met, would be as futile as the last had apparently been; and they trusted, in the last resort, to be able to secure the rejection of any Constitution which did not satisfy what they believed would be the demands of New South Wales. They thought that Federation could be trifled with again as it had been in the past; and did not foresee the irresistible momentum which the federal cause would gather, or the completeness with which it was about to sweep away minor issues, and leap to the front as the first great practical question of Australian politics. New South Wales having redeemed her pledge and led the way, other colonies were not slow to follow. South Australia, under Mr. Kingston's leadership, took action as soon as it was clear that New South Wales was in earnest, and dealt with the Enabling Bill so promptly that it became law on 20th December — three days in advance of the mother colony. The only substantial variation in the South Australian Bill was that no minimum vote was required for the acceptance of the Constitution. The Tasmanian Bill, introduced by Sir Edward Braddon, came next, and was passed on 10th January, 1896. It required for acceptance of the Constitution a minimum affirmative vote of 6000 — representing about the same proportion of voters as the New South Wales minimum. In Victoria, an Enabling Act had been introduced by Sir George Turner in December, and had passed the Assembly almost without opposition, the division on the second reading being 71 to 4. In the Council an amendment was made which the Assembly regarded as infringing its money powers, and which resulted in a temporary deadlock. In February, however, a second Bill was introduced, which became law on 7th March, 1896. It required a minimum affirmative vote of 50,000.

Queensland and Western Australia were now being waited for. But Sir Hugh Nelson, the Queensland Premier, had meanwhile discovered difficulties in the way of passing a Bill in the form agreed upon. Queensland was tripartite in interest, the North and the Centre being arrayed against the South in their demand to be erected into separate colonies. This question of separation became interwoven with the question of Federation. The North and the Centre looked forward to Federation, not only for its own sake, but also as a step towards subdivision; whilst Brisbane and the South feared that their trade would suffer from open competition with New South Wales and its metropolis. Each of the three divisions preferred to have separate representation in the Convention rather than to trust to the chances of a single electorate. Moreover, the Government and a large section of the Parliament favoured Parliamentary rather than direct election. Sir Hugh Nelson accordingly provided in his
Bill that the Queensland representatives should be elected by the members of the Legislative Assembly, grouped according to the three great districts. The Premiers of the four colonies which had substantially adopted the model Bill joined in a remonstrance against this departure from the Hobart understanding; but without avail. Sir Hugh Nelson proceeded with the Bill, but somewhat half-heartedly, without committing himself to the whole of the process, and reserving to the Parliament the right to send the Constitution to the people or not, as it pleased. He made no profession of being an ardent federalist, but argued that it could do no harm to have a voice in framing the Constitution, which they would afterwards be free to accept or reject. On the motion for the second reading, Mr. G. S. Curtis moved an amendment affirming that no Enabling Bill would be acceptable which did not provide for the election of representatives by direct popular vote. This was negatived by 36 votes to 26, and the Bill passed the Assembly in July, 1896. But in the Council it was not unnaturally claimed that if the election was to be Parliamentary, both Houses should take part in it; and accordingly the Bill was returned to the Assembly amended to that effect. The Assembly, however, denied the representative character of a nominee House. The difference between the Houses proved irreconcilable; and in November — though Mr. Reid journeyed to Brisbane to assist a settlement — the Bill was laid aside.

Meanwhile Western Australia had decided to fall partially into line with the movement, and had on 27th October, 1896, passed an Enabling Act, which, however, differed in important respects from the others. In the first place, the federal representatives of that colony were to be chosen, not by the people, but by both Houses of Parliament sitting together. And in the next place, the Constitution as framed by the Convention was only to be submitted to the people "if approved by Parliament." The Parliament of Western Australia, therefore, only gave a conditional adherence to the Enabling process, reserving to itself the right to draw back before the final stage.

THE BATHURST CONVENTION. — A symptom of awakening public interest, and at the same time a means of stimulating that interest, was afforded in November, 1896, by a "People's Federal Convention" held at Bathurst — an unofficial assemblage to which delegates were invited from leagues and organizations of all kinds throughout Australia. The Convention numbered nearly 200 representatives, mostly from New South Wales, but including several from other colonies. Its aim was both educative and deliberative; and its chief work took the form of a detailed discussion of the Commonwealth Bill of 1891. Federation was just then, for the first time, a question in which the people could take a practical and
responsible interest, because on the statute book of four colonies were Acts requiring the people first to elect representatives to frame a Constitution, and then to say "Yes" or "No" to the adoption of that Constitution. The Bathurst Convention was opportune; its proceedings were reported at length by the press, and followed with interest throughout Australia. The debates not only showed a general appreciation of the federal spirit, but contributed some really valuable suggestions — particularly in respect of the difficult question of finance. But perhaps the Convention did best service in helping to dissipate the atmosphere of suspicion which, in the minds of a section of the people, had always hung round the Commonwealth Bill. Vague impressions were abroad that the Bill was a compound of "Toryism," "Imperialism," "Militarism," and other unpopular qualities; but the Bathurst Convention, though reflecting every shade of political and social belief, failed to find these defects. The fact that the Commonwealth Bill was by general consent taken as the basis of discussion, and that it came so well out of the ordeal, helped to establish its position as a draft Constitution which must be the basis of all future deliberations.

THE CONVENTION ELECTIONS. — It was decided to wait no longer for Queensland; and 4th March, 1897, was fixed as the date for the election of federal representatives of New South Wales, Victoria, South Australia, and Tasmania. In each colony the election was preceded by a campaign; though, owing to the large size of the constituencies — each colony being one electorate for the purpose — no thorough canvass was possible, and printed addresses largely took the place of speeches.

In New South Wales the 10 seats were contested by 49 candidates. First there were a number of public men of various political faiths and constitutional views, but who may all be classed as federalists. Cardinal Moran, Roman Catholic Archbishop of Sydney, was among the candidates. Then there were the "Labour Ten," a bunch chosen by the Political Labour League of New South Wales. They insisted on a Federal Legislature of one chamber, elected on a population basis; a federal franchise giving "one man one vote;" payment of members of the Federal Parliament; elective Ministers; the Initiative and the Referendum. On these terms they were prepared to give the Federal Parliament large powers; but they announced that "on any other conditions we are opposed to Federation." There was also a bunch of five gentlemen nominated by the "Patriotic League of New South Wales," whose patriotism was avowedly provincial, and who styled themselves "Prudent Federalists." They wished each colony to retain its provincial tariff, and objected to the Federal Government having any taxing powers, except by way of a levy on the States. The list was filled up
by a few comparatively unknown candidates, of little representative importance.

The election was in no sense a party fight; and although some organizations put forward "tickets," the candidates were mostly voted for on their public reputations. The result was a triumph for the federalists, the ten representatives being elected in the following order:- Mr. Edmund Barton, Q.C.; Hon. G. H. Reid, M.L.A. (Premier); Hon. J. H. Carruthers, M.L.A. (Minister for Lands); Mr. W. McMillan, M.L.A. (ex-Treasurer); Mr. W. J. Lyne, M.L.A. (Leader of Opposition); Hon. J. N. Brunker, M.L.A. (Chief Secretary); Hon. R. E. O'Connor, Q.C., M.L.C.; Hon. Sir J. P. Abbott, K.O.M.G. (Speaker); Mr. J. T. Walker; Mr. B. R. Wise (ex-Attorney-General).

Each voter had to vote for 10 candidates; and the number of those who recorded their votes was 139,850, out of a total of some 260,000 electors — a poll not quite up to the usual standard of a general election, but very satisfactory considering the unusual conditions of the contest. Mr. Barton headed the poll with a magnificent vote of nearly 100,000, and the lowest elected candidate secured some 53,000 votes. The Labour Party, with their impossible programme, were very low in the list; though their leader, Mr. J. S. T. McGowen, polled some 40,000 votes, and would doubtless have been higher but for the bold attempt of his "bunch" to capture the Convention. The "Prudent Federalists" were nowhere. But though all the selected candidates were federalists, it cannot be said that the election disclosed any definite "mandate" as to constitutional principles.

In Victoria 29 candidates were nominated. The voting, on the whole, was more on party lines than in New South Wales — the "tickets" of the Argus and the Age, the two daily morning newspapers of Melbourne, being voted extensively; yet the polling was not nearly so heavy — votes being recorded by only 99,108 electors out of some 238,000 on the rolls. The ten representatives were elected in the following order — Hon. Sir George Turner, K.C.M.G., M.L.A. (Premier); Dr. John Quick (ex-M.L.A.); Hon. Alfred Deakin, M.L.A. (ex-Minister); Hon. A. J. Peacock, M.L.A. (Chief Secretary); Hon. I. A. Isaacs, M.L.A. (Attorney-General); Mr. W. A. Trenwith, M.L.A.; Hon. Sir Graham Berry, K.O.M.G. (Speaker); Hon. Simon Fraser, M.L.C.; Hon. Sir William A. Zeal, K.C.M.G. (President Legislative Council); Mr. H. B. Higgins, M.L.A.

In South Australia there were 33 candidates. The elected representatives were:- Hon. C. C. Kingston, Q.C., M.L.A. (Premier); Hon. F. W. Holder, M.L.A. (Treasurer); Hon. J. A. Cockburn, M.L.A. (Minister for Education); Hon. Sir R. C. Baker, K.C.M.G. (President Legislative Council); Hon. J. H. Gordon, M.L.C.; Mr. J. H. Symon, Q.C. (ex-Attorney-
In Tasmania there were 32 candidates; and owing to the comparatively small area of the colony a larger proportion of the electors than elsewhere could be reached by public meetings — a circumstance which contributed much to the federal education of the people. The elected representatives were:- Hon. Sir Philip O. Fysh, K.C.M.G., M.H.A. (Treasurer); Hon. Sir Edward N. C. Braddon, K.O.M.G., M.H.A. (Premier); Hon. Henry Dobson, M.H.A. (ex-Premier); Hon. John Henry, M.H.A. (ex-Treasurer); Hon. N. E. Lewis, M.H.A. (ex-Attorney-General); Hon. Nicholas J. Brown, M.H.A. (Speaker) Hon. C. H. Grant, M.L.C.; Hon. Adye Douglas (President Legislative Council); Hon. William Moore, M.L.C. (Chief Secretary); Mr. M. J. Clarke. M.H.A.

The first meeting of the Convention was fixed for 22nd March; and on 12th March, almost at the last moment, the West Australian Parliament amended its Enabling Act, so as to allow the more speedy selection of the representatives of that colony. Next day the polling took place, the members of both Houses electing the following representatives:- Hon. Sir John Forrest, K.C.M.G., M.L.A. (Premier); Hon. Sir James G. Lee-Steere (Speaker); Mr. George Leake, M.L.A. (Leader of Opposition); Hon. F. H. Piesse, M.L.A. (Commissioner of Railways); Hon. J. W. Hackett, M.L.C.; Mr. W. T. Loton, M.L.A.; Mr. W. H. James, M.L.A.; Mr. A. Y. Hassell, M.L.A.; Mr. R. F. Sholl, M.L.A.; Hon. J. H. Taylor, M.L.C.
The Adelaide Session of the Convention, 1897.

The first meeting of the Convention took place at Adelaide on 22nd March, 1897; though the West Australian representatives did not arrive till four days later. Before the Convention opened, each delegation met to consult, and then all the members held a private caucus for the preliminary discussion of methods of procedure. The representatives met at noon in the House of Assembly Chamber, when the Clerk of the Parliaments (Mr. E. G. Blackmore) read the proclamation convening the Convention, and the representatives present signed the roll. Mr. Kingston, as Premier of the colony in which the Convention was held, was appointed President, and Mr. E. G. Blackmore Clerk of the Convention.

The first thing to decide was whether the Convention should openly take the Bill of 1891 for its basis, and work upon that, or should proceed to originate a new Constitution. It leaked out that the caucus had decided to begin by discussing general resolutions, and then appoint a Committee to draft a Bill; but the matter was discussed again in Convention. Each plan had its advantages, and opinion was divided. It was obvious that any new draft would borrow largely from the old, and some of the members thought it merely affectation, as well as waste of time, to throw aside a Bill which admittedly would make an excellent foundation. But the argument prevailed that the Convention, having been chosen by the people to "frame" a Constitution, would best carry out its mandate, and best earn the confidence of its constituents, by beginning at the beginning, and not formally building its work on the foundations, however excellent, laid down by others.

FEDERAL RESOLUTIONS. — The Convention was as yet "a Parliament without an Executive." Sir George Turner suggested that Mr. Barton should be entrusted with the task of drawing up preliminary resolutions; and at a further suggestion by Mr. Symon, Mr. Barton undertook the duties of "Leader of the Convention." His first step was to move a series of resolutions enunciating a few leading principles and the general outlines of a Constitution, almost exactly in the form of Parkes' resolutions of 1891. One new feature, however, was a preliminary affirmation, understood to have been suggested by Mr. Wise, that the purpose of the union was "to enlarge the powers of self-government of the people of Australia." The debate on these resolutions occupied seven sitting days, and had the important practical result of bringing the members of the Convention into touch with one another, and of making known their different views. Mr. Barton, in an admirable speech, appealed to the
Convention to approach the question with an open mind and in a spirit of compromise; and explained that the object of the resolutions was to have a preliminary debate wide enough in its scope to bring out every view and opinion on the main issues, and yet to avoid, at this stage, any final judgment upon non-essentials. He touched upon the different features of the resolutions in a non-contentious way; but thought it more important for the new members, whose opinions were not on record, to have an opportunity of being heard. Sir Richard Baker followed with a weighty presentation of the argument for giving the Senate equal power with the House of Representatives. Responsible Government was, he said, inconsistent with true Federation; it would either kill Federation or Federation would kill it. No Government could carry on if it needed majorities in both Chambers; and if it were only responsible to one — if one Chamber were to predominate — the whole principle of Federation would be gone. Responsible Government had never been tried in a Federation — for Canada was none — and was inconsistent with the essential conditions of Federation. He therefore favoured the Swiss form of Executive.

Sir George Turner set the example of giving his views in greater detail. He indicated his attitude on most of the debatable questions, and from then onward the debate spread over the whole ground covered by the resolutions. A few points of difference began to loom up and assume importance from the first. Foremost among these was the power to amend money Bills, as to which it soon became apparent that the representatives of the larger and the smaller colonies were both disinclined to compromise. The representatives of the small colonies stood out for a strong Senate, and were disposed to let Responsible Government take its chance. The representatives of the large colonies either denied Sir Richard Baker's premiss that two Houses with equal powers were necessary for an ideal Federation, or argued that the ideal must be sacrificed to practical necessities. The need of some provision for deadlocks was forcibly urged by the Victorians. Both a joint sitting and a dissolution of the Senate were suggested, but the preference seemed to be for some form of referendum — the Victorian Premier and his Attorney-General, Mr. Isaacs, especially favouring a dual referendum to the people and the States. By other members, every deadlock provision was objected to as destroying the Senate's power to protect State interests. The financial question was debated at some length — especially by Mr. Holder, Mr. McMillan, Sir Phillip Fysh, and Mr. Walker — but rather by way of stating the difficulties than of solving them. The debate closed on 31st March, when Mr. Barton replied, and the resolutions were carried.
Although the resolutions were practically those which had been debated in 1891, this discussion was by no means a waste of time. It showed that the point of view had moved onward considerably in these six years; and whilst on certain matters — such as the money Bill question — which had been thoroughly threshed out in the former Convention, there was little new light to be had, yet on matters which had previously been touched slightly or not at all, the debates showed a preparedness to come to closer quarters. It was now possible to proceed to frame a new Bill on lines which the opinion of the new Convention seemed to suggest.

SELECT COMMITTEES. — The next step was to frame a first draft of the new Bill; and for this purpose Mr. Barton moved resolutions for apportioning all the members of the Convention among three Committees. Committee No. 1, for the consideration of constitutional machinery and the distribution of functions and powers, was to consist of four members from each delegation; Committee No. 2, for the consideration of provisions relating to finance, taxation, railways, and trade regulations, of three members from each delegation; and Committee No. 3, for the consideration of provisions relating to the establishment of a federal judiciary, of two members from each delegation; whilst the several Premiers were to be ex officio members of each Committee. The Finance and Judiciary Committees were to report to the Constitutional Committee, which was then to prepare and submit to the Convention a draft Constitution Bill. The various delegations then selected their members for the different Committees, which were formed as follows:-

CONSTITUTIONAL COMMITTEE. — New South Wales: Sir Joseph Abbott, Mr. Barton, Mr. Carruthers, Mr. O' Connor. Victoria: Mr. Deakin, Mr. Isaacs, Dr. Quick, Mr. Trenwith. South Australia: Sir Richard Baker, Dr. Cockburn, Sir John Downer, Mr. Gordon. Tasmania: Mr. Brown, Mr. Douglas, Mr. Lewis, Mr. Moore. Western Australia: Mr. Hackett, Mr. Hassell, Sir James Lee-Steere, Mr. Sholl.

FINANCE COMMITTEE. — New South Wales: Mr. Brunker, Mr. Lyne, Mr. McMillan. Victoria: Sir Graham. Berry, Mr. Fraser, Sir William Zeal. South Australia: Mr. Holder, Mr. Howe, Mr. Solomon. Tasmania: Sir Phillip Fysh, Mr. Grant, Mr. Henry. Western Australia: Mr. Loton, Mr. Piesse, Mr. Taylor.

JUDICIARY COMMITTEE. — New South Wales: Mr. Walker, Mr. Wise. Victoria: Mr. Higgins, Mr. Peacock. South Australia: Mr. Glynn, Mr. Symon. Tasmania: Mr. Clarke, Mr. Dobson. Western Australia: Mr. James, Mr. Leake.

The Judiciary Committee finished its work on 6th April; in the other two Committees the debates were somewhat prolonged, and they did not finish
till 8th April. Then a Drafting Committee, appointed by, the Constitutional Committee, and consisting of Mr. Barton, Sir John Downer, and Mr. O'Connor, prepared a Bill, which was submitted to the Convention on 12th April.

THE FIRST ADELAIDE DRAFT. — Mr. Barton, who was chairman of both Constitutional and Drafting Committees, brought the Bill up, and on the motion to consider it in Committee he explained its provisions categorically, with special reference to the points in which it differed from the Bill of 1891 — Conv. Deb., Adel., pp. 432–59.

The framework and form of the Bill followed closely the Bill of 1891, which the draftsmen had "endeavoured to treat as reverently as possible." To facilitate reference, however, the numeration of clauses, instead of beginning afresh with every chapter, was made consecutive through the whole Constitution. The chief differences from the Bill of 1891 were as follows:-

A change in nomenclature had been made by substituting the more expressive and more accurate term "States Assembly" for "Senate." As to the constitution of the States Assembly, the important change — previously recommended by the Bathurst Convention - had been made, of substituting, for election by the Parliaments, direct election by the people of each State as one electorate. The States Assembly was to be composed of six members from each State.

The Parliament. — For the House of Representatives, in place of the quota of one representative for every 30,000 people, alterable by Parliament, there was a provision for calculating the quota in such a way as to make the number of members as nearly as practicable twice the number of the members of the States Assembly. The minimum of representatives to which any State should be entitled was raised from four to five. The duration of the House of Representatives was extended from three to four years; and the salary of members of both Houses was reduced from £500 to £400. The federal franchise in each State was, "until the Parliament otherwise provides," to be that of the State, but without plural voting. The power thus given to the Parliament to supersede the State franchises (at federal elections) by a federal franchise was a recognition, which the Bill of 1891 had not contained, that the national franchise was a matter of federal concern. This principle was emphasized by the prohibition of plural voting. The legislative powers of the Parliament were somewhat extended. New powers were given to make laws with respect to astronomical and meteorological observations, fisheries in intercolonial rivers, insurance, parental rights and the custody and guardianship of infants. The sub-clause giving legislative power as to the status in the Commonwealth of foreign
and other corporations was extended to cover the general subject of foreign and trading corporations. In place of the sub-clause as to river navigation with respect to common purposes was a new provision giving the Parliament a far wider legislative power as to "the control and regulation of navigable streams and their tributaries within the Commonwealth, and the use of the waters thereof." On the other hand, the control of railways with respect to "transport for the purposes of the Commonwealth" was, to prevent misconception as to the extent of the power intended to be given, defined to apply to "military purposes" only.

**Money Bills.** — One of the most important changes of all was in the powers of the Senate to amend Money Bills. In the Constitutional Committee, the representatives of the two most populous colonies had been outvoted, and the "compromise of 1891" had been set aside. The settlement reached in 1891 had been that the House of Representatives should have the sole power to originate bills appropriating revenue or imposing taxation, and that the Senate should have no power to amend Bills imposing taxation or appropriating the necessary supplies for the ordinary annual services, but might instead suggest amendments in such Bills. The exclusive originating power of the House of Representatives was now cut down to Bills "having for their main object" the appropriation of revenue or the imposition of taxation; and the provision that the Senate should not amend Bills imposing taxation was struck out altogether.

**Responsible Government.** — A further safeguard was introduced to ensure the responsibility of Ministers to Parliament. In addition to the provision that Ministers of the Commonwealth should be capable of sitting in Parliament, it was expressly provided — following a provision of the Constitution of South Australia — that no Minister should hold office for more than three months without a seat in Parliament.

**Judiciary.** — The judiciary clauses, though rearranged, were not seriously altered. The term "The High Court of Australia" was substituted for "The Supreme Court of Australia;" and the High Court, instead of being left to the Parliament to establish, was established by the Constitution itself. A new power was given to "invest with federal jurisdiction" courts other than those established by the Commonwealth. Under the Bill of 1891, the Parliament might provide that appeals which had previously been allowed from the State Courts to the Privy Council should for the future be brought to the Supreme Court of Australia; the new Bill went further, and embodied this transfer of appellate jurisdiction in the Constitution itself.

**Finance.** — The financial clauses were considerably altered. In the first place, a new provision was inserted requiring uniform customs duties to be imposed within two years after the establishment of the Commonwealth.
As regards the basis of distributing the surplus revenue of the Commonwealth, three periods must be distinguished:— (1) Before the imposition of uniform duties; (2) for five years after the imposition of uniform duties; (3) after that period. For these three periods the basis of distribution was to be as follows:—

(1) Before the imposition of uniform duties (that is, so long as the provincial tariffs should remain in force) each State was to be credited with the revenues collected in it from customs and excise duties, and from "the performance of the services and the exercise of the powers" transferred to the Commonwealth. Each State was to be debited with the expenditure of the Commonwealth in respect of these duties, services, and powers, and also with a population share of the expenditure of the Commonwealth in the exercise of its original powers. The balance due to each State was to be paid monthly.

(2) During the first five years after the imposition of uniform duties, expenditure was to be charged in the same way, and revenue was still to be credited to each State on the basis of its contributions. But with a federal tariff and intercolonial freetrade, the State in which customs duty was paid would not necessarily be the State in which the dutiable article was consumed; and it was therefore provided that, notwithstanding the abolition of intercolonial tariffs, an account should be kept of imported dutiable articles passing from one State to another, and the duty chargeable thereon should be credited to the consuming State, and not to the State in which the duty was collected.

(3) After that period, all expenditure was to be charged, and all surplus revenue distributed monthly, in proportion to population. The differences between this system and the system of 1891 were shortly these: under the Bill of 1891 all expenditure was to be charged in proportion to population, there being no distinction between expenditure in connection with transferred services and expenditure in connection with original powers. Moreover, under the Bill of 1891 the second period, instead of being fixed for five years, was to last only "until the Parliament otherwise prescribes;" and though it was no doubt contemplated that Parliament would ultimately prescribe the population basis, it was not imperatively required to do so.

Other novel provisions of great importance were inserted, in the direction of guarantees that the Commonwealth should be economical in expenditure, and should return to the States a substantial share of the surplus revenue. A clause was inserted that for four years after the establishment of the Commonwealth (i.e., practically during the prospective life of the first Parliament) the total yearly expenditure of the Commonwealth in the exercise of its original powers and its transferred
powers respectively should not exceed certain specified sums — which at
this stage were left blank, but which were afterwards filled in by the
figures £300,000 for original powers, and £1,250,000 for transferred
powers. (Conv. Deb., Adel., pp. 1053–6. The sum of £1,250,000 was
intended to represent, not gross expenditure, but the excess of expenditure
over revenue, other than taxation revenue, derived from the transferred
services.) This provision had been suggested in the Finance Committee by
Mr. Reid in order to indirectly satisfy the demands of the colonies which
required a guarantee that their provincial finances would not be unduly
disturbed, and at the same time to avoid imposing on the Commonwealth
the necessity — which would have been very obnoxious to freetraders —
of raising heavy taxation through the Customs. The clause was
supplemented by a further "guarantee" that during the first five years after
the imposition of uniform duties the aggregate amount to be paid to the
States for any year should not be less than the aggregate amount returned
to them during the year last preceding the imposition of such duties. This
was a compromise which, with the help of the clause limiting federal
expenditure, Mr. Reid and his New South Wales colleagues on the Finance
Committee had succeeded in obtaining. Some of the other colonies had
required the guarantee to be for each State individually, instead of for all in
the aggregate, which would have thrown a far heavier obligation on the
Commonwealth; but in view of the strong objections from New South
Wales the lesser guarantee had been accepted.

Equality of Trade. — In the clauses dealing with equality of trade, the
prohibition of preferences was practically the same as before; but in place
of empowering the Parliament to annul State laws derogating from
freedom of inter-State trade, the new Bill contained all express provision
that any law of the Commonwealth or a State which had the effect of
derogating from such freedom should be null and void. Parliament was
also empowered to establish an Inter-State Commission to maintain and
execute, upon railways and inter-State rivers, the provisions of the
Constitution relating to trade and commerce. The members of the
Commission were to be appointed in the same way and on the same tenure
as the Justices of the High Court, and the Commission was to have such
necessary powers of adjudication and administration as the Parliament
should give it: but with the important limitation that it was to have no
powers in reference to any railway rates or regulations unless they were
"preferential in effect and made and used for the purpose of drawing traffic
to that railway from the railway of a neighbouring State." This was the first
definite form of words proposed for the difficult purpose of forbidding
unfair competition by the railways of the several States, whilst reserving to
each State the control and general management of its own railway system.

State Debts. — The clause empowering the Federal Parliament, with the consent of the States, to take over the whole or part of the debts of the States, was practically the same as in the Bill of 1891; though it seems that some members of the Finance Committee interpreted their instructions to the Drafting Committee as giving the power to take over the debts without such consent — Conv. Deb., Adel., p. 453.

State Governors. — In the chapter relating to "The States," the clause requiring that all communications by the Governors of the States to the Queen should be made through the Governor-General was omitted; as was also the clause empowering the State Parliaments to determine the mode of appointment of the Governors. Both these clauses were thought to be an unnecessary interference with the State constitutions.

Amendment. — Lastly, an important change was made in the mode proposed for amending the Constitution. Every amending law was first to be passed, as before, by an absolute majority of each House of the Parliament; but it was then to be submitted, not to State Conventions, but to the electors of the several States, and was not to be presented for the Royal assent unless approved by the electors of a majority of States, and unless the people of the approving States were also a majority of the people of the Commonwealth.

Mr. Barton having expounded the draft Bill, and explained that it represented not necessarily his own or his co-draftmen's views, but resolutions of the several Committees, no time was lost in general debate, but the motion to go into Committee was carried, and Sir Richard Baker, who had already been appointed Chairman of Committees, took the chair amidst cheers.

THE BILL IN COMMITTEE. — Proceedings in Committee opened with a motion by Sir John Forrest to postpone all clauses up to clause 52 in order that the Money Bill clauses might be taken first. The West Australian delegates, on account of a general election in that colony, would have to leave on 14th April. The burning question of the power of the Senate to deal with Money Bills was practically a battle between New South Wales and Victoria on the one hand, and the three less populous colonies on the other. As the Convention was constituted, the latter were in a majority; in the Constitutional Committee they had gained the day, and they could do so again in Convention. But with the West Australian delegates absent, the tables would probably be turned; hence their desire to settle the question at once. The propriety of taking this course had already been discussed some days before, when it had become clear that a large majority of the Convention would support Sir John Forrest's motion, and it was now
carried with but little protest.

Money Bill Clauses. — Then, on 13th April, commenced the last great debate on the Money Bill clauses — a debate which, though it occupied but two days, was certainly the most momentous in the Convention's whole history. It established the recognition by the Convention of the fact that it was a negotiating, and not a legislative, body; that the decision of a majority of representatives within that Chamber went for nothing unless it were a decision which was acceptable to the people of all the colonies. Had that fact and its consequences not been recognized, the present prospects of Federation must have been wrecked, and at the outset there seemed some danger that this might happen. Sir John Forrest, for the small States, announced cheerfully and often that "we have a majority;" and it seemed for a time that the equal representation of the colonies in the Convention — a necessary principle in an assemblage of contracting States — would exercise an undue influence on the form of the Constitution. The recognition of the fact that they must defer to the wishes of majorities outside marked the turning point of the Convention, and the entry of the really Federal spirit of compromise — a spirit which thenceforward grew, slowly but steadily, through all the sittings of the Convention, and spread from the Convention to the people.

The real debate began with an amendment by Mr. Reid to insert a prohibition against the Senate amending "laws imposing taxation," and thus revert to the "compromise of 1891." He was prepared to give the Senate - "not as an antiquated power, never to be used, but as a real living power" — the right of rejection; but the power of moulding finance must be with the House of Representatives. Sir George Turner followed, and said emphatically that he had gone a long way in conceding equal representation in the Senate, and that to give the Senate the power of amending taxation Bills was a proposition which he dare not submit to the people of Victoria, and which, if he did submit it, they would never accept. Sir John Downer, on the other side, argued that he was only asking for terms which existed in every legitimate Federation in the world. Mr. Kingston was the first to stand out from his South Australian colleagues and adhere to the "compromise of 1891," which had been deliberately arrived at after deep consideration, and any departure from which would imperil the cause of Federation. Mr. McMillan, on the other hand, differed from his New South Wales colleagues, on the ground that a revising Chamber, without the amending power, is ineffectual. With these exceptions the ranks of the opposing colonies seemed unbroken, till Mr. Glynn announced that as a representative, and not a delegate, he deemed it his duty to give way. Mr. Carruthers carried the war into the enemy's camp,
proposed to deny the Senate even the power of suggesting amendments, and withdrew his assent to equal representation in the Senate. Later on Mr. Henry, the last speaker of the day, announced his secession from the fast dwindling majority, and thought that he could support Mr. Reid's amendment without imperilling State rights. Nevertheless, had the vote been taken that evening, the amendment would assuredly have been defeated. But Mr. Barton, thanks to a providential catarrh, induced the Committee to report progress, and a night's reflection turned the tide. When the Convention met next morning the battle was practically won, and Mr. Barton clinched the victory by a forcible appeal to the representatives of the small States not to take a step which the people of the two great colonies would regard as an ultimatum, and which would inevitably imperil the chances of union. Mr. Kingston supported him, and scored a palpable hit by pointing out that the Parliament of South Australia, when dealing in Committee with the Bill of 1891, had raised no objection to the "compromise," and that there had never been any indication that the people disapproved of it. Two Tasmanians, Mr. Brown and Mr. Lewis, in the interests of Federation, declared for the amendment; and Mr. McMillan, for the same reason, determined to vote with his colleagues. On division, Mr. Reid's amendment was carried by 25 votes to 23.

The Federal Parliament. — The name "States Assembly" had already been rejected in favour of the more familiar "Senate;" and now Mr. Higgins proposed an amendment providing that each State should be entitled to a number of Senators to be determined by a sliding scale, intermediate between equal and proportional representation. His argument was that "State rights" were protected by the limitation of federal powers in the Constitution, and that in the defined sphere of national legislation State lines ought to be obliterated. To this it was replied that the true justification of equal representation was, not that it was a theoretically ideal principle, but that it was a matter of terms and conditions between equal contracting parties. The amendment was defeated by 32 votes to 5. Soon afterwards Mr. Solomon proposed a similar sliding scale for the House of Representatives, but this was promptly negatived.

The question of the federal franchise raised some discussion. Mr. Holder first proposed an amendment to give every adult man and woman a vote; but this was criticized as being a rash experiment, and an attempt at dictation which would probably be resented in some of the colonies. It was negatived by 23 to 12. He then, by way of compromise, proposed that "no elector now possessing the right to vote shall be deprived of that right" — the object being to ensure that the Federal Parliament, if it should exercise its powers of fixing a federal franchise, should not disfranchise the women
of South Australia. This was strongly opposed, not only as being too wide, but also as preventing the Federal Parliament from framing a uniform franchise except by including women's suffrage. Mr. Holder eventually withdrew this in favour of a provision — drafted, though not approved, by Mr. Barton — which was carried on division by 18 votes to 15, and which now forms sec. 41 of the Constitution. In effect, it guarantees to every State elector a federal vote; so that the Federal Parliament, though it can give the right to vote at federal elections, cannot withhold that right from any elector of a State.

In the legislative powers of the Federal Parliament several changes were made. "Telephonic and other like services" were added to telegraphs; but an amendment by Mr. Holder, to limit the postal and telegraphic power to services "without the boundaries of the Commonwealth" — reserving to the States the control of internal and inter-State services — was defeated by 30 votes to 5. The power as to river fisheries was omitted. An effort by Mr. Higgins to insert a new sub-clause dealing with "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of the State concerned" was negatived by 22 votes to 12.

The River Question. — The chief debate on Legislative powers was in connection with the sub-clause, inserted by the Constitutional Committee, "The control and regulation of navigable streams and their tributaries within the Commonwealth and the use of the waters thereof." Mr. Gordon, who was responsible for the sub-clause, proposed to cast it into a somewhat less sweeping form by restricting it to the Rivers Murray, Darling and Murrumbidgee, and their tributaries.

The debate which followed, and which was only preliminary to a keener and more prolonged debate at the Melbourne sitting, needs for its explanation a short statement of the peculiarities of this great river system, and of the interests of the several colonies in it. The one great river system of Australia extends through four colonies - Queensland, New South Wales, Victoria, and South Australia. Its watershed embraces almost the whole of New South Wales, except the narrow strip east of the dividing range; whilst some of the sources of the Darling are in Queensland, and some of the sources of the Murray are in Victoria. The lower part of the united stream runs for some hundreds of miles through South Australia to the sea. Thus the chief catchment area is in New South Wales, and the outfall in South Australia. The peculiarities of these rivers, and the causes which affect their flow, are as yet very imperfectly understood. The Darling is intermittent; sometimes a broad navigable stream, stretching into immense backwaters and billabongs; sometimes a mere chain of
waterholes. It is fed by the irregular tropical rainfalls of Queensland, and by the lighter and still more uncertain rains of New South Wales. The Murray has a more reliable source in the snows of the Great Divide, and is generally navigable as far as Echuca. In a country of vast distances, scanty rainfall, and unlimited thirst, these rivers are of immense importance both as highways of commerce and as channels for the water necessary for the development and settlement of the land; whilst the problem of their best utilization for either purpose involves vast schemes and undertakings.

Of the colonies represented in the Adelaide debate, Tasmania was a disinterested onlooker, Victoria was concerned to a certain extent, and the real issue was between South Australia as claimant and New South Wales as defendant. South Australia's interest was mainly in the maintenance and improvement of a navigable highway of the utmost importance to her trade with New South Wales and Victoria; whilst New South Wales was impressed with the supreme importance of the waters of the rivers for the development of her territory. Extensive irrigation works in Victoria, and great conservation schemes in New South Wales, had alarmed South Australia; there had been much correspondence between the Governments and a Royal Commission in Adelaide, but South Australia's claim to definite riparian rights had not received much recognition.

Mr. Gordon's contention was that riparian rights between neighbouring States were based on natural justice, and recognized by international law; and that the great river system of Australia, with all its tributaries, could only be dealt with justly by federal control. There were riparian rights between States as well as between individuals, and they ought to be defined by the Federal Parliament. Mr. Carruthers, the New South Wales Minister for Lands, pointed out that the Australian rivers were unique, and English riparian laws utterly inapplicable. New South Wales was responsible for the settlement of territory, and could never be persuaded to give up control of the water. Mr. Gordon protested that he only asked for "a tribunal;" but Mr. Deakin pointed out that there were no settled principles which a tribunal could apply, and urged "the unwise of endeavouring to include in the Federal Constitution the settlement of a problem such as this — the acquirement, in point of fact, under this Constitution of a legal right where at present no legal right exists or is enforceable." The New South Wales delegates were prepared to grant federal control, for purposes of navigation, of rivers forming a boundary between States — practically, that is, of the Murray; but they protested against the Federal Government being able to impound waters wholly within a colony — against New South Wales being made, in Mr. Reld's phrase, "a catchment area for South Australia." Sir John Downer and Mr.
Symon were prepared to accept this, and Sir John Downer moved an amendment to make the sub-clause apply only to "rivers running through or on the boundaries of two or more States, so far as is necessary to preserve the navigability thereof." Mr. Reid, however, objected to the phrase "preserve the navigability," as being dangerous and ambiguous. To regulate navigation was one thing, to "preserve navigability" another; and in the case of rivers now intermittently navigable might mean anything. Sir John Downer's amendment was negatived by 24 votes to 10, and the sub-clause was then negatived by 25 votes to 10.

Mr. Gordon then proposed a new sub-clause, "The control of the navigation of the river Murray, and the use of the waters thereof." An amendment by Mr. O'Connor, to omit the words relating to the use of the waters, was negatived, and an amendment by Mr. Carruthers to add "from where it forms the boundary between Victoria and New South Wales to the sea," was carried. In this form the sub-clause was agreed to. The decision of the Adelaide Convention was therefore to give no express federal control of rivers generally, but only of the Murray from where it first forms an inter-State boundary.

Railways. — Doubts had already been expressed whether the sub-clause empowering the Federal Parliament to deal with matters referred to it by the States would extend to the taking over of the railways; and accordingly on re-consideration sub-clauses were added by Mr. McMillan to allow the Commonwealth, with the consent of a State, to take over the railways of the State on terms arranged between them, and also to undertake railway construction and extension with the consent of the States concerned. But an amendment by Mr. Walker, to include the railways among the departments taken over at the outset, was negatived by 18 to 12.

The Finance Clauses. — In the financial clauses some important amendments were made, though the debates were short. This part of the Bill was reached on 19th April; and on the clause dealing with the distribution of the surplus, Mr. McMillan explained the difficulties which the Finance Committee had had to meet. These difficulties arose out of the widely different fiscal policies of the colonies. Three of them were, in different degrees, distinctly protective; Western Australia, being at present chiefly engaged in the mining industry, was in the abnormal position of raising nearly all her revenue through the customs; whilst New South Wales was absolutely freetrade. Until the imposition of the uniform tariff, the distribution of the surplus would be chiefly a matter of book-keeping, and would present no special difficulties. The question was how to introduce the uniform tariff without dislocating the finances of the States. If the debts were taken over, or if an equivalent minimum return of surplus
to the States were guaranteed, New South Wales would be placed in a
difficult position, because this would practically mean dictating the fiscal
policy of the future. In any case, there must be a federal tariff which would
considerably increase customs duties for the people of New South Wales;
and for the first few years, till trade had time to adjust itself, New South
Wales would pay a disproportionate amount through the customs, and
would lose heavily by a per capita system of distribution. Therefore the
Finance Committee had been driven to adopt for five years "this detestable
system of book-keeping" - which, though perfectly fair, would be "a great
nuisance." He believed that the only way was to leave the problem of
distribution to the Federal Parliament as "the great negotiator."

Mr. Holder followed, and developed the question from the point of view
of the small States. The small States did not know how, without the
customs revenue, they could make both ends meet; and his point was — "while we would like from the point of view of the Federal Treasurer to
leave him free, we cannot from the point of view of the States." They could
not leave the Commonwealth free to adopt a purely freetrade tariff which
would destroy the customs revenue and ruin the States. With a Senate
strong enough to insist on the interests of the small States, he would have
trusted the Federal Parliament; as it was, he preferred to tie the hands of the
Federal Treasurer rather than risk the solvency of the States. He believed
that ultimately the per capita system would be fair, and he would like
meanwhile to see some plan which would obviate the objectionable book-
keeping. As to the "guarantee" question, he objected strongly to the clause
limiting expenditure, and made a suggestion — which contained the germ
of what was afterwards known as the "Braddon clause" — that the
Commonwealth should return to the States a fixed percentage, say 70 per
cent., of the customs revenue collected.

Sir George Turner then took up the discussion, and objected to Mr.
McMillan's suggestion as simply shelving the difficulty and giving out to
all Australia that it was insoluble. To secure support for the Bill, they must
propound something definite. There must be a fixed minimum amount to
be returned. He would like to see, in place of the guarantee of an aggregate
amount, a guarantee to each State of an amount equal to what it received
before the uniform tariff. They might fix a percentage to be returned, in
order to guard against federal extravagance, and fix a minimum return, in
order to guard against an insufficiency of federal taxation. As to the basis
of distribution, he too did not like the book-keeping, and would welcome
some arrangement to dispense with it.

Mr. Reid came last, and argued that a per capita basis would, for some
years, mean a heavy loss to New South Wales, whilst industry and
commerce were adjusting themselves to the new conditions. At the same time, he was anxious to abolish the book-keeping system as soon as possible, and would agree to a sliding scale, ending in the per capita system after five years. He objected to fixing any minimum return, or to loading the Commonwealth with the debts. New South Wales was prepared, with the odds against her, to trust the fiscal question to the Federal Parliament; she was not prepared to give the Commonwealth burdens which would compel a high tariff. Mr. Holder, Sir George Turner, and Mr. Reid having expressed a willingness to confer in order to devise a scheme for dispensing with the book-keeping system, Mr. Barton secured the postponement of the financial clauses in order that the Treasurers might consult together on that subject.

On 21st April, the debate was resumed. First of all Sir Philip Fysh moved an amendment providing that in place of the "guarantee" to the States of an aggregate minimum, there should be a guarantee to each individual State of the amount it received before the uniform tariff. Mr. Reid opposed this stoutly as involving a gigantic system of taxation for the purpose of meeting the possible requirements of one small State. Sir George Turner, who had previously favoured this plan, admitted the force of the New South Wales arguments, and the amendment was negatived on the voices.

Then Mr. Reid brought up the proposal of the Treasurers for shortening the book-keeping period. This was based on a sliding scale, by which the apportionment of revenue, beginning on the book-keeping or contribution basis, would slide in five years to a per capita basis. Accounts were to be kept on the borders for one year only after the imposition of a uniform tariff. That year was to be taken as a test of the inequalities of contribution; and on the assumption that those inequalities would steadily decrease, and would disappear in five years, it was provided that the apportionment of revenue should scale down in five years from the basis shown by the test year to a per capita basis.

This plan, which had been chiefly worked out by Mr. Holder, was strongly recommended to the Convention, and was adopted with very little discussion. The result was that the preliminary basis, for the period prior to the uniform tariff, remained unaltered; the final basis, after five years from the uniform tariff, also remained unaltered (see p. 169, supra); but for the intermediate period, instead of five years' book-keeping on the borders, there was to be only one year's book-keeping, followed by four years' scaling down from the contribution basis, which ruled before the uniform tariff, to the per capita basis which was to rule ultimately.

The only other important financial discussion was in connection with taking over the public debts of the States. The clause as submitted to the
Convention provided that the Parliament might, with the consent of any State, take over the whole or any part of the public debt of the State. Sir George Turner, with most of the Victorians, thought it ought to be compulsory to take over all the debts; but in view of Mr. Reid's strong objection to this course, as dictating a high tariff, he did not press this proposition. He still urged, however, that the Parliament ought to take over all or none, and ought not to have the power of favouring some States in preference to others. The arguments against compulsory federalization of debts were two:— (1) That it would amount to a permanent endowment of the States, and would thus dictate a high tariff policy; (2) that it would make a present of the federal credit to the bond-holders, and prevent the Federal Treasurer being able to bargain for a profitable conversion before maturity. On Sir George Turner's motion, the words requiring the consent of the States, and also the words empowering the Parliament to take over "any part" of the debt of a State, were struck out. In order, however, to give a wider discretion to the Parliament and at the same time prevent unequal treatment of the States, it was provided that a "ratable proportion" of the several debts, on a population basis, might be taken over. The application of the clause was also restricted to debts "existing at the establishment of the Commonwealth." The clause as passed, therefore, did not compel the taking over of the debts, but empowered the Federal Parliament, at its own discretion, to take over the debts of all the States as existing at the establishment of the Commonwealth, or a ratable proportion thereof.

Railway Rates. — A somewhat indefinite debate took place on the subject of preferential rates. On the clause prohibiting derogation from freedom of inter-State trade, Mr. Gordon moved an amendment trying to define with some minuteness an unfair preference. The test by which he proposed to determine the fairness of a preferential rate was to enquire whether or not the trade attracted by that particular rate was or was not profitable; but the proposal was overwhelmed with criticism and was ultimately withdrawn. In the clause dealing with the powers of the Inter-State Commission, the Victorians objected to the prohibition of preferential rates made "for the purpose of drawing traffic from the railway of a neighbouring State," on the ground that it was one-sided, and tied the hands of Victoria in competing for the Riverina trade, whilst it left New South Wales free. The problem was a most difficult one, involving important commercial and political interests. Under the provincial system, each colony had reinforced its barrier of custom-houses by a war of railway rates and railway policies. This was especially the case between New South Wales and Victoria. Each colony had built its railway lines and arranged its rates with a view to concentrating as much trade as possible in
its own capital. New South Wales, having an immensely larger area than Victoria, had tried to gather into Sydney all the trade of that area, and had built octopus railways into the south-western or "Riverina" district — taking care not to extend them quite to the Victorian border, lest some of the trade might flow the wrong way. A large area of New South Wales, however, is geographically nearer to Melbourne than to Sydney; and Victoria ran numerous lines to the border in order to tap the trade of these outlying districts of New South Wales. Then began a system of frankly competitive rates; Victoria offering special reductions — in some cases amounting to 66 per cent. — to goods coming from across the border, while New South Wales endeavoured to retain the trade by prohibitive rates for produce travelling towards Melbourne, and by extremely tapering long-distance rates for produce travelling to Sydney. This "cut-throat" competition between the two railway systems was moreover complicated by the competition of both with river steamers trading to South Australia. As regards the "long-haul" rates in New South Wales, there was also the difficulty that tapering rates for long distances are required by the soundest principles of railway management; and it seemed impossible to ascertain the precise point at which it could be said that a differential rate became preferential and unfederal in character, or the precise degree of tapering which was necessary for the development of territory, and in the interests of the produce and the carrier alike. The only obvious test — that of the direct profitableness or unprofitableness of the rate to the carrier - was inapplicable because the carrier, being the Government, had public and political interests which might justify it in running the railways at a loss for the public benefit.

This war of railway rates had resulted in considerable bitterness between the colonies, and considerable loss to the railways and the public; and everyone was agreed that the Constitution ought, if possible, to contain some power of regulating the competition. Sir George Turner and his colleagues, however, feared that the particular provision in the Bill would prevent Victoria from competing to draw trade from beyond her boundary, whilst it would allow New South Wales to compete to retain trade within her boundary. In other words, they feared that it recognized the right of each colony to charge preferential rates with a view to drawing the trade from its own outlying territory to its own ports; that instead of being mutual, it was anti-federal, inasmuch as it restricted each colony to its own produce; and that it thus favoured the long distance railways of New South Wales at the expense of the short distance railways of Victoria. The answer on behalf of New South Wales was that the clause was mutual so far as inter-State traffic was concerned, and that the Constitution ought not to
interfere with the purely internal trade of a State. The arguments may be
summed up thus: The Victorians — and with them the South Australians — claimed that "trade should flow in its natural channels." The New South Wales representatives did not dispute this as an abstract proposition, but objected to extending the federal control to any trade that was not "inter-State trade," and claimed the right of each State to control its internal trade, subject only to the condition that freedom of trade should not be derogated from. There was no attempt to justify the policy of Victoria in carrying New South Wales goods at cheaper rates than her own, nor the policy of New South Wales in charging prohibitive rates on goods destined for Victoria. The real question as to which opinion was divided was whether a limit ought to be put to the right of New South Wales to taper her long-distance rates. Victoria objected to giving up her admittedly anti-federal weapon unless New South Wales were disarmed also; New South Wales argued that her tapering long-distance rates, though they might indeed be used as an anti-federal weapon, were an essential means to the settlement of her land and the development of her resources. No definite solution of the difficulty was arrived at; but on Sir George Turner's motion the objectionable limitation was struck out and the powers of the Inter-State Commission were left unhampered by any definite instructions.

Amendment of the Constitution. — In the clause providing for the amendment of the Constitution, an important change was made. In place of the provision requiring (1) that the electors of a majority of the States should approve the proposed law, and (2) that the people of the States so approving should be a majority of the Commonwealth, it was provided that the law should be approved by (1) the electors of a majority of the States, and (2) a majority of all the electors voting. A difficulty, however, arose with regard to the women's suffrage in South Australia, which, if the votes in the different States were added together, would give double influence to that State (assuming that there were as many women voters as men). To meet this, it was provided that the votes of States in which adult suffrage prevailed should be halved before being added to the others.

Deadlocks. — The question of the insertion of a clause for the solution of deadlocks was not ignored. During the sitting, suggestions to this end had been circulated by several members; one by Mr. O'Connor, providing for a joint sitting of the two Houses; one by Mr. Carruthers to a similar effect; one by the Premier and Attorney-General of Victoria providing for a dual referendum; one by Mr. Wise, providing for a consecutive dissolution, first of the House of Representatives, and then of the Senate; and one by Mr. Higgins giving the Governor-General a general power to dissolve both Houses. When the stage was reached for the insertion of new clauses, Mr.
Wise moved his proposal providing that if the House of Representatives should pass a Bill to which the Senate would not agree, and if the Governor-General should on that account dissolve the House of Representatives, and if after the dissolution the House of Representatives should again pass the Bill and the Senate again disagree, the Governor-General might dissolve the Senate. He pointed out that his two objects were (1) to preserve the independence of the Senate in all matters affecting State interests, and (2) to secure the dominance of the popular vote on all party questions which did not place the interests of one group of States against those of another. Mr. Barton argued that deadlocks had in fact nearly always arisen from attempts to "tack" matters of general legislation on to a money Bill, or to lump different kinds of taxation together in one Bill; and that the Constitution, by prohibiting this, had already made adequate provision against deadlocks. Mr. O'Connor had also come round to this opinion, and preferred to leave the Bill as it stood. Mr. Trenwith disagreed with this view, and argued that though the deadlocks due to tacking "were the most acute and striking, there were frequent deadlocks" consisting in the refusal of one House to pass matters of progressive legislation. The fact is that in this debate the word deadlock assumed a new and extended meaning, which, in subsequent discussion of the question, it has since retained. A "deadlock" originally meant a disagreement as to a Money Bill or some vital measure, the failure of which would paralyze the machinery of Government; but it now came to be used — for want of a better word — to describe any disagreement between the Houses on any matter of legislation. It was as yet by no means generally recognized that for "deadlocks," in this wider sense, any cure was necessary or desirable; and fears were expressed lest a clause intended to cure deadlocks should in fact have the effect of creating them.

Mr. Higgins objected to Mr. Wise's proposal because it enabled the Senate, without risk to itself, to force the House of Representatives to a "penal dissolution;" and he moved an amendment to enable both Houses to be dissolved together in the first instance. This amendment was strongly opposed, especially by the representatives of the small States, who thought that it would allow undue pressure to be brought to bear on the Senate by the Government of the day. Mr. Higgins' amendment was defeated by 24 votes to 7, and the original proposition was then defeated by 19 to 11.

Mr. Isaacs then moved a series of clauses which had already been circulated by Sir George Turner and himself. They applied equally to both Houses, and provided that in the event of a disagreement about any Bill, the House in which the Bill originated might resolve "that the proposed law is of an urgent nature," and might transmit it with any amendments agreed
to by both Houses to the other House for further consideration. If within a certain time it were not passed by the latter House, the originating House might resolve that it be referred to the direct determination of the people. The vote was to be taken in each State separately, and if the Bill was affirmed by "a majority of States containing also a majority of the population of the Commonwealth," it was to be presented for the Royal assent as though it had passed both Houses. Mr. Isaacs claimed that this scheme gave ample opportunities for reconciling differences, and did not endanger either the independence of the Houses or the responsibility of the Ministry. The real debate had taken place on Mr. Wise's clause, and the new proposal was at once negatived by 18 votes to 13.

All the mechanical devices subsequently discussed — the joint sitting, the consecutive or simultaneous dissolution of both Houses, and the referendum — were thus placed before the Convention at its Adelaide sitting. The refusal to adopt any of them at that stage was not meant as a final decision, but rather as an indication that the Convention was not yet satisfied that any provision was necessary, and at all events was not prepared to commit itself to any of the numerous alternative schemes. The whole question therefore remained open for future consideration.

ADJOURNMENT. — The Bill was reported to the Convention on 22nd April, and next day the report was adopted. In the ordinary course of events, the Convention would then have adjourned, for not more than 120 days, in the terms of the Enabling Acts; but here a difficulty had arisen. The Premiers were all about to visit England for the Queen's Diamond Jubilee celebrations, and it was practically impossible to hold the adjourned sitting before September. The device was therefore adopted of moving that the Convention adjourn till 5th May, and that "at its rising on that day it do further adjourn till Thursday, 2nd September, at 12 o'clock noon." Accordingly on 5th May — all the visiting delegates having long since departed — the Acting-President took the chair, and, having solemnly but ineffectually ordered the bells to be rang for a quorum, declared that the Convention stood adjourned till noon on 2nd September, at Parliament House, Sydney.
(11) Consideration by the Legislatures.

The next step under the Enabling Acts was the consideration of the Draft Constitution by the Legislatures of the several colonies, during the statutory adjournment of the Convention.

NEW SOUTH WALES. — The discussion was begun by the Legislative Assembly of New South Wales on 5th May, 1898, Mr. Car ruthers, in the Premier's absence, being in charge of the measure. The proceedings began with a protracted general debate, of a somewhat monotonous character, which revealed many critics of the Bill, but few friends. The points most forcibly attacked were the equal representation of States in the Senate, the powers of the Senate with regard to Money Bills, and the financial clauses generally. The financial clauses had already been adversely criticised in a series of articles by Mr. R. L. Nash, financial editor of the Sydney Daily Telegraph. The gist of his argument was that Federation under the Bill meant added burdens and no savings; that to meet the new expenditure and the remission of intercolonial duties there would have to be a great increase of duties on oversea imports; that in Victoria, South Australia, and Tasmania there was practically no reserve power of taxation; and consequently that New South Wales would have to pay the whole cost of Federation, adopt a fiscal policy of which she disapproved, and submit to additional taxation to the amount of £1,500,000 — of which possibly £1,000,000 would be returned to her, to be spent extravagantly. His conclusion was that the only solution would be to provide for savings at least equal to the added expenditure, and that this could only be effected by the federation of the debts and railways. These forecasts had been based to some extent on a set of calculations placed before the Convention by the Government Statistician of New South Wales, which took as their basis the imports of the several colonies under their existing and widely differing tariffs, and deduced the amounts of revenue that would be contributed by each colony, assuming the imports remained the same, by applying to them first a uniform tariff on the lines of the Victorian tariff, then a uniform tariff on the lines of the South Australian tariff, and so on. The basic assumption, that the amount of imports would not be affected by the change in the import duties, had already been attacked in the Convention, and was demolished by Mr. Edward Pulsford in a series of articles in the Sydney Morning Herald, which were afterwards laid on the table of the Convention at the session. The supporters of the Bill denied that the estimated contributions of the colonies, thus arrived at, were even approximately correct. They also denied the assumptions that there would
be no savings under the Bill, and that the other colonies were already taxed to the uttermost; and maintained that when the necessary corrections were made the groundwork of these gloomy predictions was cut away. The arguments of the critics, however, carried great weight, and formed the backbone of the Parliamentary opposition to the Bill. The general debate dragged on until 24th June, and on 7th July the detailed discussion began.

The chief amendments suggested by the Assembly followed the lines already indicated. An amendment to abolish the Senate altogether received little support; but the principle of equal representation was negatived, at an early hour in the morning, by a decisive vote of 59 to 4. In its place was inserted a provision for proportional representation, with a minimum representation, for any State, of three members. The exclusive originating power of the House of Representatives was extended to all Appropriation Bills, irrespective of their "main object," and the power of the Senate to suggest amendments in Money Bills was struck out. The limitation of federal expenditure, and the guarantee of the return of a minimum aggregate surplus, shared the same fate; and the elaborate provisions for the distribution of the surplus were replaced by a clause leaving the whole question to the Federal Parliament. The clauses providing for an Inter-State Commission, and for taking over the debts, were struck out. A sweeping "deadlock" clause was inserted, providing that either House, in the event of a disagreement, might submit the disputed measure to a "mass referendum," at which a majority of all the electors voting should decide. Amendments of the Constitution, after having been passed by the Parliament, were to be submitted to a similar referendum, without regard to State majorities.

In the Legislative Council, where Mr. Barton had charge of the Bill, the opposition was even more pronounced. By way of a general protest against State powers in the Constitution, and an affirmation of a more complete unification, after the Canadian model, the word "Commonwealth" was replaced by Dominion, and the word "federal" was ruthlessly excised throughout. The Assembly's amendment as to Senate representation was adopted; but the Council, with an eye to the dignity of Upper Houses in general, left intact the power of the Senate to suggest amendments in money Bills. The destructive attitude of the House, however, was plainly shown in connection with the financial parts of the Bill. The taxing powers of the Federal Parliament, through the customs or otherwise, were excised; in Chapter IV, nearly the whole of the financial provisions were omitted, leaving the Bill a blank. At this, Mr. Barton and Mr. O'Connor disclaimed all responsibility for the proceedings, and left the Chamber; but the Council protested the integrity of its intentions, and went on with its work.
of disapproval. It insisted that Sydney should be the federal capital; but on the subject of deadlocks — true to the traditions of an Upper House — it made no suggestion.

VICTORIA. — Criticism in the other colonies was much more moderate. In Victoria, both Houses accepted equal representation in the Senate, but suggested single-member electorates in preference to having each State as one constituency. The money bill clauses, even more emphatically than in New South Wales, brought out the particular bias of each Chamber. The Assembly threw out, not only the Senate's power of suggesting amendments, but also the prohibitions against tacking; whilst the Council went so far as to claim for the Senate the full power of amendment. The Assembly struck out the plan for the distribution of the surplus, and objected to giving the Federal Parliament exclusive control of bounties; but otherwise it accepted the financial clauses. The Council contented itself with a general resolution "That, in the opinion of the Legislative Council of Victoria, the finance and trade proposals of the Commonwealth Bill require further enquiry and consideration." The Victorian complaint, however, was precisely the opposite to that of New South Wales; the "guarantee" for the return of revenue was thought insufficient, and there was a strong feeling in favour of an immediate per capita distribution of revenue. The Legislative Council — like that of New South Wales — left the matter of deadlocks alone; but the Assembly suggested three distinct schemes:- (a) That if the Senate disagreed with a Bill sent up by the other House, and if "on that account" the House of Representatives were dissolved, and if the Bill were again sent up and disagreed with, the Governor-General might dissolve the Senate; (b) that if the Senate disagreed with any Bill sent up to it, the Governor-General might dissolve both Houses; (c) a modification of the Turner-Isaacs Adelaide proposition for a dual referendum, the two majorities required being (1) a majority of the electoral districts for the House of Representatives, and (2) a majority of all the electors voting. With regard to the amendment of the Constitution, the Assembly suggested that, in case of disagreement, either House without the concurrence of the other might submit an amendment to the electors; and also, suggested that the final paragraph, forbidding certain amendments without the consent of the States concerned, should be omitted.

SOUTH AUSTRALIA. — In South Australia the Assembly carried an amendment for the election of federal representatives on the basis of "one adult one vote." The Assembly asked for the federal control of rivers to be extended to the "tributaries" of the Murray, whilst the Council asked for its extension to the "Darling, Murray, and Murrumbidgee," specifically. Both Houses decided in favour of giving power to the Senate to amend Money
Bills, instead of the mere power of suggestion. The Assembly also passed an amendment providing for the election of Federal Ministers by the two Houses of Parliament for a term of three years, subject to dismissal by the vote of a joint sitting. The Council proposed to make the High Court consist of one Supreme Court Judge from each State; and it also adopted Mr. Gordon's attempted definition of a preferential rate. Lastly, the Assembly adopted a deadlock clause, providing that if, after continued disagreement upon any question, either House resolved that the question was one of urgency, the Governor-General might grant or refuse either a dissolution (apparently of both Houses) or a dual referendum.

TASMANIA. — In Tasmania the amendments made were somewhat less important. With regard to the origination of Appropriation Bills, the House of Assembly made the suggestion, which was subsequently adopted by the Convention, to leave out the somewhat vague words as to the "main object" of the Bill, and to substitute a proviso that either House might originate appropriations of fines or penalties, or fees for licenses or services. This secured the desired result of giving the Senate power with regard to petty incidental appropriations, without opening debatable questions as the "main object" of the Bill. Both Houses were in favour of giving the Senate power to amend Money Bills. Both Houses also agreed to an elaborate scheme for the immediate taking over of the debts of the States, making the Commonwealth chargeable with the whole interest bill, and giving it an indemnity against each State for interest paid in respect of any excess of its indebtedness, on a per capita basis, over that of the State whose indebtedness was least. The Tasmanian Parliament did not wish for the insertion of any deadlock scheme; but the Assembly provisionally suggested a scheme "for use in the event of the Convention deciding to make a provision to evade deadlocks, but not otherwise." It provided that in the event of a disagreement, followed by a dissolution of the House of Representatives, the law in dispute, if again carried by a four-sevenths majority of the House of Representatives, and then by a three-sevenths majority of the Senate, might be deemed to have passed both Houses.

WESTERN AUSTRALIA. — The West Australian Parliament did not meet until 17th August. Its consideration of the Bill was short, and its amendments were few. Both Houses claimed for the Senate the power to amend taxation bills. In respect of the return of surplus revenue, both Houses asked for a guarantee, not in the aggregate merely, but to each individual State, and struck out the sliding scale of distribution; whilst, for the ultimate basis of distribution, the Assembly rejected the per capita system in favour of a return in proportion to contributions. The Assembly also proposed to charge the Commonwealth with a proportion of the debts,
on the basis, not of population, but of adult male population. Western Australia at present numbers an abnormally large proportion of adult males — a fact which goes far to account for her abnormally high revenue from Customs; and it was argued that a factor which had so potent an influence on the incidence of taxation should not be ignored on the other side of the ledger.

SURVEY OF THE SUGGESTIONS. — A comparison of the general, trend of the amendments thus suggested in the five colonies is most interesting. The main lines of cleavage on constitutional points were two. There was in the first place a general opposition between the constitutional views of the more populous colonies on the one hand, and the less populous colonies on the other hand; the former inclining towards the absolute supremacy of the majority, independent of State boundaries, and the latter towards some degree of control by a majority of States. There was also, in each colony, a conservative and a liberal view — the former, for the most part, represented by the Legislative Council, and the latter by the Legislative Assembly. The Conservative, or Upper House, sympathy was with a strong Senate; and hence - partly by accident, and partly by a natural association of ideas - the Conservative view and the "particularist" or State right view tended to approximate, though their aims by no means coincided; whilst in the same way the liberal view and the nationalist view tended also to approximate. The result was a certain blurring of the lines of State cleavage. Just as in the Convention it seldom happened that any delegation voted solid, so in the Parliaments it seldom happened that the two Chambers quite agreed on their most important suggestions.

But besides constitutional differences, such as those with regard to money bills and deadlocks, there were also differences of interest or policy, such as those with regard to the river question, the railway question, or the tariff question. On these matters the issues were far more clearly cut between the colonies immediately interested. On the whole, as to constitutional questions and commercial questions alike, the draft constitution held a pretty fair balance between the conflicting views. The compromises made by the Convention were re-opened in the Parliaments in opposite directions. Thus with regard to Money Bills, the Legislative Assemblies of New South Wales and Victoria wanted to give the Senate less power; the Legislative Councils of those colonies were content with the clauses as they stood; whilst the Legislatures of the other colonies wanted to give the Senate more power. These different amendments represented the divergent views which the Convention had endeavoured, with remarkable success, to reconcile.

In two points, however, there seemed to be considerable dissatisfaction
with the Bill; in respect to the financial clauses, and in respect to the absence of a "deadlock" provision. The Adelaide "sliding scale" of distribution had considerable merit as an attempt to bridge the gulf between the system of distribution according to contributions, which was admittedly necessary to begin with, and the system of distribution per capita, which was ultimately desirable. But it did not please New South Wales — to meet whose objections to immediate per capita distribution it had been expressly devised — nor was it approved in any other colony except South Australia — whose Treasurer, Mr. Holder, was the real author of the clause. As to deadlocks, the Legislative Assemblies of three colonies — New South Wales, Victoria, and South Australia — agreed that some provision was necessary, though they differed in their ideas of what it should be. The Assemblies of Western Australia and Tasmania did not want any such provision; nor did any of the Legislative Councils.
On 2nd September the Convention met in Sydney to reconsider the draft Constitution, together with the amendments suggested by the Legislatures. Some hopes had been held out that Queensland would be represented at this sitting, but they were disappointed. In June an Enabling Bill had been introduced in the Legislative Assembly of that colony, providing that representatives elected by the Parliament should attend the Sydney Convention, on condition that the draft Constitution should be reconsidered clause by clause. Mr. Thomas Glassey, leader of the labour party, had thereupon moved a resolution similar to that previously moved by Mr. Curtis, that no Bill would be acceptable which did not provide for the direct election of the representatives; and a vote having been taken which amounted to a defeat of the Government proposal, the Bill was withdrawn on 14th July. On 29th July Mr. John Leahy moved a resolution affirming the desirability of Federation, and of Queensland being represented at the Convention, but this was ultimately discharged from the paper. At last, on 9th September, while the Convention was sitting, Mr. J. V. Chataway moved a resolution, which was duly carried, asking the Convention not to conclude its work till Queensland had an opportunity of being represented. Accordingly the colonies represented at the Sydney sitting were the same as before. There was a change in the West Australian delegation, the Hons. H. Briggs, M.L.C., F. C. Crowder, M.L.C., A. H. Henning, M.L.C., and H. W. Venn, M.L.C., taking the places of Messrs. Piesse, Loton, Sholl, and Taylor, who had resigned on 26th August.

The business of the Convention involved not only the general reconsideration of the whole Bill in the light of recent discussion, but also the consideration of some 286 amendments, in all, suggested by the ten Houses of Parliament. The chairman (Sir R. O. Baker) wisely decided that all these amendments should be put from the chair, and voted upon, as though they had been moved by a representative; so that no Parliament could say that its suggestions were slighted. It soon proved, however, that the work before the Convention was too much to be disposed of in the time at its disposal. A general election in Victoria was impending, which would call the Victorian representatives away; and it became clear that another adjournment would be necessary. In order, however, to settle some of the most important questions, it was decided once more to depart from the consecutive order of dealing with the clauses. Most of the debate at Sydney was monopolized by four great questions: the financial problem, the basis of representation in the Senate, the power of the Senate with regard to
Money Bills, and the insertion of a provision for deadlocks.

THE FINANCIAL DEBATE. — With regard to the financial clauses, the first step was to appoint a Finance Committee, consisting of the five Treasurers and one other representative from each delegation, to report upon Chapter IV. of the Constitution. Then followed a general debate, in which the whole financial question was discussed at large. The tenor of the debate was critical rather than constructive; and though no conclusion was arrived at, the difficulties as they presented themselves to the several colonies were reviewed at length. The great central difficulty was to formulate — while the nature of the federal tariff, and its operation, were still unknown quantities — some scheme of distributing the federal surplus which would not only be fair in itself, but would guarantee all the States against any dislocation of their finances. This difficulty arose out of the widely-differing character of the existing tariffs of the colonies, and the differing degrees of their dependence on customs and excise revenue. At one end of the scale stood New South Wales, with a purely free trade tariff and a large land revenue. The finances of that colony, under almost any system, would be secure; what she feared was, not a deficiency of revenue for provincial purposes, but an unduly large increase of taxation through the customs. At the other end of the scale stood Western Australia, with a large unsettled mining population, and relying almost entirely on customs duties, a great proportion of which were collected on intercolonial produce. It was recognized that her abnormal position required special treatment, and that no system of general application could meet her needs. Between these extremes were the other three colonies — all relying largely on customs and excise and all unwilling to resort in any great degree, to direct taxation. The customs and excise revenues surrendered to the Commonwealth would be some four times as much as were needed for federal expenditure; and each colony wanted some guarantee that it would get back, not only its fair share of what it contributed, but an amount sufficient to balance its provincial accounts. The two problems were to guarantee that there would be a large surplus to distribute, and to find a basis of distribution which would meet the needs of all the colonies.

The basis of distribution provided by the Adelaide sliding scale had not found favour. As Mr. Holder said, it was "a child of misfortune — misfortune in that it was laid before the Convention and accepted [in Adelaide] on the faith of those who recommended it; never discussed, never explained — thrown into a cold world, without anybody to be father to it." Mr. Reid admitted its good points, but recognized that it had not inspired public confidence; and, in common with most of his delegation, fell back on the necessity of leaving the whole question to the Federal
Parliament. The "unknown quantity" of the federal tariff, it was contended, made it impossible for the Convention to solve the question; a basis of experience was necessary. The other colonies were willing to "trust the Federal Parliament" to a certain extent; but they wanted some guarantee of their State finances. Methods were suggested for evading the difficulty by saddling the Commonwealth with some of the obligations of the States - for instance, in respect of the debts, or the railways, or both — but all these plans, as Mr, McMillan pointed out, only "covered up" the surplus, and did not get rid of the problem of apportionment. The uncertainty surrounding the whole question was increased by the calculations of the statisticians, which were sometimes treated as reliable forecasts, and sometimes — with more truth — as deductions from unreal and improbable assumptions. The debate threw all the difficulties into high relief, and it was then left to the Finance Committee to find a solution.

SENATE REPRESENTATION. — The Senate debate took place upon the New South Wales suggestion to substitute proportional for equal representation. The opponents of equal representation proved to be only five in number. It must be noted, however, that most of its supporters justified it, not so much on the abstract principle of State equality, but as a concession to the smaller States, necessary to secure their assent to the Constitution, and expedient to secure the fair treatment of local interests. This view of equal representation in the Senate, as based not on abstract logic but on practical compromise, was emphasized by an amendment which made it clear that the guarantee of equal representation was given only to "original States," and was not extended to States which might afterwards enter the union, or be created within it by subdivision or otherwise. It is also noteworthy that many of the delegates who accepted equal representation did so in the expectation, and on the understanding, that some provision would be inserted for securing the due subordination of State interests to national interests. The debate in fact pointed forward to the adoption of a deadlock clause which would place some restriction on the absolute veto of the Senate. The Convention explicitly affirmed the principle that the structure of the Federal Parliament ought to ensure due consideration to State interests; but it explicitly denied the doctrine that all federal legislation must necessarily receive the assent of a majority of the States.

MONEY BILL CLAUSES. — In the Money Bill clauses only one substantial amendment was made. The vague and somewhat sweeping power of the Senate to originate appropriation Bills whose "main object" was not the appropriation of revenue was taken away, and in its place was inserted the Tasmanian suggestion, drafted by Mr. Inglis Clark, giving the
Senate power to originate Bills involving incidentally the appropriation of fines or fees. This provision was based upon a standing order of the House of Commons, which had already been adopted by the Legislative Assemblies of South Australia and Tasmania. The amendment of the Legislative Council of Western Australia, to give the Senate power to amend taxation Bills, was debated at some length, but was defeated by 28 votes to 19.

DEADLOCKS. — The longest and most important debate of the Sydney sitting was that upon deadlocks, which lasted from 15th to 21st September. On this question several distinct suggestions had been made by the Legislatures; and the clause first proposed from the Chair was that suggested by the Legislative Assembly of New South Wales, providing for a referendum of the kind spoken of at the Convention as a "mass" or "national" referendum — a referendum, that is to say, at which a simple majority of all the electors voting should decide. The discussion began by a general debate on the whole question. (Conv. Deb., Syd., pp. 541–79.) Some of the members had thought from the outset that some provision would be necessary to prevent serious conflicts between the Houses. Others, who thought conflicts would be infrequent, nevertheless agreed that some provision in the nature of a "safety-valve" would be desirable; and some who had previously opposed any such provision were now, upon more mature consideration, converts to this view. The devices which were chiefly discussed at the outset were the dissolution of both Houses, either consecutively or simultaneously, and the referendum, either national or dual. Of these, all except the national referendum preserved the veto power of a majority of States, and therefore failed to provide effectually against the conflict which was feared from the double basis of representation. They safeguarded State interests, but did not ensure finality. They would only be effectual in cases where the Senate's constituents either differed from their representatives, or were overborne by the moral weight of the national majority. This, of course, from the point of view of the small colonies, was a strong recommendation; but from the point of view of the large colonies it meant that these schemes failed in their chief function; that, whenever State interests and national interests clashed, the deadlock, so far from being cured, would be intensified by being transferred from the Parliaments to the people. On the other hand the national referendum, though absolutely final, ignored the individual States altogether, and was objected to by the small States as practically destroying the power of the Senate to protect their interests.

Some compromise was needed which would partially, but not fully, recognize State individualities; and to effect this, Mr. Kingston and Mr.
Reid suggested that the subjects of legislation which affected State interests might be defined, and the dual referendum applied to them, whilst the national referendum should be applied in all other cases. It was soon seen, however, that no definition of this kind could possibly be framed, as almost every conceivable subject of legislation could be dealt with in a way which might seriously prejudice State interests. Some other principle of compromise had to be looked for.

The Tasmanian suggestion — which, in case of continued deadlock, enabled a four-sevenths majority of the House of Representatives to override a four-sevenths majority of the Senate — was not much discussed; but the somewhat similar device of a joint sitting of both Houses, which had previously been suggested in a tentative way by Mr. O'Connor, Mr. Reid and others, was now revived as a possible solution of the difficulty. It was not favourably received by Sir George Turner and Mr. Isaacs, who had an affection for the referendum — even the dual referendum, if no other were attainable. In fact — as is the way with compromises — it aroused no enthusiastic support anywhere; but both sides looked upon it as a possible last resort if they could get no better terms. The dissolution and the referendum continued to occupy the most prominent place in the debate; which turned a good deal on the restrictions and safeguards which ought to be placed on both these devices to prevent their abuse. The objections raised to the consecutive dissolution, first of the House of Representatives and then of the Senate, were: first, that it would enable the Senate, without immediate risk to itself, to penalize the other House; next, that it would mean that the two sides of the question would be put to the people at different times. The objection raised to the simultaneous dissolution of both Houses in the first instance was that it would enable the Ministry constantly and systematically to bring threats and pressure to bear on the Senate. And the objection raised to any dissolution of the Senate at all was that it would destroy the continuity which was effected by the principle of rotation — an objection largely met by the reply that deadlocks would undoubtedly be rare, and that resort to the deadlock clause would be "the medicine, not the daily food," of the Constitution. The argument against the referendum was that it would weaken Ministerial and Parliamentary responsibility; and accordingly many of those who objected strongly to its use as a first step were inclined to view it with less disfavour if it were preceded by the responsible step of a dissolution. The general discussion ended with a test vote on the first word of the proposed clause, which resulted in a decision, by 30 votes to 15, in favour of a deadlock clause of some kind. Then came the question of the choice of methods.

The first amendment, moved by Mr. Symon, was to the effect that if the
Senate should disagree with any Bill passed by the House of Representatives, and if "on that account" the House of Representatives were dissolved, and if the deadlock still continued, the Governor-General might dissolve both Houses. It was at once complained that this not only required the House of Representatives to be penalized first, but also involved its being dissolved twice to the Senate's once, and Mr. Symon accordingly consented to deprive the first dissolution of the House of Representatives of its penal character by omitting the words "on that account," and to allow the Senate alone to be dissolved in the second instance. This proposition for a consecutive dissolution was strongly opposed by the representatives of New South Wales and Victoria, but was carried, after discussion, by 27 votes to 22 — the division practically representing the three small colonies against the two large ones. To most of the representatives of the latter the vote was very unpalatable; but it had to be accepted for the time being.

Mr. Lyne then moved to add to Mr. Symon's amendment a provision that if, after the consecutive dissolution, the deadlock still continued, the measure in question should be referred to a national referendum. But Sir George Turner, though he had been prepared to allow the referendum to follow a simultaneous dissolution, would not postpone it till after the consecutive dissolution; and he accordingly moved an amendment on Mr. Lyne's proposition, so as to provide that instead of a dissolution, there might be a referendum (either dual or national) in the first instance. Mr. Wise, in turn, objected to a referendum without a previous dissolution, and accordingly moved to amend Sir George Turner's amendment by inserting a simultaneous dissolution before the referendum. The proceedings were getting rather tangled, and to simplify matters the discussion was postponed; with leave to the Committee to reconsider and rescind the unsatisfactory vote already taken, and to begin afresh.

The Committee, however, did not take advantage of this leave, but proceeded to discuss the series of amendments thus proposed. A whole day's debate followed before any decision was come to. A vote then taken, without division, on the first word of Mr. Lyne's amendment, decided that whatever new machinery was added should be made alternative to, and not consequent upon, Mr. Symon's consecutive dissolution. The result was that Mr. Symon's provision led up to nothing further, but stood by itself as one mode of securing agreement; whilst the Convention, not satisfied with that mode, proceeded to work out an alternative one.

Mr. Lyne's amendment was now out of the way, and the questions before the Convention were Sir George Turner's proposition for a referendum, and Mr. Wise's amendment for preceding this with a simultaneous dissolution.
Mr. Wise's amendment was carried by 25 votes to 22 — a decision that, if there were to be a referendum at all, it should only be after a double dissolution. It soon became evident, moreover, that though the friends of some kind of referendum were in a majority, they were hopelessly split when the choice had to be made between the national and the dual referendum. As a result, the national referendum was defeated by 36 votes to 18 — the smaller colonies voting almost solid with the majority — and the dual referendum was next defeated by 27 votes to 18.

Mr. Carruthers then came to the rescue with a proposition that Mr. Wise's double dissolution should be followed up by a joint sitting of both Houses, at which a three-fifths majority should be able to carry the measure. Though no one waxed enthusiastic over the joint sitting for its own sake, it was supported as being on the whole the best compromise that the Convention would agree to. It was, however, strongly opposed by Sir George Turner and Mr. Isaacs on the one hand, and some of the friends of a strong Senate on the other. Mr. Kingston moved an amendment to substitute, in place of the joint sitting, a national referendum "in the case of national questions," and a dual referendum "when State interests are involved;" but the impossibility of defining State interests was apparent, and the amendment was negatived by 30 to 11. The "three-fifths" majority at the joint sitting caused some debate. Mr. Howe, of South Australia, wanted to increase it to "two-thirds;" Mr. Higgins, of Victoria, to diminish it to a bare majority. A proposition to omit the words "three-fifths" was defeated by 28 votes to 13 — Mr. Reid and others, who preferred a bare majority, not caring to risk the loss of everything by insisting. Mr. Carruthers' amendment was then carried by 29 votes to 12.

The result of these votes was that Sir George Turner's original proposition for a referendum was overlaid by the Wise-Carruthers amendment, providing for a simultaneous dissolution of both Houses, followed, if necessary, by a joint sitting. The question that this composite proposition stand part of the clause was carried in the affirmative by 23 votes to 13. A further amendment by Mr. Carruthers, to allow a bare majority at the joint sitting, if defeated, to appeal to a national referendum, was rejected; and the clause was then agreed to. The Sydney session thus resulted in two deadlock schemes: Mr. Symon's consecutive dissolution, standing by itself and leading to nothing further; and the Wise-Carruthers scheme of a double dissolution followed by a joint sitting. The latter scheme represented the real decision of the Convention, and it was tacitly understood that Mr. Symon's consecutive dissolution was superseded, and would be subsequently rescinded.

The necessity for the departure of the Victorian delegates brought the
proceedings of the Sydney session to a close before more than half of the clauses of the Constitution had been considered; and on 24th September the Convention adjourned, to meet for its final session at Melbourne on 20th January, 1898.

QUEENSLAND AND NEW SOUTH WALES. — It was hoped that this adjournment might enable Queensland, even at the eleventh hour, to take part in the proceedings of the Convention; but the hope was again disappointed. A third Enabling Bill was indeed introduced in that colony in November, for the direct election — at last — of Queensland representatives by the whole colony as one constituency. This Bill was again wrecked by the provincial differences of the three great divisions of the colony. Mr. Curtis moved the withdrawal of the Bill with a view to having the colony divided into three constituencies. He succeeded in his object so far as the withdrawal of the Bill was concerned; but no further Bill was introduced. Federalists were still too divided by provincial differences to make headway against opposition.

In New South Wales, the interval between the Sydney and Melbourne sessions was marked by a determined effort by the opponents of the Convention scheme to prevent its ultimate adoption by the people. The Parliament of New South Wales contained many members who, if not exactly anti-federal, were at least strongly opposed to Federation on the lines which commended themselves not only to the Convention, but to most of the zealous advocates of Federation. They had allowed the Enabling Bill to pass without much protest, little dreaming of the strength of public sentiment by which the movement so started would be supported and carried to a conclusion; and they now rallied for a last Parliamentary stand. In June, a Bill had been introduced in the Assembly by Mr. R. H. Levien, a private member, to amend the Enabling Act by requiring an affirmative vote, at the federal referendum, of an absolute majority of all the electors on the roll. As the roll at that time numbered about 278,000 electors, this meant an affirmative vote of some 139,000 — an impossible number to expect. The Bill reached its second reading on 12th October, when it was found that though few members were willing to go so far as to require an absolute majority, many would vote for a substantial increase in the minimum of 50,000 imposed by the Enabling Act. Any amendment of the Enabling Act at this stage was denounced by the most prominent federalists in the House as a breach of faith with the other colonies; but the second reading was carried by 47 votes to 27, and in Committee an amendment was carried requiring a minimum affirmative vote of 80,000. In that form the Bill was passed and sent to the Council, where it was introduced by Sir Julian Salomons. It met with determined opposition from
Mr. Barton, Mr. O'Connor, and other prominent federalists, who however found themselves in a minority. The second reading was carried by 21 to 17, and in the course of an all-night sitting, notwithstanding gallant resistance, it was forced through Committee with the help of a plentiful — and in that Chamber, unprecedented — use of the closure. It became law on 12th December.
The Melbourne Session of the Convention, 1898.

The Melbourne session, extending from 20th January to 17th March, 1898, was the longest and most important of all; and the necessity of coming to a final decision on all points invested its deliberations with special weight. The whole Bill received thorough reconsideration by the Convention, and thorough revision by the Drafting Committee. The passage through Committee of the Whole interrupted in Sydney, was completed — ending with the finance and trade clauses, on which the Finance Committee had meanwhile reported. This process occupied the Convention until 3rd March, after which the Bill was four times recommitted for the consideration of certain clauses, and for the insertion of drafting amendments, before it was finally adopted by the Convention. The debates which stand out from the others as being of pre-eminent importance were those relating to rivers, finance, and railway rates.

RIVERS. — The river question raised the first long debate, which occupied nearly a fortnight of the time of the Convention. (Conv. Deb., Melb., pp. 31–150, 376–642, 1947–90.) It began upon the suggestion of the Legislative Council of South Australia, to extend to the "Darling, Murrumbidgee, and Lachlan" the sub-clause empowering the Federal Parliament to regulate "the navigation of the river Murray and the use of the waters thereof." The South Australian claim, at first, involved federal control not only of navigation, but of irrigation and water conservation as well. It was argued that the great rivers belonged, not to one colony, but to all; that they were essentially national in character, and that the use of their waters, for all purposes, could only be effectually dealt with by the federal authority. As regards navigation, South Australia undoubtedly had the best of the argument, and no serious attempt was made in Melbourne to confine federal control of navigation to boundary rivers. It was also admitted that the navigation power ought not to be confined to the rivers which were "navigable" in the sense laid down by English decisions, as being subject to the ebb and flow of the tide, but ought to extend, as defined by cases in the United States, to rivers which were in fact, permanently or intermittently, navigable for purposes of trade and commerce. But it was pointed out that irrigation and conservation were not subjects handed over to the Commonwealth, and therefore that the "use of the waters" for these purposes was a matter in which the States, which were responsible for the settlement and cultivation of their lands, were primarily interested. This the South Australian representatives were soon obliged to concede, though they maintained that there were, or ought to be, riparian rights between
States as between individuals, and that these rights ought to be defined by federal law. The debate proceeded mainly, however, on the recognized assumption that navigation — at least inter-State navigation — was a federal power, incident to the control of trade and commerce, whilst irrigation and conservation were State powers incident to the control and management of the land. The difficulty remained, that the two powers might possibly conflict. Irrigation and conservation works in the States, if uncontrolled by the Commonwealth, might destroy the navigability of the rivers; whilst navigation regulations of the Commonwealth, and more especially works for maintaining or improving the navigability of the rivers, might seriously interfere with irrigation and conservation. South Australia adjured New South Wales to "trust the Federal Parliament;" New South Wales replied that she was prepared to trust the Federal Parliament in federal matters, but that provincial rights ought to be beyond the reach of the Federal Parliament. It was argued very strongly that both sides were fighting a shadow, and that the danger of conflict was imaginary; that the two powers, so far from being antagonistic, would probably mutually benefit each other. Neither party, however, could be wholly satisfied as to this; and the question was how far either power, in case of conflict, ought to be paramount. Amendments innumerable were suggested, with a view to giving the Federal Parliament power to deal with the "maintenance of the navigability," or "the maintenance and improvement of the navigability" of the rivers; whilst the New South Wales representatives contended that the clause ought to be restricted to the "control of navigation." "Navigability," they objected, was such an uncertain and intermittent condition in the Darling that it was impossible to define what its "maintenance" meant; and it would be equally impossible to decide whether a particular irrigation work interfered with "navigability" or not. Moreover, power to maintain — and still more to improve - navigability, must, in order to be effective, deal with tributaries, and control the use of the water. Irrigation and conservation, they contended, were needed for production, and were infinitely more important than navigation, which was only needed for carriage. Accordingly, they objected to any provision which made navigation paramount, and cultivation subservient. To meet these objections, various limitations were suggested by way of preventing interference with a "reasonable use" of the waters for irrigation, or of requiring a just regard to the necessities of water conservation and irrigation." None of these suggestions, however, satisfied the New South Wales representatives, who complained that they were being asked, in the name of Federation, to give up their undoubted rights with regard to provincial matters. No solution seemed ready, and Mr. Barton secured the
postponement of the clause in order that the delegations most directly concerned might thresh the matter out in friendly conference.

The friendly conference, however, was unsuccessful, and the debate recommenced. In the interval Mr. Carruthers, the New South Wales Minister for Lands, had procured and hung in the vestibule a large map showing the watershed of the Murray system; and this helped the representatives of Tasmania and Western Australia, who were in the position of disinterested umpires, to see that the objections of New South Wales were not unfounded. The Convention began to hark back to the position that, after all, the "trade and commerce" power, together with the power to regulate "navigation and shipping," gave all the control of navigation that was necessary, and that the best solution would be to follow the American example and attempt no detailed definition. A number of amendments, on the lines previously foreshadowed, were proposed and negatived, and eventually the whole sub-clause was struck out. Attempts were made to substitute various other provisions in its place; but these were all rejected in turn, and the "navigation" power was left undefined and unfettered, without any reference to rivers.

New South Wales, however, was not yet satisfied. The federal control of rivers was now limited to navigation; but the navigation power, being a federal power, would be absolutely paramount, in case of conflict, over the rights of the States to use the water for any other purpose. Mr. Reid and Mr. Carruthers wanted to secure the rights of irrigation and conservation, which they regarded as of paramount importance, against any possible interference by the Federal Parliament. Accordingly, after the second recommittal of the Bill, Mr. Carruthers moved to add to the "navigation and shipping" sub-clause a proviso that the use of the rivers for navigation should be subordinate to the conservation of waters within any State to meet the requirements of its people. He argued that without some such safeguard no one could safely invest money in conservation works without the express sanction of the Federal Parliament. The South Australians, having failed to secure their own amendments, fought for the Bill as it stood, and claimed that irrigation must not be made paramount unless some just basis of distribution between riparian States were recognized. Finally Mr. Carrathers withdrew his amendment in favour of one by Mr. Reid, to the effect that the navigation power "shall not abridge the rights of a State or its citizens to the use of the waters of rivers for conservation and irrigation." This, it was claimed, merely protected the existing rights of New South Wales, leaving it to the Court to say what those rights were. The South Australian argument, however, was that, whatever the present legal rights of a colony might be, they should not be paramount when they
conflicted with the reasonable use of the powers of the Commonwealth. Several previous amendments had offered to concede to the States the "reasonable use" of the waters, and now Sir John Downer proposed to insert "reasonable" before "use" in Mr. Reid's amendment. Mr. Reid feared that the indefinite word "reasonable" would destroy the effect of the provision for the preservation of rights; but the Convention was against him, and the sub-clause was carried with Sir John Downer's amendment. Later, it was re-modelled by the Drafting Committee into a separate clause explanatory of the "trade and commerce" power.

THE FINANCIAL CLAUSES. — The Finance Committee appointed in Sydney had not, during the Sydney session, found much time for deliberation; but during the early part of the Melbourne session they got to work, and framed a series of resolutions which, with the help of the Drafting Committee, were shaped into clauses. On 10th February, when the first consideration of the whole Bill, except Chap. IV., had been completed, the Finance Committee brought up their report. They proposed a complete reconstruction of the financial scheme of the Bill. They recommended that the Adelaide "guarantees" of a limited expenditure and of a minimum aggregate return of surplus should be omitted. They submitted a new clause to provide against a loss of revenue which it was feared might result during the first year of the tariff if merchants "loaded up" dutiable goods in New South Wales in anticipation of the tariff, in the hope of making them free of the Commonwealth without paying duty. The new clause provided that such goods, on transportation into another State within a certain time after the uniform tariff, should pay the difference between the duty chargeable on importation under the uniform tariff and the duty they had already paid.

As regards the period before the uniform tariff, no substantial change was made; but after the uniform tariff it was proposed to abolish the Adelaide sliding-scale, and revert to the despised system of book-keeping "for five years, and thereafter until the Parliament otherwise provides." In other words, they harked back, practically, to the plan of 1891, ensuring each State a return on the basis of its contributions for five years, and leaving the ultimate mode of distribution to be determined by the Parliament, after five years' experience of federal conditions.

To meet the abnormal position of Western Australia, a clause was suggested to provide that in the event of a falling off in the proportional amount collected in that colony, as compared with the rest of the Commonwealth, the deficiency should be made good by the Commonwealth.

On this report there was a general debate of two days' duration. (Conv.
Deb., Melb., pp. 774–895). On the whole, the scheme was received with general, though cautious, approval, as the best that could be done with a difficult problem. The abolition of "guarantees," however, was strongly objected to by Sir George Turner and Mr. Isaacs for Victoria, and by Sir Edward Braddon and others for Tasmania. Mr. Holder, on the other hand, argued that an express guarantee was unnecessary, because "the necessities of four out of five States" were a sufficient guarantee that the Parliament would raise its revenue and limit its expenditure to meet those necessities. Some of the Tasmanians also thought that their colony ought to receive special terms like those given to Western Australia.

The clauses were then dealt with in detail, and the recommendations of the Finance Committee were substantially accepted, except in respect to the West Australian clause. It was pointed out that any loss of revenue which that colony might suffer would be a purely Treasury loss, owing to a remission of taxation to the West Australian tax-payers; and it was argued that this loss ought to be made up by the tax-payers of Western Australia, not by the tax-payers of the other colonies. Western Australia, however, was not yet in a position to raise much revenue otherwise than through the customs; so it was finally agreed to allow her, for five years, to impose gradually diminishing duties on intercolonial imports. This would, of course, postpone for a while the full benefits of intercolonial free-trade, and was not very welcome to South Australia, the next-door neighbour of Western Australia; but the point was conceded in consideration of the abnormal conditions temporarily existing in the latter colony. The Adelaide "guarantees" having been struck out, several alternative kinds of guarantee were submitted, but without success; and when the Bill was reported a first time to the Convention it contained no express guarantee whatever as to the return of surplus. This position, which was due to the strenuous objections of the New South Wales delegates, was not accepted as final by the other colonies; and after the third recommittal Sir Edward Braddon, after consultation with others of the same mind, brought up the first draft of the famous Braddon clause, providing that out of the net customs and excise revenue not more than one-twentieth should be spent by the Commonwealth in the exercise of its original powers, not more than four-twentieths should be spent upon transferred services, and the remaining three-fourths should be distributed among the States. The proposal was made in the small hours of the morning, towards the close of the sittings; it had been in print for some days, the Convention had already discussed the whole question fully, and it was carried, with hardly any debate, by 21 votes to 18 — the Victorians and Tasmanians voting solid with the "Ayes," and all the representatives of New South Wales, except Mr. Lyne, with the
"Noes."

Next day it was reconsidered. Mr. Barton made an effort to limit it to five years, in which he was backed up by Mr. Reid, who reiterated his objections to any guarantee at all but admitted that, if there must be a guarantee, this was the least objectionable form of it that he had seen. Mr. Holder put the argument for the clause very clearly. The Federal Treasurer would only need, for federal purposes, a revenue of £1,500,000; but to meet the needs of the States, he ought to raise at least £6,000,000. He still thought that the best guarantee was the necessities of the States; that this clause only imposed a statutory obligation to do what in any case the Parliament would be under a political obligation to do. Still, he pointed out the difficulty of satisfying the electors — upon whose acceptance the Constitution depended — without plain words on the face of the Constitution; and he supported the clause without limitation. Mr. Barton's amendment was negatived; and the clause passed with an amendment providing that, when any part of the public debts was taken over, revenue returnable to the States might be devoted to the payment of interest. The clause was discussed yet once again, when Sir Edward Braddon consented to simplify it by omitting the distinction between different kinds of expenditure, and allowing the Commonwealth to spend one-fourth of the net receipts.

The financial clauses, as finally passed, substantially differed from those of 1891 in one respect only — the addition of the "guarantee" contained in the Braddon clause. The question of guarantees to the States against the dislocation of their finances had troubled the Convention from the very first; the problem being to satisfy Victoria, South Australia, Western Australia, and Tasmania on this point without arousing the fears of New South Wales that a high tariff would be required. In the latter part of their task — as subsequent events in New South Wales proved — the Convention did not altogether succeed; for it was upon the Braddon clause that the opponents of the Bill in New South Wales made the fiercest and most effective attack.

RAILWAY RATES. — The question of regulating the war of railway tariffs caused a series of long and critical debates, owing to the difficulty, in the first place, of finding any satisfactory definition of fair or unfair competition, and the difficulty, in the second place, of securing harmony between the apparently conflicting interests of the rival trade centres, Sydney and Melbourne.

To begin with, Mr. Barton proposed to substitute, for the preference clause agreed to in Adelaide, a clause forbidding both the Commonwealth and the States to make any law or regulation of commerce or revenue
which should give any preference to one State over another. This was at once objected to as going too far. That the Commonwealth should give no preferences was admitted; that a State should not be permitted to "derogate from freetrade" by trade barriers of any kind was also admitted; but that a State should be forbidden to attract trade to itself - to compete for trade by increasing the facilities for it — was too sweeping. It was strongly urged that the aim of Federation was to remove obstructions to trade, not to paralyze competition. Mr. Higgins denied this, and argued that differential rates which attracted trade, though they did not interfere with freedom of trade, interfered with equality of trade, and were therefore unfederal. He proposed to add to the existing clause a prohibition against rates made "with a view of attracting trade to ports of one State against ports of another State." Mr. Reid, however, replied that low rates were used for purposes of developing territory, as well as for attracting trade, and it would be impossible to frame words which would allow the one, and forbid the other. It would be disastrous to federalize the control of railway rates unless the financial responsibility of management were also federalized; and whilst he was prepared to forbid unduly high rates, he favoured an express provision that no rates should be invalid by reason of being unduly low. Such rates cut no throats; they benefited the producers; at the cost of the State, no doubt — but that was the State's concern. These widely differing views were developed by several speakers, but without any satisfactory compromise being suggested; and the opinion seemed to be gaining ground that there was really no middle course between the complete federation of the railways on the one hand, or unrestricted competition on the other.

Mr. Higgins' amendment was negatived by 24 to 18; the clause in the Bill was struck out without division; and then Mr. Barton proposed his new clause in a modified form, limited to the prohibition of preferences by the Commonwealth. This would have left the States free to charge any rates which did not come within the category of "derogating from freedom of trade." An amendment by Sir John Downer, to extend the prohibition to preferences by the States, was negatived; and then Mr. Higgins moved his amendment against rates made to "attract trade" — which this time was carried by 18 votes to 15.

This decision somewhat alarmed New South Wales, and a wrangle followed as to what its precise effect would be. It seemed to aim at fixing points of equidistance between Sydney and Melbourne as the "watershed" of traffic, and preventing "long-haul" rates between Sydney and Riverina. The New South Wales contention was that this would make waste iron of the New South Wales lines in that direction, and Mr. Reid promptly moved
a proviso to prevent any interference with the power of a State to fix its 
railway rates so as to "secure payment of working expenses and interest 
upon the cost of construction." The Convention was now in something of a 
tangle. Mr. Reid's amendment was negatived by 22 to 20; but it was 
decided to postpone the clause until after the consideration of an alternative 
suggestion by Sir George Turner.

Sir George Turner's proposition was that Parliament might make laws to 
carry out the trade and commerce power upon railways, "and particularly 
to forbid such preferences or discriminations as it may deem to be undue 
and unreasonable, or to be unjust to any State." (Conv. Deb., Melb., p. 
1372.) The first part of this — the purport of which is now embodied in 
sec. 98 of the Constitution — was merely declaratory of the application of 
the trade and commerce power to State railways; the second part was a 
particular interpretation of the nature of the power, and was meant to 
enable the Parliament to deal with all unfair rates, whether too high or too 
low. Its phraseology was based on the English Railway and Canal Traffic 
Acts and the American Inter-State Commerce Act. The objections raised 
on the part of New South Wales were: first, that it purported to control 
internal commerce, as well as inter-State commerce; next, that it assigned 
to the Parliament a power that was properly judicial. On the latter point 
there was an animated debate. Sir George Turner and Mr. Isaacs argued 
that the question was political rather than judicial, and was properly 
entrusted to the Parliament; whilst Mr. Reid insisted that the Parliament 
would be an interested tribunal and therefore a "tainted tribunal." However, 
the clause — with the omission of the word "particularly" - was carried by 
25 votes to 16.

Mr. Barton's postponed clause was now re-considered, and Mr. Higgins' 
amendment, being superseded by Sir George Turner's clause was struck 
out. The Turner clause was taken very seriously by Mr. Barton, Mr. Reid, 
Mr. O'Connor, and most of the New South Wales representatives, who 
complained that it meant that the railway rates of New South Wales in the 
competitive area were to be fixed to suit the interests of the other colonies. 
To counteract it Mr. O'Connor moved an amendment providing that no rate 
should be deemed unlawful on the ground that it was unduly low. 
Afterwards, to make his purpose clear, he added the words "if such rate is 
imposed for the development of traffic between places within the limits of 
the State." The debate became very heated; Victoria was charged with 
"aggression" and "spoliation," whilst New South Wales was accused of 
wanting low rates, not for the sake of developing her territory or benefiting 
her producers, but in order to secure a monopoly for her own railways. The 
Turner clause had been inserted because it was feared that the trade and
commerce clause tied Victoria's hands, and left New South Wales free. Mr. O'Connor's amendment was moved because it was feared that the Turner clause left New South Wales defenceless; and Sir George Turner complained that the amendment undid the whole effect of his clause, and tied Victoria's hands again. At this stage Mr. Grant came to the rescue with an amendment — now practically embodied in sec. 104 of the Constitution — to the effect that there should be no interference with "the imposition of such railway rates by any State as may be necessary for the development of its territory, if such rates apply equally to goods from other States." This would empower the Parliament to prevent rates which discriminated between the goods of different States, unduly high rates which blocked inter-State traffic, and unduly low rates whose purpose was not development, but competition. This suggestion was favourably received by New South Wales; but Sir George Turner and Mr. Isaacs objected that it would throw an impossible task upon the High Court. They contended that the proper tribunal to determine whether a rate was "necessary for development" was the Parliament; and the Victorian Premier moved the insertion of the words "in the opinion of the Parliament." It seemed that the whole dispute was to be re-opened; but at last something approaching harmony was restored by the suggestion to leave the decision to the Inter-State Commission — a body which would be judicial in attitude, and at the same time better able than the High Court to investigate and determine the questions which would arise.

The whole subject was now — after three days' debate — ripe for settlement; and to simplify the process the various amendments were withdrawn, to be proposed again in the form of new clauses. Mr. Barton's clause, forbidding the Commonwealth to make preferences, was at once carried. Mr. Grant then proposed his clause safeguarding rates which were "necessary for development." Sir George Turner announced himself as unable to accept this unless Parliament were made the judge of the necessity, and he moved an amendment to that effect; but this was rejected in favour of an amendment by Mr. Holder to make the Inter-State Commission the judge of this question. In that form the clause was carried by 22 votes to 21 — all the Victorian representatives, except Mr. Higgins, voting against it, and all the New South Wales representatives voting for it. This division was taken to involve, consequentially, the substitution of the Inter-State Commission for the Parliament in the Turner clause.

Mr. Reid then proposed a clause (now substantially embodied in section 102 of the Constitution) requiring that "due consideration shall be given to the financial responsibility incurred in connection with the construction and working expenses of State railways." This also was agreed to, and the
settlement was complete.

The clauses were afterwards recast by the Drafting Committee, and on the second recommittal of the Bill Sir George Turner and Mr. Isaacs again took a division on the proposal that the Parliament, instead of the Inter-State Commission, should be the judge of the fairness of a rate; but the Convention was against them by 22 votes to 15.

These provisions gave important and responsible duties to the Inter-State Commission; and led to some changes in its constitution. Instead of merely empowering the Parliament to constitute an Inter-State Commission, the Convention decided to provide that "there shall be an Inter-State Commission," and to restore the clauses giving the members of the Commission a seven years' tenure, subject only to removal by both Houses of Parliament in the way prescribed for Justices of the Federal Courts. The functions of the Commission were defined as being "the execution and maintenance within the Commonwealth of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder." For this purpose, however, it was only to have "such powers of adjudication and administration as the Parliament deems necessary." As it was thus contemplated that the Commission should have judicial functions, it was deemed necessary — in order to preserve the unity of the judicial system — to allow an appeal from its decisions to the High Court, but "on questions of law only."

The whole intention of the "railway rate" clauses was to secure the fullest measure of trade equality that was consistent with the management of the railways by the States, and with the responsibilities of the States in connection therewith. This was secured by means of a triple control by the Federal Parliament, the Inter-State Commission, and the High Court. Preferences and discriminations by a State - unlike preferences by the Commonwealth — are not directly prohibited by the Constitution; but the Parliament is enabled, under its trade and commerce power, to make laws prohibiting, not all preferences and discriminations, but preferences and discriminations which are undue and unreasonable, or unjust to any State. This power, however, is hedged about by restrictions intended to prevent its abuse for political purposes; notwithstanding any Parliamentary prohibition, no rate can be prevented without the independent judgment of the Inter-State Commission that it is unfair; nor even then can it be prevented - unless it applies unequally to the goods of different States — if the Commission deem it necessary for development. Any prohibition of preferential rates must, therefore, first be declared by the Parliament, and cases arising under any such prohibition must be independently adjudicated on by the Inter-State Commission; whilst over both Parliament and
Commission stands the Constitution, and — as the final arbiter and interpreter of the Constitution - the High Court.

DEADLOCKS. — There was another two days' debate on the deadlock clause, and a number of amendments were moved which re-opened the whole question. The first paragraph of the clause, providing for a consecutive dissolution, was dealt with first. Sir John Forrest, fearing that the provision for dissolving the Senate would place that House at the mercy of the Executive, proposed to substitute, in place of the dissolution of the Senate, a joint sitting in the first instance. This was negatived by 28 to 15. Mr. Barton proposed to omit the first paragraph altogether, according to the understanding at Sydney; but the friends of the "consecutive dissolution" were determined to make another effort to carry their point, and the paragraph — for the present — was retained by a vote of 28 to 17, the minority being almost wholly composed of representatives of New South Wales and Victoria.

The fight between the consecutive dissolution and the simultaneous dissolution was brought to an issue by Mr. Symon's amendment to strike out the first part of the second paragraph (providing for a simultaneous dissolution) and so attach the joint sitting to the consecutive dissolution. For a time the situation looked serious. The last division indicated that the smaller States preferred the consecutive to the simultaneous dissolution, and there was a prospect that they would follow up their victory by carrying the amendment. Sir George Turner protested that if this were done the chances of carrying the Bill in Victoria would be ruined; and Mr. Reid followed with a speech which, under a running fire of interjections, developed considerable warmth. At this stage Mr. Barton secured an adjournment for dinner and calm reflection; and on resuming the debate, it turned out that the danger was imaginary — the amendment being negatived by 28 votes to 12.

The longest debate was on a proposal by Mr. Isaacs to substitute a referendum for the joint sitting. The national referendum was, of course, his ideal; but he preferred the dual referendum to none at all, as it would secure the voice of the people — and the experience of Switzerland supported the view that the voice of the people was never likely to be contradicted by the voice of the States. A referendum, he contended, was the only satisfactory solution. Dissolution of the Houses was admittedly insufficient; and the joint sitting was objectionable because it allowed the principle of equal representation to invade the House of Representatives, introduced a unicameral body as final arbiter, and would, in practice, give the Senate a decisive veto. Mr. Wise replied with a powerful attack on the proposed application of the referendum, as being unsuited to the British
Parliamentary system, and destructive of Responsible Government. Mr. Reid and Mr. Isaacs contended that these arguments only applied to a referendum, such as that in Switzerland, by way of a veto on the Parliament; the question here was how to meet the case in which Parliamentary institutions broke down. Most of the Victorians, half of the South Australians, and Mr. Reid and Mr. Carruthers from New South Wales, supported the amendment; but the Convention was not to be convinced, and it was defeated by 30 votes to 15.

An amendment by Mr. Higgins, to substitute a bare majority for three-fifths, was defeated by 27 to 10. The clause was elaborated in several respects — especially with a view to enabling the joint sitting to consider amendments actually made by either House, whilst making it clear that amendments suggested by the Senate could not be so considered, and that therefore the joint sitting gave the Senate no power of indirectly amending money bills. Finally, Mr. Symon agreed that the isolated provision for a consecutive dissolution was an excrescence, and ought to be struck out; and this was done. Substantially, therefore, the Sydney settlement of the deadlock question was adhered to.

OTHER CHANGES. — During the Melbourne session numerous amendments of considerable constitutional importance were made. The legislative authority of the Commonwealth was — after several unsuccessful attempts — at last extended, on Mr. Howe's motion, to "invalid and old-age pensions;" and power was also given to make laws for the acquisition of property for the public purposes of the Commonwealth. The provisions as to Privy Council appeals were considerably altered. To meet the wishes of an influential section of the mercantile community, who petitioned in favour of preserving the right of appeal, it was decided not to interfere with the existing right of appeal direct from the Supreme Courts of the States to the Privy Council, but to allow an alternative right of appeal to the High Court. Where, however, the appeal was made to the High Court, its decision was to be final, in the sense that there was no further appeal as a matter of right; and in matters involving the interpretation of the Federal Constitution, or of a State Constitution, no appeal was allowed, even as a matter of grace, unless the public interests of some other part of the Queen's dominions were concerned. With this exception, there might be an appeal from the High Court to the Privy Council by special leave of the Queen in Council; but the Federal Parliament might limit the matters in which such leave could be asked.

The suggestion of the Legislative Council of New South Wales, that the federal capital should be at Sydney, was met with a counter-suggestion by Sir Edward Braddon in favour of "some suitable place in Tasmania," whilst
Sir George Turner and Mr. Symon kept up the joke by suggesting "St. Kilda" and "Mt. Gambier" respectively. It was felt that the site of the capital ought to be left for the Australian Parliament to choose. The amendment was negatived without division, and an amendment by Mr. Lyne, to provide that the seat of Government should be in New South Wales, was withdrawn at the suggestion of his colleagues. On the first recommittal of the Bill, however, Mr. Lyne pressed his amendment to a division, in which he was defeated by 33 votes to 5; whereupon Mr. Peacock — to show that the vote was not an expression of opinion that the capital ought to be in Victoria — divided the Convention on the question that the capital should be in Victoria — which was defeated by 36 votes to 3. A proposition by Sir George Turner, that the capital should be "within federal territory," was then carried by 32 votes to 12.

There was a widespread feeling that the Constitution ought to contain some recognition of the Deity. At Adelaide numerous petitions to this effect had been received from various religious bodies, and Mr. Glynn had proposed to insert in the preamble a declaration that the people "invoking Divine Providence" had agreed to form a Federal Commonwealth. A majority of the members thought, however, that the insertion of such words might offend some sections of the people, and that the Convention ought to abstain from expressing, by any formula, the religious sentiments of the people. In deference to this feeling, Mr. Glynn had wished to withdraw the amendment; but this was objected to, and it was negatived by 17 votes to 11. Subsequently nine out of the ten Houses of Legislature had suggested the insertion of some words of recognition, and in Melbourne Mr. Glynn proposed to insert the words "humbly relying upon the blessing of Almighty God," which was carried without division. To prevent any implication arising from these words that the Commonwealth had any power to impose religious observances, or require religions tests, Mr. Higgins afterwards proposed the clause which now stands as sec. 116 of the Constitution.

On Saturday, 12th March, after the Bill had been for the fourth time reported with amendments, the Convention adjourned to enable the Drafting Committee to revise the Bill. The Committee worked assiduously, thoroughly revising every clause; and on Wednesday, 16th March, the Bill was recommitted a last time, and finally adopted by the Convention.

Next day the Convention held its last sitting. A motion by Mr. Barton, inviting the Premiers of all the colonies to supply copies of the Draft Constitution to the electors, afforded an opportunity for those members who were present to express their opinions of their work. Mr. Barton and Mr. McMillan for New South Wales, Mr. Deakin and Mr. Trenwith for
Victoria, Sir Richard Baker, Mr. Holder and Mr. Glynn for South Australia, Sir Edward Braddon for Tasmania, all expressed themselves, with varying degrees of enthusiasm, as satisfied with the Constitution as a whole, and pledged themselves to its support. Mr. Reid had already left for home; so had the West Australian representatives. Sir George Turner was ill; but his colleague, Mr. Isaacs, spoke for both, and announced that though they were not wholly satisfied, they hoped that after thorough consideration they would be able to recommend the Bill to Victoria. And in putting the motion, Mr. Kingston, from the Chair, declared his faith in memorable words:—

"It seems to me that this is not the time when one should stand trembling on the brink of a distinct declaration as to future policy in connection with this great movement. I can but speak for myself alone; but in regard to this Constitution, I say unhesitatingly that I accept it gladly. More, I welcome it as the most magnificent Constitution into which the chosen representatives of a free and enlightened people have ever breathed the life of popular sentiment and national hope. Mine will be no Laodicean advocacy; but with such ability as I may possess, and with the fullest enthusiasm and warmth of which my nature may be capable — with my whole heart and strength — I pledge myself to recommend the adoption of this Constitution, daring any danger and delighting in any sacrifice which may be necessitated by unswerving devotion to the interests of the Commonwealth of Australia."

After some complimentary resolutions, the proceedings terminated with cheers for the Queen and for Australia, and the Australasian National Convention of 1897–8 came to a close.
(14) The Referendum of 1898.

In accordance with the requirements of the Enabling Acts, the Draft Constitution was forwarded to the Governors of the several colonies by the President of the Convention and by the representatives. From the rising of the Convention an interval of eleven weeks elapsed before the popular vote was taken in four colonies — an event which in New South Wales, Victoria and Tasmania, was fixed for Friday, 3rd June, and in South Australia for 4th June. Western Australia alone took no action, but awaited the result of the vote in the other colonies. In the colonies in which the vote was to be taken, copies of the Draft Constitution were freely distributed to the electors. In New South Wales and Tasmania, the Constitution was accompanied by an official explanation prepared by Mr. R. R. Garran; in Victoria the Melbourne Argus published an unofficial explanation by Dr. Quick; and in South Australia a summary of its provisions was circulated by the Government. The campaign for and against the Constitution began promptly, and was vigorously conducted by the newspaper press, the federal representatives of each colony, and prominent politicians of all parties.

NEW SOUTH WALES. — In New South Wales alone was the opposition really formidable. During the last days of the Convention, whilst the leading champions of the Bill were still at their task in Melbourne, a wave of opposition had swept through Sydney. The first opponent in the field was the Sydney Daily Telegraph, which cast its whole influence against the Bill. Mr. J. H. Want resigned his position in the Ministry to fight the Bill with a free hand; whilst many members of Parliament, including the whole of the labour party, threw their influence on the same side, and a strong "Anti-Convention Bill League" was formed with headquarters in Sydney. The objections which were made to the Bill may be classed under three heads — political, financial, and provincial. Criticism of the aspects of the Constitution was concentrated chiefly on the principle of equal representation in the Senate, and the powers wielded by the Senate — provisions which, it was argued, would stifle the will of the majority, and enable the small States to rule the large. In a less degree, the provision for amending the Constitution was attacked, as making amendment practically impossible, and imposing a "cast-iron" Constitution for all time. A further objection, which consolidated the greater part of the Parliamentary labour party against the Bill, was the rejection of the Referendum — their favourite political institution — as a means for settling deadlocks. The financial objections were that the Bill necessitated
the raising of an enormous customs revenue and consequently an immense increase of taxation in New South Wales; that under the federal tariff New South Wales would contribute an undue proportion of the revenue, and that after the expiration of the book-keeping period there was every probability that her share of the surplus would be "scrambled for" by the other colonies, to meet their pressing needs. The Braddon clause, under the alliterative nickname of the "Braddon Blot," was especially denounced; and apart from the strong case that could be made out against it on its merits, it was made the subject of ingenious mis-interpretation — such, for instance, as the constantly reiterated assertion that it required the raising of "four times as much taxation as is necessary."

These arguments, moreover, were reinforced by others which wore purely provincial and anti-federal — though seldom avowedly so. Distrust of Victoria and the other colonies — an alleged "conspiracy" to make Melbourne the federal capital, to annex the trade of the Riverina, and to steal the rivers of New South Wales — formed the stock-in-trade of that section of the Anti-Bill party which was really anti-federal, and which appealed rather to prejudice than to reason. The stronghold of this section was in Sydney. What may be called the "old Sydney" party had never been enthusiastic for Federation. The intercolonial jealousies and rivalries of a generation ago had left their mark, and the motives of the other colonies were objects of suspicion. It was thought that the claims of New South Wales as the mother-colony, and of Sydney as the metropolis of Australia, had not been duly recognized, and in fact New South Wales was looked upon as the destined victim of scheming neighbours. These fears, partly a survival of empty prejudices, were in part also due to a short-sighted view of the trade necessities of New South Wales. Historical circumstances which it is unnecessary to recapitulate had left New South Wales with outlying territories southwards, west-wards, and northwards, which were geographically nearer to Melbourne, to Adelaide and to Brisbane than to Sydney; and many people earnestly believed that it was necessary in the interests of Sydney — and tried hard to believe that it was necessary in the interests of the whole of New South Wales — to keep an octopus grip on the whole trade of this territory, no matter at what inconvenience to the producers and cost to the public. The doctrine not unreasonably preached by Victoria and South Australia, that "trade should flow in its natural channels," was held to be rank heresy; and no doubts were entertained that the merits in the great battle of railway rates were wholly with New South Wales. Viewed from this stand-point, the carefully contrived compromises as to railways and rivers seemed to be a traitorous surrender of the rights and privileges of New South Wales, and were denounced accordingly in no
measured terms.

The "Anti-Billites" were first in the field, but the champions of the Constitution were not long in following. Mr. Barton, and six of his fellow-representatives at the Convention, were untiring in advocacy: federalists from the freetrade and protectionist parties alike rallied energetically; the Federation Leagues throughout the colony helped so far as their non-party organization enabled them to do so; and a strong campaigning body, called the New South Wales Federal Association, was organized. Of the Sydney daily press, the *Morning Herald* and the *Evening News* supported the Bill, and the great majority of the provincial press followed suit.

The friends of the Bill had the advantage in debating strength, and had all the weight of national sentiment on their side; its enemies had provincial prejudices and vested interests to help them, and had also the advantage, which the critics of a definite and detailed piece of legislation always have, of being able to choose innumerable points of attack, and challenge the federalists to justify the Bill clause by clause, and line by line. The issue was doubtful, and the great question was — on which side would Mr. Reid throw his great influence and his unrivalled powers as a platform speaker? As Premier of the leading colony, and the man at whose invitation the process of framing the Constitution had been entered upon, he had a heavy responsibility; and it was no secret that he was not wholly satisfied with the Bill.

Mr. Reid kept his own counsel until 28th March, when he addressed a vast meeting at the Sydney Town Hall. He analyzed the Bill from beginning to end, criticized unsparingly what he thought to be its defects, touched more lightly on its merits and ended with a dramatic declaration that, in spite of all his criticisms and objections, he personally could not be "a deseter to the cause;" that he would vote for the Bill himself — words which were greeted with an outburst of enthusiasm — but would abstain from any recommendation to the electors, one way or the other. Of course, he was claimed by both sides — the "Billites" pointing to his vote, and the "Anti-Billites" to his arguments. During the campaign he only made three other speeches — at Goulburn, Bathurst and Newcastle; and though he still declined to offer advice, his influence undoubtedly was cast against the Bill. Subsequently Mr. Lyne and Mr. Brunker declared against the Bill.

As time went on, the points of attack were multiplied; a word here, and a phrase there, were culled out to show the iniquity of the measure. But the main line of criticism remained the same. Equal representation would be "the death-knell of majority rule;" the "dead-lock fraud" would be utterly ineffective; the Inter-State Commission would hand over the railways of New South Wales to the other colonies; the federal capital would be in
Victoria. The real strength of the attack, however, was directed against the financial clauses. It was here that Mr. Reid's criticisms had been most telling; and rival experts — Mr. Edward Pulsford and Mr. Bruce Smith for the Bill, Mr. R. L. Nash and Mr. Coghlan against it — engaged in a duel of figures which made the bewildered electors ask "What is truth?" The Anti-Bill statisticians maintained their forecast of an impossibly high tariff, and heaped ridicule upon the unfortunate "Braddon blot;" their opponents challenged their assumptions, condemned their forecasts as unreliable guesswork, and maintained that the Bill did not require excessive taxation. The undeniable fact, which the freetraders had to face, was that the federal tariff would be framed to produce more revenue than the existing tariff of New South Wales — not because the Constitution required it, but because the people of Australia would require it; and this, from the freetrade aspect, was a point scored against Federation. At last the Government appointed a Commission, consisting of Mr. J. Russell French (a banker whose federal views were unknown), Dr. MacLaurin (a strong critic of the Bill), and Mr. Bruce Smith. Witnesses were examined, and on 17th May a report was presented which — like Mr. Reid's speeches — was claimed by both sides as a "triumph." In reality it told against the Bill; for, though it did not bear out the figures of the extreme alarmists, it adopted some of their methods, to which it gave a semi-official authority.

The two sides were thus left as hopelessly at issue as before. On one point only was there no substantial dispute — that the new expenditure for federal establishments would be an inconsiderable item, which might be set down — after allowing a liberal margin — at £300,000 a year for all the colonies. But the opponents of the Bill proceeded to forecast the necessity of ruinous taxation by the following argument. They first calculated the "net deficiency" which each State would have after Federation, supposing no customs or excise revenue whatever were returned by the Federal Government. This they arrived at by simply subtracting the expenditure of which the State would be relieved from the revenue of which it would be deprived. They then assumed that this "net deficiency" of each State was an absolute "requirement" of the State, which must be made up to it by the Commonwealth out of customs and excise revenue. This involved the assumption that the federal tariff must be screwed up to meet the requirements of the weakest State; because, under the distribution clauses, each State could only get back the amount of its own contribution — or rather, the balance of its contribution after deducting its share of the federal expenditure. They then "calculated" the relative percentages which each State would contribute to a common tariff. The first of these calculations for the Adelaide Convention — was based frankly on the existing import
figures of the various colonies under their widely differing tariffs; and of course the result of applying, say, the Victorian protectionist tariff to the actual imports of New South Wales under a free-trade system gave a startlingly high forecast of the contributions for the latter colony. The absurdity of the assumption led to considerable modifications of these estimates; but it was still contended that New South Wales would contribute an abnormally high percentage of revenue, at least for many years. The conclusion of this elaborate argument was that a tariff high enough to squeeze out of (say) Tasmania enough revenue for her wants would inflict a huge burden of utterly unnecessary taxation upon New South Wales; and though the bulk of this would find its way back to the Treasurer of New South Wales, it would leave him with the demoralizing temptations of an unmanageable surplus. In this argument — which was waged at immense length in the newspapers — the "Braddon Blot" had no place whatever; that was reserved for another line of attack.

The friends of the Bill replied that the whole argument rested on a series of false assumptions. The fixed "deficiencies" were imaginary, and involved the impossible task of foretelling the revenue and expenditure of each State four or five years in advance. There was no justification for assuming that the States could not diminish their "requirements" by savings in expenditure; or that any State which, under a reasonable federal tariff, had a provincial deficiency, could not meet it by provincial taxation. The estimates of the percentage of New South Wales contributions were excessive, and the figures were unduly swollen by refusing to take into account the probable savings due to Federation, whilst loading the expenditure with the most liberal margins for contingencies. In short, it was argued that the Commonwealth would have a perfectly free hand in framing a tariff; and that under a very moderate revenue tariff each State would be left in a perfectly solvent position. It was not denied that New South Wales would be submitted to some additional taxation, through the customs; but that was the necessary result of a uniform tariff, and was not due to the financial scheme of the Bill. Moreover, the favourable position of New South Wales as regards taxation was not due to superior wealth, but to the fact that she was living on capital in the shape of the revenue from the alienation of land; she was not at present taxed up to her real requirements, and an increase of taxation revenue would render a sounder system of finance possible.

Mr. Nash frankly admitted that the faults of which he complained were inseparable from the scheme of Federation proposed, and he advocated, as the only solution, a system which would include the immediate federation of railways and debts. These views, however, were not popular in New
South Wales, and most of the critics, while having no suggestions of their own to offer, tacitly assumed that a better way was available. They were convinced that a better Bill could be fixed up in half an hour "but they had not half an hour to spare."

The progress of the fight showed that the objectors and doubters were in great force, especially in and near the metropolis. Along the borders, and especially in the Riverina district, the disadvantages of disunion were so apparent that criticism had less weight, and there was a general disposition to accept with enthusiasm the work of the Convention.

VICTORIA. — In Victoria, the fight was a one-sided affair from the outset. This fact — which anti-federalists in the mother-colony ascribed to an eagerness to "loot New South Wales" — was really due to quite different causes. In the first place, the sentiment of nationality was far more developed and better organized in the southern colony. The credit of this was chiefly due to the Australian Natives' Association - an institution which had received its chief development in Victoria, and which, on the basis of a mixed friendly society, mutual improvement society, and national association, extended to every corner of the colony, and had immense power by reason of its organization and its enthusiasm. Founded in 1871, it was already a great power in politics, and a recognized ladder to a Parliamentary and Ministerial career. Federation had long been its watchword; it had urged Governments to action, suggested schemes of its own, and lent encouragement to the schemes of others. It had produced the Bendigo scheme, the germ of the Federal Enabling Acts under which the Constitution had been framed; it had contributed three representatives to the Convention — Mr. Deakin, Mr. Peacock, and Dr. Quick. And finally, at a critical juncture, on the eve of the adoption of the Constitution by the Melbourne Convention, when the Age advocated the Fabian policy of caution and delay, and when the Turner Ministry, or at least some members of it, seemed to hesitate, the Association at its annual conference held at Bendigo, stimulated by the inspiring eloquence of Mr. A. Deakin and Mr. J. L. Purves, announced its support of the Bill with a declaration of triumphant enthusiasm that left no doubt as to the result.

Another reason for the comparative weakness of the opposition in Victoria was that the financial obstacles were less than in New South Wales. New South Wales, in the matter of customs taxation, occupied a position at the extreme end of the group; Victoria was near the middle. It was apparent that a tariff of approximately the productiveness of the Victorian tariff would fairly meet the needs of the Commonwealth; and though that productiveness might be attained by a moderate revenue tariff as well as by the existing protective tariff of Victoria, the fears of
producers that their protection might be reduced affected few pockets as compared with the fears of tax-payers in New South Wales that their taxation would be increased.

There was, nevertheless, a substantial Anti-Bill party in Victoria, led by Mr. Higgins — the only one of the ten Victorian representatives who did not support the Bill. His objections were almost wholly from a constitutional standpoint, and were directed against equal representation in the Senate, and against the restrictions upon the amendment of the Constitution. He was supported by a section of the labour party, which was however hopelessly divided — seeing that Mr. Trenwith, the ablest and most influential of the party's leaders, was warmly advocating the Bill. These were the most effective criticisms used against the Bill in the metropolitan centres; but in the country districts the chief concern was over the abolition of the stock tax, which would have to go when intercolonial freetrade began. The farmers had an unbounded belief in the extra value added to their land and stock by this tax; and Mr. Allan McLean, its chief apostle, conducted a vigorous campaign against the Bill. There was some dissatisfaction in Victoria with the "railway rate" clauses, which the Premier and Attorney-General of Victoria - in spite of the precisely opposite fears expressed in New South Wales - feared would unfairly hamper Victorian competition for the Riverina trade, whilst leaving New South Wales free to do as she liked, under the pretext of developing her territory and making her railways pay. However, after a report from Mr. Mathieson, the Commissioner for Railways, which went to show that the revenue loss, on the most unfavourable interpretation of the Bill, would not be considerable, the Victorian Ministry announced their unanimous support of the Bill.

A few vested interests felt some mild alarm about bounties and protective duties. The clause prohibiting the granting of bounties by the States, except with the consent of the Federal Parliament, had in New South Wales been thought to hide a cunning conspiracy to enable its provisions to be evaded, and Victorian bounties to be perpetuated; in Victoria it was complained of as a death-blow to the few bounty-assisted industries in existence. Nor did the Victorian Anti-Billites share the confidence of their brethren across the Murray that the federal tariff must inevitably be protective; and they would fain have seen some guarantee against the predominance of freetrade views in the Commonwealth.

All these arguments were overwhelmingly answered by the federalists, who, strong in numbers, in debating ability, and in enthusiasm, swept the country with an unbroken series of campaigning triumphs. Victoria as a whole had confidence in the Convention, and confidence also in the ability
of the Australian people to work out their own destiny under a free Constitution. The federal compromises were accepted as necessary conditions of union, and the fears of the Anti-Billites were outweighed by the obvious commercial advantages of Federation, and by the strong sentiment in favour of national institutions. The Victorian newspapers almost unanimously supported the Bill. The *Argus*, the *Australasian*, and the *Evening Herald* in the metropolis, and the *Bendigo Advertiser*, the *Bendigo Independent*, the *Bendigo Evening Mail*, the *Ballarat Courier*, the *Ballarat Star*, the *Geelong Advertiser*, the *Geelong Times*, the *Gippsland Times*, and other country journals gave the Bill powerful advocacy. The *Age* and the *Leader* were not opposed to federation, but anxious to promote the improvement of the Bill. Although doubtful and critical at first, the *Age* eventually, in consideration of the many democratic features of the Constitution rendering it more liberal even than the Constitution of Victoria, recommended its acceptance with the hope of securing its reform at a later stage.

SOUTH AUSTRALIA. — In South Australia all the federal representatives united in an appeal to the electors to vote for the Bill. The chief difficulties that had to be met were the fears that the cost would be excessive, and that the rights and interests of the less populous States would be unduly subordinated to the mass vote of the majority. But the argument of the advantages of union, and especially the benefits arising from intercolonial freetrade, prevailed; and the issue was never really in doubt.

TASMANIA. — In Tasmania there was widespread dissatisfaction, at the outset, with the provisions limiting the powers of the Senate, which were thought to endanger the interests of the smaller States; and it was also feared that, notwithstanding the Braddon clause, there were not sufficient "guarantees" that the surplus returned to Tasmania would enable her to meet her provincial obligations. However, the federal representatives threw themselves courageously into the fight, and their efforts were rewarded with complete success.

THE VOTE OF THE PEOPLE. — The result of the voting in the four colonies for and against the draft Constitution was as follows:

<table>
<thead>
<tr>
<th></th>
<th>N.S.W.</th>
<th>Victoria</th>
<th>S. Australia</th>
<th>Tasmania</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>71,595</td>
<td>100,520</td>
<td>35,800</td>
<td>11,791</td>
<td>219,712</td>
</tr>
<tr>
<td>Against</td>
<td>66,228</td>
<td>22099</td>
<td>17,320</td>
<td>2,716</td>
<td>108,363</td>
</tr>
<tr>
<td>Majority</td>
<td>5,367</td>
<td>78,421</td>
<td>18,480</td>
<td>9,081</td>
<td>111,349</td>
</tr>
</tbody>
</table>

There was thus a majority for the Bill in each of the four colonies. In Victoria, South Australia, and Tasmania, the majorities were decisive; but
in New South Wales not only was the majority a slender one, but the total affirmative vote fell short by 8,405 of the 80,000 minimum required by the Federation Enabling Act Amendment Act of 1897. In New South Wales, therefore, under the provisions of the Act, the barely victorious Bill was "deemed to be rejected" — the prescribed effect of which was to be that in New South Wales "no further action shall be taken pursuant to this Act." In other words, the whole statutory process, so far as New South Wales was concerned, was at an end.
(15) Events in New South Wales.

THE TASK RESUMED. — Had the federalists in New South Wales been in an actual minority, the discouragement would have been serious; but their majority, slender as it was, spurred them to fresh exertions. On the evening of 3rd June, an accidental duplication of some of the telegraphic returns had caused the coveted 80,000 to be posted at the Sydney Morning Herald office, and for a few minutes federalists were congratulating themselves on having won the battle. In the first disappointment of the awakening, some brave words were said about repealing the Act requiring an 80,000 minimum; but calmer judgment showed the unwisdom of "cramming the Bill down the throats" of a minority, many of whom were rather fearful than hostile. It was clear that some effort must be made to secure amendments which would dispel the fears of opponents, and diminish the opposition; but Mr. Barton and his following wisely held their hands until Mr. Reid, as Premier of the colony, should open negotiations. This Mr. Reid promptly did. The day after the referendum he telegraphed to the other Premiers inviting them to a Conference with a view of amending the Bill to meet the wishes of New South Wales, and suggesting that the amendments, when agreed upon, should be transmitted with the draft Constitution to the Imperial Government. The Premiers did not receive this suggestion with favour. Their own colonies had given overwhelming majorities for the Bill, and they resented the idea that, at the instance of a minority in New South Wales, they should be asked to reopen the question - especially as New South Wales was on the eve of a general election, and it remained to be seen whether that colony could not yet be brought into line. The Premiers of South Australia, Western Australia, and Tasmania, refused point blank to confer; whilst Sir George Turner, in Victoria, replied diplomatically that it would be well for Mr. Reid to intimate what amendments he desired. Mr. T. J. Byrnes, the Premier of Queensland, whom Mr. Reid had also consulted, expressed his willingness to confer; but the attitude of the other Premiers made it clear that nothing could be done till after the New South Wales elections.

The expiring Parliament met on 21st June, and the Governor's speech disclosed Mr. Reid's federal programme. After reciting the result of the Referendum; and the de jure rejection of the draft Constitution, the speech proceeded:-

"The Government are not prepared, however, to abandon their efforts to arrive at a satisfactory removal of those features of the Bill which have prevented the people of this country from voting more largely in its favour,
and which have caused so many thousands of the electors to vote against it.

"My advisers are, therefore, anxiously engaged upon the preparation of proposals to modify the Convention Bill in certain respects. These will shortly be submitted in clear and definite terms to the electors of New South Wales.

"They will include:-

1. An objection to the principle of equal representation in the Senate, which, if not altered, must be accompanied by the removal of the stipulation requiring that a majority vote at a joint sitting of both Houses, to be effective, shall consist of three-fifths of the members present; or, failing that, the principle should be qualified by a provision for a national referendum instead of a joint sitting.

2. Some of the financial provisions to be recast, and the Braddon clause omitted altogether.

3. Money bills not to be amended by the Senate.

4. The same protection for the territorial rights of each State, as there is for the representation of each State in the federal Parliament, and this should include more definite provisions with regard to inland rivers.

5. Seat of Government — in stead of the proposal in the Bill, adoption, in a slightly modified form, of the plan followed in the Canadian Constitution.

6. It is also considered that the appellate jurisdiction should be remodelled."

The bulk of the session, which only lasted three weeks, was taken up in both Houses, with the Address-in-Reply. The main attack upon the Government programme came from Mr. Barton and Mr. O'Connor in the Legislative Council. They objected strongly to the demands of New South Wales being stated in the form of an ultimatum before conference, and maintained that the Government ought to go untrammelled into conference, and negotiate for the best terms possible. Moreover, they challenged Mr. Reid's good faith in the matter, and especially pointed to the fact that Mr. Want — who had left the Ministry to lead the opposition to the Bill, and whose criticisms had a decidedly anti-federal complexion — had since the Referendum been readmitted to the Ministry. As regards amendment in the draft Constitution, they took this position. They believed that the Bill was a good and a fair one, and had heartily recommended it for acceptance. With some of the provisions they had never been fully in accord, but they had loyally accepted the whole as the best compromise available. It now appeared that a large minority of the people were dissatisfied; and they recognized not only that an effort must be made to secure amendments which would meet the chief objections made, but also that the result of the
vote — showing as it did that unless some amendments were made it would be difficult to secure the adherence of New South Wales — made concessions possible which previously would have been impossible. Mr. Barton therefore approved of asking for reconsideration of the Bill with a view to three amendments — the removal of the three-fifths majority at the joint sitting, the omission of the Braddon clause, and the location of the capital in New South Wales.

THE GENERAL ELECTION. — Parliament was dissolved on 8th July, and the campaign began at once. Mr. Reid and the Ministerialists took the field as the "Liberal Federal Party," whilst Mr. Barton led the Opposition on behalf of the "National Federal Party." Federation thus became, for the first time, a question of party politics; and curiously enough, both parties seemed to be fighting for substantially the same thing — the draft Constitution, with a few amendments. The amendments foreshadowed by Mr. Barton were indeed only three, as against Mr. Reid's seven; but that was not the real distinction between the parties. The real difference was of a twofold kind, involving a question of federal attitude, and a question of leadership. In the first place, Mr. Reid and his following were definitely hostile to the Bill as it stood, and demanded substantial amendments as a condition of its acceptance. Mr. Barton and his following had been, and still were, ready to accept the Bill as it stood; but urged amendments with the double view of making it a still better Bill and of conciliating opposition. Consequent upon this difference of attitude, the Reid party urged that Mr. Reid stood for the interests of New South Wales, and Mr. Barton for those of the other colonies — that Mr. Reid's demands would meet acceptance, whilst Mr. Barton's "negotiations" meant surrender. The Barton party replied that no agreement could be reached by a policy of dictating terms; that Mr. Barton, as a persona grata to the other colonies and the trusted leader of the federalists, would be able to make better terms than Mr. Reid; and that the interests of New South Wales, as well as those of Australia, would be safe in his hands.

The main issue, however, was mixed up in every electorate, not only with the personal claims of the candidates, but with the old lines of party cleavage. The "fiscal issue" was indeed supposed to be sunk; but the fact that in the Ministerial party freetraders preponderated, and in the Opposition party protectionists, showed that the allegiance of many candidates was influenced by the old party ties. The same thing undoubtedly held true of the electors, and stood in the way of a "straight out" issue on the federal programme.

The result of the general election, which took place on 27th July, was very evenly balanced. Mr. Reid himself defeated Mr. Barton in the King
Division of Sydney; but his previous large Parliamentary majority was reduced to a narrow majority of about four - including the labour party — whilst three Ministers lost their seats. But though neither party could claim a triumph, Federation had undoubtedly won all along the line. The preceding Legislative Assembly, though not avowedly anti-federal, was so trenchantly critical of the whole Commonwealth scheme as to be, in effect, hostile to Federation. In the new Assembly, every member stood pledged to the main principles of the draft Constitution, and the debatable points were narrowed down to a small schedule of amendments. The unanimity was perhaps more apparent than real. Both parties numbered adherents whose federal sentiment was little more than a polite concession to the necessities of party unity. Still, the fact that there were two federal parties and no anti-federal party — nor even an avowedly anti-federal candidate for election — showed the immense development of popular feeling in New South Wales. Federation may be said to have been assured from the date of the election.

THE FEDERAL RESOLUTIONS. — Parliament met on 16th August, and after the adoption of the Address-in-Reply, Mr. Reid introduced his federal resolutions. The first resolution affirmed the desire of the House that "steps should be taken without delay, in conjunction with the other colonies, to bring about the completion of federal union." The second resolution affirmed the desire of the House "that the other colonies should agree to reconsider those provisions of the Bill most generally objected to in New South Wales," and proceeded to "submit for the consideration of the other colonies" the following propositions:-

(a) *Representation in the Senate.* — That if equal representation be insisted upon, the provision for a three-fifths majority at a joint sitting of both Houses should be removed, and that a simple majority should decide; or that the provision for a joint sitting be replaced by a provision for a national referendum.

(b) *The 87th clause, known as the Braddon clause.* — That this clause should be removed from the Bill.

(c) *The capital of the Commonwealth.* — That clause 124 should be amended, and provision made in the Bill for the establishment of the federal capital in such place within the boundaries of New South Wales as the Federal Parliament may determine.

(d) *The boundaries of States.* — That better provision should be made against the alteration of the boundaries of a State without its own consent — namely, by the protection afforded by clause 127, as to the representation of States.

(e) *Inland rivers.* — That the use of inland rivers for purposes of water
conservation and irrigation should be more clearly safeguarded.

(f) *Money Bills.* — That there should be a uniform practice in respect to such Bills, namely, that provided in the case of taxation Bills and Bills for the ordinary annual services of the Commonwealth.

(g) *Judicial appeals from States.* — That the mode of appeal from the Supreme Courts of the States should be made uniform, namely, the appeal should either be to the Privy Council or to the High Court, but not as at present, indiscriminately to either.

The third resolution dealt with the financial system of the Bill, and supplemented the suggestion for the removal of the Braddon clause as follows:-

(3) Although prepared, for the sake of union — if it be placed in other respects upon a fair and just footing — to accept the financial system embodied in the Bill, with the one exception mentioned, this House earnestly invites further inquiry into, and a more thorough consideration of, the financial clauses, regarding as evils to be avoided if possible excessive burdens of taxation, a prolonged system of book-keeping, uncertainty as to the amount of surplus to be divided, and uncertainty as to the method of distributing it among the States.

It was recognized on all hands that these resolutions were studiously moderate in tone, and that the language of demand had been renounced in favour of the language of request. Nevertheless, Mr. Barton still feared that the difference might be merely one of form, and that under the velvet paw of "negotiation" might lurk the claw of dictation. He still objected to the requests of the House being embodied in a "placard," and thought that the Government ought merely to have defined its policy and then asked the House for authority to confer. However, the resolutions were debated in the House and in Committee, and were passed, with the addition of requests for the consideration of the two following propositions (the first moved by Mr. J. S. T. McGowen, leader of the Labour Party, and the second by Mr. Henry Copeland):

(h) *The alteration of the Constitution.* — That clause 127 should be altered to provide:-

1. That any proposed alteration of the Constitution, approved by both Houses and a national referendum, should be submitted to the Governor-General for the Queen's assent.

2. That, where a proposed alteration has been affirmed in two succeeding sessions by an absolute majority in one House, but rejected by the other, such proposed alteration should be submitted to the national referendum.

3. That, respecting proposed alterations transferring to the Commonwealth any of the powers retained by the several States at the date
of their acceptance of the Constitution, such alteration should not take effect in any State unless approved by a majority of electors in such State voting.

(i) Number of Senators. — That the number of Senators from each State should be increased from six to not less than eight. Twenty Senators, including the President or Chairman of Committees, to constitute a quorum.

In the Legislative Council the same resolutions, with Mr. McGowen's and Mr. Copeland's propositions attached, were moved by Mr. J. H. Want, the Attorney-General. After debate, they were passed with the following substantial modifications:- (1) The suggestion of a national referendum as an alternative to a joint sitting was struck out. (2) The proposition that the federal capital should be in New South Wales was — by a majority of one — amended so as to require that the capital should be in Sydney. (3) As to rivers, the Council asked that their use for irrigation and conservation, instead of being merely "more clearly safeguarded," should be "preserved for their respective colonies." In Resolution 3, the declaration that the House was "prepared for the sake of union to accept the financial system embodied in the Bill" was struck out. Mr. McGowen's proposal for the alteration of the Constitution was also struck out, and replaced by a resolution objecting to the plan of submitting alterations of the Constitution to a Referendum, but asking that any alteration transferring State powers to the Commonwealth should not take effect in any State without the consent of both Houses of Parliament of that State.
(16) The Premiers' Conference 1899.

No attempt was made to harmonize the resolutions of the two Houses; and on 29th January, 1899, the Premiers of all the six colonies met at Melbourne, at Mr. Reid's request, to consider the suggestions made by New South Wales. A noteworthy feature of this meeting was that Queensland, which since the Hobart Conference of 1895 had stood aloof from the movement, was represented by its new Premier, Mr. J. R. Dickson. The conference was held behind closed doors, and lasted till 2nd February, when a unanimous agreement was arrived at which all the Premiers agreed to submit to their respective Parliaments for reference to the electors.

THE JOINT SITTING. — The first request of New South Wales was almost wholly complied with. The requirement of a three-fifths majority at a joint sitting was done away with; and replaced, not indeed by a simple majority, but by "an absolute majority of the total number of the members of both Houses."

THE FINANCIAL CLAUSES. — The financial question proved the hardest of all to solve, and nearly caused a break-up of the Conference. Several brand-new financial schemes were offered, but none of them met with general acceptance, and the Conference, like the Convention, was obliged to fall back on the scheme in the Bill. As to the Braddon clause, every one was willing to let it go, if any substitute could be found; but every cure seemed worse than the disease. The Conference reported as follows:-

The Premiers have given full consideration to the objections which have been urged against this clause, and have also considered other proposals which have been suggested for the purpose of giving some security to the States that a reasonable amount of the revenue collected in the States shall be returned to them, while, if possible, avoiding excessive burdens of taxation, a prolonged system of book-keeping, uncertainty as to the amount of the surplus to be divided, and uncertainty as to the method of distributing the surplus amongst the States.

"The Premiers consider that all the other proposals are open to more serious objections than those which have been raised against the clause as it appears in the Bill; but with a view of meeting the objections as far as possible, consistently with the safety of the States, the Premiers are of opinion that the operation of the clause should not continue after a period of ten years if the Parliament then desires to repeal or alter it; and that, in addition, power should be granted to the Parliament to deal with any
exceptional circumstances which may from time to time arise in the financial position of any of the States."

To give effect to these opinions, they limited the Braddon clause to "a period of ten years after the establishment of the Commonwealth, and thereafter until the Parliament otherwise provides;" and added a new clause (sec. 96) empowering the Parliament, during the same period, to grant financial assistance to any State.

THE FEDERAL CAPITAL. — With regard to the Federal Capital, the Conference reported thus:-

"It is considered that the fixing of the site of the capital is a question which might well be left to the Parliament to decide; but in view of the strong expression of opinion in relation to this matter in New South Wales, the Premiers have modified the clause, so that while the capital cannot be fixed at Sydney, or in its neighbourhood, provision is made in the Constitution for its establishment in New South Wales at a reasonable distance from that city."

Accordingly the request of New South Wales, that the capital should be in that colony, was granted; but with two conditions which Victoria insisted upon: (1) that it should not be within 100 miles of Sydney; (2) that the Parliament should sit at Melbourne until it met at the seat of Government.

BOUNDARIES OF STATES. — The protection, asked for by New South Wales against the alteration of the boundaries of any State without its consent was given, by requiring that any law or constitutional amendment to that effect should be submitted to the electors of the State affected, and should require the assent of a majority of those voting.

ALTERATION OF THE CONSTITUTION. — With regard to the suggested amendments in the mode of altering the Constitution, the Premiers reported as follows:-

"The Premiers agree that, where there is a difference of opinion between the two Houses as to whether the people should have the opportunity of deciding if any alteration should be made in the provisions of the Constitution, one House should not have the power to prevent the question being decided by the people. They have therefore endeavoured to provide a means whereby, after full discussion and reasonable delay, the matter may be referred from either House to the electors. The Premiers are unable to agree that the decision should rest on the result of a National Referendum, it being considered of vital importance that any alteration in the Constitution which the States have agreed to accept should only be made if a majority of the electors of the Commonwealth and also a majority of the electors in a majority of the States determine that it is proper to make such
Accordingly the provision was inserted which enables a proposed law for the alteration of the Constitution, if twice passed by either House of the Federal Parliament, to be submitted to a Referendum notwithstanding the dissent of the other House.

OTHER SUGGESTIONS. — As to Rivers, Money Bills, and Judicial Appeals, the Premiers after fully considering the proposals of New South Wales did not find it practicable to recommend any alteration of the Bill; whilst they did not regard as desirable the proposed increase in the number of Senators. But in addition to the amendments made at the instance of New South Wales, one was agreed to at the instance of Queensland. To meet the peculiar conditions of that colony, it was provided that if Queensland joined as an original State, the Parliament of that State might, pending federal legislation, divide the State into electorates for the purposes of Senate elections.

RESULT OF THE CONFERENCE. — As a result of the Conference, therefore, seven amendments were made in the Bill — six at the instance of New South Wales, and one at the instance of Queensland. The three main requests of New South Wales had each been met by a substantial concession. The abolition of the three-fifths majority was a great extension of the actual, as well as the moral, efficiency of the deadlock clause. The provision as to the capital prevented the possibility of the permanent seat of Government being fixed anywhere but in New South Wales. As to the Braddon clause - the temporary retention of which was a general surprise, for it had few friends — it was certainly a great advantage to diminish its rigidity by placing it, after ten years, at the mercy of the Parliament, and thus obviating the necessity for a constitutional amendment if its removal should prove desirable.
THF POSITION IN NEW SOUTH WALES. — A welcome piece of news to federalists was Mr. Reid's prompt announcement that he had done with doubt and indecision, and would support the amended Bill with all his powers. It soon became evident, however, that the opposition in New South Wales would be strong. The Sydney Daily Telegraph, on second thoughts, took up as uncompromising an attitude as ever, and the opposing forces began to consolidate themselves. Their cry was that the "demands" of New South Wales had been trifled with and that the Bill was in substance "the same old Bill." The absolute majority at the joint sitting was denounced as being little if any better than the three-fifths majority, and elaborate calculations were made to show how New South Wales would invariably be defeated if most of her representatives absented themselves. The "Braddon Blot" was the subject of renewed attack, and its limitation in point of time was made light of. The 100 mile limit for the federal capital was complained of as a gross insult to Sydney — the corresponding "insult" to the rest of Australia, implied in the demand made by New South Wales, being ignored. The provision was in fact a most unfortunate one, because it aroused fierce opposition in the metropolitan and suburban area — the very district which it was most important to conciliate. In particular the provision for the temporary meeting of Parliament in Melbourne was attacked as hiding a deep conspiracy to establish the seat of Government there permanently, and it was roundly stated that Mr. Reid had been "outwitted" by the cunning of the other colonies. The real fight, however, centred round the financial clauses, against which all the old arguments were reiterated, but with greater wealth of detail.

THE ENABLING BILL. — The New South Wales Parliament met on 21st February, and the new Enabling Bill was at once introduced in the Assembly. It provided for the submission of the amended Constitution to a Referendum, at which a simple majority was to decide; and it allowed any holder of an elector's right to vote at any polling-booth in the colony, whether or not he was qualified as a Parliamentary voter for any electorate. In the Assembly no difficulties were met; even the malcontents admitting that the Constitution must be submitted to the people, and reserving their hostility for the present. In Committee, amendments were moved to make acceptance by an "absolute majority" of all the electors necessary; to make the inclusion of Queensland a condition of New South Wales entering the Federation; and to take an alternative referendum on the Bill as amended by the Premiers, and on the Bill "as amended by the Legislative Assembly.
of New South Wales." The object of all these amendments, however, was too apparent, and they were all defeated by overwhelming majorities. An amendment was also moved to defer the referendum for three months after the passing of the Bill; but this was withdrawn on the Premier undertaking to allow an interval of six weeks.

The Bill passed the Assembly without amendment, and went to the Council, where it met with a very different reception. A large petition was presented against the Bill, and the opposition was led by Dr. MacLaurin with a powerful attack on the financial clauses, which he claimed to be unworkable. In Committee, three vital amendments were passed by large majorities; one to defer the referendum for three months; another to make acceptance by one-third of all the electors necessary; and a third making the inclusion of Queensland a condition of Federation. To these amendments the Assembly refused to agree; the Council insisted, and a free Conference was held, but both sides were unyielding, and on 30th March Parliament was prorogued.

The Council was at this time much below its normal strength, owing to deaths and resignations, and a few days after the prorogation the Governor, on the advice of his Ministers, appointed twelve new members. On 11th April Parliament was again called together, and the Enabling Bill was again passed by the Assembly and sent up to the Council. The hint was sufficient. Only one amendment was proposed, to require an interval of eight weeks before the referendum should be taken. This was agreed to by the Assembly, and on 22nd April the Bill was assented to.

THE SECOND REFERENDUM. — The 20th June, 1899, was the day fixed for the Referendum, and the last great fight began at once. The federal campaign was organized by the United Federal Executive, formed of representatives from the non-party Australasian Federation League, from the New South Wales Federal Association, which had fought the last battle for the Bill, and from the Ministerial and Opposition parties in Parliament. On the other side, the Anti-Convention Bill League took up its old attitude. Of the Sydney daily press, the Telegraph was alone in its opposition; the Sydney Morning Herald, the Evening News, and the Australian Star all worked zealously for Federation. The Sydney Bulletin, which — when it has a positive policy — is a great power throughout Australia, concentrated its unrivalled wealth of ridicule against the opponents of the Bill, and the suburban and provincial press were almost unanimous on the same side. Of the 125 members of the Legislative Assembly, some 86 supported the Bill with varying degrees of zeal; and nine of the New South Wales representatives at the Convention worked earnestly for it — Mr. Lyne alone expressing himself still dissatisfied.
With all these odds against them, the Anti-Bill party made a gallant fight. Their virtual leader was Dr. MacLaurin, whose criticism of the financial clauses undoubtedly made a deep impression; whilst the rank and file of the party made onslaughts upon every joint in their opponents' armour, and devoted themselves especially to stir up jealousy in the metropolitan area. The great bulk of the Parliamentary Labour Party still yearned for the national referendum, and opposed the Bill consistently; though at the polls the labour vote was fairly evenly divided. The heart of the controversy, however, was the financial argument, and the whole country seemed plunged into a bewildering maze of figures, devoted to proving — and disproving - that the Bill would involve oppressive and unfair taxation in New South Wales. Eight days before the vote a fillip was given to the cause by the passing, at last, of a Federal Enabling Bill in Queensland — the colony of which federalists and anti-federalists alike had always spoken as the "natural ally" of New South Wales.

The result of the polling was a decisive victory for Federation by a majority of 24,679 votes, the figures in the city, suburban, and country electorates being as follows:-

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>11,019</td>
<td>10,546</td>
</tr>
<tr>
<td>Suburbs</td>
<td>24,475</td>
<td>25,237</td>
</tr>
<tr>
<td>Country</td>
<td>71,926</td>
<td>46,958</td>
</tr>
<tr>
<td>Total</td>
<td>107,420</td>
<td>82,741</td>
</tr>
</tbody>
</table>

Taken by electorates, the vote shows 79 electorates for the Bill, and 46 against — or a majority of 33 for union.

THE SOUTHERN COLONIES. — South Australia had passed the new Enabling Act in March, and seizing the opportunity afforded by a general election, had taken the vote upon the amended Bill on 29th April, when the verdict of the previous year was, without much excitement, reaffirmed by an even larger majority than before — the voting being 65,990 for Federation, and 17,053 against.

Victoria and Tasmania, as soon as the verdict of New South Wales was known, passed Enabling Acts on the same lines, and fixed 27th July, 1899, as Referendum Day. In Victoria, despite the weakness of the opposition, federalists determined to exhibit their strength, and aroused enthusiasm to such a pitch that a great muster of 152,653 votes were recorded for the Bill, and only 9,805 against it. In Tasmania also the majority was increased, and the minority reduced, the figures being 13,437 for and only 791 against the Bill.

QUEENSLAND. — The real interest now centred in Queensland. The
Premier, Mr. Dickson, ably supported by his colleague, Mr. R. Philp, took up the cause with enthusiasm. The Enabling Bill, providing for the submission of the amended Constitution to a referendum, and for its subsequent transmission, by address of both Houses, to the Home Government, was introduced in May. It was nearly wrecked at the outset by a proposition from the democratic party to adopt the principle of "one man one vote," without restriction, at the referendum. There was in Queensland a "plural vote" — electors being entitled to vote in every electorate in which they possessed property of an annual value of £10 — and there was also a considerable nomad population not registered as voters. It was urged that every man over the age of twenty-one should be allowed to vote whether registered as a voter or not. This the Government were unable to accept, but they only gained their point, and saved the Bill, by one vote. They afterwards conciliated opposition by affording facilities for a revision of the rolls before referendum day.

One difficulty to be faced was that Queensland — though it had been ably represented at the 1891 Convention, whose work was the basis of the draft Constitution now presented — had, through the fault of its politicians, taken no part (except through its Premier, Mr. Dickson, at the Premiers' Conference) in the actual framing of the Constitution. A natural though belated desire was felt to have a voice in the details; and as the Constitution was appended as a schedule to the Enabling Bill they could, technically, make amendments in it. An attempt to do so was, however, thwarted by the leaders of all parties, who pointed out the futility of taking a vote on anything but the identical Constitution agreed to by the other colonies; and the Bill and the schedule were passed through both Houses without amendment, and became law on 19th June — the eve of the referendum in New South Wales. The vote was fixed for 2nd September, and the campaign began.

But the friends of Federation had to face great difficulties. The question in Queensland was comparatively new, and the Constitution came definitely before the people for the first time. The forces of prejudice, ignorance, and suspicion, which in the other colonies had gradually given way as a result of repeated federal campaigns, had to be met and beaten down at a single blow; the principles of the Constitution, which in the other colonies had been expounded, analyzed, attacked and defended, discussed in public and in private, for two or three years, had to be brought, home to the people in the space of a few weeks. The friends of the Bill worked zealously, and achieved wonders. It soon became clear that the North and the Centre were the federal strongholds — federal sentiment being there aided by the hope that the separation of those districts into distinct
provinces, so long unsuccessfully contended for, would be easier after Federation. The one clause of the draft Constitution which aroused the fears of the Separatist federalists was clause 124, providing that a new State might be formed by separation of territory from a State, "but only with the consent of the Parliament thereof." The Separatists were in a minority in the Queensland Parliament, and objected to the desires of an overwhelming majority in the North and Centre being thwarted by a majority in the South.

In Brisbane and throughout the southern district the opposition to the Bill was very strong. Farmers, merchants, and manufacturers feared the competition of their New South Wales neighbours under a system of intercolonial freetrade; and — while the anti-federalists in New South Wales hailed Queensland as their "natural ally" against the southern colonies — the extreme anti-federalists of Queensland turned against New South Wales the epithets which their brethren in New South Wales had hurled against Victoria. Brisbane feared the competition of Sydney, just as Sydney had feared the competition of Melbourne; and federalists had a hard task in convincing their opponents that the benefits of free intercourse would vastly outweigh any sacrifice of intercolonial protection.

In Queensland, therefore, the opposition was directed against a vital principle of Federation, and was undeniably anti-federal. The objection was not to this Constitution merely, but to any Federation worthy of the name. It was a war of vested interests and intercolonial protection against commercial unity. Minor issues were, of course, raised, and the "Anti-Bill" catchwords of the other colonies — however inapplicable — were caught up and scattered broadcast. The cry of "increased taxation through the customs," and even the exact figures of "22s. 6d. per head increased taxation," were copied from New South Wales manifestoes with calm indifference to the fact that these forecasts were based upon the existing tariff of New South Wales - which produced about 30s. per head less than that of Queensland. Equal representation in the Senate was, from the Queensland point of view, a merit; but it was largely discounted by the Money-Bill and deadlock clauses, which it was feared would lead to the undue supremacy of the larger colonies.

The result of the vote was a victory for Federation by a substantial majority of 7,492 — the figures being 38,488 for the Bill, and 30,996 against. In the Northern district there was an overwhelming federalist majority of 8,993, every electorate showing a majority for the Bill. In the Centre, there was a majority of 2,156, eight electorates being favourable, and three unfavourable. Rockhampton, the capital of the centre, polled against the Bill — a result due, not to antagonism to Federation, but to a
Separatist fear of clause 124. The Centre and North thus gave a combined federal majority of 11,149; but this was unfortunately reduced by an anti-federal majority of 3,657 in the South — the metropolitan electorates being all against the Bill, and the rest of the Southern district polling slightly in its favour.

THE TOTAL RESULTS. — The voting in the five colonies whose electors had accepted the draft Constitution was as follows:-

<table>
<thead>
<tr>
<th></th>
<th>New South Wales</th>
<th>Victoria</th>
<th>South Australia</th>
<th>Tasmania</th>
<th>Queensland</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>107,420</td>
<td>152,653</td>
<td>65,990</td>
<td>13,437</td>
<td>38,488</td>
<td>377,988</td>
</tr>
<tr>
<td>No</td>
<td>82,741</td>
<td>9,805</td>
<td>17,053</td>
<td>791</td>
<td>30,996</td>
<td>141,386</td>
</tr>
<tr>
<td>Majority</td>
<td>24,679</td>
<td>142,848</td>
<td>48,937</td>
<td>12,646</td>
<td>7,492</td>
<td>236,602</td>
</tr>
</tbody>
</table>

These figures are a striking proof of the extent and sincerity of the national sentiment throughout the whole of Eastern Australia; and they are also a unique testimony to the high political capacity of the Australian people. Never before have a group of self-governing, practically independent communities, without external pressure or foreign complications of any kind, deliberately chosen of their own free will to put aside their provincial jealousies and come together as one people, from a simple intellectual and sentimental conviction of the folly of disunion and the advantages of nationhood. The States of America, of Switzerland, of Germany, were drawn together under the shadow of war. Even the Canadian provinces were forced to unite by the neighbourhood of a great foreign power. But the Australian Commonwealth, the fifth great Federation of the world, came into voluntary being through a deep conviction of national unity. We may well be proud of the statesmen who constructed a Constitution which — whatever may be its faults and its shortcomings — has proved acceptable to a large majority of the people of five great communities scattered over a continent; and proud of a people who, without the compulsion of war or the fear of conquest, have succeeded in agreeing upon the terms of a binding and indissoluble Social Compact.

THE ADDRESSES TO THE QUEEN. — The last step towards the acceptance of the draft Constitution by the five colonies was taken by the Legislatures in passing Addresses to the Queen praying that the Constitution should be passed into law by the Imperial Parliament. In the three southern colonies — Victoria, South Australia, and Tasmania — this proceeding, after the emphatic vote of the electors, was little more than a matter of form; and during the month of August both Houses of Parliament in each of those colonies adopted the Addresses without opposition and amid general congratulations. In New South Wales there was a show of
opposition, but only by a few of the most irreconcilable critics. Many of those who had opposed the Bill had been influenced by misgivings rather than by real hostility, and accepted the verdict of the people loyally. The Address was debated at length in the Assembly, but an amendment purporting to inform the Queen that 82,000 of her loyal and dutiful subjects had voted against the Bill, and that "such vote was not a declaration against Federation, but against the adoption of any Constitution which could not be amended by a majority of the Australian people," was defeated by 75 votes to 22, and the Address was then passed on the voices. In the Council the opposition was stronger. An amendment, moved by Mr. C. G. Heydon, to declare that if the Parliament did not meet at the Seat of Government within four years, it should sit in alternate years at Sydney and Melbourne, was prompted by the fear that the sittings of the Parliament at Melbourne might become permanent. Federalists recognized, however, that it was impossible to re-open the terms of union at this stage, and the amendment was defeated by a narrow majority of four. On 17th August the Address itself was carried, after several nights' debate, by 24 votes to 21.

In the Queensland Assembly the verdict of the people was also loyally accepted, and the Address was passed, on 4th August, by 57 votes to 9. In the Council, an amendment was moved to declare that the Bill had been carried by majorities in the Centre and North only; but this effort to elevate sectional differences over the decision of the whole colony failed, and the Address was passed by 16 votes to 9.

WESTERN AUSTRALIA. — At the close of the Convention, Sir John Forrest had seemed prepared to recommend Western Australia to adopt the Constitution as it stood; but his attitude subsequently became less favourable. At the Premiers' Conference, 1899, it is understood that he asked, unsuccessfully, for certain concessions. In July, 1899, after the second referendum in New South Wales, the Constitution was for the first time submitted to the Parliament of Western Australia, and was referred to a Select Committee of the Legislative Assembly. On 19th September the Committee brought up its report, declaring its opinion that before Western Australia could safely join the Commonwealth, four amendments were necessary:-

(1.) Enabling the colony to be divided into electorates for the election of Senators;
(2.) Empowering the Federal Parliament to authorize the construction of a transcontinental railway;
(3) Allowing Western Australia, for five years after the adoption of a federal tariff, to impose her own customs duties on intercolonial and other imports;
(4.) Exempting Western Australia, for the same period, from the jurisdiction of the Inter-State Commission.

The object of the second of these amendments was to dispense with the necessity of the consent of South Australia (under sec. 51 - xxxiv.) to the selection of the route and the construction of the line within that colony. The five years' control of the tariff was for the double purpose of securing the revenue necessities of the colony and affording temporary protection to the West Australian farmers, and other producers of foodstuffs.

On the consideration of this report in the Legislative Assembly, the Government proposed to submit to the electors both the Bill as adopted by the Premiers' Conference and the Bill with the West Australian amendments. This was stoutly opposed by federalists, who were confident that there was an overwhelming majority of the population, especially on the goldfields, in favour of the Bill as it stood, and that the proposed alternative ballot would confuse the issue. In Parliament, however, the goldfields were very scantily represented as compared with the settled districts; and though Mr. Leake moved an amendment that the Bill as adopted by the Premiers' Conference should alone be referred to the people, the Government proposal was carried by the House.

In the Council the proceedings were hopelessly tangled. First a proposal by Mr. Matheson, that the Bill as adopted by the other colonies should be referred to the people, was negatived. Then a proposal by Mr. Whitcombe, that it was undesirable at present to submit the question of Federation to the people at all, was also rejected. The Government's proposal to submit both Bills met with the same fate; and finally a proposal by Mr. Hackett, to submit only the Bill with the Committee's amendments, was also lost. The result was that the submission of the Bill to the people was blocked altogether. The federalists raised the cry that the whole fiasco had been planned by the Government; and an agitation was promptly started on the goldfields for separation from Western Australia, under the power reserved by the Queen in the Constitution of the colony.

In January, 1900, Sir John Forrest, with a view to securing assent to his amendments, visited the eastern colonies and attended a Conference of Premiers at Sydney. He finally gave up three of the West Australian amendments, but stood firm on the five years' liberty to impose intercolonial customs duties. Had the matter been still in the stage of negotiation, this might have been granted; but the difficulty was that the Constitution was now a compact upon which the people of the accepting colonies had set the seal of their approval, and whose alteration the Governments of those colonies were unable to countenance.

NEW ZEALAND. — New Zealand, alone of the seven Australasian
colonies, had, since the Convention of 1891, taken no part in the process of framing the Federal Constitution. Following the example of 1891, New Zealand is mentioned in covering clause 6 as a possible "State," but as yet she has taken no steps to adopt the Constitution. This does not mean that New Zealand is without interest in Australian Federation. The progress of the movement has been watched by that colony with keen attention; and a substantial section of public opinion favours the adoption of the Constitution. In July, 1899, a Federation League was formed in Auckland; and though the question of Federation has not risen to the magnitude of a party issue, it has been much discussed by politicians, by the press, and by the people. For the most part, however, Federation is in New Zealand not so much a national as a commercial question. Her geographical isolation from Australia by 1,200 miles of sea is a factor which cannot be neglected, though it may be exaggerated. At the same time, her commercial and other relations with Australia are most important; her interests, as regards defence and external affairs, are largely identical; and the alternatives either of union or of a reciprocal commercial arrangement with the Commonwealth are pressing themselves upon the attention of the people of New Zealand.
(18) The Enactment of the Constitution, 1900.

On 22nd December, 1899, Mr. Joseph Chamberlain, Secretary of State for the Colonies, in a telegraphic despatch to Earl Beauchamp, Governor of New South Wales, expressed a hope that a delegation from the federating colonies would visit England and be present when the Commonwealth Bill was submitted to the Imperial Parliament. This invitation was considered at a Conference of Premiers held at Sydney from 24th to 27th January; and it was arranged that a delegation should be sent, consisting of Mr. Edmund Barton (N.S.W.), Mr. Alfred Deakin (Victoria), Mr. J. R. Dickson (Queensland), Mr. C. C. Kingston (S.A.), and that they should be joined in London by Sir Philip O. Fysh (Tasmania). It was agreed that the delegation should represent all the federating colonies in unitedly urging the passage of the Bill through the Imperial Parliament without amendment, and in explaining any legal or constitutional questions that might arise. The Government of Western Australia also expressed a desire to be represented, and, with the concurrence of the Secretary of State, despatched Mr. S. H. Parker, Q.C., as a Delegate from that colony.

IMPERIAL CRITICISMS. — Towards the middle of March, 1900, the Australian Delegates arrived in London. Mr. Barton was appointed their spokesman; and on 15th March they had their first informal conference with the Secretary of State for the Colonies and the Crown Law Officers. Mr. Chamberlain having welcomed the Delegates, Sir Richard Webster, Q.C., Attorney-General, indicated the provisions of the Bill which the Crown Law Officers thought required discussion and explanation, and perhaps amendment. The chief objection made was to clause 74, as restricting the right of appeal to the Privy Council.

It was evident from the outset that, whilst the Delegates were anxious to secure the passage of the Bill without amendment, the Imperial Government were equally anxious to amend certain provisions which seemed to them to affect Imperial interests. The only way in which the Imperial Government had been heard in connection with the framing of the Bill was in consultation with the Australian Premiers at London at the Diamond Jubilee celebrations in 1897 when certain criticisms had been made on the Bill as drafted at Adelaide. Mr. Chamberlain had subsequently sent Mr. Reid a confidential memorandum of the criticism of the Crown Law Officers, which included an objection to the almost total abolition of Privy Council appeals, as proposed in the Adelaide draft. (See Extract from this memorandum, Parl. Papers, May, 1900.) This memorandum had been handed by Mr. Reid to the Drafting Committee, and had led to several
amendments being made, and particularly to a considerable modification of
the clause relating to Privy Council appeals. The Crown Law Officers,
however, were not satisfied with the new clause, and had also some new
criticisms to offer.

A memorandum of the amendments suggested by the Crown Law Office
was afterwards handed to the Delegates. (House of Com. Pap., May, 1900,
p. 19.) These amendments, only five in number, were wholly confined to
the covering clauses of the Bill. (1) As regards Privy Council appeals, it
was proposed to modify the effect of clause 74 by adding to covering
clause 5 a declaration that nothing in the Act or the Constitution should
affect any prerogative of the Crown to grant special leave of appeal to Her
Majesty in Council. (2) In covering clause 2, the words "This Act shall
bind the Crown" were proposed to be omitted, as involving an unnecessary
interference with the prerogative. (3) In covering clause 5, the provision
that the laws of the Commonwealth should be in force on British ships
plying between ports of the Commonwealth was proposed to be omitted as
being too wide and involving a possible conflict of jurisdiction; whilst it
was thought that all necessary powers of legislation in respect of the
coasting trade were given by sec. 736 of the Merchant Shipping Act, 1894
(see p. 50, supra). (4) It was proposed to declare, in covering clause 5, that
the laws of the Commonwealth were "colonial laws" within the meaning of
the Colonial Laws Validity Act, 1865 (28 and 29 Vic. c. 63). A contention
had been raised in Canada that this Act was not fully applicable to laws of
the Dominion (see Lefroy, Legisl. Power in Canada pp. 227–8); and the
Crown Law Officers feared that in Australia a similar contention might
derive some support from the definition of "colony" in covering clause 6.
(5) It was proposed that the Constitution, instead of being appended to
covering clause 9, should be placed as a schedule to the Act.

MEMORANDUM OF THE DELEGATES. — Preliminary to a further
interview with the Secretary of State for the Colonies, the Delegates
forwarded to him a Memorandum, dated 23rd March, of their reasons for
urging the passage of the Bill in the form in which it had been affirmed by
the people. (House of Com. Pap., May, 1900, p. 13). In defending the
provisions proposed to be altered, they carefully guarded themselves
against even appearing to acquiesce in the suggestion that any amendment
was necessary. They called attention to the recital in the preamble that the
people of the federating colonies had agreed to unite in a federal
Commonwealth "under the Constitution hereby established;" and argued
that this recital would not be justified if the Constitution were in any way
altered. In answer to a question whether, if alterations were made, it was
preferable that they should be placed in the covering clauses rather than in
the Constitution itself, the Delegates replied that though this would, in appearance, be the less objectionable method, yet any amendment in the covering clauses which altered the meaning of the Constitution would be in effect an alteration of the Constitution, and would therefore be equally objectionable.

They then dealt categorically with the specific amendments foreshadowed by the Crown Law Officers. As regards the application of the Colonial Laws Validity Act, they thought that the meaning of the Bill was clear without the proposed amendment, and that the definition of "colony" in covering clause 6, which had been framed simply for the purpose of clearly including South Australia in the Bill, could not exclude the definition of "colony" in the Colonial Laws Validity Act from applying to the Commonwealth. In support of this view, they cited the definition of "colony" in the (Imperial) Interpretation Act, 1889 (52 and 53 Vic. c. 63). And they hinted that, if the Imperial Government thought that any doubt was raised by the definition in the Bill, it would be better to omit the definition, as being unnecessary, than introduce new matter.

With regard to the proposed omission of the provision relating to British ships, they pointed out that the provision was much more restricted than that inserted, at the instance of the Imperial Government, in the Federal Council Act of 1885. If the contention were correct that the matter was sufficiently provided for by the Merchant Shipping Act, 1894, the phrase objected to was at the worst a harmless redundancy. But the expression "coasting trade" in that Act was not defined, and might be taken to include only the trade of vessels plying within the "three-mile" territorial limits. Moreover, the provision removed a further anomaly by protecting a vessel which passes from the territorial waters of one colony into those of another from being subjected to a change of laws, and by applying the uniform laws of the Commonwealth during the whole passage from one port of the Commonwealth to another. The power, though larger than that conceded by the Merchant Shipping Act, was larger only for the most beneficial purposes.

To the amendment relating to Privy Council appeals they objected as substantially altering, and in great part nullifying, clause 74 of the Constitution. They entered into an elaborate defence of clause 74, pointing out that it was not as far-reaching as was supposed in some quarters, and justifying the demand for the finality of the judgments of the High Court, in constitutional cases, by the argument that if the Australians were fit to make a Constitution for themselves they were fit also to interpret that Constitution. The concluding sentence of the clause, giving the Federal Parliament power to limit the right of appeal, only conferred on the
Commonwealth (they argued) a right to do what each State could do at present, subject to the reservation of the Bill as affecting the prerogative; and they referred to the Instructions to Australian Governors, dated July, 1892, clause viii., par. 7 (see note, ¶56, infra) as showing that the framers of the Instructions considered that the colonies had full legislative powers in matters affecting the prerogative, subject to reservation for the royal assent. The last sentence of the clause, therefore, seemed only to confer on the Commonwealth a legislative power which had long been possessed by each of the States. They asked the Imperial Government to consider whether clause 74 was of such a nature as to justify alarm, and whether it was worth while to incur the risk of serious dissatisfaction in Australia for the sake of preserving the small degree of prerogative affected.

They referred to the generous attitude taken by the Imperial Government in respect of the Federal Council Bill in 1885, when it had been recognized that it would be inexpedient to make any unavoidable alterations in the draft submitted from Australia; and they concluded with an eloquent appeal to the mother-country to place in the hands of the Australian colonies the trust for which they asked. This memorandum was signed by the Delegates of the five federating colonies.

MR. HALDANE'S PROPOSAL. — At this stage a new element was introduced into the appeal question by a proposal from Mr. R. B. Haldane, Q.C., M.P. Mr. Haldane, in an article in the March number of the Juridical Review, dwelt on the confidence felt in the Privy Council by all parts of the Empire, and the valuable work it had done in reviewing the decisions of the High Court of Canada, and giving a liberal interpretation to the powers of the provinces as defined in the British North America Act. The Commonwealth Bill, however, proposed to restrict this right of appeal, and he contended that this could only be averted "by making our Australasian colonies feel that we offer them the finest court of ultimate appeal that the Empire can produce." He proposed that the three colonial members of the Privy Council should be made life peers, and that this step should be followed by the fusion of the Judicial Committee of the Privy Council with the House of Lords in its judicial capacity. There would then be one great Imperial tribunal, and the anomaly of having one court of final appeal for the United Kingdom, and another for the dependencies, would be removed.

Mr. Haldane's suggestion attracted much notice in the press, and was regarded with favour by the Imperial Government and the Crown Law officers.

MEMORANDUM OF IMPERIAL OBJECTIONS. — In answer to the Memorandum of the Delegates, the Imperial Government prepared a Memorandum, dated 29th March, setting forth their objections to some
provisions of the Bill. (House of Com. Pap., May 1900, p. 22.) It stated that they were most anxious for the speedy passage of the Bill in a form which would give the Australian colonies the Federation which they desired; but, at the same time, it was their bounden duty to protect the interests of the United Kingdom and the rest of the Empire. The points of difference were few, and involved a minimum of alteration. They observed that the Memorandum of the Delegates abstained from discussing any of the proposed alterations on their merits, and consisted almost wholly of an appeal to the Government to accept the Bill unaltered, as embodying the wishes of the Australian people. They felt it their duty to place on record some of the reasons which made it impossible for them to accede to this request. In the first place, they contended that the distinction, which the Delegates now refused to recognize, between the "covering clauses" and the Constitution, had been clearly recognized in the debates of the Convention, and that the Enabling Acts showed that the agreement at which the people of the colonies had arrived related to the "Constitution" only and not to the covering clauses.

As to the application of the Colonial Laws Validity Act, they cited a suggestion by Mr. R. E. O'Connor (Conv. Deb., Syd., p. 252) that the Act would not apply to the laws of the Commonwealth. They contended that doubts arose, not only from covering clause 6, but also from sub-sections xxix. and xxxviii. of section 51; and they added that "in the absence of any definition or limitation of the privilege claimed by these provisions of the Constitution, Her Majesty's Government would fail in their duty if they left any room for doubt as to the paramount authority of Imperial legislation."

As to the enforcement of the laws of the Commonwealth on British ships trading between ports of the Commonwealth, they said that the provision in the Federal Council Act, relied on by the Delegates, was unduly wide. They contended that the power to control the coasting trade, given by sec. 736 of the Merchant Shipping Act, 1894, was not confined to territorial waters, and that the words "first port of clearance" and "port of destination" were not free from ambiguity.

As to Privy Council appeals, they thought there would be uncertainty as to the definition of "matters involving the interpretation of the Constitution" and "public interests." They objected to the powers given to the Federal Parliament to limit the prerogative, and urged that the establishment of two final courts of appeal would introduce confusion and uncertainty. The clause seemed to have originated, to some extent, in objections to the present constitution and working of the Judicial Committee — which however had, on the whole, commanded the confidence of the Empire. But the time was specially inopportune to curtail
its jurisdiction. Proposals were under consideration for securing a permanent and effective representation of the colonies on the Judicial Committee, and for amalgamating the Judicial Committee with the House of Lords, so as to constitute a Court of Appeal from the whole British Empire. It would be unfortunate if Australia should choose this moment to take from the Imperial tribunal the determination of the class of cases of greatest importance and often of greatest difficulty. They stated at some length the arguments against the contention for the finality of judgments of the High Court, and concluded by saying:- "The retention of the prerogative to allow an appeal to Her Majesty in Council would accomplish the great desire of Her Majesty's subjects both in England and Australia, that the bonds which now unite them may be strengthened rather than severed, and, by ensuring uniform interpretation of the law throughout the Empire, facilitate that unity of action for the common interests which will lead to a real Federation of the Empire. The object of everyone at present should be to draw closer together all parts of the Empire. The existence of the right of appeal, subject to the leave of the Privy Council, has been a link effectively binding together every part of Her Majesty's dominions; the weakening of this tie would seriously lessen the value of even so great and beneficent a result as the Federation of Australia. If the Bill were passed in its present form, while it would mark a step in advance as far as the Federation of Australia is concerned, it would be a retrograde measure so far as it affects the larger question of Imperial Federation."

NEW ZEALAND. — On 27th March, Mr. W. P. Reeves, the Agent-General for New Zealand, informed the Colonial Office that he had been appointed a Delegate for that colony; and on 30th March he forwarded to the Colonial Office a Memorandum of certain amendments desired by New Zealand. (House of Com. Pap., May 1900, p. 29.) These amendments, three in number, were in effect:-

(1.) That New Zealand should preserve the right of joining the Commonwealth at any time, or within a specified time, on the same terms as the Original States.

(2.) That while New Zealand remains outside the Commonwealth, litigants in her Higher Courts, though reserving the right of appeal to the Privy Council, should have an alternative right of appeal to the High Court.

(3.) That the Commonwealth and New Zealand should be empowered to make the necessary arrangements for joint naval and military defence, including operations outside their own boundaries, and for that purpose to form a homogeneous Australasian force.

In support of the first amendment — the request for an "open door" — Mr. Reeves urged that New Zealand, on account of her geographical
distance and her peculiar circumstances, ought to be given a longer time to make up her mind than had been necessary in the case of contiguous colonies. Though New Zealand was linked to Australia by bonds of intercourse, friendship, and sympathy, she had also vital and separate interests. She had watched the federal movement with caution and reserve, and her decision needed prudent deliberation. To forestall a possible objection that his demands came too late, Mr. Reeves said that New Zealand had been unable to judge of the intentions of the Australian colonies until they had accepted the Commonwealth Bill; and as the leading statesmen of Australia, in response to a request by the Premier of Western Australia, had refused to consider any further amendments, the only course open to New Zealand was that now taken.

WESTERN AUSTRALIA. — On the same day Mr. S. H. Parker, the Delegate for Western Australia, forwarded to the Colonial Office a Memorandum of the amendment asked for by that colony. (House of Com. Pap., May, 1900, p. 31). Following the recommendation of the West Australian Select Committee (p. 226 supra) he asked that clause 95 should be struck out, and a clause substituted empowering Western Australia, for five years after the imposition of the Federal tariff, to receive the same customs duties as were in force at the passing of the Commonwealth Act. Such duties to be collected by the Commonwealth. He announced that if this amendment were made, the Government of Western Australia would immediately summon Parliament in order to pass an Act to refer the Commonwealth Bill to the people, and would use their utmost endeavours to secure its acceptance.

CONFERENCE AT THE COLONIAL OFFICE. — On 5th April there was a Conference at the Colonial Office, at which Mr. Chamberlain presided, and the Delegates from all the seven colonies were present (House of Com. Pap., May, 1900, p. 35). Mr. Chamberlain first asked Mr. Parker and Mr. Reeves to say anything which they might wish to add to their respective Memoranda. Mr. Parker urged that the sliding scale in the Bill, by which the intercolonial duties of Western Australia would be annually reduced by one-fifth, was not a sufficient protection for infant industries, and particularly for agriculture, and that an annual alteration of duties would greatly injure and disturb trade. If the Bill were to be amended at all by the Imperial Legislature, he did not see why the West Australian amendment should not be introduced. The argument against the amendment was that a farther referendum would be necessary; and if there must be a referendum there was an opportunity for this amendment. Questioned by Mr. Chamberlain, he admitted that a referendum would cause some delay, and that he could not ask for the amendment if it alone
necessitated a referendum. He also urged that if his amendment were accepted, a further amendment would be necessary to enable Western Australia, within a certain time, to be admitted as an Original State. Cross-examined by Mr. Kingston, he admitted that there was a strong feeling on the goldfields in favour of accepting the Bill without amendment, but maintained that the majority of the producing population were against it. He could not form an opinion whether the Bill if referred to the people would be accepted. Mr. Reeves expanded the arguments of his Memorandum, and said that while the attitude of New Zealand was one of "cautious examination," the feeling in favour of Federation was growing. Asked by Mr. Chamberlain whether two of his suggestions — namely, the appeal to the High Court and the arrangements for mutual defence — were not rather a matter for subsequent agreement with the Commonwealth than for amendment of the Bill, he merely pointed to other special provisions in the Bill relating to particular colonies. He suggested seven years as the time during which the "open door" should be allowed to New Zealand. As to the question of delay, he agreed with Mr. Parker that if the Bill were to be amended at all these amendments could be put in.

From remarks made by Mr. Chamberlain, it appears that though some amendment of the covering clauses was contemplated by the Imperial Government, no decision had then been come to whether any amendment would be made in the Constitution itself.

Mr. Parker and Mr. Reeves then withdrew, and the remainder of the Conference was devoted to discussing, with the Delegates of the five federating colonies, the different points at issue. The Delegates seem to have understood that the amendments relating to the Colonial Laws Validity Act and to British ships would be abandoned.

At midnight, Mr. Chamberlain despatched to the Governors of the five colonies a telegram announcing the result of the Conference. He disclaimed any intention to interfere in interests exclusively Australian, but was confident that the Ministers of the colonies would give full weight to the suggestions of the Imperial Government when urged on behalf of the United Kingdom, or as Trustees for the Empire at large. The Imperial Government would have desired amendment as to various questions which had arisen, but were unwilling to risk delaying Federation by pressing their views; and the operation of clause 74, in restricting the right of appeal to the Privy Council, was now practically the only matter in issue. The Imperial objections to the clause were set out substantially as follows:-

1. The term "public interests" is vague, and would lead to increased litigation.
2. A most important link of Empire would be seriously impaired, and
the consequences would be far-reaching in allowing divergency to spring up where uniformity is most desirable.

(3.) In the interests of Australia, the final decision in important questions as to boundaries of Federal and State powers should lie with the highest court of the Empire, beyond suspicion of local bias.

(4.) Important questions as to the operation of Commonwealth laws on British shipping, or generally as to whether such laws are *ultra vires*, can hardly be allowed to be concluded by the High Court.

(5.) Commonwealth laws on fisheries, &c., may seriously affect the interests of other parts of the Empire.

(6.) Banks and other institutions having large interests in Australia are strongly against the limitation, and weighty representations on the subject have been made to the Imperial Government.

(7) The actual restriction, and the power claimed to make further restriction, equivalent to practical abolition of appeal, are specially inopportune when a Bill is under consideration for enhancing the dignity and efficiency of the Judicial Committee by practically amalgamating it with the House of Lords, and providing for the adequate and permanent representation of the great colonies in a new court.

For these and other reasons the Imperial Government felt that they must press for the amendment of clause 74, but they wished to effect the amendment in the way most agreeable to Australian sentiment, and so as to avoid if possible the delay and expense of a further referendum. Several suggestions had been made, but the Delegates' lack of instructions prevented their discussing the form of the proposed amendment.

The only other amendment alluded to was the declaration that the Colonial Laws Validity Act applied to Acts of the Commonwealth - a declaration which the Imperial Government still regarded as necessary. Mr. Chamberlain earnestly appealed to the colonial governments to co-operate with him in securing the unopposed passage of a Bill which, while accepting the draft Constitution practically in its entirety, would take account of the above considerations; and he trusted that they would enlarge the instructions to their Delegates, and authorize them to arrange with the Imperial Government the speediest and best method of securing these objects.

On the same date Mr. Chamberlain telegraphed to the Governors asking whether their Ministers would consent to the amendment desired by Western Australia being inserted in the covering clauses.

PREMIERS' CONFERENCE. — On receipt of these telegrams the five Australian Governments decided to hold a conference of Premiers to discuss the position. Meanwhile, on 16th April, Mr. Chamberlain sent a
further telegram stating that whilst he would be glad to learn that the Premiers concurred in his policy of amending the Bill, what he immediately desired was that the Delegates should be authorized to consult with the Imperial Government as to the best means of effecting the alterations, especially with a view to avoiding, if possible, a further referendum. The responsibility would rest with the Imperial Government, but they were anxious to avail themselves of the assistance of the Delegates. On 17th April Mr. Chamberlain, at the request of Mr. Reeves, sent a telegram inviting consideration of the New Zealand request for an "open door" for seven years. If the Premiers approved, he would be prepared to consider the amendment, otherwise he would not be justified in making it.

The Premiers' Conference sat at Melbourne from 19th to 21st April. Neither Mr. Philp, for Queensland, nor Mr. Lewis, for Tasmania, were averse to the alteration of clause 74; but ultimately the following resolution was agreed to:-

"The Premiers of New South Wales, Victoria, Queensland, South Australia, and Tasmania, in conference assembled, having given full consideration to the despatches from the Secretary of State for the Colonies respecting suggested amendments in the Commonwealth Bill, reply: -

"(1.) While they fully recognize the feeling of the Imperial Government that vigilance on their part is essential in the interests of all parts of the Empire, and also the importance of securing the inclusion of Western Australia in the Federation from the first, they cannot forget that by the enabling Acts and in pursuance of them (a) the framing of the Federal Constitution was expressly entrusted to the Convention of Representatives, specially elected by the people for the purpose, in all the Colonies, except Queensland and Western Australia, and that the final acceptance or rejection of the Constitution when framed was also remitted to the people; (b) the question as to appeals was, inter alia, considered by the Convention in Adelaide, and no appeal to the Privy Council was allowed. During the visit of the Premiers to England at the Jubilee the matter was referred to by the Secretary of State for the Colonies, who urged reconsideration. It was accordingly reconsidered at the meeting of the Convention in Melbourne, and resolved in the opposite direction to the decision in Adelaide. Later, the matter was again discussed, and the compromise now in the Bill agreed to. It was yet again debated in the Premiers' Conference prior to the last referendum, and no alteration was made in the form of the Bill. The vote was then taken and the Bill was adopted by a large majority of the electors; (c) the Commonwealth Bill belongs therefore in a very special sense to the people of Australia, whose only mandate to Governments and Parliaments
is to seek its enactment by the Imperial Parliament in the form in which it was adopted by the people.

"(2.) The Premiers believe that the Appeal Clause, as framed, could not work injuriously to any part of the Empire, although the proposed new Court of Appeal for the Empire would doubtless present attractions to the people of Australia.

"(3.) The only alternatives suggested in the despatches are:-

(1) Amendment of the Bill and (2) postponement of its consideration. Of these two the Premiers do not hesitate to say that the latter course would be much more objectionable to Australians generally even than the former.

"(4.) Without disputing the constitutional power of the Imperial Parliament to amend the Bill on its own responsibility, the Premiers respectfully urge that the voice of the Australian people given on the Bill as it stands should receive that favourable consideration which such a weighty referendum demands. The Premiers do not consider themselves as having authority to accept any amendments. They hope that the colony of Western Australia, whose representatives assisted to frame the Bill and in the Convention almost unanimously agreed to clause 95, may be urged to accept it as it stands. They think that the Bill already sufficiently provides for the admission of New Zealand."

WESTERN AUSTRALIA AND NEW ZEALAND. — On 27th April, Mr. Chamberlain telegraphed to Sir A. C. Onslow, the Acting-Governor of Western Australia, that the Premiers had declared that they had no authority to accept amendments, and had given their Delegates no fresh instructions. He therefore could not press the matter further, and now urged West Australian Ministers to consider whether they should not, in the best interests of that colony as well as of Australia, make a resolute effort to bring the colony into Federation at once. Western Australia, unless she joined as an Original State, could only enter later on condition of complete intercolonial freetrade, and would thus lose the temporary protection of clause 95; whilst, in view of her present population, she might find it difficult to secure such large representation in the Federal Parliament as she would get as an Original State. He also asked them to consider the effect of the agitation of the Federalist party, especially in the goldfields, if the colony did not enter as an Original State. He thought it of the utmost importance to the future of Western Australia that she should join at once, and he urged that they should immediately summon Parliament and take steps for ascertaining the wishes of the people. If they agreed to this course, a clause would be inserted in the Bill providing that, if the people intimated, before the issue of the Queen's proclamation, a desire to be included, Western Australia might join as an Original State.
To this the Acting-Governor replied, on 2nd May, that Parliament had been summoned for 17th May, when an Enabling Bill would be introduced by the Premier providing for the immediate submission of the Commonwealth Bill to the people.

On 28th April the Colonial Office informed Mr. Reeves that the Premiers at the Melbourne Conference had decided that they had no authority to accept any amendments, and considered that the Bill already provided sufficiently for the admission of New Zealand. Under these circumstances he did not feel justified in further pressing for amendments in regard to a question which appeared to be one to be settled by the Australian colonies without Imperial interference.

THE DELEGATES' SECOND MEMORANDUM. — In some quarters, the Premiers' resolution was viewed as an "invitation" to the Imperial Government to amend the Bill. The Delegates of the federating colonies — except Queensland — made haste to correct this impression. They addressed a second Memorandum to the Colonial Office, dated 27th April. (House of Com. Pap., May, 1900, p. 65.) They said that the one remaining amendment suggested by the Imperial Government had been fully considered by the Premiers in Conference. As the Premiers had been unable to accept it, or to withdraw, enlarge, or modify the instructions to the Delegates, it continued to be the common duty of the Delegates — each of whom was appointed to represent all the colonies — to press for the speedy passage of the Bill, as prepared by the instructions, and endorsed by the votes, of the Australian people. In firmly preferring this request with all possible respect, they deemed it desirable to offer some comment on the Colonial Office Memorandum of 29th March.

The substantial issue which they again pressed upon the attention of Her Majesty's Government was that the Bill as prepared was an Australian Constitution in a double sense — Australian not only in origin, but by the deliberate endorsement of Parliaments and peoples. Any amendment, not both absolutely essential and incapable of achievement by any other means and at any other time, was to be deprecated as destroying the character of the measure, and re-opening numerous issues at present happily and conclusively settled. They again drew attention to the phrase in the preamble, reciting that the people of the colonies had agreed to federate "under the Constitution hereby established;" and urged that the proposed amendment would at once vitiate the agreement, and render this solemn declaration a violation of the facts.

They pointed out that it was not quite accurate to say that the Enabling Acts referred to the "Constitution" only, and not to the covering clauses. Both in the Enabling Acts and in the Addresses the "Constitution" meant
the whole Bill — the Acts having imposed on the Convention the duty of
framing a Federal Constitution "in the form of a Bill for enactment by the
Imperial Parliament." It was true that there were ways in which the
covering clauses might be amended without changing the meaning of the
Constitution itself; but the proposed amendment of clause 74 was not of
this character. It had never been admitted that such an alteration would
preserve the intercolonial compact of the electors.

They feared that the amendment of clause 74 would encourage the
persistent opponents of the Bill to renew their agitation. A fresh
referendum would involve expense, delay, and vexation; and if a
referendum were not granted it would be truly asserted that the Bill no
longer contained the compact accepted by the people. In either case, the
initiation of the Commonwealth would be embittered by the introduction of
issues fruitful in strife.

They had hitherto forborne to dilate on the disadvantages of the present
system of appeals to the Privy Council; for not only were the delay and
expense incapable of serious dispute, and the evils patent which were
inseparable from the want of judicial knowledge of Australian laws and
conditions, but the court as at present constituted was not attempted to be
defended. Whether its proposed recon- stitution would suffice from the
Australian point of view would depend on subsequent Imperial legislation.
When Australia had at length, after infinite pains, formulated a scheme
which satisfied Australian requirements, it would be manifestly unfair to
postpone its adoption pending the consideration of a measure not yet
prepared, and which might, or might not, be satisfactory.

The substantial questions were:— (1) whether clause 74 derogates from
the rights of other parts of the Empire; and (2) even if it technically appears
to do so, whether its operation would injuriously affect other parts of the
Empire. The delegates confessed their inability to see that an affirmative
answer could be given to either question. The clause expressly preserved
the rights — or, in its own words, the "public interests" — of every part of
the Queen's Dominions outside the Federation. If the words "public
interests" had no technical meaning, they must be construed in their
ordinary and common-sense signification, which was sufficiently definite.
They elaborated the arguments for the final interpretation in Australia of
the Australian Constitution. The capacity and integrity of Australian
Judges would not be disputed. The contention that clause 74 would "tend to
destroy uniformity of decision on constitutional questions" was untenable.
The principles of interpretation of statutes were so well understood that
lack of uniformity in that regard was out of the question; and in their
application to the words of the Australian Constitution the question of
uniformity with decisions given on (say) the Canadian Constitution would not arise. Uniformity of decision as to Constitutions of different design would be as unattainable as it was undesirable. Judicial knowledge of local conditions was essential to true interpretation.

To the contention that the final decision in Australia of a few Australian questions would weaken a "link of Empire," and that uniform interpretation of the law would facilitate that unity of action which would lead to a real Federation of the Empire, the Delegates replied that "unity of action" and "uniform interpretation of the law" seemed to them wholly unrelated, and certain to remain so. They reflected with pride that there were sentiments which would constitute eternal links of Empire. "The consciousness of kinship, the consciousness of a common blood and a common sense of duty, the pride of their race and history — these are the links of Empire; bands which attach, not bonds which chafe. When the Australian fights for the Empire, he is inspired by these sentiments; but no patriotism was ever inspired or sustained by the thought of the Privy Council. The Delegates assured Her Majesty's Government that the proposed amendment, even through a covering clause, could not fail to be distasteful and harassing to the Australian people. "If they accepted the Constitution with such an amendment, it would be because they were made to choose between the bowl of intervention and the dagger of delay."

In conclusion, they submitted that the object of those who sought to draw closer together all parts of the Empire "would be best served in Australia by never permitting its Federation to be placed in even apparent opposition to "the larger question of Imperial Federation." So far from there being any conflict between the two, it had always been maintained in the colonies that local union was an essential preliminary to any practical scheme of Imperial co-operation. The suggestion that they were antagonistic was therefore to be deprecated, as it was not only unjustified, but must deal a serious blow in Australia to the prospects of Imperial Federation.

"The Delegates therefore plead most earnestly with Her Majesty's Government that effect may be given to the representations made by the Australian Premiers in their recent telegram. That despatch makes it clear that the clause as it stands was repeatedly considered and ratified by Convention, Premiers, and people; that the electoral adoption of the Bill is a mandate to Executives and Legislatures to seek its enactment in the form which the people gave it by their representatives, and confirmed by their votes; that the Premiers decline to accept alterations, because that course is unauthorized in view of the mandate, and would therefore be improper; and that they decline to authorize others to do on their behalf that which they cannot rightly do themselves. This request implies no questioning of
the trusteeship of Her Majesty's Government, of the wisdom of Parliament, or of its sovereign power; but often it has been the truest wisdom of sovereignty to abstain from the exercise of its power, or so to exercise it as only to win the gratitude of those who are subject to its authority."

This Memorandum was subscribed by the Delegates of four of the federating colonies; but Mr. Dickson, the Queensland Delegate, refused to sign it, on the ground that to continue to press upon the Imperial Government correspondence which might lead to further arguments would invite delay in presenting the Bill to Parliament, with a possibility of imperilling its immediate consideration. In a subsequent Memorandum to the Colonial Office, dated 5th May, Mr. Dickson explained that a further reason for his refusal to sign was "a conviction that the maintenance of plenary appeal to the Privy Council, notwithstanding the provisions of the Bill, is regarded with most cordial approval by every loyal subject — certainly in Queensland - and, I believe, generally throughout Australia."

He added that since their arrival in London, the Delegates had had the honour and immense advantage of consultations with the Attorney-General, Sir Richard Webster, and Sir Robert Finlay, Solicitor-General, who, at interviews and in the reply to the Delegates' first Memorandum, had expressed arguments for the maintenance of full appeal which seemed to him to be practically unanswerable.

FINAL IMPERIAL MEMORANDUM. — On 4th May, the Imperial Government addressed a final Memorandum to the Delegates. They said that a detailed reply to the Delegates' arguments would merely involve repetition of their previous Memorandum; but there were one or two points which deserved a brief comment. First, it could not fairly be contended that the referendum on the Bill was to be taken as an unqualified and considered ratification of every detail of the Constitution, and that no single provision could be altered without contravening the decision of the electors. Next, as to the alleged disadvantages attending appeals to the Privy Council, they did not believe that there was such delay and expense as suggested, and were not aware of any patent evils arising from want of knowledge of Australian laws and conditions. It had never been admitted, nor could it be justly asserted, that the Judicial Committee as at present constituted was incapable of defence. They referred to the statement, in their first Memorandum, that the administration of justice by the Privy Council had, on the whole, been such as to command the confidence of the Empire. This statement was amply justified by the history of that Tribunal, and no inference to the contrary could be drawn from any proposals for improving its constitution. The excellent work which it had done in deciding the difficult and delicate questions arising between the Dominion
and the Provinces in Canada was in itself a complete refutation of such an idea. The proposed amendments were based upon no distrust of the people of Australia; the sole desire of the Government was that, in a matter which affected the whole Empire, the Bill should be passed in a form which would be best alike for Australia and for every other part of the Queen's Dominions. In this endeavour they confidently hoped for the cooperation and support of the Australian people.

DELEGATES' FINAL MEMORANDUM. — To this the four Delegates replied briefly with yet another Memorandum dated 8th May. They agreed that no useful purpose would be served by further written discussion of the proposed amendments. They denied, however, that the amendment as to appeals was in any sense "a detail of the Constitution." It had been treated from the first, on both sides, as vital. To the suggested amendment in regard to the Colonial Laws Validity Act they had made no reference in their second Memorandum, as they had understood that it had been abandoned. Without receding from their previous opinion, they now urged that such an Act ought not to apply to great self-governing communities like the Dominion and the Commonwealth, whose statutory authority should be subordinate only to that of the Imperial Parliament when exercised after the establishment of their Constitutions and expressly applied. They trusted that even now the Imperial Government might be willing to provide by separate legislation for this and any other matter they might consider essential, passing the Commonwealth Bill without amendment as desired by the peoples, Parliaments, and Governments of the colonies. For the immediate and ultimate consequences if the suggested amendments were made the Delegates could not be held responsible. If they had been outspoken and tenacious of their views, the sincerity of their apprehensions would, no doubt, be accepted as sufficient justification.

INTRODUCTION OF THE BILL. — On 14th May, Mr. Chamberlain introduced the Commonwealth Bill into the House of Commons. The Bill as introduced differed from the draft of the Convention in the following particulars:

In the preamble, the words "and under the Constitution hereby established" were omitted. In covering clause 2, the words "This Act shall bind the Crown" were omitted, and the clause consequentially amended so as to read "The provisions of this Act and of the Constitution set forth in the schedule to this Act," &c. The, blanks in the preamble and in covering clause 3 were filled in, and in the latter clause the words providing for the admission of Western Australia as an Original State were inserted. To covering clause 5 the following words were added: "Notwithstanding anything in the Constitution set forth in the schedule to this Act, the
prerogative of Her Majesty to grant special leave to appeal to Her Majesty in Council may be exercised with respect to any judgment or order of the High Court of the Commonwealth or of the Supreme Court of any State."

To the definition of "Commonwealth" in covering clause 6 the following words were added:- "and the laws of the Commonwealth shall be colonial laws within the meaning of the Colonial Laws Validity Act, 1865."

Covering clause 9 was altered to read:- "Subject to the foregoing provisions, the Constitution of the Commonwealth shall be as set forth in the schedule to this Act." Before the Constitution the word "SCHEDULE" was inserted; and at the end of the table of divisions of the Constitution the words "The Schedule" were omitted.

In the Constitution itself, the blank in clause 26 was filled in, with an alternative provision in the event of Western Australia being an Original State. In clause 42, the words "to this Constitution" were added after "schedule." Clause 74 was omitted, and the last paragraph of clause 73 was placed as clause 74. In clause 95, after "Western Australia," the words "if that State be an Original State" were added. In clause 125, the words "if New South Wales be an Original State" and "if Victoria be an Original State" were omitted, with consequential amendments. At the end of the Constitution, the word "The" before "Schedule" was omitted.

In introducing the Bill, Mr. Chamberlain said, to a crowded and enthusiastic House, that it marked an era in the history of Australia, and a great and important step towards the organization of the British Empire. This Bill — the result of the careful and prolonged labours of the ablest statesmen of Australia — enabled that great island continent to enter at once the widening circle of English-speaking nations. It would be in the interests of Australia, and also of the Empire, rendering the relations between the colonies and the motherland more cordial, more frequent, and more unrestricted. "Therefore we all of us — independently of party — welcome the new birth of which we are witnesses, and anticipate for these great, free, and progressive communities a future even more prosperous than the past, and an honourable and important position in the history of the Anglo-Saxon race."

He then briefly sketched the history of the movement, and lauded the services of Sir Henry Parkes, Sir Samuel Griffith, and Mr. Barton. He described the Bill as "a monument of legislative capacity." Though it might not be perfect, yet, considering the magnitude and variety of the interests dealt with, no praise could be too high for those whose moderation, patience, skill, mutual consideration, and patriotism, had been able to produce so great a result.

He contrasted the Constitution with that of Canada, and briefly outlined
its provisions. The Bill had been prepared by the Australian people; and though he denied altogether that Australia regarded the Imperial Parliament merely as a court for the registration of their decrees — though he was convinced that the Australian people would be neither offended nor insulted at the alteration of a word or even a clause — he did think that they expected a reasonable regard to their opinion whenever it had been conclusively shown, and to those rights of self-government of which they had made so magnificent a use. The principles on which the Imperial Government had dealt with the Bill were these. They had accepted without demur, and they asked the House to accept, every word, every line, every clause, which dealt exclusively with the interests of Australia. But where the Bill touched the interests of the Empire as a whole, or of Her Majesty's subjects or possessions outside Australia, the Imperial Parliament occupied a position of trust which it was not the desire of the Empire - nor, he believed, of Australia — that they should fulfil in a formal or perfunctory manner. In accordance with these principles they had made some amendments; but they had refused — even at the desire of Western Australia and New Zealand — to make amendments where Imperial interests were not affected.

With regard to the Colonial Laws Validity Act, he proposed to make its application clear. The Delegates had recently raised a new point — whether the Act ought to apply to great Commonwealths like Australia and Canada. He admitted that this was a perfectly fair point to raise; but such an important change could not be introduced without mature consideration, and consultation with both Canada and Australia. He thought that clause 74 of the draft Bill would weaken a link of Empire. He admitted that those links depended entirely on freewill and assent; but before agreeing to so serious a change, he wanted to be quite certain that it had behind it the whole force of Australian opinion. The resolutions of the Premiers did not indicate that there would be any strong feeling in Australia against the amendments. The Governments of three out of seven colonies - Queensland, Western Australia, and New Zealand — were in favour of the amendments; so wore the Chief Justices of all the colonies, and an enormous preponderance of the newspapers of Australia.

With regard to the reconstitution of the Supreme Court of the Empire, he admitted that the tentative provisions of the Judicial Committee Amendment Act, 1895, for the appointment of Colonial Judges to the Privy Council, had not been satisfactory. The question of constituting a new Court required farther consideration; but, meanwhile, he proposed to introduce a Bill to provide for the appointment of a representative from each great colonial possession and from India to the Privy Council; such
representatives to hold office for seven years, to sit during that time as Lords of Appeal, to receive from the Imperial Exchequer the salary of Lords of Appeal, and to have life peerages.

Sir Henry Campbell-Bannerman, leader of the Opposition, expressed regret and disappointment that the Government had not felt themselves obliged to accept the Bill in its entirety. He thought that any proposed amendments should have been formulated and submitted to Australia at an earlier stage, and that Conferences and Memoranda in the Jubilee Year were not enough, in view of the many subsequent opportunities for intervention. The Government, by reserving action, had in effect, though not in intention, flouted Australia. He deprecated the conduct of the Government in going behind the opinions of the accredited representatives of Australia.

Mr. George Denison Faber, the new member for York, spoke of the appeal clauses from an experience of nine years as Registrar of the Privy Council. He pointed out that the nominal strength of the Privy Council was greater than that of the House of Lords; the real trouble was when both were sitting. He opposed amalgamation, but thought that the time had come for the establishment of a new Court altogether, and the appointment of more paid Judges. Sir Charles Dilke was glad that the substantial amendments had been reduced to two, and thought that Mr. Chamberlain had failed to show any vital necessity for amending the Bill. Mr. Vicary Gibbs spoke in favour of the amendments. Mr. Haldane saw no necessity for postponing the amalgamation of the Judicial Committee and the House of Lords; and urged that so long as the jurisdiction of the House of Lords was retained, it would be impossible to preserve the status of the Privy Council. Whilst there were two tribunals, one was starved to keep up the other, and judicial strength inevitably gravitated to the House of Lords. Mr. Stanley Leighton agreed that the objections to the present constitution of the Judicial Committee were well founded. The first reading was carried on the voices, with cheers.

THE FIRST COMPROMISE. — In spite of the apparently uncompromising attitude of the Imperial Government, the Delegates did not despair of securing some modification of the proposed amendment. They had failed in what they believed to be their mandate to endeavour to secure the passage of the Bill without amendment; and when the amended Bill had been actually introduced, they conceived that the position was altered, and that they were authorized to negotiate with a view to securing a compromise. The publication of the Blue Book, containing the correspondence between the Delegates and the Imperial Government, had greatly increased public interest in the question; and the English press,
whilst generally approving the resolve of the Government to protect Imperial interests, showed a marked sympathy with the aims of the Delegates. The Delegates had several interviews with Mr. Chamberlain and the Crown Law Officers, who met them cordially, and were willing to concede what they could, consistently with the principle of reserving the right of appeal to the Privy Council where interests outside Australia were affected. At last, on 19th May, Mr. Chamberlain offered to substitute for the first paragraph of clause 74 the following words:-

"No question, howsoever arising, as to the limits inter se of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the constitutional powers of any two or more States, shall be capable of final decision except by the High Court, and no appeal shall be permitted to the Queen in Council from any decision of the High Court on any such question unless by the consent of the Executive Government or Governments concerned, to be signified in writing by the Governor-General in the case of the Commonwealth, and by the Governor in the case of any State."

The second paragraph of clause 74 was unaltered, except that to the power to make laws limiting the right of appeal was added a proviso that "any proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure." To clause 73, after "final and conclusive", it was proposed to add "unless the Queen grants special leave to appeal in accordance with section 74."

The object of this provision was to make the decision of the High Court final on questions as to the limits of Federal and State powers inter se, unless both parties — or, if the parties were private citizens, the Governments whose powers were affected — desired an appeal. The Delegates, at their own request, were authorized by their Governments to secure the nearest approach possible to the original Bill; and as this was offered by Mr. Chamberlain as the utmost limit of concession, they expressed their approval of it, subject to possible verbal improvements.

SECOND READING OF THE BILL. — On 21st May, Mr. Chamberlain moved the second reading of the Bill in the House of Commons. With regard to the Colonial Laws Validity Act, he announced that after further discussion with the Delegates, the Government had decided that the best way of removing doubts would be to omit the definition of "colony" in covering clause 6. It would then be unnecessary to make any further amendment in this respect. With regard to Privy Council appeals, he reaffirmed the principle of non-interference with purely Australian interests, and vigilance for Imperial interests. He pointed out that clause 74 of the draft Constitution recognized this distinction by making an
exception where "the public interests" of some part of Her Majesty's dominions outside Australia were involved; but the distinction did not go far enough. It was uncertain whether the phrase "public interests" would cover, for instance, the private interests of investors, or of any body of Her Majesty's subjects. Moreover, foreign relations were of equal importance with Imperial relations. The proposals of the Imperial Government had been before Australia for a week, and had been in most cases favourably considered. The Delegates, too, finding it impossible to carry out what they believed to be their mandate to secure the passage of the Bill without amendment, had been most considerate and he had now arrived at an absolute agreement with four of them. He then read and explained the proposed new clause. With regard to the power of the Federal Parliament to limit the right of appeal, the Delegates had pointed out to him that a similar power was inherent in the Parliaments of the Australian colonies, subject to the reservation of the Bill exercising such power. Accordingly, it was proposed to grant this right to the Commonwealth, subject to an absolute statutory requirement that such Bills should be reserved.

Mr. Asquith, for the Opposition, expressed his gratification at Mr. Chamberlain's announcement of a settlement. He admitted the trusteeship of the Imperial Parliament, but thought that the danger of clause 74 had been exaggerated in some quarters. Mr. Henniker Heaton, Mr. Blake, Mr. James Bryce, and Mr. S. Evans joined in the congratulations. The Attorney-General expressed his appreciation of the tone of the debate, which was concluded by Mr. W. Redmond and Mr. T. M. Healy declaring, on behalf of Ireland, their envy at the rights of self-government accorded to Australia. The Bill was then read a second time with cheers, and taken into Committee pro forma.

AUSTRALIAN CRITICISMS. — In Australia, however, the suggested compromise was received, first with hesitation, and then with distinct disapproval, both the drafting and the policy of the new clause being condemned. On 24th May, a telegram seems to have been sent by the Government of New South Wales to Mr. Chamberlain, indicating acceptance of the arrangement by the Premiers; but a study of the cabled text of the clause changed the situation. In Queensland, Sir Samuel Griffith pointed out that the provision that no constitutional question should be "capable of final decision except by the High Court" was a clumsy and inaccurate mode of saying that all appeals in such cases should be brought to the High Court alone. He also argued that this would be a restriction, and not an extension, of the right of appeal to the Privy Council given by the original clause — under which he contended that appeals, even in constitutional cases, would lie from the State Courts direct to the Privy
Council. This, however, was not the generally received interpretation of the original clause, nor was it the intention of the Convention, which clearly intended that the prohibition of appeals to the Privy Council in constitutional matters should include appeals from the State Courts; (see Historical Note to sec. 74 infra). But his strongest point was that in cases between private suitors, in which a constitutional point arose, a party's right of appeal ought not to be made dependent on the consent of the Executive Government of his State or of the Commonwealth. In all the colonies it was forcibly urged that the interference of the political with the judicial department would be fraught with danger. Mr. Philp threatened that, if the new amendment were adhered to, he would demand the insertion of a clause requiring the assent of the Queensland Parliament before the Bill became operative in that colony. In South Australia, the Chief Justice, Sir Samuel Way, commented on the new clause as being not only obscure, but dangerous, novel, and unauthorized.

Meanwhile, to remove ambiguities and meet some of the criticisms from Australia, the first part of the proposed clause was redrafted as follows:-

No question, however arising, as to the limits inter se of the constitutional powers of the Commonwealth on the one hand, and those of any State or States on the other, shall be capable of final decision by any Court other than the High Court, except that an appeal may be permitted to the Queen in Council from any decision of the High Court on any such question by the consent of the Executive Governments concerned, whether parties or not to the litigation, the consent to be signified by the Governor-General in the case of the Commonwealth, and by the Governor in the case of a State."

This verbal improvement, however, did not meet the main objections to the proposed clause; and on 14th June the Premiers of the southern colonies sent a joint telegram to Mr. Chamberlain, stating that opinion throughout Australia was strongly opposed to subjecting the right of appeal to the consent of the Executive Governments. They urged the reconsideration of the proposal to pass the Bill without amendment. If that was impossible, they said that the original proposal to preserve the prerogative right of appeal intact would be less objectionable than the new proposal.

THE FINAL COMPROMISE. — Sir George Turner, in an interview, suggested the substitution of the leave of the High Court for that of the Executive Councils. Mr. Wise and Mr. O'Connor telegraphed the same suggestion to Mr. Barton; but on 16th June, just before the arrival of this telegram, Mr. Chamberlain, in consultation with the Delegates, had at last resolved to make this further concession, and to offer clause 74 in the form
in which it now stands in the Constitution. This was gladly accepted by the Delegates, including Mr. Dickson. The Queensland Government withdrew their protest, and offered no objection. The Government of Victoria expressed approval of the clause as altered; and the Government of South Australia, while reiterating their inability to accept any amendment, telegraphed that they did not anticipate any difficulty from the amendment now proposed. The Government of Western Australia telegraphed that the new proposal was preferable to the previous one, but that they would have preferred an appeal as a right, without leave. In New South Wales — the only colony in which Parliament was then sitting — the Government submitted to both Houses a resolution affirming that the amendment now proposed was not such an important departure from the original Bill as would justify any action which would further delay Federation. This was carried without division in the Assembly on 21st June, and in the Council on 27th June.

THE BILL IN COMMITTEE. — On Monday, 18th June, the discussion of the Bill in Committee of the House of Commons was begun. In covering clause 5, Mr. Chamberlain moved the omission of the words which had been inserted to save the prerogative of appeal in all cases (see p. 242, supra). He suggested that as some of the verbal amendments which were on the notice paper in his name hinged upon the acceptance of clause 74 as now proposed, this would be the best time for a general debate on the subject of appeals. He described the proposed settlement as an "arrangement" rather than a compromise, as neither party gave up anything to which they attached importance. The Australian objections to the previous proposal had been (1) that it would limit the right of appeal from the State courts more than was done by the original Bill — it being thought in some quarters that the original Bill did not prohibit appeals from the State courts to the Privy Council in constitutional cases; (2) that it introduced the Executive into judicial questions. The new arrangement — in connection with which he acknowledged the assistance given by Sir Samuel Griffith — met these objections, and satisfied all the five Delegates; though no reply had yet been received from their Governments. Several members of the Opposition complained that the House was placed in a difficult position by being asked to debate so important a clause on such short notice, and without information as to the views of the Australian Governments. Eventually, after some discussion, the debate was adjourned till Thursday, 21st June.

On that date the Committee stage was resumed. Mr. Chamberlain read telegrams announcing that the Governments of Victoria, Queensland, South Australia, and Tasmania, were satisfied with the proposed
arrangement, and that the Parliament of New South Wales was being consulted, and would probably agree. He pointed out that the right of appeal to the Privy Council would be the same as in Canada, with the trifling exception — which he was almost inclined to think an improvement — that in certain rare cases the leave to appeal would be granted by the High Court and not by the Privy Council. Mr. Haldane and Mr. Bryce thought that in some respects — and particularly as regards cases involving the public interests of Imperial possessions outside the Commonwealth — the clause in the original Bill was better than that now proposed; and they suggested that there would be some ground for the argument that in constitutional cases the High Court was co-ordinate with, and not subordinate to, the Privy Council. This contention was answered by Sir William Anson and by the Attorney-General, Sir Robert Finlay. Mr. Asquith admitted that as the colonies had assented to the arrangement, it should be carried into effect. Mr. Chamberlain's amendment to covering clause 5 was agreed to.

In covering clause 6, the reference to the Colonial Laws Validity Act was omitted, as was also the definition "Colony shall mean any colony or province." Covering clause 9 was restored to its original form, the Constitution being thus appended to the clause, instead of forming a Schedule to the Act.

In the Constitution itself, the original last paragraph of clause 73 was restored to its position, instead of standing as clause 74, and the new clause 74 was inserted according to arrangement. In the Preamble, the words "and under the Constitution hereby established" were restored. The Bill was then reported with amendments.

THE BILL IN THE HOUSE OF LORDS. — In the House of Lords, the Bill was read a first time on 26th June. The second reading was moved on 29th June by the Earl of Selborne, Under-Secretary for the Colonies. Earl Carrington accused Mr. Chamberlain of imprudence which had imperilled the Bill, and characterized his settlement as an unconditional surrender. The Earl of Halsbury, Lord Chancellor, deprecated this as a partisan attack which would mar the harmony and unanimity of the Empire's acceptance of the Bill. Lord Davey thought the appeal clause was not a happy solution of the difficulty, and hoped that the colonies would hereafter modify it. The Earl of Jersey, the Earl of Kimberley, Lord James of Hereford, Lord Russell of Killowen, Viscount Knutsford, and Lord Brassey, spoke in terms of congratulation. The Bill was read a second time and taken into committee pro forma. On 3rd July, it was carried through Committee without amendment, and on 5th July it was read a third time and passed.

THE ROYAL ASSENT. — On 9th July, the Queen gave her assent to
the Bill. At the request of the Delegates, Her Majesty signed the Commission, declaring her assent to the Bill, in duplicate, and gave Mr. Barton one of the copies, as well as the pen, inkstand, and table used by Her Majesty, to be preserved in the Federal Parliament Buildings. On the same day, in the House of Lords, the House of Commons having been summoned to the bar, the Lords Commissioners (the Earl of Halsbury, the Earl of Hopetoun, and the Earl of Kintore), announced the Royal assent to the Bill, which was received with cheers.

ADOPTION BY WESTERN AUSTRALIA. — On 17th May — three days after the introduction of the Commonwealth Bill in the House of Commons - the West Australian Parliament met, and an Enabling Bill was at once introduced. It was on the lines of the Enabling Acts passed in the other colonies, and provided for the submission of the Constitution to a referendum, of the people of the colony, and for an address to the Queen in the event of the vote being in the affirmative.

On 23rd May Sir John Forrest moved the second reading, and announced that he would vote for Federation, though he did not see that it would be any great benefit to Western Australia for some time. The Bill as introduced provided for a referendum on the existing rolls; but during the debate the Government consented to have it taken in accordance with the newly extended franchise of the colony (see p. 71 supra), so that all adult — men and women — who had been twelve months in the colony should be entitled to vote.

The second reading was carried without a division on 31st May. In the Council slight amendments were made, which were accepted by the Assembly. On 13th June the Bill was assented to. The referendum was fixed for 31st July, and the campaign for and against the Constitution began at once. Sir John Forrest fought hard for the Bill, though some of his colleagues opposed it. The logical and sentimental argument for the completion of the continental union was made the most of. The ultimate entry of Western Australia into the Commonwealth was recognized as inevitable; and it was forcibly urged that even if the immediate benefits of Federation to Western Australia were not obvious, her interests would be better secured by joining the union at the outset, and helping to mould the federal policy, than by standing aloof. The strongest argument of the opponents was that a federal tariff with intercolonial freetrade would dislocate the finances of the colony, and that section 95, allowing Western Australia to retain intercolonial duties on a diminishing scale for five years, was inadequate to meet the difficulty. This argument was assisted by appeals to intercolonial jealousy and by vague allusion to the terrors of the unknown. The stronghold of the federal party was on the goldfields, where
the population was largely recruited from the other colonies; whilst the most solid opposition came from the agricultural interests, which dreaded the removal of the duties on intercolonial produce.

Though federalists were confident of victory, the decisive issue was a surprise. The result of the poll was a vote of 44,800 for the Constitution, and 19,691 against, leaving an affirmative majority of 25,109. An analysis of the voting gives the following result:

<table>
<thead>
<tr>
<th></th>
<th>Yes.</th>
<th>No.</th>
<th>Majority.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metropolitan Electorates</td>
<td>7,008</td>
<td>4,380</td>
<td>2,628</td>
</tr>
<tr>
<td>Fremantle Electorates</td>
<td>4,687</td>
<td>3,141</td>
<td>1,546</td>
</tr>
<tr>
<td>Goldfields Electorates</td>
<td>26,330</td>
<td>1,813</td>
<td>24,517</td>
</tr>
<tr>
<td>Country Electorates</td>
<td>6,775</td>
<td>10,357</td>
<td>(Min. 3,582)</td>
</tr>
<tr>
<td>Total</td>
<td>44,800</td>
<td>19,691</td>
<td>25,109</td>
</tr>
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On 21st August, both Houses of the Parliament of Western Australia passed addresses to the Queen, praying that Western Australia might be included as an Original State of the Commonwealth in the Proclamation shortly to be made.

THE ROYAL PROCLAMATION. — The issue of the Queen's Proclamation fixing the day for the establishment of the Commonwealth had been withheld pending the issue of the referendum in Western Australia, in order to enable her Majesty to be satisfied that the people of Western Australia have agreed "to join the Commonwealth. Meanwhile some telegraphic communications passed between the Imperial and Colonial Governments as to the date on which the Commonwealth should be established. The prevailing opinion was in favour of the 1st January, 1901, the first day of the twentieth century — a dramatic and significant date for the birth of Australian nationhood. The sentimental argument was reinforced by the practical one that the 1st January was the beginning of a financial half-year in all the colonies. On the other hand there was some advocacy of the 26th January - the anniversary of the foundation of New South Wales in 1788 — which was celebrated in several of the colonies as the patriotic festival of the year. The date chosen was the 1st January; accordingly, on 17th September, 1900, the Queen signed the Proclamation declaring that on and after the first day of January, 1901, the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia should be united in a Federal Commonwealth under the name of the Commonwealth of Australia.

Thus all the five colonies of the mainland of Australia, and also the adjacent island of Tasmania, become Original States of the Commonwealth which is to be inaugurated on the first day of the twentieth century. The
Commonwealth, as few dared to hope it would, comes into existence complete from the first — "a nation for a continent, and a continent for a nation." The delays at which federalists have chafed have been tedious, and perhaps dangerous, but they have been providential; they have given time for the gradual but sure development of the national spirit in the great colonies of Queensland and Western Australia, and have prevented the establishment of a Commonwealth of Australia with half the continent of Australia left, for a time, outside.

But though Australian union has been completed, Australasian union has not. New Zealand — separated from Australia by 1,200 miles of sea, and correspondingly more self-confined and less in touch with the national sentiment of Australia — has not yet decided to enter the Commonwealth. The choice between union or isolation, which has not yet been directly presented to the people of New Zealand, cannot long be deferred. On 19th October, 1900, a resolution was passed by the New Zealand House of Representatives, on Mr. Seddon's motion, declaring it to be desirable (a) That a Royal Commission should be appointed to inquire into and report upon the desirability or otherwise of New Zealand becoming a State of the Commonwealth: (b) that if the Commissioners deem Federation for the present inadvisable or premature, they should report as to the establishment of a reciprocal treaty between the Commonwealth and New Zealand, and indicate the lines on which it should be based: (c) that the Commissioners entrusted with this all-important matter, affecting the national life and well-being of New Zealand, should be conversant with the agricultural, commercial, and industrial interests of the colony, and be otherwise eminently fitted for their high office (d) that they should be empowered to proceed to Australia to take evidence: and (e) that their report should be presented to the New Zealand Parliament within ten days of the opening of the next session.

The report of this Commission will be awaited with interest. Meanwhile, Mr. Seddon's "Greater New Zealand" policy (see p. 639, infra) indicates that he is endeavouring to secure as advantageous a position as possible for a commercial treaty with the Commonwealth, in the event of a decision adverse to immediate union.

APPOINTMENT OF THE GOVERNOR-GENERAL. — On 14th July it was officially announced that the first Governor-General of the Commonwealth of Australia would be the Right Honourable the Earl of Hopetoun, G.C.M.G., then Lord Chamberlain. Lord Hopetoun was already well known in Australia, having been Governor of Victoria from 1889 to 1895, during which time he had been one of the most popular, although one of the youngest, of Australian Governors, and had earned the
reputation of a tactful and capable administrator, and a worthy representative of the Crown. His choice as the first holder of the high and honourable office of Governor-General of the Commonwealth gave general satisfaction.

The actual appointment of the Governor-General could not, in accordance with clause 3 of the Commonwealth Act, be made until after the issue of the Queen's Proclamation which fixed the date of the establishment of the Commonwealth. On 21st September Lord Hopetoun waited upon the Queen at Balmoral Castle, when Her Majesty invested him with the knighthood of the Order of the Thistle. He delivered into Her Majesty's hands the wand and badge of the Lord Chamberlain of Her Majesty's Household, and received the commission of his appointment as Governor-General.

PREPARATIONS FOR THE INAUGURATION. — Shortly after the Royal Proclamation, it was announced that the inauguration of the Commonwealth, on the 1st January, 1901, would take place in Sydney. The Parliaments of the six colonies began to legislate, under the authority of clause 4 of the Commonwealth Act, and Secs. 9 and 29 of the Constitution, for prescribing the method of choosing senators, determining the times and places of elections of senators, and determining the electoral divisions for the House of Representatives; with such other local legislation as was deemed advisable in view of the approaching change in the political condition of the colonies. On 17th September, it was officially announced that the Queen, on the recommendation of Lord Salisbury, had assented to a visit by the Duke and Duchess of York to Australia, early in the year 1901, when the Duke of York would be commissioned by Her Majesty to open the first session of the Parliament of the Commonwealth in her name. Although Her Majesty naturally shrank from parting from her grandson for so long a period, she fully recognized the greatness of the occasion which would bring her colonies of Australia into federal union, and desired to give this special proof of her interest in all that concerned the welfare of her Australian subjects. Her Majesty wished at the same time to signify her sense of the loyalty and devotion which had prompted the spontaneous aid so liberally offered by all the colonies in the South African War, and of the splendid gallantry of her colonial troops.

CONCLUSION. — During the past century the foundations of Australian nationhood have been laid; with the new century will begin the task of building the superstructure. Political barriers have been broken down, and the constitutional compact which, politically speaking, creates the Australian people, has been framed, accepted, and established. But all this is only the beginning. The new national institutions of Australia have
to be tested in the fire of experience; provincial jealousies have to be obliterated; national sentiment has to be consolidated; the fields of national legislation and national administration have to be occupied. Australian statesmanship and patriotism, which have proved equal to the task of constructing the Constitution, and of creating a new nation within the Empire, are now face to face with the greater and more responsible task of welding into a harmonious whole the elements of national unity, and of guiding the Australian people to their destiny — a destiny which, it may be hoped, will always be linked with that of the mighty Empire of which they form a part.
List of Members of Federal Conventions, Conferences, &c.
Intercolonial A.N.A. Federation Conference, Melbourne, January, 1890.

OFFICERS
PRESIDENT. — Sir John C. Bray, K.C.M.G., Speaker of the House of Assembly, South Australia.
SECRETARIES. — Messrs. F.C. Wainwright, W. Burnet, and J.W. Hill.
DELEGATES.
New South Wales.
Mr. E. Dowling
Mr. W.S. Dowel, M. P.
Mr. J.W. Hill
Mr. B.B. Nicoll, M.P.
Mr. Ninian Melville, M. P.
Mr. H. Slatyer
Mr. H. Thompson
Mr. J.T. Wilshire, M.P.
South Australia.
Sir John C. Bray, M.P.
Mr. H.H. Barrett
Hon. J.C.F. Johnson, M.P.
Mr. W. Burnet
Mr. S.H. Prior
Mr. W.J. Sowden
Mr. C. Tucker
Mr. W.H. Wadey
Western Australia.
Mr. W. Maley
Mr. E.P. Nesbit
Queensland.
Mr. J. Allan
Mr. J.R. Bradshaw
Mr. W.V. Brown
Victoria.
Mr. T.J. Connelly
Mr. J.C. Bottomley
Mr. Field Barrett
Mr. J.W. Larter
Mr. A.J. Peacock, M.P.
Mr. G.H. Wise
Mr. F.C. Wainwright
## Australian Natives' Association, Victoria.

List of Presidents of the Board of Directors, from its inception to June, 1900:-

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Years</th>
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<tr>
<td>Mr. T. O'Callaghan</td>
<td>Melbourne</td>
<td>1877 and 1878</td>
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<tr>
<td>Mr. S. Cadden</td>
<td>Ballarat</td>
<td>1879 and 1880</td>
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<tr>
<td>Mr. M. J. Cahill</td>
<td>Bendigo</td>
<td>1881</td>
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<tr>
<td>Mr. Wm. Anderson</td>
<td>Creswick</td>
<td>1882</td>
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<tr>
<td>Mr. R. R. Hart</td>
<td>Stawell</td>
<td>1883</td>
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<tr>
<td>Mr. O. F. Wilson</td>
<td>Ballarat</td>
<td>1884</td>
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<tr>
<td>Mr. A. J. Peacock, M.L.A.</td>
<td>Creswick</td>
<td>1885, 1886, 1893</td>
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<tr>
<td>Mr. T. J. Connelly</td>
<td>Bendigo</td>
<td>1887</td>
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<tr>
<td>Mr. J L. Purves, Q.C.</td>
<td>Melbourne</td>
<td>1888, 1889</td>
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<tr>
<td>Mr. D. J. Wheal</td>
<td>Ballarat</td>
<td>1890</td>
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<tr>
<td>Mr. G. H. Wise</td>
<td>Sale</td>
<td>1891</td>
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<td>Mr. J. W. Larter</td>
<td>Ballarat</td>
<td>1892</td>
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<tr>
<td>Mr. G. Fitwimmons</td>
<td>Prahran</td>
<td>1894</td>
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<tr>
<td>Mr. J. W. Kirton, M.L.A.</td>
<td>Ballarat</td>
<td>1895</td>
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<tr>
<td>Mr. J. H. Cook, M.L.A.</td>
<td>Brunswick</td>
<td>1896</td>
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<tr>
<td>Mr. R. F. Toutcher, M.L.A.</td>
<td>Richmond</td>
<td>1897</td>
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<tr>
<td>Dr. C. Carty Salmon, M.L.A.</td>
<td>Avoca</td>
<td>1898</td>
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<tr>
<td>Mrs. E. E. Roberts</td>
<td>Flemington</td>
<td>1899</td>
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<tr>
<td>Mr. Walter Skelton</td>
<td>Dunolly</td>
<td>1900</td>
</tr>
</tbody>
</table>
National Australasian Convention, 1891.

OFFICERS:
PRESIDENT — The Honourable Sir Henry Parkes, G.C.M.G., M.L.A.
VICE-PRESIDENT.— The Honourable Sir Samuel Walker Griffith, K.C.M.G., Q.C. M.L.A.

DELEGATES.
New South Wales.
The Honourable Sir Henry Parkes, G.C.M.G. M.L.A.
The Honourable William McMillan, M.L.A.
The Honourable Joseph Palmer Abbott, M.L.A.
George Richard Dibbs, Esquire, M.L.A.
The Honourable William Henry Suttor, M.L.C.
The Honourable Edmund Barton, Q.C. M.L.C.
The Honourable Sir Patrick Alfred Jennings, K.C.M.G., LL.D., M.L.C.
New Zealand.
Sir George Grey, K.C.B.
Captain William Russell Russell, M.H.R.
The Honourable Sir Harry Albert Atkinson, K.C.M.G., M.L.C.
Queensland.
The Honourable John Murtagh Macrossan, M.L.A. [Decease reported 31st March.]
The Honourable John Donaldson, M.L.A.
The Honourable Sir Samuel Walker Griffith,
The Honourable Sir Thomas McIlwraith, K.C.M.G., LL. D., M.L.A.
The Honourable Arthur Rutledge, M.L.A.
The Honourable Andrew Joseph Thynne, M.L.C.
The Honourable Thomas Macdonald-Paterson, M.L.C.
South Australia.
The Honourable Richard Chaffey Baker, C.M.G., M.L.C.
The Honourable John Hannah Gordon, M.L.C.
The Honourable Sir John Cox Bray, K.C.M.G., M.H.A.
John Alexander Cockburn, Esquire, M.D., M.H.A.
The Honourable Sir John William Downer, K.C.M.G., Q.C., M.H.A.
The Honourable Charles Cameron Kingston, Q.C., M.H.A.
The Honourable Thomas Playford, M.H.A.
Tasmania.
The Honourable William, Moore, M.L.C.
The Honourable Adye Douglas, M.L.C. M.H.A.
The Honourable Andrew Inglis Clark, M.H.A.
The Honourable William Henry Burgess, M.H.A.
The Honourable Nicholas John Brown, M.H.A.
The Honourable Bolton Stafford Bird, M.H.A.
The Honourable Philip Oakley Fysh, M.L.C.
Victoria.
The Honourable Alfred Deakin, M.L.A.
The Honourable James Munro, M.L.A.
The Honourable Lieutenant-Colonel William Collard Smith, M.L.A.
The Honourable Nicholas Fitzgerald, M.L.C.
The Honourable Henry John Wrixon, Q.C., M.L.A.
The Honourable Duncan Gillies, M.L.A.
The Honourable Henry Cuthbert, M.L.C.
The Honourable William Shiels, M.L.A. [Acting from 2nd to 9th March, during absence of Mr. Wrixon.]
Western Australia.
The Honourable John Forrest, C.M.G., M.L.A.
The Honourable William Edward Marmion, M.L.A.
The Honourable Sir James George Lee-Steere, M.L.A.
The Honourable John Arthur Wright, M.L.C.
The Honourable John Winthrop Hackett, M.L.C.
Alexander Forrest, Esquire, M.L.A.
William Thorley Loton, Esquire, M.L.A.
Corowa Federation Conference, August 1893.

OFFICERS:

PRESIDENT — Mr. B.B. Nicoll, M.L.A.


SECRETARY — Mr. Edward Wilson.

ASSISTANT SECRETARY — Mr. E. Lapthorne.

TREASURER — Mr. A.A. Piggin.


DELEGATES:

Arnott, D. Federation League, Yarrawonga.
Barker, S. Protection Liberal and Federation League, Melbourne.
Barrett, Herbert Vice-President Board of Directors of A.N.A., Victoria.
Berryman, G. H. Federation League, Moama.
Boyle, A. O. Federation League, Howlong.
Bridignon, H. Progress Committee, Germanton.
Bromfield, H. Federation League, Howlong.
Brown, A. B. Progress Committee, Germanton.
Brown, Andrew R. Federation League, Tocumwal.
Buckley, Allan K. Federation League, Rutherglen.
Camplin, A. Federation League, Mulwala.
Chanter, J.M. M.L.A. Federation League, Koondrook and Barmah.
Church, W. R. Young Victoria Patriotic League, Melbourne.
Clifton, W. A. Federation League, Corowa.
Cook, James. Protection Liberal and Federation League, Melbourne.
Cowderoy, B. President Chamber of Commerce, Melbourne.
Crockett, M.C.M. Federation League, Yarrawonga.
Dowling, Edward Hon. Secretary A.N.A., Sydney.
Drummond, W. D. Federation League, Berrigan.
Easterby, W. H. Federation League, Howlong.
Edmundson, F. W. Federation League, Wodonga.
Gorman, D. Federation League, Savernake.
Gorman, B. J. Federation League, Berrigan.
Haig, Gee. G. Federation League, Wahgunyah.
Hallett, C. Chamber of Commerce, Melbourne.
Hampson, A. J. A.N.A., Bendigo.
Harricks, F. M. Young Victorian Patriotic League, Melbourne.
Hemmings, R. A.N.A., Clifton Hill.
Holland, James  Federation League, Yarrowonga.
Hose, Rev. W. Clarke  Federation League, Corowa.
Jameson, A.  Federation League, Deniliquin.
Kilborn, R.  Federation League, Rutherglen.
Lapthorne, Ernest  Federation League, Berrigan.
Lorimer, W. J.  Protection Liberal and Federation League, Melbourne.
McGeeoch, R.  Federation League, Mulwala.
Maloney, W., M.L.A.  Protection Liberal and Federation League, Melbourne.
Miller, John J.  Municipality, Cootamundra.
Mitchell, P. S.  Progress Committee, Tooma.
Morris, W. A.  Vice-President Commercial Travellers' Association, Melbourne.
O'Dwyer, R. D.  Federation League, Savernake.
O'Grady, Charles  Federation League, Rutherglen.
Peacock, A. J., M.L.A.  President Board of Directors A.N.A.
Piggin, Alex. A.  Federation League, Corowa.
Piggin, F. C.  Federation League, Corowa.
Pigott, E. F.  Progress Association, Cobram.
Prendergast, G. M.  President Progressive Political League, Melbourne.
Quick, John, LL.D.  A.N.A., Bendigo.
Rain, W.  A.N.A., No. 1 Branch, Melbourne.
Ross, Alex.  Progress Committee, Germanton.
Ross, John  Progress Committee, Germanton.
Shields, John G.  Federation League, Wodonga.
Sloane, J. A. S.  Federation League, Mulwala.
Smith, G. S.  Federation League, Wahgunyah.
Stretton, D.  Federation League, Echuca.
Taylor, H., D'E.  Imperial Federation League, Melbourne.
Thomas, O. C.  Imperial Federation League, Melbourne.
Thorpe, Jas.  Federation League, Wahgunyah.
Towel, Dr.  Federation League, Berrigan.
Warner, Jas.  Municipality, Beechworth.
Whitaker, T.  Federation League, Albury.
Whitford, F. P.  Federation League, Wahgunyah.
Whitty, H. P.  Federation League, Tocumwal.
Willis, Geo. H.  Federation League, Corowa.
Wilson, Edw.  Federation League, Corowa.
Young, J. B.  A.N.A., Bendigo.
People's Federal Convention, Bathurst, 1896.

OFFICERS

PRESIDENT — Thos. A. Machattie, Esq., M.B.


HONORARY ASSISTANT SECRETARY. — G. E. Flannery, Esq., B. A., LL.B.

HONORARY TREASURER. — H. C. Matthews, Esq.

PROCEDURE COMMITTEE. — The President (Dr. Machattie), the Secretary (the Rev. A. J. Webb), the Right Rev. Dr. Camidge, the Right Rev. Dr. Byrne, the Right Rev. Dean Marriott, the Rev. Father Dowling, Dr. Hurst, Dr. Quick, Mr. G. E. Machattie, Mr. M. Meagher, Mr. A. G. Thompson, Mr. Wright, the Hon. Sydney Smith, M.P.

DELEGATES AND INVITED MEMBERS:

Alcorn, S.A., B.A., M.B. East Maitland
Archer, Wm. Burwood
Armstrong, J.F. Forbes
Balls, G. C. Sydney
Barclay, J. B. Wickham
Barrett, A. C. Goulburn
Barry, G. J. North Sydney
Barton, E, M.A., Q.C Sydney
Bassett, E. P. Carcoar
Bassett, W. P., M.D. Bathurst
Batey Geo W. Greta......
Bavister, Thos., M.P. Sydney
Beavis, Horace Colin Bathurst...
Becher, Rev. R. F., B.A. Bathurst...
Bell, Alexander Ballarat, Vic.
Bell, Colonel, United States Consul Sydney
Beveridge, John Lithgow
Blythe, Chas. Sebastopol Vic.
Bond, Robert J. Wickham
Bourke, J. Murrumburrah
Boyd, John Bathurst
Braye, T. A., B.A. Waratah
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<tr>
<td>Brennan, M.</td>
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<td>Cullen, W. P., M.A., LL.D., M.L.C.</td>
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<td>Davies, Lieutenant-Col., M.H.A.</td>
<td>Hobart, Tas.</td>
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<td>Dickson, S. H.</td>
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<td>Duffy, Hon. J. G.</td>
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<td>Fielding, Rev. S. G.</td>
<td>Windsor</td>
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<td>Finckernagel, Wm.</td>
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<td>Flanagan, P. J.</td>
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<td>Flood, Captain John</td>
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<td>Foster, Frank J.</td>
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<td>Fox, Frank</td>
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<td>Freehill, F. B., M.A.</td>
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<td>West Maitland</td>
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<td>Glover, George</td>
<td>Aberdeen</td>
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Marriott, Very Rev. Dean Bathurst
Martin, James Sydney
Matthews, H.C. Bathurst
Matthews, H. Cootamundra
Mawby, H. Cowra
Meagher, John Bathurst
Meagher, John P. Wyslong West.
Melville, Ninian Ashfield
Meeks, A.W. Sydney
Millen, E.D., M.P. Bourke
Miller, John J. Cootamundra
Mills, Henry Balmain
Milne, Alexander M. Balmain
Moore, S.W., M.P. Bingara
Moran, His Eminence Cardinal Sydney
Morris, Professor E.E. Melbourne
Muller, Narcisse Dubbo
Nicoll, B.B. Sydney
Niven, W.F. Ballarat, Vic.
Norton, John Sydney
Oakes, Rev. G.S. Kelso
O'Connor, Hon. D., M.L.C. Sydney
O'Connor, Hon. R.E., M.L.C. Sydney
O'Haran, Dr. Sydney
O'Mara, John Stockton
Parnell, E. A. Kelso
Paul, W. H. Bathurst
Peacock, R. W. Perth, N.S.W.
Pilcher, G. de V. Orange
Pinkstone, Fred. Cootamundra
Pryor, Benjamin Greta
Purves, J. M., M.A. Sydney
Pymont, Alfred Hill End
Quick, John, LL.D. Bendigo
Rees, Evan Stockton
Reid, Hon. G.H. Premier, N.S.W. Sydney
Reid, A. C. Cowra
Renehan, J.T. Cootamundra
Richardson, J.J. Goulburn
Robson, Thos. Merewether
Rodgers, J. S. Newcastle
Rohner, Wm. Cobram, Vic.
Rolin, Tom, M.A. Sydney
Ross, S.A. Sydney
Russart, Jacob Blayney
Ryan, James Wodonga, Vic.
See, John, M. P. Sydney
Shackle, A. Grenfell
Sharpe, John Sebastopol
Shute, Richard Burwood
Simpson, Robert Merewether
Skelton, J.O.M. Sydney
Small, O.W. Auburn
Smith, Hon. Sydney, M.P. Sydney
Smith, Thos. Newcastle
Smith, W.C. Auburn
Spears, J. Granville
Stafford, A. Manilla
Stephen, Consett Croydon
Stephen, Wm. Sydney
Stewart, R.W. Hillston
Stratton, J.T. Cootamundra
Struthers, James Warren
Sutor, Hon. F.B. Sydney.
Taylor, J. W., M. A. Forbes
Taylor, Rev. W. G., President Wesleyan Conference Bathurst
Terry, E. Ryde
Thiselton, R.G. Brighton, S.A.
Thomas, F.J. Glen Innes
Thompson, A.G. Bathurst
Tovey, Rev. S.S., B.A. Sydney
Turner, John Frahnan, Vic.
Upward, John Ashfield
Wade, John Sydney
Walker, Arthur Paddington
Walker, J.T. Sydney
Warren, W. Sydney
Webb, Rev. Arthur J. Bathurst
Webb, Hon. Edmund, M.L.C. Bathurst
Wilson, Charles G. Armidale
Webb, N.A., LL.B. Port Augusta, S.A.
Windsor, W.H. Granville
Weeden, John Tumut
West, John Shepparton, Vic.
West, John E. Sydney
West, T.J. Paddington
Whitmee, S. Milthorpe
Wilkinson, R.B. Sydney
Williams, E. Bathurst
Williamson, John Sydney
Wilson, Edward Corowa
Withers, J. W. Sydney
Wittenoom, Hon. E.H. Perth, W.A.
Young, Rev. Canon Perth, N.S.W.
OFFICERS:

PRESIDENT. — The Right Honourable Charles C. Kingston, P.C., Q.C., M.H.A.


LEADER. — The Honourable Edmund Barton, Q.C., M.L.C.

REPRESENTATIVES:

New South Wales.
Edmund Barton, Esquire, M.L.C., Q.C.
The Honourable Joseph Hector Carruthers, M.L.A. (Secretary for Lands).
William. McMillan, Esquire, M.L.A.
William, John Lyne, Esquire, M.L.A.
The Honourable James Nixon Brunker, M.L.A. (Colonial Secretary).
The Honourable Richard Edward O'Connor, M.L.C., Q.C.
The Honourable Sir Joseph Palmer Abbott, K.C.M.G. (Speaker Legislative Assembly).
Bernhard Ringrose Wise, Esquire.

South Australia.
The Right Honourable Charles Cameron Kingston, P.C., Q.C., M.H.A. (Premier)
The Honourable Frederick William Holder, M.H.A. (Treasurer).
The Honourable John Alexander Cockburn, M.D., M.H.A. (Minister of Education).
The Honourable Sir Richard Chaffey Baker, LL.B. K.C.M.G. (President of the Legislative Council).
The Honourable Sir John William Downer, Q.C., K.C.M.G., M.H.A.
Patrick McMahon Glynn, Esquire, B.A.,
The Honourable John Hannah Gordon, M.L.C.
The Honourable James Henderson Howe.
Vaiben Lewis Solomon, Esquire, M.H.A.
Josiah Henry Symon, Esquire, Q C.

Tasmania.
The Honourable Sir Philip Oakley Fysh, K.C.M.G., M.H.A. (Treasurer).
The Honourable Henry Dobson, M.H.A.
The Honourable Neil Elliott Lewis, M.H.A.
The Honourable Nicholas John Brown, M.H.A.
The Honourable Charles Henry Grant, M.L.C.
The Honourable Adye Douglas (President Legislative Council).
The Honourable William Moore, M.L.C. (Chief Secretary).
Matthew John Clarke, Esquire, M.H.A.
The Honourable John Henry, M.H.A.

Victoria.
John Quick, Esquire, LL.D.
The Honourable Alfred Deakin, M.L.A.
William Arthur Trenwith, Esquire, M.L.A.
The Honourable Sir Graham Berry, K.C.M.G. (Speaker Legislative Assembly).
The Honourable Simon Fraser, M.L.C.
The Honourable Sir William Austin Zeal, K.C.M.G. (President Legislative Council).
Henry Bournes Higgins, Esquire, M.L.A.

Western Australia.
The Honourable Sir James George Lee-Steers, Knight (Speaker Legislative Assembly).
George Leake, Esquire, M.L.A.
The Honourable Frederick Henry Piesse, M.L.A. (Commissioner of Railways). [Resigned 26th April, 1897.]
The Honourable John Winthrop Hackett, M.L.C.
William Thorley Loton, Esquire, M.L.A. [Resigned 26th April, 1897.]
Walter Hartwell James, Esquire, M.L.A.
Albert Young Hassell, Esquire, M.L.A.
Robert Frederick Sholl, Esquire, M.L.A. [Resigned 26th April, 1897.]
The Honourable John Howard Taylor, M.L.C.
The Honourable Henry Briggs, M.L.C. [From 26th August, 1897.]
The Honourable Frederick Thomas Crowder, M.L.C. [From 26th August, 1897.]
The Honourable Andrew Harriot Henning, M.L.C. [From 26th August, 1897.]
The Honourable Harry Whittal Venn, M.L.C. [From 26th August, 1897.]