THURSDAY, 3RD MARCH, 1898.

Commonwealth of Australia Bill.

The PRESIDENT took the chair at thirty-four minutes past ten o'clock a.m.

COMMONWEALTH OF AUSTRALIA BILL.

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

The CHAIRMAN.-The question with which the committee has to deal first is Mr. Symon's new clause, to take the place of clause 110, struck out.

Mr. SYMON (South Australia).-I beg to move-

That the following new clause be inserted in place of clause 110, struck out:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

The clause which I now propose in substitution of clause 110, struck out, is the first paragraph of section 2 of the fourth article of the American Constitution. It provides that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states. I would direct attention to clause 110 as it originally stood. Honorable members will recollect that there was an amendment upon that clause which was debated in this Convention the other day. That amendment was similar to an amendment which was inserted in the United States Constitution after the war, going further than the original provision, and dealing with a changed state of things. There was considerable debate in the Convention upon the clause, which eventually was struck out, as going a great deal too far beyond the necessities of the case which we were required to provide for. I will just point out in one word the difficulty that impressed me at the time the debate was proceeding, and led me to vote against clause 110. That clause was as follows:-

A state shall not make or enforce any law abridging any privilege or immunity of citizens of other states of the Commonwealth nor shall a state deny to any person within its jurisdiction the equal protection of the laws.

The effect of the first part of that was that apparently the citizen of one state would not merely enjoy the privileges and immunities he would be entitled to as a citizen of the Commonwealth on entering another state, but would carry with him into that other state any special privileges and immunities he enjoyed in the state from which he came: That was illustrated by several honorable members by interjections as to what would be the position if a member of one state who held immunity from military service, afterwards became a resident of another state where that immunity would still attach to him, although such an immunity did not attach to the ordinary residents of that state. That, of course, was a condition of things the consequences that might follow from which we could not foresee. Therefore, clause 110 was struck out. But in the course of the debate honorable members will recollect that it was pointed out that, unless some provision were inserted, there was a fear that a state might legislate so as to disqualify [start page 1781] the citizens of another state from
holding land within its borders. The possibility of such an occurrence was very grave. In the course of the debate I used that illustration myself, and I confess that I recoil, if that possibility could exist, from the effect of my own argument. I think it would be imperative, if there were a risk of anything of that sort occurring, that we should introduce words into the Constitution so that no state could be at liberty, by laws of its own, to disqualify the citizens of another state from, for instance, holding land within its borders, or enjoying the same privileges and immunities as its own citizens would have.

Sir JOHN FORREST. - What about coloured races?

Mr. SYMON. - That matter is dealt with, my right honorable friend will see, under a special provision of this Constitution.

Sir JOHN FORREST. - How would it be in a case of this sort: Suppose a Chinaman going to Western Australia from Victoria and claiming to have a miner's right?

Mr. SYMON. - If he were a citizen of Victoria, and went to Western Australia, he would be entitled to the privileges and immunities of a citizen of Western Australia only. That is the effect of my amendment.

Sir JOHN FORREST. - That is, he would be able to get a miner's right?

Mr. SYMON. - If the law in my right honorable friend's colony permitted him to have it. Under clause 110 as it stood, we felt that the effect would be that if a citizen of Victoria went to Western Australia, although by the law there he might be disqualified from holding a miner's right, still he would take with him the privileges and immunities of a citizen of Victoria, and be entitled to hold a miner's right. My amendment, however, is that all he would be able to enjoy in Western Australia would be the privileges and immunities of a citizen of Western Australia.

Sir JOHN FORREST. - What is a citizen of Victoria?

Dr. QUICK. - It is not defined.

Mr. SYMON. - My honorable friend (Dr. Quick) has framed a definition to be inserted in clause 120A. I do not know whether he desires to move that, and if so whether he desires to modify or restrict it in any way. But if it would be convenient to the Convention that Dr. Quick's proposal should be considered in connexion with the amendment I am moving, I should be agreeable to that being done. At any rate, I do not think that there is any necessity for defining a citizen. Citizenship is another matter, but there would be no difficulty or confusion from the use of the word citizen in this clause. I only wish this matter to be put on a proper footing, and I should be quite willing for Dr. Quick's amendment to be discussed at the same time as my own; or, for the matter of that, I should be content to have the two amalgamated.

Mr. ISAACS. - Would a Western Australian resident coming to Victoria have the right of voting whether he became a resident of Victoria or not?

Mr. SYMON. - No.

Mr. ISAACS. - Under this proposal, why not?

Mr. SYMON. - Because that matter is specially provided for in another part of this Constitution. The state regulates the exercise of the franchise within its own limits, and that matter would be exempt from the operation of this provision.

Mr. ISAACS. - Why? You say that the citizens of every state shall have the rights and privileges of the citizens of the federal states.
Mr. SYMON.-No. In America the same provision is in operation. My honorable friend will see this provision word for word in the United States Constitution. My amendment is word for word the same as clause 1 of section 2 of Article 4 of the American Constitution, which provides that-

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. [start page 1782] That has been working in America for over 100 years without confusion. At any rate, there can be no doubt at all that a citizen going from one state to another state ought not to take with him or have recognised in that other state the privileges and immunities of the state from which he goes. That should not be the measure. The measure should be the privileges and immunities of the citizens of the state to which he goes. If they are less than he enjoyed before he must submit to them; if they are greater he gets additional advantages.

Sir JOHN FORREST.-Our laws only apply to the Asiatic alien, and he would not be affected by this, I have no doubt.

Mr. SYMON.-A person coming from another colony to my right honorable friend's colony would be entitled to the privileges and immunities enjoyed by the citizens of that colony, no more and no less. What we have to guard against is this: I apprehend that we do not wish that any state should disqualify, or lessen the privileges and immunities of, citizens of other states should such citizens enter within its borders. As the Bill now stands, it might be within the power of one state to say that no citizen of another state should hold land within its boundaries, or that they should hold it only under certain conditions. It should not, however, be possible for such an enactment to have force. Every citizen of the Commonwealth should be entitled to hold land in any state under the same terms as were imposed upon citizens of that state. If a citizen of Western Australia went to Victoria he should be able to hold land in Victoria upon the same terms, and subject to the same qualifications and limitations, as a citizen of Victoria.

Sir JOHN FORREST.-Could he be prevented from doing so? Would the Bill, the object of which was to prevent him from holding land, get the Royal assent?

Mr. SYMON.-Of course, the absolute control by a state of everything within its own borders is retained by this Constitution, except in respect to such matters as are expressly handed over to the Commonwealth.

Sir JOHN FORREST.-But subject to the Imperial control.

Mr. SYMON.-The Imperial authorities might not interfere. Of course, these are mere possibilities that I am discussing. This is the principle involved: Is it not desirable that a citizen of Western Australia should have the same privileges and immunities as are enjoyed by a citizen of Victoria, and vice versa? If we do not insert such a provision as this in the Constitution, I do not think we shall have a Commonwealth citizenship at all.

Sir JOHN FORREST.-I do not think that could happen.

Mr. SYMON.-I do not know about that. A state might do a great many things which would come uncommonly near to taking away advantages from citizens of other states, and this possibility is so grave that it ought to be very seriously considered. The arguments which I used in opposition to clause 110 will give me serious pause, unless some provision of this kind is introduced into the Constitution.

Mr. KINGSTON.-How would you define the word "citizen"?
Mr. SYMON.-I do not think that it is necessary to frame a definition of "citizen." A citizen is one who is entitled to the immunities of citizenship. In short, a citizen is a citizen. I do not think you require a definition, of "citizen" any more than you require a definition of "man" or "subject."

Mr. ISAACS.-Would you include a corporation in the term "citizen"?

Mr. SYMON.-Why not?

Mr. ISAACS.-Well, in America they do not.

Mr. SYMON.-I do not see why a corporation existing in one colony should not have the rights of a corporation in another colony. Otherwise you defeat the objects of this Constitution.

Mr. ISAACS (Victoria).-There is one word in the proposed clause which, when the honorable member was speaking, did not strike my attention as it does now. I read the clause as if it provided that the citizens of each state should be entitled to all the privileges and immunities of all the citizens of the several states; but I find now that it is not so. The words in the clause are "in the several states," so that possibly it would not have the disadvantages which I thought at first it would have. I am afraid, however, that it will not do what the honorable and learned member wishes. In Dr. Burgess's work, vol. 1., pages 255-256, it is pointed out that Germany adopted a provision of this kind with the fall intention that is actuating us now. This is what the writer says about it:-

This is simply the old provision of Article 4, secure 2. of the Constitution of the United States, that "The citizens of each state" (Commonwealth) "shall be entitled to all privileges and immunities of citizens in the several states" (Commonwealths). It was fashioned from this provision. It was discovered and demonstrated in the Constitutional Assembly of 1867 that this provision would not secure the civil liberty throughout the German State which that body intended to establish. The difficulty was solved, not by fixing the immunities and privileges of citizenship in the Constitution, but by vesting the Legislature of the General Government with the power to deal with all these subjects by statutory provisions.

That is precisely what the honorable and learned member (Dr. Quick) tried to do yesterday. The provision which the Convention threw out yesterday is that which has been proved by experience to be the only one which in Germany could carry out the object wished for. The provision which they moulded upon the provision in the American Constitution failed to carry out that object, and I am afraid that the provision of the honorable and learned member (Mr. Symon) will also fail to do so.

Mr. KINGSTON (South Australia).-I agree with what has fallen from the honorable and learned member (Mr. Isaacs). I think that we made a mistake yesterday when we rejected the amendment of the honorable and learned member (Dr. Quick), and I trust that before we finally separate, we shall be able to include that amendment in the Constitution, or, if not, to adopt a provision similar to that
which was suggested by the honorable and learned member (Mr. Glynn), which would have made the clause read as follows:-

A state shall not deny to the citizens of other states the privileges and immunities of its own citizens.

That, I understand, would mean that a Victorian citizen, whether a Chinaman or any one else, going, say, into the great province of Western Australia, would be entitled to all the privileges and immunities of a citizen of Western Australia. If Western Australia had legislated to restrict the rights of Chinese within her borders, a Chinaman going there would be subject to that restriction, but if no restrictions had been imposed upon Chinese residing within Western Australia, it would be impossible for Western Australia, simply because a Chinaman came from another colony, to treat him differently from the way in which Chinese residents there were treated. It seems to me an anomaly to use the word "citizen" in this Constitution, if you neither define it nor make provision for its definition. I asked the honorable and learned member (Mr. Symon), what was his definition of "citizen," and I understood him to say that a citizen was a man who had the rights of citizenship. That reminded me of the definition once given of an archdeacon, who was described as a reverend gentleman who performed archdiocesan functions. Such a definition may be all very well in humorous conversation, but we have already been warned about the impropriety of inserting anything of this character in the Constitution. I trust that we shall make this Constitution perfectly intelligible within its four corners, and I do not think we can do that without adopting some provision of the kind suggested by the honorable and learned member (Dr. Quick).

Mr. DOUGLAS (Tasmania). -I take it that what is required is that the position of citizens of the Commonwealth should remain practically what it is now, and that each citizen, when he went out of his own state into another, should be liable to the laws of that state, but to no special laws. On the other hand, he should not be able to carry with him any particular privileges. It seems to me that we should take care to prevent the states from passing any law which would restrict the rights and liberties of citizens of other states who happened to come within its borders.

Mr. SYMON (South Australia). -The criticism of my honorable and learned friend (Mr. Isaacs) is, of course, perfectly sound. This provision does not provide all that we should like to provide. His citation from Burgess shows that probably something further will be required, but so far as the clause goes, honorable members will see that it is essential that such a provision should be introduced into the Constitution. Otherwise, we fall short of giving to the citizens of each state the privileges which it is intended that this Union shall confer upon them. The only real objection to the provision is that it does not go so far as may be necessary to give complete citizenship. But to the extent to which it does go, and following upon the lines of the American provision, which has worked so advantageously for over a hundred years, it seems to me essential that we should introduce it into the Constitution.

Dr. QUICK (Victoria). -I do not propose to be as severe in my criticism of the provision of the honorable and learned member (Mr. Symon) to-day as he was in his determined opposition to my proposed clause yesterday. I would point out, however, two difficulties in the way of adopting his provision. The first is that there is no definition of the status of "citizen." The clause does not say whether a citizen is a ratepayer of a state, an adult male, or any member of the population of a state - men, women, children, Chinamen, Japanese, Hindoos, and other barbarians. Who are the citizens of a state?

Mr. SYMON. -That depends upon the law of the state upon the subject.

Dr. QUICK. -So far as I am aware, there is no law in any colony defining colonial citizenship or state citizenship. I am merely adopting the line of argument which my honorable and learned friend adopted yesterday, in taking advantage of technical points.

Mr. SYMON. -That was not my line of argument.
Dr. QUICK.-The honorable and learned member gives no definition of state citizenship, but he proposes to place in the Constitution a provision relating to state citizens. At the present time there is no such entity as a state citizen. The status of elector, or ratepayers or member of the population of a state may exist, but the status of citizen does not exist. I am surprised that my honorable friend, with all his learning and acumen, has proposed to place in the Constitution a provision containing a term of which there is no definition, even in Professor Morrison's Dictionary. Another objection is this: The clause proposes to impose the obligation upon all the states to treat the people or citizens, as the honorable and learned member has described them, of other states upon the same terms as apply to their own citizens. Does not that provision interfere with state rights?

Mr. SYMON.-Not a bit.

Dr. QUICK.-Why should the honorable and learned member endeavour to interfere with state rights, when he has been one of the most determined advocates of and sticklers for the independence of the states?

Mr. SYMON.-Are you not going to give citizenship throughout the Commonwealth?

Dr. QUICK.-This is a Bill to establish a Federal Commonwealth, and while there may be strong arguments in favour of defining federal citizenship, I contend that there is no occasion for us to go further and to attempt to define state citizenship. On these two grounds I think that the proposed clause should be rejected.

The CHAIRMAN.-It will be advisable if Dr. Quick desires to move his new clause that he should move it as an amendment on this one, so as to save two discussions on the subject.

Mr. WISE (New South Wales).-I am sorry it is impossible to obtain the last edition of Cooley's Constitutional Limitations. There is a most valuable note in it upon the importance of similar words in the American Constitution, which were introduced by an amendment as ancillary to the clauses relating to the freedom of trade. Judge Cooley points out that since that amendment has been introduced these words have been found of the utmost importance in preventing interference by the several states with the trade of their neighbours, under various pretexts. He points out that under there words such a tax as that on commercial travellers in New Zealand would have been declared illegal, although it could not have been touched under the freedom of trade clause. Devices really aimed at limiting trade between the states, although ostensibly taking another form, were dealt with under this amendment, and without it they could never have been prevented. I trust the amendment will be carried in this form, or perhaps Mr. Symon can see his way to alter the word "states" to "Commonwealth," which, I think, would meet Dr. Quick's view.

Mr. SYMON.-If you move that, I will accept it.

Sir JOHN FORREST.-What is a citizen? A British subject?

Mr. WISE.-I presume so.

Sir JOHN FORREST.-They could not take away the rights of British subjects.

Mr. WISE.-I do not think so. I beg to move-

That the words "each state" be omitted, with the view of inserting the words "the Commonwealth."

I apprehend the Commonwealth must have complete power to grant or refuse citizenship to any citizen within its borders. I think my answer to Sir John Forrest was given a little too hastily when I said that every citizen of the British Empire must be a citizen of the Commonwealth. The
Commonwealth will have power to determine who is a citizen. I do not think Dr. Quick's amendment is necessary. If we do not put in a definition of citizenship every state will have inherent power to decide who is a citizen. That was the decision of the Privy Council in Ah Toy's case.

**Sir JOHN FORREST.** He was an alien.

**Mr. WISE.** The Privy Council decided that the Executive of any colony had an inherent right to determine who should have the rights of citizenship within its borders.

**Mr. KINGSTON.** That it had the right of keeping him out.

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**Mr. WISE.** In our case he was within our limits, but he was not allowed to sue in our courts.

**Mr. BARTON (New South Wales).** If it is a fact that citizens, as they are called, of each state are also citizens of the Commonwealth, there may be some little doubt as to whether this is not providing for practically the same thing.

**Mr. WISE.** No, there may be territories that is what I want to provide for.

**Mr. BARTON.** In other portions of the Bill we use the words "parts of the Commonwealth" as including territories, so that the object of Mr. Wise would be met by using the words "citizens of every part of the Commonwealth" or "each part of the Commonwealth." Mr. Wise will see that that follows the ordinary phraseology of the Bill, and I do not think it alters the meaning of what he intends to propose. I leave it to his consideration, because it would make the clause more consistent with the rest of the Bill. I still take objection to the use of the word "citizen" here without a definition, and I understand the definition is to be proposed by Dr. Quick. As this will be the only part of the Bill where the expression "citizen" occurs, I would like to support the suggestion of the Chairman that Dr. Quick should move his clause as an amendment on that of, Mr. Symon. Then the definition will be in the only clause which deals with the subject. As to ordinary matters, the part of the Bill called the Act has made some provision. Clause 7 of the covering clauses, as redrafted, provides that-

This Act, and all laws made by the Parliament of the Commonwealth in pursuance of the powers conferred by the Constitution, and all treaties made by the Commonwealth, shall be binding on the courts, Judges, and people of every state and of every part of the Commonwealth, anything in the laws of any state to the contrary notwithstanding.

So anything conferred by the Constitution or by any law under the Constitution upon any subject or citizen, as he has been called, will be retained by him, inasmuch as the liability to obey the laws involves the protection of the laws, so that a good deal of what is sought by this clause is already conferred by clause 7. As to the general object of Mr. Symon's proposal, I confess I am strongly in favour of it. My only doubt is whether we should not rather cumber the Constitution by using the word "citizens," and requiring a definition of citizens when we use it here, and when the ordinary term to express a citizen of the empire might be used. We are subjects in our constitutional relation to the empire, not citizens. "Citizens" is an undefined term, and is not known to the Constitution. The word "subjects" expresses the relation between citizens of the empire and the Crown.

**Sir GEORGE TURNER.** Is a naturalized alien a subject?

**Mr. BARTON.** He would be a citizen under the meaning of this clause.

**Sir GEORGE TURNER.** Suppose you say "subject" without definition, would that include naturalized aliens?
Mr. BARTON.-Yes. Dr. Quick's definition is: Persons resident in the Commonwealth, either natural-born or naturalized subjects of the Queen, and if they are subject to no disabilities imposed by the Parliament they shall be citizens of the Commonwealth. Why not use the word "subject," and avoid the necessity of this definition?

Dr. QUICK.-This definition does not interfere with the term "subject" in its wider relation as a member of the empire or subject of the Queen.

Mr. BARTON.-No, but the definition of "citizen" as a natural-born or naturalized subject of the Queen is co-extensive with the ordinary definition of a subject or citizen in America. The moment he is under any disability imposed by the Parliament he loses his rights.

Dr. QUICK.-That refers to special races.

Mr. BARTON.-But if he is under any disability under any regulation of the Commonwealth he would cease to be a citizen, however slight that disability might be. I doubt whether the honorable member intends that. There is power by law to regulate the people of any race requiring special laws. There may be some purely regulative law passed, not imposing any special restriction on any person of that kind who may be a subject of the Queen. That regulation, if it were of the mildest character, under this definition, would deprive him of his rights.

Dr. QUICK.-The regulation would have to specify the ground of disability.

Mr. BARTON.-Yes; but my honorable friend says not under any disability imposed by the Parliament. Would not the difficulty be that if he were under any slight disability for regulative purposes, all his rights of citizenship under the Commonwealth would be lost?

Mr. KINGSTON.-There might be a special disability on minors.

Mr. BARTON.-That might be one of the disabilities. Of course here the disabilities as to minors would not matter much, but I would like to put this consideration to Dr. Quick, that if we use the term "subject," or a person subject to the laws, which is a wider term, we shall avoid the necessity for a definition of "citizen." You might say a subject or resident being the subject of the Queen.

Sir GEORGE TURNER.-Subject to the laws will be too wide.

Mr. BARTON.-Yes, it might be. The expression "resident subjects of the Queen" would avoid the necessity of having a definition of a term which only occurs in one place in the Constitution. I do not know how Mr Symon would take the suggestion, but it is far better not to import the word "citizen" here if we can deal with it by a term well known in the constitutional relations of the empire between the Queen and her subjects.

Mr. SYMON (South Australia).-I have expressed the opinion, whether rightly or wrongly, that the word "citizen" does not require a definition at all in the Constitution. We are not dealing with rigid terms or with a Constitution which is not to be perfectly elastic, and under the construction and interpretation of the Constitution the word "citizen" seems to me to be capable of very easy determination. It is one of those expressions which in the Constitution is just as easy of determination as the word "person." I really do not see where the difficulty is.

Mr. ISAACS.-It has been found very difficult to define it by decisions in the United States.

Mr. SYMON.-There is no man in Australia who is more profoundly versed in constitutional law than Mr. Isaacs, and he knows that every point and every question has been the subject of more or less debate and discussion, and will be until the end of time.
The words "subject," "person," and "citizen" can be made subjects of controversy at all times if occasion requires it. At the same time, it does not affect the principle that there should be a definition of "citizen," either in the form suggested by Dr. Quick or by Mr. Barton. I will be quite content. The principle is what I am contending for: The principle that our labours will be incomplete unless we make the rights of citizens or subjects in one state to extend to the citizens of another state who may go from one state to another. There ought to be no possibility of any state imposing a disqualification on a person in the holding of property, or in the enjoyment of any civil right, simply because he happens to belong to another state. That would not give us the uniformity of citizenship we all desire, and therefore I am willing that the word "citizenship" should be defined as Dr. Quick suggests, with perhaps some modification. I also support the suggestion from the Chair that the two propositions might be considered together. The clause would do something to meet the difficulty, not perhaps finally or conclusively, as Mr. Isaacs, said, but at any rate to a large extent and almost completely.

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Mr. BARTON.-Would this do:-

Any subject of the Commonwealth, resident in any part of the Commonwealth, shall be entitled to all the privileges and immunities of subjects resident in other parts of the Commonwealth?

Mr. SYMON.-I should be quite satisfied with that.

Dr. QUICK (Victoria).-There can be no doubt that this subject is surrounded with considerable difficulty, and probably any decision arrived at will be reviewed either by the Drafting Committee or the Convention at a subsequent stage. The Hon. Mr. Wise's suggestion to amend the Hon. Mr. Symon's clause so as to make it read-

The citizens of the Commonwealth shall be entitled to all the privileges and immunities of citizens in the several states.

Dr. QUICK's clause so as to make it read-

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth.

Mr. Symon's words would then follow:-

And the citizens of the Commonwealth shall be entitled to all the privileges and immunities of citizens in the several states.

Mr. SYMON.-Is it necessary to leave in the words "natural-born or naturalized"?

Dr. QUICK.-That is a detail that is open to discussion. I feel that there is a considerable difficulty in connexion with this definition, but, as it has been suggested, I will propose it, and leave the committee to amend it if they think proper. The words proposed to-day may not give exact expression to the views of the Convention, but it would be a very serious mistake if some provision of this kind were not inserted in the Constitution.

The CHAIRMAN.-The amendment proposed by the Hon. Mr. Wise is now before the Chair.

Mr. WISE (New South Wales).-I will withdraw my amendment for the time being, to enable Dr. Quick to submit his amendment.
The amendment was, by leave, withdrawn.

Dr. QUICK (Victoria).-I beg to move-

That the following words be inserted at the commencement of the proposed new clause:—"All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth."

Sir JOHN FORREST (Western Australia).-That, of course, makes the clause much wider. The Hon. Mr. Symon proposes that any person coming into a state shall be subject to the laws of that state. This amendment provides that he shall be subject to the laws of the Commonwealth. That might be found to be inconvenient, and I do not think it can be necessary. I shall, therefore, vote against the amendment.

Mr. ISAACS (Victoria).-I am afraid that the amendment is far too wide, unless we say that the disabilities imposed by Parliament may extend to birth and race. This would, notwithstanding the rights conferred under clause 52, deprive Parliament of the power of excluding Chinese, Lascars, or Hindoos who happened to be British subjects.

Mr. WISE.-Might not place of birth be a disability?

Mr. ISAACS.-It would be difficult to persuade me that place of birth is a disability that could be imposed by Parliament. The amendment provides that a natural-born subject of the Queen, unless he is liable to some disability imposed by Parliament, such as lunacy, shall be a citizen of the Commonwealth. It does not say except such persons as Parliament chooses to exempt, and it seems to me, from the very nature of the expression, that this cannot refer to place of birth. That is not a disability imposed by Parliament, and unless a natural-born or naturalized subject of the Queen does something or gets into such a condition as amounts to, so to speak, a disqualification, he would be entitled to be admitted as a citizen of the Commonwealth. I am quite sure that the doubt is at all events sufficiently great to cause a very strong feeling against the thing. We could not insure such an interpretation as honorable members desire. The effect of it certainly may be, and I think probably will be, what I have stated, and it seems to me that the only safe course to adopt is to do what Dr. Quick proposed to do yesterday.

Mr. GLYNN (South Australia).-When this matter was before the Convention on a former occasion in connexion with clause 110, I raised this very point, but I did not succeed in getting honorable members to pay any attention to it: Its importance evidently was not recognised. I intended, when Dr. Quick's amendment was proposed, to make an addition to it, so that it would read as follows:-

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth and of the state in which they reside, and shall be entitled to all the privileges and immunities of citizens in the several states.

The one clause would then cover everything, and I put this forward for the consideration of the honorable member. He may not wish to go to the extent of saying that they shall be citizens of the state in which they reside, but the latter words would embody the principle Mr. Symon is now suggesting, and which I suggested on clause 110.

Mr. BARTON.-What about territories?

Mr. GLYNN.-There is power under the Bill to make special laws with regard to territories, and I am not sure that we could not constitute a certain class of citizenship for the territories.
Mr. BARTON. That power would be exercised subject to the Constitution. If you make the matter safe so far as the citizens of the territories are concerned in the Constitution, legislative power could not interfere with them.

Mr. GLYNN. I understand that you can make any provision you like as to representation and otherwise until the territories become states. Their position in the Constitution is purely provisional. I can see the force of the point, and I admit that my amendment does not cover it. The proposal I have suggested puts the definition in the same position as in America. Citizens of the Commonwealth are citizens of the state in which they reside, and they also have, as Mr. Symon suggests, the privileges and immunities of citizens of the several states. There is only one other means by which you could do what is wanted, and perhaps it is the best: That is to adopt the principle of the German Constitution, which says that there shall be a common citizenship, and that the rights of the citizens in one state shall attach to the citizens in the other states. That would place it in the power of the Federal Parliament to declare what are the conditions of citizenship. There would be power under a provision of this kind to say that an alien should not be a citizen until he had resided five years in the colony, while the citizenship would be uniform in its character throughout the Commonwealth. In America, aliens have been prevented from becoming citizens unless they have resided in the place for five years. They must then be citizens for seven years before they can stand for Parliament. Honorable members will see that by adopting the principle of the German Constitution we could prevent any special rights being given to aliens, and I think it would be better in that form. I desire to call attention to this point also, that even if you do not define citizenship at all in the Constitution there would be very little harm done. It seems to be forgotten [start page 1790] that in the American Constitution the word citizen is used. It is not used in our Constitution. In the original American Constitution the word "citizen" is for instance used in connexion with representation in Parliament. A man must be a citizen for seven years before he can be returned as a representative, so that there is a special reason for the definition given to the term citizen. Here we do not use the word citizen. We use the word "resident" only. The qualification for a Member of Parliament is residence for three years, and very little harm will be done if we leave out "citizen" altogether. If the Convention do not adopt a suggestion such as that I have made, the better plan will be to fall back on the principle of the German Constitution, which would enable us to make special laws regarding aliens. I would like to mention, in connexion with what Mr. Isaacs said as to aliens, that this provision would not interfere in the slightest degree in the way of preventing aliens from coming in, because it is only when the aliens get inside the Commonwealth that this provision is to apply to them. The decision of the Privy Council in the case of Ah Toy v. Musgrove was that an alien had no right to land here, but that decision does not affect his citizenship after he has landed. Mr. Musgrove, then Secretary for Customs, prevented Ah Toy from landing. Ah Toy brought an action for assault and battery against him, but the Privy Council held that that action could not be justified.

Mr. HOLDER (South Australia). I think that there are grave objections both to Mr. Symon's proposed new clause and to Dr. Quick's amendment thereto, and the objections are perhaps even more grave in the case of the amendment than they are in the case of the original motion. No chain is stronger than its weakest link, and therefore citizenship throughout the Commonwealth would not be more restricted than it was in the colony which least restricted citizenship. There might be one state in the Commonwealth which gave citizenship far too freely, in the opinion of the other states of the Commonwealth, and yet, according to Mr. Symon's proposal, the state which was so lax in its methods and conditions of granting citizenship would confer citizenship all through the Commonwealth, in so far as related to citizens of that state who went to reside in other states.

Mr. SYMON. No; the citizens of the lax state would be limited, when they went to another state, to the privileges and immunities of that other state.

Sir GEORGE TURNER. I read your proposal in precisely the other way.
Mr. SYMON. - They do not take with them to that other state the privileges and immunities of citizenship of their own state. They only get the privileges and immunities of the state to which they go.

Mr. HOLDER. - I still think the words might be interpreted to mean what I thought they meant.

Mr. SYMON. - I did not intend that.

Mr. HOLDER. - I accept that statement of the honorable member, but I submit that his proposed new clause might be interpreted as I interpreted it by some authority, and, in that case, we should be landed in a very unfortunate position. Dr. Quick’s amendment is even worse, because it provides that—

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth.

Now, it might be easily conceivable that, simply because a man was born under British rule in India, China, or elsewhere, therefore, of necessity, on arriving in one of these colonies, he could claim citizenship of the Commonwealth. Is it not a mistake to stereotype in the Commonwealth Bill at this period our opinions on this subject? Would it not be better to authorize the Federal Parliament to deal with this question, not once only, but from time to time as circumstances and conditions may change? I hope that both the proposals will be withdrawn or negatived, and that at a later stage an opportunity will be given to Dr. Quick to try again what he tried yesterday, a provision which, as then proposed, or with a slight alteration of the words, would give to the Federal Parliament power to determine the citizenship of the Commonwealth from time to time, and thus to meet any changes of conditions, which certainly ought to be met if they arise, but which cannot then be met if we now arrive at some decision and stereotype it once for all in this Constitution.

Sir EDWARD BRADDON. - I submit there is a still better course open to us, and that is to give consideration to the amendment proposed by the Assembly of Tasmania, which has received up to the present time no attention whatever.

Mr. GLYNN. - Not sufficient attention, at all events.

Sir EDWARD BRADDON. - The amendment is to omit clause 110, and insert the following now clause:-

The citizens of each state, and all other persons owing allegiance to the Queen and residing in any territory of the Commonwealth, shall be citizens of the Commonwealth, and shall be entitled to all the privileges and immunities of citizens of the Commonwealth in the several states, and a state shall not make or enforce any law abridging any privilege or immunity of citizens of the Commonwealth, nor shall a state deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws.

Now, there is a clause that covers the whole ground—a clause that is all-sufficient for the purpose-bearing in mind that every provision is made for securing to the Commonwealth that its citizens shall not be people of alien races to any considerable extent. There are in India some 150,000,000 British subjects, but of those 150,000,000 people very few indeed could stand the test applied by the Natal Immigration Restriction Act, which I think has been adopted already in Western Australia; which will no doubt be adopted in other colonies. of Australasia, and which will be effective in keeping from our shores the natives of India who cannot pass the education test that is applied under the Natal Act. This education test is one which would debar some 149,000,000 at the least out of 150,000,000 from qualifying, and would so keep them out of Australia. There you have a very much wider disability—and I think a very wholesome disability—which goes far and away beyond that suggested by the
learned and honorable member (Mr. Isaacs). I think if we took this clause into our consideration, it might be found to do all that is required for us.

Mr. TRENWITH (Victoria).-It seems to me that the clause that has just been read by the Right Hon. Sir Edward Braddon—the one suggested by the Tasmanian Assembly—would land us in greater difficulties than anything we have thought of yet, and I think we shall be incurring a very great risk in endeavouring to define who is in future to be considered a citizen of the Commonwealth. We have a right to deal to-day with what we think is right for to-day, but we have Do right to tie the hands of the future people of the Commonwealth in this connexion. Therefore, I think it would be extremely wise to reject both of these amendments, with the view, as suggested by Mr. Holder, of getting back, if we can, to the proposal which we had before us yesterday, and which says exactly what I think we ought to say in connexion with all questions, namely, that the Parliament shall have the power to deal from time to time, as necessity dictates, with the question of citizenship, if we are to deal with the matter at all. The clause we have here, proposed by Dr. Quick, reads as follows:

All persons resident within the Commonwealth, being natural-born or naturalized subjects of the Queen, and not under any disability imposed by the Parliament, shall be citizens of the Commonwealth. I think it has been shown that it would be unwise to insert that provision in the Bill. The Attorney-General of Victoria suggested that there may be here—indeed experience has shown that there will be—as in various countries of the world, races within the nation that remain distinct; that do not blend with our people; that are by their existence and by their rapid increase inimical to the well-being of the whole community. This has been made very manifest in America. Any student in the history of America must see that the negro population is a disturbing factor which is increasing with immense rapidity in that country. They had to make them citizens, but the Americans made a mistake by declaring that the negroes should be citizens.

Mr. SYMON.—They did not make them citizens; they gave them the franchise.

Mr. BARTON.—They were made citizens.

Mr. TRENWITH.—They were constituted citizens under an impulse of generosity that we must all admire; but the circumstances that have since developed prove that that act was extremely unwise, and America is only prevented from taking this right of citizenship from the negroes by the rigid cast-iron character of its Constitution. Now, we are here making a Constitution, and we must be careful not to do something which may seem for the moment wise, but which may tie the hands of the future people of the Commonwealth from doing what they, judging from circumstances altogether different from those we are acquainted with, positively know to be wise. It seems to me we have already power in the Commonwealth to deal with aliens, and we have power to declare in a certain sense the character of citizenship in connexion with the form of naturalization that may be adopted. And if more than that is required—and I think it is—it is sufficiently and adequately provided by a simple declaration that, in future, the Commonwealth Parliament shall have the power to deal with Commonwealth citizenship. Now, I think that if any of these proposals were carried, what would happen would be that a citizen coming from another state would not be entitled to all the immunities possessed by a citizen of the state from which he came, and if he happened to be a Chinaman, coming from a state where very rigid disabilities are imposed, I think he would have to be subjected to the disabilities that existed in the state into which he came. But we have to remember that this Bill has to be carried, if at all, not by a Convention like this, where most of the members are intimately acquainted with constitutional law, intimately acquainted with constitutional history, and are experts upon the exact definition of terms-men who know exactly what will accrue from any resolution we pass here—but it will have to be carried by the people, who will be scared by a suggestion which they do not clearly understand—that they may be perhaps compelled to give within their own respective states privileges and immunities that are given in other states, because the persons coming to them from those other states are citizens of those other states. I see a great deal of danger from that point of view in voting either for the proposal of Mr. Symon or for the proposal of Dr. Quick, and I hope that if these proposals are not
withdrawn they will be negatived, because I think we are sufficiently safeguarded in the power we already possess to deal with naturalization and with aliens; and I am afraid we may, perhaps, in a way we do not now see, tie the hands of the future people of the Commonwealth by carrying either of these proposals.

Mr. WISE (New South Wales).-My mind has waivered very much during this debate. I have come to the conclusion that my original suggestion was wrong, that the best form of all in which the original amendment could be moved is [start page 1793] that in which it was proposed by Mr. Symon, and that then no definition such as is suggested by Dr. Quick will be really required, because, if we allow each state to make its own standard of citizenship, we shall reserve all the rights of the states, and obviate all the difficulties contemplated by Mr. Trenwith, by retaining to each state the right to determine the qualification of its own citizens. And then we will make a provision that is necessary as part of the Federal Constitution, that when a man has acquired citizenship in one state he shall be entitled to the right of citizenship in the other states.

Mr. HOLDER.-That is to say, if one state has been lax in its gift that laxity must govern the whole.

Mr. WISE.-Not at all. All this, of course, is to be subject to the general power conferred on the Commonwealth by subsection (26) of clause 52 to make special laws for particular races. Probably it would be more apt to use these words:-

   Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled to all privileges and immunities of subjects resident in other states or parts of the Commonwealth, but this section shall not apply to the people of any race in respect of which the power conferred by subsection (26) of clause 52 can be exercised.

That would give Parliament every control, and prevent the states from being coerced in respect of the coloured races, while it would get over the difficulties which have been suggested by attempting to define Commonwealth citizenship. I would like to say one word as to the necessity for the clause at all. Mr. Inglis Clark has written a memorandum which I shall be very happy to show to any one here, in which, after pointing out, as I endeavoured to mention just now, that the clause was necessary to prevent discriminating legislation for the real purpose of interfering with the freedom of trade, but for some other purpose ostensibly, goes on to illustrate the kind of cases in which the clause has been effective in the United States.

Mr. HIGGINS.-Is the concrete case you have in mind the commercial travellers' tax?

Mr. WISE.-The commercial travellers' tax was put on between two states, and dealt with, not under the commerce clause, but under this clause. Another one is that between the State of Maine and the adjoining states. Mr. Clark says-

   There was a public road running from an adjoining state into the state of Maine, which was used in common by the residents of both states, and the people of Maine felt they had a grievance against the adjoining state in regard to the repair and maintenance of the road. The legislature of Maine passed a law forbidding a citizen of any other state to bring any action for damages on account of injuries received from the defective condition of the road in the state of Maine, but the law did not impose a like disability upon the citizens of the state of Maine, and the law was declared unconstitutional, because it violated the provisions of the 14th amendment of the Constitution of the United States.

   That is a very clear concrete illustration of the necessity for a clause of this kind.

Mr. SYMON (South Australia).-I think some misapprehension has been developed during the debate, on which I fancy the objections to this clause have been founded. I think the amendment of Dr. Quick is not open to some of the criticisms which have been levelled against it. All he does is to
say that all persons within the Commonwealth, being natural-born or naturalized subjects of the Queen, shall be citizens of the Commonwealth. Some honorable members have been dealing with them as though by making them citizens of the Commonwealth we are conferring upon them the franchise, and so on. We are doing nothing of the kind. It is merely giving the persons resident in the Commonwealth the privileges of the law applicable to all the recognised inhabitants.

Mr. BARTON.-The rights of free men.

[start page 1794]

Mr. SYMON.-All that Dr. Quick's definition does, it appears to me, is to give the inhabitants of the Commonwealth the rights of free men; that is to say, the protection of the law?

Mr. HIGGINS.-Which law—the Commonwealth law or the state law?

Mr. SYMON.-Both laws. Dr. Quick's amendment refers to citizenship of the Commonwealth, and, therefore, it would be rights under the Constitution of the Commonwealth.

Mr. FRASER.-In that case, does that override the state law?

Mr. SYMON.-No.

Mr. FRASER.-If they clash, which will prevail?

Mr. SYMON.-The state declares its own law, subject to the exception in regard to aliens and naturalization. If a man is a citizen of a state, he is a citizen of the Commonwealth. The Commonwealth cannot take away that citizenship; it cannot interfere with that citizenship. I am sorry that Dr. Quick felt that I was urging it with undue determination, but that was the point which influenced me strongly yesterday in regard to his amendment, which, I think, went a great deal too far. The state citizenship is not interfered with, and cannot be interfered with, by the Commonwealth unless under such an amendment as was suggested yesterday, except in the cases governed by the provisions of clause 52, as to aliens and naturalization. It cannot be affected by it. The object of this amendment, I would point out, particularly to my learned friend (Mr. Holder), is exactly the reverse of that contemplated by the original clause 110, and that which he, in common with myself, feared would be a very unjust thing. That is under clause 110. Suppose there was a more lax citizenship in South Australia than in Western Australia. If a resident of South Australia went to Western Australia he would take with him his more lax citizenship, or his more extended rights there. But this is the other way about. If he went from South Australia to Western Australia he would only acquire, when he went there, the more restricted citizenship of Western Australia. For instance, the expression "citizen" does not mean only persons exercising the franchise; it includes infants and lunatics, if you like. Every one who is recognised as an inhabitant and is under the laws, is a citizen. Women in most of the colonies except South Australia do not exercise the franchise, but no one can say that they are not citizens. The object of my amendment is to say that when they go to another colony they are entitled to the rights conferred on the citizens of that other colony in the same way as though they had been residents or born there, subject to this: That if a woman goes to South Australia, she is entitled to all privileges and immunities of a citizen of South Australia, but she is not entitled to exercise the franchise until the conditions of the local laws on the subject have been complied with by her. The local Government has absolute control of that, and the only effect of this amendment, even with or without a definition, which I still think is unnecessary, is to place persons going from one state to another on exactly the same footing as the persons in the other state, and it seems to me that that lies at the very foundation of what we are trying to do under this Constitution. Every one, I think, recognises that something of this sort is essential. It may not go far enough. It does go a very long way, and it brings about that common citizenship which is expressed, to that extent at any rate, in the German Constitution, referred to by Mr. Glynn. I do not think the definition is necessary, but if honorable members think that some definition should be inserted, it is merely a repetition of the first part of the clause. All it amounts to is that all persons resident within the Commonwealth are entitled...
to the protection of the laws; but, without that clause as I have moved it, it is one which has the essential elements of our Constitution, and I venture to say that no definition is required.

Dr. COCKBURN (South Australia).-If the word "citizen" simply means resident or inhabitant, why should we go to all this trouble about it? If it means inhabitant, what is the use of saying the inhabitant of one state going to another state shall be an inhabitant of that other state? It seems to me that if you are going to use the word "citizen" in the sense of being equal to resident or inhabitant, and it is to have no other meaning such as has always been attached to it, we had better leave out the clause.

Mr. REID (New South Wales).-I understand that Dr. Quick has moved, as a preface to the new clause of Mr. Symon, the amendment which stands in his name on the notice-paper?

Dr. QUICK.-Yes.

Mr. REID.-It seems to me that, so far as the amendment of Dr. Quick is concerned, we do not need to take the slightest trouble as to the citizens of the Commonwealth, so far as the Commonwealth is concerned. Every man who becomes an elector of the Commonwealth enjoys all the privileges of the Commonwealth Constitution and all the rights which he may get thereunder. Aliens are dealt with under special powers, and so with other races. Consequently, I think we are wasting a great deal of time in trying to define what a citizen of the Commonwealth is. We understand what "An elector of the Commonwealth" means We understand what "A man who has got the suffrage" means. We also understand that no question can arise as to whether Commonwealth laws will equally apply to male and female persons, and so on. I think we are raising a number of difficulties we need not concern ourselves with, so far as Dr. Quick's amendment is concerned. I quite understand the object of Mr. Symon's proposal. It is to prevent a state from making indirect laws placing fellow subjects of the Commonwealth, resident in other states, under disabilities which their own inhabitants are not under. I recognise that the object of his proposal is a good one, but I do not think it is necessary to make any definition, so far as the Commonwealth and its citizens are concerned. I think no difficulty can possibly arise with the Bill as it stands. It may be a question whether it is necessary even to pass Mr. Symon's proposal, but the object of it, at any rate, is clear enough. It is, perhaps, possible that after we become citizens of the Commonwealth, a state may endeavour to establish differences in its internal government between the subjects of the Commonwealth living in that state and the subjects of other states coming into the Commonwealth. But I cannot even conceive that any state would pass a law which would read one way for a person in the Commonwealth at the time the law was passed and another way for a person coming into that colony from some other state after the law was passed. I do not think such things are possible. My inclination is to vote against both propositions, and to leave the matter as it is.

Mr. O'CONNOR (New South Wales).-I would suggest that Mr. Symon should accept the amendment suggested by Mr. Barton, so that his clause shall read-

Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled to all privileges and immunities of subjects resident in other states or parts of the Commonwealth.

I am altogether in favour of the principle of Mr. Symon's amendment; but the word "citizen" creates a difficulty. If, instead of the word "citizen," we use the words "Every subject of the Queen resident in a state," it really means the same thing. The meaning to be given to the word "citizen" in Mr. Symon's amendment is not the narrow limited meaning of the citizen who can exercise the franchise, but it is the broad general meaning which the word has been held to have under the United States Constitution. It has been decided there that the word "citizen" has, in a general and wide sense, this meaning:-
In its broad sense the word is synonymous with subject and inhabitant, and is understood as conveying the idea of membership of the nation, and nothing more.

Mr. ISAACS.-Look at page 212, No. 14, and the next page, and you will see another decision.

Mr. O'CONNOR.-The decision referred to by Mr. Isaacs states that in regard to offences against the citizens of the United States for which punishment is prescribed in section 5508, the word "citizen" is used in its political sense, as it is in the 14th amendment, and is not synonymous with "resident, inhabitant, or person." When dealing with offences, the word "citizen" appears to be used in another way.

Mr. ISAACS.-As it is in the 14th amendment.

Mr. O'CONNOR.-The reference my honorable friend has put before me emphasizes what I say, that the word "citizen" is used in its general sense, and at the same time there appears to be a particular sense in which it also may be used.

Mr. ISAACS.-In a sense which is "not synonymous with resident, inhabitant, or person."

Mr. O'CONNOR.-Exactly. It has two meanings, but we are only dealing now with the one meaning—the general meaning. Mr. Isaacs' reference shows the danger that might be incurred by using the word "citizen," because it might have the restrictive meaning the last decision imposes. All we mean now is a member of the community or of the nation, and the accurate description of a member of the community under our circumstances is "a subject of the Queen resident within the Commonwealth."

Mr. SYMON.-A person for the time being under the law of the Commonwealth.

Mr. O'CONNOR.-A person for the time being entitled to the benefits of the law of the Commonwealth.

Mr. FRASER.-But as the whole Constitution has been passed for the benefit of subjects, surely the clause is not necessary?

Mr. O'CONNOR.-That is another question. I am now simply dealing with the use of the word "citizen." It seems to me that the word "citizen" is not a proper word. The only reason I see for the amendment is the reason put forward already, and I would remind the honorable member (Mr. Fraser) that that reason is there should be no power in a state to treat the inhabitants of another state differently from its own.

Mr. FRASER.-Hear, hear.

Mr. O'CONNOR.-That is the only thing to be provided against. I think that Mr. Symon's amendment, if altered as Mr. Barton suggests, will carry that out. The alteration provides that every subject of the Queen resident in a state or part of the Commonwealth shall be entitled to all the privileges and immunities of the subjects resident in the other states or parts of the Commonwealth. The only meaning of that is that when the subject of a state goes into another state he will be treated equally with the subjects of the Queen in the, state to which he goes.

Mr. SYMON.-Hear, hear; no more and no less.

Mr. O'CONNOR.-A subject would only have the rights of inhabitants of the state to which he goes. He does not take with him the privileges of his own state.
Mr. ISAACS.-Could that not be construed to mean that a subject of the Queen resident in one state should, although resident in that state, have all the rights, privileges, and immunities of a subject resident in another state?

Mr. O’CONNOR.-I do not think so. I am prepared to support the amendment, of Mr. Symon if altered as suggested.

Mr. ISAACS (Victoria).-Might the amendment not mean that a subject resident in one state, and contemplating the continuance of that residence, is to have [start page 1797] all the privileges and immunities of residents irk another state?

Mr. WISE.-No, no.

Mr. ISAACS.-It says that a subject of the Queen resident in one state shall have the privileges and immunities of a subject of the Queen resident in another state. It seems to me that the proposal is quite open to the objection I have mentioned. I fear that all the attempts to define citizenship will land us in innumerable difficulties.

Dr. COCKBURN (South Australia).-Shall we not, by drawing those lines of distinction, be drawing lines which at present are not drawn in Australia? The words "subject of the Queen" introduce a dividing line among the Asiatics we have at present in Australia, some of whom are subjects of the Queen, and others of whom are not. We want to deal with Asiatics on broad grounds without any such distinction, but the proposal if carried would prevent our doing so. The moment any legislation was introduced the question would arise as to which Asiatics were subjects of the Queen, say from Hong Kong, and which were. Asiatics which came from some other part of China and were not subjects of the Queen.

Mr. O’CONNOR.-Asiatics will be dealt with by special laws, which will be the same all through the Commonwealth.

Dr. COCKBURN.-But the present proposal if carried would raise an initial difficulty in framing special laws. It might be urged that it was necessary to discriminate between residents who are subjects of the Queen and those who are not, and the amendment would introduce an element which would give rise to a great deal of trouble in the future.

Mr. HIGGINS.-You want to keep both classes out.

Dr. COCKBURN.-We desire always to deal with Asiatics on broad lines, whether they are subjects of the Queen or not; and in South Australia, and, I believe, other colonies, those lines of distinction are obliterated. In South Australia we make no difference between Chinese from Hong Kong and those from other parts of China. That, I think, is the most effective way of dealing with this matter.

Dr. Quick's amendment was negatived.

Mr. SYMON.-Does Mr. O'Connor move an amendment?

Mr. O’CONNOR.-I thought my friend (Mr. Symon) would have accepted my suggestion.

Mr. SYMON.-If Mr. O'Connor will move his amendment, I will be content with it.

Mr. O’CONNOR.-I would suggest words which I think will meet the criticism of my friend (Mr. Isaacs):-
Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled in any other state or part of the Commonwealth to all the privileges and immunities to which he would be entitled if a subject of the Queen resident in that latter state or part of the Commonwealth.

Mr. DOBSON.-Don't you want to say that a citizen shall be entitled to the privileges of the state in which he resides?

Mr. SYMON.-Oh, no, that he already has.

Mr. DOBSON.-But I mean on leaving one state and going to another.

Mr. ISAACS (Victoria).-Take the matter of the income tax, for example. A subject from a state where there was exemption might claim exemption in another state, although there was no exemption in the latter.

Mr. O'CONNOR.-He could not be entitled to greater or less privileges than the inhabitants of the state itself.

Mr. ISAACS.-Allow me to point out that the subject, although resident, we will say, in Queensland, is to have the same privileges and immunities as if resident in Victoria. In Victoria, if he were resident, he would have the right to claim exemption under the income tax up to a certain point. Under the proposal, although he is not resident in Victoria, he is to have that exemption.

Mr. SYMON (South Australia).-That is the very point. My honorable friend [start page 1798] (Mr. Isaacs) has really done more in his last few words to explain the true position of this matter than has the whole of the rest of the debate. The sort of thing he has mentioned is exactly the sort of thing to be remedied. In the debate, the whole question was whether any one state could impose an increased tax on the ground of residence in an adjoining state. There was a consensus of opinion that a state should not do so.

Mr. ISAACS.-No.

Mr. SYMON.-That was the consensus of opinion. There was a difference of opinion, but there was a strong feeling that that sort of thing should not prevail. Victoria ought not to be allowed to declare that an income tax shall be twice as much on a resident of South Australia as on a resident of Victoria. Otherwise we should be continuing those distinctions and what are almost alien elements which now exist between the colonies.

Mr. ISAACS.-I am speaking of taxation for state purposes, and not for federal purposes.

Mr. SYMON.-I am speaking of the same thing. Unless you have this amendment, or the amendment as modified by Mr. O'Connor, that state of things would prevail. Victoria might impose an income tax on its own citizens of 10 per cent., and a tax of 30 per cent. on people resident in South Australia who derived income from Victoria. Otherwise we should be continuing those distinctions and what are almost alien elements which now exist between the colonies.

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Mr. WISE.-Or attempt to impose a fine of 50 per cent. on people from South Australia who tried to buy land in Victoria.

Mr. SYMON.-Or impose a tax on commercial travellers, as was done in New Zealand. We ought really to be indebted to Mr. Isaacs for putting the point he did before us, for that is the very point we are seeking to remedy. The remedy may be open to criticism, but that a remedy is demanded is clear.

Sir GEORGE TURNER.-The effect mentioned by Mr. Isaacs is not the only effect. If it were the only effect I would go the full length with you, and whenever we pass a law relating to absentee would make it operate outside Australasia.
Mr. SYMON. - That is not the only effect.

Sir JOHN FORREST. - Then that ought to be made clear.

Mr. SYMON. - It is made clear by the amendment, which, I think, meets every case of the character, and prevents one state from imposing disabilities on the residents of another state.

Mr. ISAACS (Victoria). - I would like to add that the point I placed before the Convention was only by way of illustration of how the proposal would operate. But apply the proposal to another matter. Under the Victorian Land Act land is selected by persons resident in Victoria only, but under the proposal before the Convention a subject, although resident in South Australia, could claim a right to, select land in Victoria.

Mr. WISE. - Hear, Hear. Subjects would not be Victorians, but Australians.

Mr. ISAACS. - We are talking now of the purely state matter of selecting land for Victorian development, and yet it is proposed that a subject is to have the same right of selecting land in Victoria wherever he may reside.

Mr. REID. - If you attach the condition of residence in case of land selection it surely means residence on the particular land selected.

Mr. ISAACS. - Under the proposal a man will be able to say he must have exactly the same rights under the Constitution, if he did not reside in New South Wales, as if he did.

Mr. REID. - Our land laws in New South Wales have not been framed in that way.

Mr. KINGSTON. - Cannot you apply that to electoral laws as well?

Mr. ISAACS. - It may apply to electoral laws. The electoral law of a state might say that a person not resident for, say, six months in New South Wales or in Victoria, should not have a right to vote, but under this he might be held to have such a right.

Mr. WISE. - He would have to live six months in the same way in Victoria before he could vote.

Mr. ISAACS. - It may give him the same rights as a person who has lived for six months in the state. Look at the wording of the provision. It states that-

Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled in any other state or part of the Commonwealth to all the privileges and immunities to which he would be entitled if a subject of the Queen resident in the latter state or part of the Commonwealth.

These words are tremendous.

Mr. WISE. - But if such privileges only attach after six months' residence to a person in a colony, they would apply to a person going into the colony.

Mr. ISAACS. - Residence in some other part of the Commonwealth is made equivalent to residence in the state under this provision. I am afraid that it will carry the matter further than we intend to go. What has been said regarding the absentee tax shows to me more and more the unwisdom of attempting to define these things in the Constitution. I feel that we shall be landing ourselves in difficulties that we do not anticipate.
Mr. O'CONNOR.-That is a different question altogether.

Mr. ISAACS.-No, it is the same thing, and this is an attempt and it seems to me a dangerous attempt to constitute a definition of Commonwealth citizenship. That is really what it comes to. I do press upon the committee once again the desirability of going back to the clause proposed by Dr. Quick.

Mr. O'CONNOR (New South Wales).-The last observation of the honorable and learned member (Mr. Isaacs) is quite inapplicable to this proposal, because it certainly does not deal with any definition of citizenship at all. It only prevents the discriminative laws now made by a state against the subjects of other states. The answer to the point put before that by the honorable and learned member (Mr. Isaacs) is this: The use of the word "resident" cannot satisfy any condition of a state law regarding a period of residence.

Mr. KINGSTON.-That would not touch the absentee tax.

Mr. O'CONNOR.-They cannot possibly have that, because if you have a condition that there shall be a residence of a certain period before a person can acquire a right of any kind, that period of residence is required from every inhabitant of the state, and it will be equally required from an inhabitant of another state. This proposal does not touch that question at all.

Mr. KINGSTON (South Australia).-I am inclined to think that the remarks which have just fallen from Mr. O'Connor cut away the strength of the argument that a clause of this description would prevent an absentee tax being imposed. I am thoroughly opposed to absentee taxes which are levied by states on the inhabitants of other states of the Commonwealth, but, when it is put by Mr. O'Connor that this clause would not meet the case where a certain period of residence is required in a colony, then it is impossible to hold that it will exclude the operation of an absentee tax. Because what does this clause do? It provides that certain people, unless they have been resident or have worked or spent years in a colony may be subject to this special tax; so that it will not meet the case where a period of residence is required to prevent exemptions from the tax.

Mr. SYMON.-It does not say that.

Mr. KINGSTON.-I understood Mr. O'Connor to say that it was so. Either it does not meet the case or it does. If it does not, it has not the recommendation of abolishing the absentee tax. If it does specify a period of residence, it is open to the objection which Mr. Isaacs has raised that it would confer an electoral qualification such as is required in each state before a man can register on the electoral roll. Under these circumstances, it seems to me very hard to decide how to vote. I want to see a common citizenship. I think that any Commonwealth Constitution which is deficient either in its definition or its power of definition, as circumstances arise, is a mistake. We have been labouring here for some time to secure a definition. Various definitions have been offered for consideration which seem to me to be open to a variety of objections. I think, therefore, that the better plan will be to go back to the amendment of Dr. Quick, and confer upon the Federal Parliament the power of defining, when occasion arises, what shall constitute citizenship of the Commonwealth. I wish To be clearly understood that in any vote I shall give against the insertion of a definition, I am not to be understood as being desirous of voting against a uniform citizenship, but rather am I to be accredited with the desire to confer upon the highest power, at the proper time, when it will have the best means of securing a proper definition, the full opportunity and authority of doing so.

Mr. SYMON (South Australia).-I think that Mr. O'Connor has been rather misunderstood. What I understood him to say was that in the case of any state which imposes a condition of residence (for instance, in respect to the particular case put by Mr. Isaacs in relation to the taking up of land under any Land Selection Act), and which requires that there shall be personal residence (or, as we have it in South Australia, substituted residence, or any other form of residence for a definite period), that same condition shall apply to every inhabitant of every other state coming to live in the state imposing such
conditions. The effect of this amendment would be to make the matter uniform. A state would be able to say that persons desiring certain privileges should have to reside within its territory for six months in a year, but not that residents from other states should be obliged to reside for twelve months whilst their own residents had to reside for only six. What we want is uniformity of law, so that the privileges of a citizen of one state shall be applicable to the subjects of another state, and be neither greater nor less than those that apply to the other states.

Mr. ISAACS.-We want to get that if we can.

Mr. SYMON.-What we want is uniformity. If, for instance, in the case of an income tax, it were provided that the residents in Victoria should pay 10 per cent., you should not be able to apply an income tax of 50 per cent. to the inhabitants of Western Australia holding property in Victoria. And so, in regard to residents, there should also be uniformity, so that if you have a condition of residence it must apply equally, whether the applicant for privileges resides in the state conferring those privileges or in another state. The condition seems to me as plain as possible, and that is what Mr. O'Connor intended to convey. Of course, you cannot prevent any state levying an absentee tax, or prevent it imposing conditions with regard to taking up land, but you should prevent it from imposing differential conditions with regard to the citizens of one state as compared with the conditions which you apply to the citizens of another state.

Mr. O'CONNOR (New South Wales).-I beg to move-

That there be inserted at the beginning of Mr. Symon's new clause the following words: "Every subject of the Queen resident in any state or part of the Commonwealth shall be entitled in any other state or part of the Commonwealth to all the privileges and immunities to which he would be entitled if a subject of the Queen resident in the latter state or part of the Commonwealth."

Sir GEORGE TURNER.-Cannot you reverse the mode, and say that the person outside the state shall not be subject to greater disabilities than a person in such state?

Mr. HIGGINS (Victoria).-I think that Sir George Turner has exactly bit the nail on the head. The form of expression used in Mr. O'Connor's amendment is affirmative, and it operates too widely. I would suggest therefore that, as we have all a common object to be gained, we should express the matter in as simple a form as we can. I would suggest the following words:-

There shall be no discrimination by state laws based on residence or citizenship in another state.

That would attain the purpose exactly, and it would allow Sir John Forrest at the same time to have his law with, regard to Asians not being able to obtain miners' rights in Western Australia. There is no discrimination there based on residence or citizenship; it is simply based upon colour and race. It would also prohibit a law like that of the state of Maine, in the United States, alluded to by Mr. O'Connor, to the effect that a resident of an adjoining state should not be allowed to sue for damages in Maine for any want of repair of roads. What we want is to get a negative prohibition for the purpose of securing free intercourse between the various states. We want, as I understand it, to prohibit any discrimination which is based upon a false principle; and if you say that there shall be no discrimination made by state laws based upon residence or citizenship in another state I think that would answer the purpose. It is a form of expression which is preferable to the affirmative form used in Mr. O'Connor's proposal.

Mr. WISE.-If you had a colony like Northern Queensland, where coloured labour is employed, you could not exclude them.

Mr. HIGGINS.-That would not be a discrimination based on residence or citizenship in another state.
Mr. WISE.—It might be.

Mr. HIGGINS.—No, it would be based on colour. We want a discrimination based on colour. With regard to Dr. Quick's amendment, I would point out that we want to give the Federal Parliament power to dictate its own terms as to citizenship, but this is a distinct subject, and we should not mix up the subject of discrimination with citizenship of the Commonwealth. I think we need not have the two in the same clause. I would suggest to my honorable and learned friend (Mr. O'Connor), who appears to have charge of the amendment, that he should put the proposal in a negative form, such as I have suggested.

Mr. SYMON (South Australia).—Of course we only want to arrive at a conclusion on this subject which will be satisfactory to all. The suggestion of Sir George Turner, as embodied in the form of words suggested by Mr. Higgins, puts the matter negatively, and we have asked for it to be put affirmatively. It is a matter of indifference to us how it is put, so long as the common object we all have is secured. I think, if Mr. Higgins will allow me to say so, that the better form will be the following:

No citizen of a state shall be subject in any other state to a disability or discrimination not equally applicable to the citizens of such other state.

I prefer this form of words to the form suggested by Mr. Higgins, because his is more general.

Mr. HOWE (South Australia).—A few days ago, when clause 110 was under discussion, the honorable and learned member (Mr. Glynn) made a suggestion which, I think, would meet the case entirely. I raised the question of absentee taxation when I spoke yesterday in regard to the proposition of the honorable and learned member (Dr. Quick). Mr. Glynn's amendment read thus:

A state shall not deny to the citizens of other states the privileges and immunities of its own citizens.

I believe that that is exactly the provision which the committee desires, and I would suggest that the honorable and learned member (Mr. Glynn) should bring forward his amendment again.

Mr. O'CONNOR (New South Wales).—I think that the suggestion made by the honorable, and learned member (Mr. Symon) will do very well if the word "citizen" is altered as I have suggested to the words "subject of the Queen resident in a state." The amendment which the honorable and learned member has now drawn up, though it may have to be recast afterwards, will, I think, meet the present occasion, and to allow him to move it, I ask leave to withdraw my amendment.

Mr. O'Connor's amendment was, by leave, withdrawn.

Mr. Symon's proposed new clause was, by leave, withdrawn.

Mr. SYMON (South Australia).—I adopt with gratitude the suggestions of the Right Hon. Sir George Turner and of the honorable and learned members (Mr. Isaacs and Mr. Higgins), and, with the consent of the committee, I will ask leave to substitute this motion for that which I have already made. I beg to move:-

That the following words stand a clause of the Bill:-

No subject of the Queen resident in any state shall be subject in any other state to any disability or discrimination not equally applicable to the subjects of the Queen in such other state.

The clause was agreed to.
The CHAIRMAN.-The next question the committee have to consider is the Right Hon. Sir George Turner's proposed amendment of clause 118.

Sir GEORGE TURNER (Victoria).-Clause 118 provides that the seat of the Commonwealth Government shall be determined by the Federal Parliament. I think, however, that it would be wise to take care that, wherever the seat of government may be fixed, the federal authority shall have absolute control over it. Therefore, I propose to declare that it shall be within federal territory. I do not know that there can be any objection to this proposal, and I would leave it entirely to the Federal Parliament to say what the area of the federal territory should be. I therefore beg to move-

That after the word "Parliament," in clause 118 the words "and shall be within federal territory" be inserted.

Sir JOHN FORREST.-Make it 100 square miles.

Mr. WALKER (New South Wales).-I am delighted that our right honorable friend has proposed this. It may perhaps be within the recollection of honorable members that I made a somewhat similar suggestion in Adelaide. At that time my suggestion was thought to be premature, but now that we have had three sessions, seeing how prejudiced some persons are against leaving this matter without some such provision, I trust that the motion will be carried unanimously.

Mr. LYNE (New South Wales).-On the previous occasion when this matter was under discussion I moved a motion in regard to the fixing of the site of the federal capital, which was not pressed to a vote. I now beg to move-

That the amendment be amended by the addition of the words "and within the colony of New South Wales."

Sir GEORGE TURNER.-I shall have to move another amendment substituting "New South Wales" for "Victoria."

Mr. LYNE.-Honorable members can laugh as they please, but I am going to press the amendment to a division. It is unnecessary for me to make a long speech. I have very little doubt in my own mind as to what the opinion of honorable members is in regard to this matter. I certainly think, however, that the Constitution should make some provision in regard to the location of the federal capital. I was never more satisfied of anything in my life than I am that, if the Constitution comes into force without a provision to the effect that the site of the federal capital must be within New South Wales, the federal capital never will be within New South Wales. I think it is as well to face this question at once, so that we may know who is in favour of having the federal capital in the mother colony, and who is against it. I consider that New South Wales is, beyond all argument, entitled to have the federal capital within its borders, and it is as [start page 1803] well that we should know who are against this.

Mr. HOLDER.-You will not find that out by taking a vote now.

Mr. LYNE.-I think that we shall find it out pretty well. I think that any one who votes against the insertion of this provision may be considered as intending to vote hereafter against the locating of the federal capital within New South Wales.

HONORABLE MEMBERS.-No.

Mr. LYNE.-Well, I do not care for professions without acts.

Mr. PEACOCK.-I might as well move that the site of the federal capital be Ballarat.
Mr. LYNE.-I have no doubt that you would be more likely to carry that proposal than I am to carry my amendment.

Mr. PEACOCK.-This is not the place in which to move such a proposal.

Mr. LYNE.-I think that Ballarat would receive more votes than any place in New South Wales.

Mr. WISE.-If it would be federal territory?

Mr. LYNE.-Yes. It is a very simple thing to convert any part of a state into federal territory, and I have no doubt that the opportunity would be embraced by the people of Ballarat with great pleasure.

Sir JOHN DOWNER.-We should have to buy the place first.

Mr. LYNE.-It is all very well for honorable members to say that they are in favour of establishing the capital in some part of New South Wales hereafter, but that they will not vote for it now; but I think that we should decide the question at once. I regret exceedingly that I was overpersuaded on another occasion, and did not press my amendment to a vote. On this occasion, however, I will do so.

Mr. DOBSON.-You are doing absolute harm to the colony of New South Wales.

Mr. LYNE.-I do not think so. I am accustomed, to be the judge of my own actions, and I will be so now. I am as satisfied as that I am standing here that unless this provision is inserted in the Constitution the federal city will not be within New South Wales, at any rate not unless Queensland joins the Federation.

Mr. DOBSON.-I shall vote for Ballarat.

Mr. LYNE.-I have not the slightest doubt that you will. I think that most of the Tasmanians will vote for Ballarat, and that the majority of the South Australian representation will. I do not know what the erratic Western Australians will do—anything that will suit them at the moment. I think that, in justice to New South Wales, and as a matter of duty, I am called upon to propose this amendment at the present time.

Mr. WISE (New South Wales).-Having regard to the old proverb that coming events cast their shadows before, one cannot help feeling a considerable amount of sympathy for the leader of the opposition—I mean the honorable member (Mr. Lyne)—for the position in which he finds himself.

Mr. LYNE.-I do not want your sympathy.

The CHAIRMAN.-The honorable member is not in order in imputing an untruth to the honorable and learned member (Mr. Wise).

Mr. LYNE.-That is not true.

[start page 1804]
The CHAIRMAN.-I will not hear the honorable member. I must ask him to withdraw his interjection.

Mr. LYNE (New South Wales).-Surely I can put myself in order by withdrawing. I think that your ruling, sir, is rather extreme. I do not wish to do anything disorderly, but when I heard a statement made which was not borne out by what I recollected of the facts, I interjected, perhaps rather hurriedly, that it was not true. What I meant to say was that, so far as I recollected, the statement was absolutely incorrect.

Mr. WISE.-I accept the disclaimer of the honorable gentleman of the desire to impute any wilful inaccuracy to me, but I maintain that my statement was substantially correct, and that the bombshell thrown into the Convention of 1891 was a proposal to the effect that the site of the federal capital should be fixed by the Convention, and not left to the Federal Parliament to determine. I care not that there was some slight difference as to the place for the capital. The motion was the same. I do not know whether the intention was the same, but the effect will be the same. So far as one representative for New South Wales can do so, and perhaps one may speak with authority equal to that of any other, I utterly repudiate this idea. I have as much knowledge of the feelings of the Convention as the honorable member (Mr. Lyne), and perhaps more, and I am sure that there is no attempt whatever to exclude New South Wales from possessing the capital. So far as I can judge, the feeling of the Convention is all the other way.

HONORABLE MEMBERS.-Hear, hear.

Mr. WISE.-I believe that, if we were at liberty now, having regard to the obligations we owe to our constituents, to take a vote upon this question-and we certainly ought not to do so unless there is a strong feeling upon every side-there would be an overwhelming vote in favour of the mother colony. I also repudiate the idea that this vote will indicate the feelings of honorable members on this question. It will do no such thing. I do not know what will be done by my colleagues, but I shall certainly not vote in the division.

Mr. LYNE.-You are not game, that is the reason.

Mr. WISE.-The honorable member knows I have not got a reputation for any lack of gameness.

Mr. LYNE.-I do not know anything of the kind, nor anybody else.

Mr. WISE.-I have a strong conviction that the motion is ill-timed. Having that conviction, I shall be acting contrary to the intention of those who sent me here if I occupy a position which might have the effect of damaging the favorable consideration of this Bill elsewhere, and which ought not to have the effect of damaging in any degree the manner in which the Bill will be received in New South Wales. Sir George Turner's amendment has put it beyond all doubt that there is no idea of having Melbourne as the capital of the Federation. Mr. Lyne informed the people of New South Wales, a week or a fortnight ago, that there was a plot in this Convention to make Melbourne the capital.

Mr. LYNE.-I never said so.

Mr. WISE.-It was so reported.

Mr. LYNE.-It was never so reported; the honorable member ought to be a little more careful.

Mr. WISE.-I was referring to an interview with the honorable gentleman published in the Sunday Times, in which the honorable member was reported to have said that there was a plot, and that the capital was going to be in Melbourne.

Mr. LYNE.-I said it was to be in Victoria-Ballarat.
Mr. WISE. - Melbourne was the place reported.

Mr. LYNE. - I never said so.

Mr. WISE. - Then I am glad the honorable member was misreported.

Mr. LYNE. - The statement was not published; it was not misreported.

[Start page 1805]

Mr. WISE. - Then my recollection is at fault. But the same statement was made in a leading article in the Daily Telegraph the next day. Sir George Turner's amendment has put it beyond all doubt that the capital is not to be in Melbourne or Sydney. It has put it beyond doubt that neither of those large towns will be the site of the capital. It is unnecessary to go into the reasons for that.

Mr. HIGGINS. - Is Ottawa federal territory?

Mr. WISE. - I am not sure; but I know Toronto was not in the old days of the Union, and Parliament House in Toronto was burnt down because the state and the municipality both refused to render any assistance.

An HONORABLE MEMBER. - Were they insured?

Mr. WISE. - I hope this motion will not be taken seriously, and I hope it will be made clear throughout the length and breadth of Australia that whatever vote is given has no significance whatever as indicating the feeling of this Convention upon the question of the site of the future capital.

Mr. TRENWITH (Victoria). - I wish to make a few remarks.

The CHAIRMAN. - I would remind the honorable member that I have to report this Bill shortly to the whole House, and I will not have an opportunity of going through it.

Mr. TRENWITH. - At the request of the Chairman, I shall not proceed with my remarks.

Question - That Mr. Lyne's amendment be agreed to-put.

The CHAIRMAN. - The "Noes" have it.

Mr. LYNE. - I call for a division.

The CHAIRMAN. - There were no Ayes.

Mr. LYNE. - I gave my voice with the Ayes.

The CHAIRMAN. - I heard no voice with the Ayes.

Mr. LYNE. - I beg your pardon. I said "Aye" as distinctly as possible.

The CHAIRMAN. - According to the standing orders under which we are sitting, there can be no division unless there is more than one "Aye." The standing order is 374.

Mr. LYNE. - I think surely there should be fair play. I gave my voice with the Ayes.
The CHAIRMAN.-I will put the question again, and if there is not more than one "Aye" there can be no division.

Question again put.

The committee divided-

Ayes ... ... ... 5

Noes ... ... ... 33

Majority against Mr. Lyne's amendment ... ... 28

AYES.

Brunker, J.N. Walker, J.T.

Carruthers, J.H. Teller.

Reid, G.H. Lyne, W.J.

NOES.

Berry, Sir G. Henry, J.

Briggs, H. Holder, F.W.

Brown, N.J. Howe, J.H.

Cockburn, Dr. J.A. Isaacs, I.A.

Crowder, F.T. Kingston, C.C.

Deakin, A. Leake, G.

Dobson, H. Lee Steere, Sir J.G.

Douglas, A. Lewis, N.E.

Downer, Sir J.W. Moore, W.

Forrest, Sir J. Peacock, A.J.

Fysh, Sir P.O. Quick, Dr. J.

Glynn, P.M. Symon, J.H.

Gordon, J.H. Trenwith, W.A.

Grant, C.H. Turner, Sir G.

Hackett, J.W. Venn, H.W.

Hassell, A.Y. Teller.
Henning, A.H. Higgins, H.B.

Question so resolved in the negative.

Mr. PEACOCK (Victoria). - I beg to, move-

That the following words be inserted: - "and within the colony of Victoria."

Mr. Lyne has made a statement here, as a member of this Convention, that it is the determination of honorable members, so, far as their opinions are concerned, that they have settled beforehand that the capital is to be in Victoria. I do not believe it. I do not believe this is the proper place to decide the question, but I want to test the opinions of the members of the Convention as to whether it is their desire that the capital should be in Victoria.

Mr. LYNE (New South Wales). - It is very evident to all those who have heard the speech of Mr. Peacock that this is done for a purpose.

Mr. PEACOCK. - I have taken you at your word.

Mr. LYNE. - It is being done for the purpose of trying to detract from the vote which has just been given. There is no doubt about that. It is not intended to be a conscientious vote.

Mr. PEACOCK. - It is just as conscientious as the vote the honorable member just gave.

Mr. LYNE. - Then the honorable member is very anxious that the capital should be in Victoria, because I was very anxious that it should be fixed to be in New South Wales.

Mr. PEACOCK. - So am I that it should be in Victoria.

Mr. LYNE. - Any one who attributes anything else to me is very much mistaken.

Mr. PEACOCK. - I am anxious that it should be in Victoria, but this is not the place to decide the question.

Mr. LYNE. - I am of opinion that this is the place to settle the question, and for that reason I have forced it to a division. I still think I am right. It has been stated that I said to a reporter in Sydney that it was intended by this Convention to have the capital in Melbourne. I regret that the gentleman who made that statement did not adhere more closely to fact. Unfortunately, he does not always do so. I think he gets a little excited at times. He becomes more excited than he should.

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

Mr. LYNE (New South Wales). - At the time of the adjournment for lunch I was giving the reason why I considered that this was an opportune time at which to decide in what colony the federal capital should be situated. I think that in the interests of the colony I represent that should be done, more especially as we are proposing to federate without our natural ally, Queensland. If Queensland was in, or was likely to come into the Federation there would be a chance of justice being done to New South Wales in the matter of the federal capital.

Mr. DOUGLAS. - I object to that. What do you mean by justice?

Mr. LYNE. - I mean exactly what the word expresses. I think it justice to New South Wales, as being the mother colony and the wealthiest colony in the group, to place the federal capital within her
territory. I cannot see why there should be any objection to dealing with the matter now. I cannot see why those honorable members, who showed by their demonstrations a little before lunch that they were in favour of the federal capital being in New South Wales, should object to saying so by their votes at the present time. On the other hand, if honorable members are in favour of the federal capital being in any other colony, the honest and straightforward course is to say so now. It is not fair, it is not honest, it is not just, for any of the states to leave this question as a matter of doubt, because, being a matter of doubt, you may take my word for it that it is a matter of danger.

Mr. BROWN. - We have heard that before.

Mr. LYNE. - It is as well that the honorable member should hear it more than once. The danger must be apparent to all. For what reasons do my honorable friends (Mr. Brown and Mr. Douglas) wish to have the matter deferred? Surely they do not anticipate that the federal capital is going to be in Tasmania.

Mr. BROWN. - It is not impossible.

Mr. LYNE. - It is next to impossible. What reasons can the honorable members who represent Western Australia give for refusing to vote now?

Mr. VENN. - We will not vote under compulsion.

Mr. LYNE. - Do they want the federal capital at Perth or Fremantle?

Mr. DEAKIN. - No, at Coolgardie.

Mr. LYNE. - Probably; but they have no sufficient justification for refusing to give their votes now. Then there are the representatives of South Australia. Unless they desire to see the federal capital in Adelaide, what honesty is there in with-holding their votes?

Mr. SYMON. - We do desire to see it in Adelaide, but our desires are not always accomplished.

Mr. LYNE. - If talking to the Convention would do it the honorable member might succeed. I have not counted the number of speeches the honorable member has made, but the Right Hon. Sir John Forrest took that trouble, and he gave him the palm as being the principal talker in the whole Convention. Since then the honorable member has well maintained his reputation.

Mr. BROWN (Tasmania). - I desire to ask, Mr. Chairman, if the honorable member is in order in addressing the Convention on the question of whether the federal capital should be in New South Wales? That has already been decided, and the question before the committee is that the federal capital should be in Victoria.

The CHAIRMAN. - The honorable member is not in order in advocating that the federal capital should be in New South Wales when the committee have negatived that proposition.

Mr. LYNE. - I have said all that I wanted to say on the subject. Although I was wandering, perhaps, from the strict rule under the South Australian standing orders, still, one proposition is so linked with another that it is very difficult to refrain from referring to any of the colonies. It was stated by the Hon. Mr. Wise that I had said that there was a plot in the Convention to place the federal capital in Melbourne. I denied that at the time, and I regret the honorable member made the assertion, because it is not in accordance with facts. What I did say, and what I believe, is that if a straight-out vote were taken in the Convention now, the federal capital would be in Victoria, and at Ballarat.

Mr. WISE. - You never mentioned Ballarat at all.
Mr. LYNE.-The honorable member is as correct as he is usually.

Mr. WISE.-I challenge you to produce the report.

Mr. LYNE.-What I say cannot be contradicted. The honorable member can appeal to the reporter to whom I spoke if he likes. What was reported I do not know. I have not been able to find the paper. A strong feeling exists in another colony on this subject, and it was for that reason I submitted my motion. The honorable member had no right to make the assertion he did make. He said also that he sympathized with me in the course I was taking. Thank heaven, his sympathy is not worth much. It is the sympathy of a party of one of himself alone.

An HONORABLE MEMBER.-What has that to do with federation?

Mr. LYNE.-I have a right to reply to the honorable member. He made reference to his sympathy. I do not wish for his sympathy, nor have I ever had it. He would not offer it to me now excepting with a double meaning. I am reminded of a statement I once heard when a reference was made to him.

Mr. DOBSON.-Is this in order?

Mr. LYNE.-I think it is. When an honorable member attacks me I have a right to reply.

Mr. DOBSON.-You have stated two or three times that you do not want his sympathy; why not let us get on?

[Start page 1808]

Mr. LYNE.-These interruptions will not affect me. I have heard the honorable member described by a man whom he very much admires as a gentleman who could not sit long in one place. That description was very apt and very good. The honorable member's mind travels with his body. It does not remain very long in one groove. I only wish to say further that I recognise that the Hon. Mr. Peacock has not submitted this motion with a view of getting a true expression of opinion upon it or with a hope that it will be carried. The public outside will be able to see exactly what his motive is. I do not think that that motive will be indorsed by any large section of the community. The honorable member casts, or attempts to cast, ridicule in a small way on the proposal I submitted. I was in earnest in what I said and did, and I had ample justification. In my opinion, the federal capital should be placed in the colony which I represent.

Mr. SYMON (South Australia).-I only wish to say-

Several HONORABLE MEMBERS.-Divide!

Sir GEORGE TURNER.-We have only two days in which to finish this part of our work.

Mr. SYMON.-Yes, and the whole of this proceeding is the most pitiable misuse of the time of the Convention that has ever taken place. It is utterly derogatory to the dignity and position of the Convention. I intend to vote against the motion. If a similar motion is brought forward on behalf of South Australia, I shall not walk out of the chamber; I shall vote against it, and for this reason, that this is neither the time nor the place, as we decided a week or two ago, for the determination of this question.

Mr. HOLDER.-Nor have we any commission to decide it.

Mr. SYMON.-No; and it is necessary that some one should express this view in no hesitating manner. The honorable member who has just sat down said that the Hon. Mr. Wise's conduct reminded him of something. His conduct reminds me of the nursery rhyme:-
There was a little girl who had a little curl,  
Right in the middle of her forehead,  
And, when she was good, was very, very good,  
And, when she was bad, she was horrid.

Mr. BARTON (New South Wales).-I should like to say one or two words on this subject before the division is taken. I have not been in the habit of taking up too much of the time of the Convention, considering the duties that are imposed upon me. I wish to add two or three words in approbation of what Mr. Symon has said. I take the same position entirely as he takes on this question. From 1891 down to the present moment it has been recognised by the representatives of the various colonies that it does not rest with them to choose the capital of the Commonwealth, and that a free people, through their free Parliament, should choose their own capital. That is the position I have always occupied in regard to this matter, and that has been the position of every Convention.

Mr. SYMON.-And Mr. Lyne practically assented to it the other day when he withdrew his call for a division.

Mr. LYNE.-Nothing of the kind.

Mr. BARTON.-If any part of Australia or Tasmania were proposed specifically as the place for the capital of the Commonwealth, I should vote against the proposal, and I should expect the whole Convention except the mover to vote with me. I think it is quite out of place to make proposals of this kind; and when we know they are absolutely condemned to defeat, we are not doing the right thing in making such proposals. Such nominations do no good to the place or the colony they favour, because they are sure to be defeated. Therefore, I say, we are not right in making such proposals, because it is not just to this Convention to bring forward motions which only take up time unnecessarily, and it is not just to the people of any colony to take a course which, however innocently taken, may lead those people to the supposition, through the decision of the Convention, that there is a disposition here against placing the capital of the Commonwealth in their colony—a disposition which may not exist in the Convention.

Mr. TRENWITH (Victoria).-I rose before to speak on this point, and, in deference to your wish, Mr. Chairman, I resumed my seat, but, in view of what has since transpired, I desire to say now what I would have said then, namely, that I think the proposal to put the capital in any of the colonies by this Convention, is neither calculated to improve the prospects of federation, nor the prospects of that colony of ultimately securing the capital. So that from both points of view it is extremely unwise, not to say unpatriotic. I personally determined, before I was elected to this Convention, that I would not vote for any proposal to place the capital anywhere by a specific provision in the Constitution. I said that to the electors, and I believe most of the candidates in Victoria said the same thing, believing that the selection of the capital of the Commonwealth is a matter of legislation in the interests of the Commonwealth, and not a matter that ought to be in the Constitution. I shall therefore vote against this proposal to place the capital in Victoria, not because at the present moment I am prepared to say it ought not to be in Victoria, but on the same ground as I voted against placing the capital in New South Wales, namely, because I thought this Convention is not constructed on the right lines to settle questions of that character.

Mr. HOLDER.-And we have no authority to do it.

Mr. TRENWITH.-I do not know that. It seems to me that the Convention has authority to do anything it chooses as far as putting together a Constitution is concerned; but it would be extremely unwise, and, I venture to say, unpatriotic, to do anything of the kind. I say that it would be unpatriotic to do so, because it would be prejudicial to federation; and it does seem to me that any proposal to do it here would, rather than be an effort to obtain an expression of opinion as to where the capital ought to be, have the effect of evoking an expression of opinion that would injure federation. I feel strongly
on this point, and I feel that I would not be doing my duty unless I said so. I desire the federation of the colonies, and for that reason I wish to leave to the Parliament every question of legislation in the interests of the Commonwealth. Therefore I wish not to be misunderstood. When I voted against the capital being placed in New South Wales, it was not because my mind is made up that New South Wales is an improper place for the capital of the Commonwealth to be in; and when I vote against the placing of the capital in Victoria, as I shall do if a division is taken, it will not be because my mind is made up at present that Victoria is not a proper place for the capital of the Commonwealth; but because, in my opinion, this Convention ought not to pass any resolution on the point. I shall oppose any such proposal by every means in my power.

**Mr. PEACOCK** (Victoria).-I desire to say that I certainly never would have moved my amendment but for the tactics that have been adopted. I hold the same views as most members of the Convention on this question. I have always been of opinion that the determination of the place where the capital of the Commonwealth is to be should be left to the Federal Parliament, but now an honorable member representing another colony has brought forward a proposal with regard to New South Wales, I feel it to be my duty to submit this amendment, and ask the members of the Convention to vote against it. If another honorable member will go with me I will take a division on the amendment, in order to show the people of Australia that the Convention is determined that this question shall not be settled here, and that it is a matter purely for the Federal Parliament to decide. I am determined to show the people of Australia the tactics that have been adopted on this question.

**Mr. MCMILLAN** (New South Wales).-I am absolutely out of sympathy with this move in every way, and I think that it will do nothing but bring this Convention into disrepute.

**Mr. PEACOCK.**-Which move?

**Mr. MCMILLAN.**-I was alluding to the proposal that the capital of the Commonwealth should be in the territory of New South Wales. That question had been absolutely settled already, and when we are trying to save time in order to bring our labours to a speedy conclusion it seemed to me almost childish to introduce it here.

Question-That Mr. Peacock’s amendment be agreed to-put.

The committee divided-

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Majority against Mr. Peacock’s amendment. ... 33

**AYES.**

Douglas, A.  Teller.

Hassell, A.Y. Peacock, A.J.

**NOES.**

Barton, E. Howe, J.H.

Berry, Sir G. Isaacs, I.A.

Briggs, H. Kingston, C.C.
Mr. CARRUTHERS (New South Wales).—I hope that this Convention will not agree to the proposal to add to clause 118 the words "and shall be within the federal territory," and I take the same broad ground which has been enunciated by the leader of the Convention. I use his own words, in which he said he would vote against any proposal to establish the capital of the Commonwealth in any place, because he preferred to leave the matter to the free Parliament of a free people to have its free choice. Now, you will distinctly be taking away from that free Parliament a free choice if you carry this proposal. You at once put outside the range of choice all the great capital cities of Australia. I do object to tying the hands of the Federal Parliament in such a fashion as that. Why should we assume that we have all the wisdom of the world in regard to the proper choice of a federal capital? There is absolutely no necessity to have this site on federal territory. It may be open to very good argument in favour of having it on federal territory, but we cannot shut our eyes to the fact that very good argument may be used against having the federal capital dissociated from those centres of trade and commerce and culture which exist in Australia. I do object to tying the hands of the Federal Parliament in such a fashion as that. Why should we assume that we have all the wisdom of the world in regard to the proper choice of a federal capital? There is absolutely no necessity to have this site on federal territory. It may be open to very good argument in favour of having it on federal territory, but we cannot shut our eyes to the fact that very good argument may be used against having the federal capital dissociated from those centres of trade and commerce and culture which exist in Australia. I, for one, look at the example which the United States has afforded us as one not worthy of being copied—to establish the capital almost in the wilderness, away from where commercial men, professional men, men of education, are wont to congregate, away from where their business keeps them together, and to set the affairs of the State, forsooth, to be conducted in some far distant place, where there are not those surroundings of civilization which tend to make life pleasant or to make society happy. I think that one of the results of establishing the capital of the United States at Washington, has been largely to divorce from political life some of the best elements of the community. We do not want to copy a mistake of that character. Let us contemplate for one moment the establishment of a federal capital, as has been proposed
in some places, in the interior of Australia. There are many who advocate its establishment there on the ground that it will be easily defended.

Sir JOHN FORREST.-Too hot.

Mr. CARRUTHERS.-I do not say that all propositions in regard to this Constitution emanate from within the walls of this chamber, but it has been seriously proposed that the federal capital should be established in the interior of Australia.

Sir JOHN FORREST.-Only by lunatics.

Mr. CARRUTHERS.-We can imagine, then, the establishment of the Federal High Court there, because it will have to hold its chief sittings in the federal capital. You will require a bar to attend there, and I undertake to say that almost for a century to come the leading members of the bar will be found practising their profession in the capital cities of the various colonies, and for litigants to engage a bar to attend to their cases in some distant so-called federal capital will mean to penalize litigants to an enormous extent before the Federal High Court. Again, take the class of men who will be eligible for election to the Federal Parliament which must sit in that federal territory. Men must go far away from their homes, far away from the society they are accustomed to.

Sir JOHN FORREST.-That must apply to some, any way.

Mr. CARRUTHERS.-It will not apply to so large an extent.

Sir JOHN FORREST.-If it sits at Sydney it will apply to all the Melbourne people.

Mr. CARRUTHERS.-Not to the same extent. I can assure the honorable member that the ground can be largely cut from under his feet in that respect. If it is in federal territory away from these cities it inconveniences no one; it inconveniences every one. You will be largely handing over politics to political adventurers if you isolate the Federal Parliament from all the populous centres of Australia. You will not find men largely engaged in commerce, men largely engaged in professional pursuits, men who have large interests to look after in the various centres-you will not find these men willing to give up a large proportion of their time each year to go into the wilderness of Australia. Sir John Forrest says that the same thing will apply if we have the capital established in any leading city.

Sir JOHN FORREST.-Why not?

Mr. CARRUTHERS.-It will apply to some extent, but not to the extent that it would apply in the case I have just cited. Nearly all men engaged in mercantile pursuits or commercial pursuits can to some extent be conducting their business in whatever city they may be, can establish a branch business there; and a lawyer, a doctor, or an engineer will always find scope for the practice of his profession in any of the great cities of Australia, but he will not find that scope if he has to go to a little town in the bush. As it is a matter which is fairly open to argument, and as the Convention has resisted doing anything which would locate the federal capital at all, on the ground of consistency, do not do that which at once by a negative vote says that the capital shall be in some other part of Australia than Sydney, Adelaide, Melbourne, Hobart, or Perth. If it is not wise to select one place, on the same ground it is unwise to select those places and say that they shall not be the federal capital. I put another strong ground. The Convention, by its vote, negatived a proposition emanating from New South Wales to the effect that the capital should be in Sydney. There is in New South Wales a large vote in favour of the establishment of the federal capital in the city of Sydney. Now why alienate that vote by a mere gratuitous assertion of this character? Why create further obstacles to the adoption of the Constitution? I can assure honorable members that whilst men may be slightly inclined to view with favour the Constitution, in view of the fact that Sydney is not selected, they will go into open antagonism to the Constitution when they find that by express enactment the claims of the city of Sydney are absolutely to be shut out. Those claims can only be appreciated by those who
look at the fact that in the city of Sydney you have the first capital of Australia, the mother city of Australia—a city whose claims are regarded by its citizens, and many of the people of Australia, as standing on higher grounds than the claims of any other city. I do not want to urge the Convention to pass a vote in favour of the claims of one part of the colony over another part, or of one, part of Australia over another part, but I do say that nothing should be done now which will prejudice the free choice by a free Parliament of a free people of a site for the capital, when the time comes for that selection to be made.

Sir JOHN DOWNER (South Australia).—I agree with, I think, every word that Mr. Carruthers has uttered, and my only regret is that when the narrower view was taken, and it was sought to interfere with the free choice of a free people, he was found endeavouring to fix the location of the federal capital.

Mr. CARRUTHERS.—Yes, but I only quoted Mr. Barton.

Mr. BARTON.—You spoke very strongly in favour of the view you thought I expressed.

Sir JOHN DOWNER.—I listened to the honorable gentleman with great attention, and with quite as much interest as attention, when he laid down what I think is an absolutely true principle—that it should be left to the free choice of a free people; and in the face of that statement I regret that he was a party to producing so much of this discussion, and to endeavouring to provide that it should not be left to the free choice of a free people. I follow my honorable friend entirely in his later and broader view, which I am willing to believe was his view throughout, but which he had not the consistency at the moment to advocate. I have no fear of the dangers which the founders of the American Commonwealth anticipated through the federal capital being a central city. We can understand very well in this Convention that there was no reason for it. The Convention has met in Adelaide, it has met in Sydney, and now it is meeting in Melbourne; and I would like to ask any honorable member whether the locality where the meetings of the Convention were being held has had the slightest effect on the mind of any honorable member? It may have been beneficial. The changing of the locality is distinctly beneficial, because we have seen in many instances that the removal of honorable members from the more immediate influences that ordinarily surround them has developed a breadth of view which the limitations of home might have prevented. But apart from that, I would like to know what honorable member has been in any way influenced by his local surroundings where the meeting of the Convention was held in one place or in another, or has not conscientiously and thoroughly adhered to what he thought to be fair and right, quite apart from the place where it happened to be meeting? I think, therefore, the question of whether the federal capital should or should not be in a city is a matter of no consequence; but, following the last expressed view of my honorable friend (Mr. Carruthers), that this should be the free choice by a free people, I object to the amendment which has been moved.

Dr. COCKBURN (South Australia).—I think it would be a great mistake for the Convention to attempt to locate the federal capital anywhere, but, on the other hand, I see no objection, but every advantage, in laying down a broad general principle, which is done by the amendment of

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Sir George Turner. A broad principle, I think, is necessary for the well-being of the Federation, and it is simply this: That wherever it is located the Federal Parliament is to be master in its own house, and not subject to the conflicting authority of any municipality or any other form of state government.

Mr. MCMILLAN (New South Wales).—I think the principle we have to adopt is that wherever there is full power given with full discretion to the Federal Parliament, to leave that power to work out itself. Many of us may believe that no capital city of Australia ought to be the federal capital. Many of us may believe that it ought to be federal territory. But, at the present time, this does look like a side-blow at any attempt to make any city the federal capital, and while many of us might be against that, we would resent altogether an attempt to dictate to the Federal Parliament in a matter of this kind. It is
just one of those questions on which it is not possible at the present time for us to give an opinion. It is a matter which will be surrounded by various circumstances and conditions, and before the Commonwealth is formed there may be many reasons to alter the views we have at present. It seems to me, from every possible point of view, that it is better to leave the Federal Parliament to decide according to its own discretion and entirely untrammelled.

Sir JOHN FORREST (Western Australia).-I am very much in accord with the proposal of Sir George Turner. It seems to me that the Federal Parliament we desire to constitute must have some habitation, and to locate it in one of the larger towns or cities of Australia would have one effect, at any rate, which, as far as I am able to gather, is not desired; it would lessen altogether the prestige of that colony. For instance, if we had the Federal Parliament and the Governor-General in Melbourne, we would have two Parliaments, perhaps within a stone's throw of one another, carrying on their business. We would have the Governor-General out on the hill there, and the Lieutenant-Governor somewhere else. The thing would be absurd. The state would be disparaged altogether. There are a great many here who are very much afraid that the dignity of the states will be imperilled when we have a Federal Constitution. I think, if there is one thing which would tend to lessen their importance and dignity, it would be to have the Federal Parliament and the Governor-General in the same place as the local Parliament. The local Government would be altogether overshadowed by the Federal Government. I should very much like to see a new city erected in some suitable place, where we could all go in summer. It ought to be a cool place; indeed, the coolest place in Australia. It ought to be a place where we could build a federal city, looking forward with great ideas in our minds to the future. It ought to be a place where a city could be laid out which would be the admiration not only of the present but of future generations. I cannot help remembering that the lands of this territory, in the early days of the Federal Constitution, would be a source of great revenue. I should like to see it inserted in the Bill that the federal area should not be less than 100 square miles. No doubt, as Mr. Carruthers has said, such a federal territory might cause inconvenience at first, but this inconvenience would disappear as time went on. It would, no doubt, be inconvenient for the Sydney people to come to Melbourne, for South Australians to go to Sydney or Brisbane, or for the Western Australian representatives to come to the east. But these difficulties we have foreseen from the beginning, and I do not think they would get greater, but less, as time goes on. We have the examples presented by Washington and Ottawa, and I have never heard that there has been any desire to change what was adopted by the American people or the Canadian people. I hope, therefore, that the proposal will be carried.

Mr. KINGSTON.-And the federal territory would be subject to state laws?

Sir JOHN FORREST.-And it would be subject to state laws.

Mr. SYMON (South Australia).-This amendment is a declaration that the federal capital should not be any already established town or city.

Mr. DEAKIN.-Unless the state is willing to cede it.

Mr. SYMON.-Then there is no necessity whatever for putting the provision in the Constitution.

Mr. FRASER.-Hear, hear; that is the point.

Mr. SYMON.-I intend to vote against the amendment, and I take exactly the view expressed by Mr. Carruthers, Sir John Downer, and Mr. McMillan. The intention of the Convention is to leave the choice of the federal capital to the Federal Parliament unlimited and unrestricted. To whatever extent the amendment goes it is a limitation in that direction. I agree with every word Sir John Forrest has said as to the undesirability-in fact, the impossibility-of choosing a site for the federal capital. I also
agree with Sir John Forrest entirely as to the necessity of having the federal capital set apart. But the Federal Parliament is perfectly competent to do that, why should we, when we are disclaiming all intention of interfering with the Federal Parliament, seek to interfere with it in this apparently slight respect? The Federal Parliament would surely be perfectly competent to deal with the matters referred to. At any rate, if we do leave these matters to the Federal Parliament, let us leave them free of all restrictions, direct or indirect. For this Convention to peace any restriction would be to derogate from the position we have already taken up.

Mr. GLYNN (South Australia).-I quite agree with Mr. Carruthers that the hand of the Federal Parliament should not be forced. There is no provision in the American Constitution putting a ban on state capitals. At the time the American Constitution was drawn provision was made that the capital was not to be within any of the states, but should be on territory ceded by the various states. The object was not to get rid of the danger of any pressure from outside, but to get rid of the danger of the states interfering with the independence of the Federal Government. It was not until 1800 that the present city of Washington was fixed. It was then fixed as the result of a bribe by Hamilton to Virginia and Maryland. The fact was that Virginia and Maryland, when the proposition was made some years before that the debts should be amalgamated, raised the objection that their indebtedness was exceedingly small. The proposition of Hamilton was to pool all the debts without regard to excess or minimum, but Virginia and Maryland were promised by Hamilton that Washington would be placed on the banks of the Potomac. That was not the result of any policy to exclude capitals. Many writers have said that as the result of having Washington away from the direct influence of the public, and away from the opportunities which would be afforded to politicians of mixing with the professional, literary, and other classes, Washington has become the centre of political cliquism and a good deal of corruption. I hope the restriction will not be provided for in the Constitution. It would be impossible to get sufficient federal territory near to any of the present capitals, and the result of putting such a provision in the Constitution would not only be inexpedient generally, but would have the result of alienating a considerable number of city votes. It might have the effect, as some representatives of New South [start page 1815] Wales have said—although I know Mr. Walker takes a different view—of a number of votes in Sydney being cast against the Constitution rather than for it. A similar result might occur in Melbourne. The American federal territory was granted about 1800 by Virginia and Maryland, at a time when the land had practically no value. I ask the Convention whether it would be likely to get the quantity of land necessary within 10 miles radius of any of the present Australian capitals? I say it would be impossible. Either a large sum would have to be paid for it, or it would have to be granted by the state, and both of these would be next to impossible. By passing the amendment of Sir George Turner the Convention would exclude Sydney and Melbourne, and probably Adelaide, from all chance of ever becoming the site of the Federal Government.

Mr. HIGGINS (Victoria).-I find from Longman's Gazetteer of the World that Ottawa, the capital of Canada, is in the province of Ontario. It may be right or it may be wrong, but it is not provided that it should be on federal territory. I agree with Mr. Carruthers that this matter might be left open in the Bill. Personally I am strongly in favour of the federal territory near to any of the present Australian capitals? I say it would be impossible. Either a large sum would have to be paid for it, or it would have to be granted by the state, and both of these would be next to impossible. By passing the amendment of Sir George Turner the Convention would exclude Sydney and Melbourne, and probably Adelaide, from all chance of ever becoming the site of the Federal Government.

Mr. WISE (New South Wales).-As has been pointed out, the voters of New South Wales may be embarrassed. An idea has been disseminated in New South Wales, and has found expression in the press, from what source I do not know, that Melbourne is to be the capital. There are a very large number of people in New South Wales who, from what has appeared in the public press, believe they would be specially prejudiced, and who would vote against the Bill if there were any chance of Melbourne becoming the capital of the Federation. Logically, I would be prepared to leave the matter to the Federal Parliament, who must declare the capital to be on federal territory. But, as a matter of tactics, I believe it would assist the passing of the Bill in New South Wales if the amendment of Sir George Turner were carried.
Mr. ISAACS (Victoria).-I shall support the amendment of Sir George Turner. We practically admitted the principle in clause 53. In that clause we have given exclusive powers to the Federal Parliament. We say that the Federal Parliament shall have, amongst other powers, the power to make laws in regard to "the government of any territory which, by the surrender of state or states, and the acceptance of the Commonwealth, becomes the seat of government of the Commonwealth." It must be borne in mind our position is absolutely different. In the United States they were seeking, as we are seeking, to make a Government of enumerated powers. In Canada the Commonwealth has absolute power to make laws, subject to restrictions expressly set forth, so that wherever the seat of government is the Government may exercise legislative power. But here we have to take territory in order to give the Commonwealth exclusive jurisdiction. It seems to me, therefore, that the course pursued in the United States is the one to pursue here, on account of the similarity of the Constitution we are endeavouring to frame, and the difference between our position and that of Canada.

Question-That the words "and shall be within federal territory" proposed to be added be so added-put.

The committee divided-

Ayes ... ... ... 32
Noes ... ... ... 12

Majority for the amendment 20

[start page 1816]

AYES.

Abbott, Sir J.P. Howe, J.H.
Barton, E. Kingston, C.C.
Berry, Sir G. Lee Steere, Sir J.G.
Briggs, H. Lewis, N.E.
Brown, N.J. Moore, W.
Cockburn, Dr. J.A. O'Connor, R.E.
Crowder, F.T. Peacock, A.J.
Deakin, A. Quick, Dr. J.
Douglas, A. Solomon, V.L.
Forrest, Sir J. Trenwith, W.A.
Fraser, S. Turner, Sir G.
Fysh, Sir P.O. Walker, J.T.
Gordon, J.H. Wise, B.R.
Hackett, J.W Zeal, Sir W.A.
Hassell, A.Y.
Henning, A.H.  Teller.
Holder, F.W.  Isaacs, I.A.

NOES.

Brunker, J.N.  Lyne, W.J.
Dobson, H.  McMillan, W.
Downer, Sir J.W.  Symon, J.H.
Glynn, P.M.  Venn, H.W.
Grant, C.H.
Henry, J.  Teller.
Higgins, H.B.  Carruthers, J.H.

Question so resolved in the affirmative.

The clause as amended, was agreed to.

The Bill was then reported with amendments.

Mr. BARTON (New South Wales).-Before I move that the report be adopted I had better ask leave for the standing orders to be suspended, with a particular purpose. Under Standing Order 304 it is provided that-

At the close of the proceedings of a committee of the whole House on a Bill, the Chairman shall report the Bill forthwith to the House, and if amendments have been made thereto, a time shall be appointed for taking the report into consideration, and moving its adoption; and the Bill, as reported, shall, in the meantime, be printed.

So that, amendments having been made in the Bill, it would be necessary under the standing order I have read to appoint a future time for the consideration of the report. We should thus lose perhaps a day; so that I beg to move-

That the standing orders be suspended to enable the report of the committee to be taken into consideration forthwith.

Sir JOSEPH ABBOTT (New South Wales).-Before that motion is put I should like to know what opportunity is to be afforded to those who wish various clauses to be recommitted? If the report be adopted now there should be at the same time a motion to recommit.

Mr. BARTON (New South Wales).-There will be. If we consider the report now an amendment can be moved for the recommittal of certain clauses. I have a number of amendments ready and printed, and I intend to move that the Bill be recommitted for the purpose of reconsidering the clauses in which I wish to move amendments. I suppose it will be competent for any honorable member to move to amend my motion by adding other clauses.
The motion was agreed to.

**The PRESIDENT.** - I shall now put the question-

That the report be adopted;

and upon that motion it will be competent for the leader of the Convention to move an amendment for the recommittal of certain clauses.

**Mr. BARTON** (New South Wales). - I beg to move-

That all the words after "That" be omitted, with a view of inserting the following words: - the Bill be recommitted in order to insert a new clause after clause 6 of the covering clauses; to amend clauses 10, 12, and 24; to omit clause 25, and insert a new clause 24A; to omit clause 26; to amend clause 27; to omit clause 28; to amend clause 29; to omit clause 42; to amend clause 44A, and insert new clause 44AA; to amend clause 52 by amending sub-section (12), and inserting new sub-section (31A); to amend clause 53; to omit the first paragraph of clause 56B; to insert in clause 73 new sub-section (7), and amend sub-section (8); to amend clauses 74, 77, 79, 80, and 83; to omit clause 86; to insert new clause 85A; to amend clauses 90 and 93; to amend clauses 95 B, C, and D, clause 99, and clause 101.

**Mr. REID** (New South Wales). - I beg to move-

That the motion be amended by adding the following words: - "Also for the purpose of adding words to clause 3, to insert words in clause 46, to add a paragraph at the end of clause 52, to omit sub-section (4) of clause 54, to insert a sub-section in clauses 73 and 74, and to add words to clause 101."

**Mr. ISAACS** (Victoria). - I beg to move-

That the motion be further amended by the addition to the amendment of the following words "to amend clause 9," clause 24.

**Mr. BARTON.** - I have moved the recommittal of clause 24.

**Mr. ISAACS.** - But I understand that that is only for a particular purpose. Will the clause be open to amendment by any honorable member?

**Mr. BARTON.** - I take it that it will. By the recommittal of the clause I shall acquire the right to propose an amendment in it, and I take it that every other honorable member will acquire the right to propose an amendment of my amendment, or to propose a different amendment.

**Mr. ISAACS.** - I would ask whether, when a clause is recommitted at the instance of an honorable member, for a particular purpose, it will be open to any honorable member to move any amendment upon that clause?

**The PRESIDENT.** - I take it that it will be better, unless the Convention is afraid of opening up too much ground for argument, to simply recommit the Bill for the purpose of reconsidering certain clauses and certain new clauses, making no limitation in regard to the amendments it is intended to propose.

**Mr. SYMON.** - I would point out that the Premier of New South Wales moved as an amendment the recommittal of certain clauses with a view to the addition of certain words. I presume that this limitation will be disregarded.
**The PRESIDENT.** - That would depend upon the way in which the Convention asked me to put the amendment from the Chair. I shall put it in the largest form.

**Mr. ISAACS.** - Then I need not ask specifically for the recommittal of clauses which have been mentioned by other honorable members?

**The PRESIDENT.** - I propose to put it to the Convention that the clauses mentioned be recommitted, but where honorable members simply desire to reconsider a paragraph of a clause, I think it will suit the convenience of the Convention, as some of the clauses are very lengthy, if I simply put it that the clause be recommitted for the consideration of the paragraph.

**Mr. BARTON.** - I take it that you will, sir, state the purpose for which it is proposed to recommit the clause, and that an honorable member will be able to move that the whole clause be thrown open to discussion.

**The PRESIDENT.** - Where it is proposed to amend a clause by the insertion or the addition of certain words, I will put it that the clause be reconsidered, but where the suggestion is that a certain paragraph only shall be dealt with, I will put it that paragraph so-and-so of clause so-and-so be reconsidered.

**Sir JOSEPH ABBOTT** (New South Wales). - I should like to point out that if a clause is recommitted simply to insert certain words, it does not matter what your opinion maybe, sir; the Chairman of Committees must be guided by the terms of the motion to recommit. If the recommittal of a clause is moved for the purpose of inserting certain words, when we get into committee we shall find ourselves in this position, that the Chairman, under the parliamentary rules, will feel that he is restrained from allowing any amendment except the specific amendment for which the clause was recommitted. I want it to be clearly understood that where clauses are recommitted they will be open to full discussion. I will take, for instance, clauses 74 and 75, in which I am interested. It is proposed to recommit clause 74, for the elimination of certain words and the insertion of other words. Under the terms of that recommittal, the Chairman of Committees would not have the power to allow other amendments to be moved. That [*start page 1818*] is not what, I think, the Convention desires.

**The PRESIDENT.** - It will depend upon the mode in which the motion is carried by the Convention as to how the clauses can be dealt with in committee. I propose to put the question—where the recommittal is not limited to a certain paragraph—in a general form, so that the whole clause may be open for reconsideration. The Chairman of Committees will not then be hampered as the honorable member suggests.

**Mr. TRENWITH** (Victoria). - It would be extremely inconvenient if a clause were recommitted for the purpose of dealing with a certain part of it, and, when we had made an amendment in that part, we found that that necessitated a consequential amendment in some other part which we were unable to make. For this reason, it seems to me advisable, where a clause is recommitted, to throw the whole of it open for discussion.

**The PRESIDENT.** - There can be no doubt of the force of the honorable member's suggestion. At the same time, where it is merely proposed to recommit a paragraph of a clause, I think only that paragraph should be open for discussion, seeing that the various paragraphs deal with separate subjects. Where the motion is for the recommittal of a paragraph I do not propose to put the question that the clause be reconsidered, because that would be giving an opportunity for unnecessary discussion.

**Mr. ISAACS** (Victoria). - I think that, under the circumstances, I had better name the clauses which I desire to see recommitted. They are clauses 9, 24, 26-

**Mr. BARTON.** - I have mentioned clause 24 generally.
Mr. ISAACS.-Yes, but I want to mention it again, because I am not quite clear how this will be dealt with in committee. The clauses which I wish to have reconsidered are clauses 9, 24, 26, 27; clause 52, sub-sections (2), (3), (8), (22), (24). Then I want clause 52 to be recommitted for the purpose of reconsidering bounties, in case it should not come in under any of these particular sub-sections, with the power to put in a sub-section. It may, perhaps, be better to deal with it in clause 86B, but before I get to 86B there is clause-55. I only want to have that reconsidered with a view to the question of whether it shall be laws or proposed laws, which seems to be a very important matter. Then there is clause 56B.

Mr. BARTON.-I have given notice to reconsider that.

Mr. ISAACS.-But only for a certain purpose. Then there is clause 86B, to which I have already referred, also clauses 89, 92, 95A, 98, 121. Then there is clause 52, which we desire to have recommitted, with the view of dealing with the same subject as is raised by clause 95A, so that, if the committee thinks fit, we can give the Parliament power to make laws without reference to the railways. It is only the complement to recommittting 95A.

Mr. HIGGINS (Victoria).-I want to amend the motion by inserting clauses 80 and 95B.

Mr. BARTON.-I have given notice of those clauses.

Mr. DEAKIN (Victoria).-I wish to move that clauses 13 and 68 be recommitted.

Sir PHILIP FYSH (Tasmania).-I wish to recommit clause 90, for the purpose of moving a new sub-section.

Mr. HOWE (South Australia).-I wish to propose a new sub-section in clause 52 to stand as 23A-invalid and old-age pensions.

Mr. WALKER (New South Wales).-I wish to repropose clause 117A.

Sir JOSEPH ABBOTT (New South Wales).-I think we had better move that the whole Bill be recommitted.

Sir JOHN FORREST (Western Australia).-I have one or two clauses which I wish to amend, but, it seems to me, it will take along time to get rid of those [start page 1819] already proposed. May I suggest to honorable members who propose amendments, and I shall be glad to follow the same course myself, that they should put their amendments in print? They should place the amendments on the notice-paper to-morrow. It is very easy for honorable members to get up and say I propose to amend a clause, but we may not know that he intends to amend it at all. I intend to ask leave to amend clause 45. My object is to allow Ministers of the Crown in the various states to be members of the Federal Parliament.

Sir GEORGE TURNER.-Will you put that in print?

Sir JOHN FORREST.-It has been in print for several days. I also propose to strike out clause 56B, with a view to insert a new clause which has been on the paper for two or three weeks.

Mr. DOUGLAS (Tasmania).-Is it not desirable that all these proposed amendments should be in print before we take them into consideration? It would be absurd for us to consider all these various clauses without any previous knowledge of what is proposed. We do not know in which direction the amendments will go, and we shall come here quite unprepared unless we have these documents before us so as to compare one alteration with another.
The PRESIDENT.-That might be desirable and convenient; at the same time, the motions now being submitted are perfectly in order.

Mr. HOLDER (South Australia).-I desire to have leave to propose a new clause, to follow clause 93.

Sir RICHARD BAKER (South Australia).-I would point out that this practically amounts to a reconsideration of the whole Bill. We have already been here for seven weeks; are we to be here for another seven weeks in order to enable honorable members to re-open questions that have been already decided?

Mr. REID (New South Wales).-I rise to a point of order.

Sir RICHARD BAKER.-I am perfectly in order.

Mr. REID.-That is for the President to decide. What I desire to ask is, whether it is in order to interrupt honorable members in giving these notices? They are entitled to give them, and if they assume any alarming proportions, it will be within the power of the Convention to strike out all those that they do not care to take.

Mr. BARTON.-There are 31 already, in addition to the Drafting Committee's amendments.

The PRESIDENT.-I think that Sir Richard Baker was perfectly in order in rising to speak to the question. Any honorable member may suggest the recommittal of any clause, and it is competent for any other honorable member to speak on the subject.

Sir RICHARD BAKER.-I do not desire to say anything more.

Sir JOSEPH ABBOTT (New South Wales).-I would ask the leader of the Convention if he is prepared to recommit the whole Bill? There are two clauses that I desire to have reconsidered—clauses 74 and 75.

Mr. BARTON.-I propose a general recommittal of clause 74.

Sir JOSEPH ABBOTT.-Consent to the recommittal of clause 75 also, and I will say no more.

Mr. BARTON.-I cannot say what I will consent to yet. We are only now taking the course of indicating what the clauses are that we desire to have recommitted.

Sir JOSEPH ABBOTT.-If an honorable member moves a motion now he may be held to have spoken on it.

Mr. BARTON.-No; honorable members are simply intimating what clauses they desire to have recommitted. They are not proposing their amendments.

Mr. ISAACS.-No.

Sir JOSEPH ABBOTT.-Apparently we are not bound by the rules of Parliament. There have been irregularities already.

[Start page 1820]

The PRESIDENT.-If there are any irregularities it is the duty of honorable members to call attention to them.
Sir JOSEPH ABBOTT. - It is unjust to make a statement of that kind. The Hon. Mr. Isaacs made an assertion, and I answered it.

The PRESIDENT. - I will ask the honorable member to kindly take his seat. I do not think the honorable member will desire to persist in a remark of that sort, and I will ask him again to withdraw it.

Sir JOSEPH ABBOTT. - Then I won't. I do not think you could have heard what Mr. Isaacs said.

The PRESIDENT. - I would ask the honorable member to exhibit that respect to the Chair which generally characterizes him, and to withdraw the observation.

Sir JOSEPH ABBOTT. - I am sure you are under a misapprehension. I attribute nothing whatever to you, or to the Chair. What I said was that, apparently, we were not bound by the rules of Parliament, although we agreed to follow the rules of Parliament at our first sitting. I am not one who would reflect on the Chair for a moment, and I at once withdraw any words I used that you rule to be out of order. I should be exceedingly sorry to have any disagreement with the Chair.

The PRESIDENT. - It is absolutely unnecessary for the honorable member to say anything more.

Sir JOSEPH ABBOTT. - I was asking whether honorable members, being bound by the rules of Parliament, would, if they gave notice of motion for the recommittal of a particular clause, be taken to have spoken, and whether they would have a right to speak again. I want to have clause 75 recommitted.

The PRESIDENT. - I think I shall be studying the convenience of the Convention in allowing every latitude consistent with the discharge of business. That is the rule I have endeavoured to adhere to, as I recognise that our proceedings are governed by certain standing orders, with which four-fifths of the members of the Convention cannot be expected to be familiar.

Sir GEORGE TURNER (Victoria). - I desire to move that clause 93 be recommitted.

Mr. BARTON (New South Wales). - I might intimate to honorable members who have not read the long notice I have caused to be distributed that the amendments it contains, with a very few exceptions, are little more than mere drafting amendments. They have been placed in the notice for recommittal because they may possibly be considered by some honorable members to have overstepped the bounds of mere drafting amendments, and to call for reconsideration at the recommittal stage. I wish now to add to the list of clauses to be recommitted—and this is a matter of substance—clause 106A.

The motion was amended accordingly.

Mr. MCMILLAN (New South Wales). - Are we to understand that the motions we are considering will commit us to a reconsideration of all the clauses that have been mentioned, or is the question of what clauses shall be recommitted to be debated?

The PRESIDENT. - The matter is in the hands of the Convention. If they choose to sanction the recommittal of certain clauses they may do so. The motions may be put together or separately.

Sir GEORGE TURNER (Victoria). - If we take each motion separately, and have to give our reasons for asking for the recommittal of each clause, we shall be kept here for a great length of time, because we should have to enter into the merits of the amendments we desire to submit. The better course would be to allow the clauses to be recommitted without debate.
Mr. SYMON (South Australia).-I would point out that if these clauses are recommitted the committee will have the power of calling into force the standing order which enables any honorable member to move that the committee do now divide, when the discussion would be brought to a close. That would not, of course, be done under ordinary circumstances.

Mr. BARTON.-It is a distasteful thing to do.

Mr. SYMON.-Yes, and none of us would be likely to do it. I simply desire to point out that we will have the power in our own hands to stop the discussion.

Sir JOHN FORREST (Western Australia).-What I fear is that we will not know what we are voting upon. A number of honorable members have intimated that they desire to amend certain clauses. If we knew what the nature of the amendments were we might reject the proposal for recommittal. I think it is too much to ask us to agree to the recommittal of a clause before we know what is the nature of the amendment to be proposed. That surely is not the procedure that is generally followed. If we saw the amendments we would know what to do.

Mr. HIGGINS.-We ought to have them in print by to-morrow morning.

Sir JOHN FORREST.-Yes, but if we give leave to recommit now we may have to again discuss such Questions as the control of the rivers. That alone might occupy a week.

Sir GEORGE TURNER.-Surely you could not refuse to rediscuss that very important question.

Sir JOHN FORREST.-I think, at any rate, honorable members ought to have an opportunity of saying whether they will allow the question to be re-opened or not, and they certainly will not have that opportunity if they vote on the motion for recommittal of a clause without any indication as to the nature of what is proposed.

Mr. BROWN (Tasmania).-I am not quite sure if it be competent to include in the instructions to the committee on this recommittal that they should consider first those amendments of which notice has already been given.

Mr. HOWE.-They are nearly all in print.

Mr. BROWN.-If that course were adopted the objections of Sir John Forrest would be met, and we could proceed with the business without any interruption. I hope there will be no suggestion of adjourning the business in order to have proposed amendments put in print, because we already have a certain amount of work with which we can proceed. If it is competent to instruct the committee in the way I have indicated so that the business may be carried on, I hope that that course will be adopted.

Mr. BARTON (New South Wales).-The standing orders have been suspended for the consideration of the report, or, rather, for the consideration of any amendment on the motion for report; but the instruction will have to be the subject of a separate suspension of the standing orders, or, at any rate, a separate motion.

Sir JOHN DOWNER (South Australia).-As far as the Drafting Committee's amendments are concerned, they are, as the leader of the Convention has said, substantially, endeavours to carry out the known wishes of the Convention in a better way than they were previously expressed. There are two or three matters of substance, however, to which the attention of the Convention will be called. We suggest that the whole of the Drafting Committee's amendments should be taken together. As to whether that course is adopted however, the Convention will please itself. But to say that an honorable member has only to state that he wants a clause to be recommitted, in order to get it recommitted, would be a very inexpedient course to take. Are we to go back into committee for the purpose of reconsidering a question over which we may spend days?
Sir GEORGE TURNER.-Not days.

Sir JOHN DOWNER.-Who can fix the limits of discussion when once we are started? Certainly not my right honorable friend.

Sir GEORGE TURNER.-The Convention can do so by moving that a division be taken.

Sir JOHN DOWNER.-Exactly; but that would be a most ungracious course—a course which it would be peculiarly inadvisable to adopt.

Mr. ISAACS.-Is it not as bad to refuse to reconsider a clause which an honorable member desires to have reconsidered?

Sir JOHN DOWNER.-Any question of that kind can be just as well settled in the Convention as in committee, and in less time. If my honorable friends have fresh clauses to propose, or want certain clauses to be reconsidered, they can move accordingly in the Convention. There are substantially no new matters to be considered. It is only going over old ground again, and surely we have reached that stage when honorable members may fairly and justly be prevented from speaking more than once on the same subject, which is substantially all that is involved between taking matters in the Convention or going into committee. At this stage of the Convention, I think, we are justified in adopting the course I suggest in order to shorten the proceedings.

Mr. HOWE.-It is all in the hands of the lawyers.

Sir JOHN DOWNER.-If honorable members have fresh proposals to submit, they can tell the Convention so, and if the Convention thinks they are proper matters to be reconsidered they will be reconsidered; but if it is the old ground that we are asked to go over again, the Convention can reconsider that, too. At all events, we can express an opinion about such matters. Now, if all the motions for reconsideration have to be dealt with separately a great deal of time will be wasted, and, in my judgment, we shall save a considerable amount of time and dispose of them finally if we deal with them in the Convention instead of in committee.

Mr. FRASER (Victoria).-I think it would be advisable that all the members who wish to have clauses reconsidered should give notice of their proposals now and have them printed at once, and then we could deal with those proposals the first thing to-morrow morning. If that course is not adopted, and we are to reconsider clauses generally, the whole of our debates will be repeated over again, and we may take many weeks to finish our business. Now, some of us, even among those who are living in Victoria, cannot afford to give very much more time to this business; therefore the best way would be to compel honorable members to give notice in the way I have suggested, so that we can deal with those amendments to-morrow, and not be called upon to discuss matters outside them.

Mr. TRENWITH (Victoria).-I would point out to my honorable friend and others who have urged that we should not give permission in this general way for the recommittal of clauses that if we do not adopt that course it is highly probable the proceedings will be very much more protracted than if we do adopt it, because any honorable member has the right to move the recommittal of any clause, and be can move the recommittal of each clause in a separate speech.

Mr. FRASER.-Let honorable members give notice of their amendments now.

Mr. TRENWITH.-The honorable member must see that we are in a novel position. The standing orders which we are working under provide there shall be an adjournment to give us time to do this thing, but at the request of the leader of the Convention, in the interests of expedition, we have suspended the standing orders, and honorable members are therefore not in a position to prepare and
give notice and print their amendments and we are consequently adopting this course. But surely we can trust the good sense of the representatives to see that it is necessary we should come to a conclusion of our labours very soon. It is utterly impossible [start page 1823] to keep this Convention together much longer, and, therefore, if we give this permission, as a matter of courtesy, very much as we give leave to introduce a Bill without notice, we shall get along much more quickly than by insisting that honorable members shall move for leave in the Convention as a whole, where we may be longer in discussing the various subjects than if we discussed them in committee. Because honorable members know that in the Convention they will only have the opportunity of speaking once, and an honorable member moving for the recommittal of a clause would, under those circumstances, feel it to be his duty to support his proposal by arguments on every side, whereas, if they can submit their proposals in committee, they will appeal in a few words to the good sense of honorable members to carry their views. In some instances the reasons for doing that will be so obvious that it will be done at once, and in other cases the reasons against doing it will be so equally obvious that honorable members will refrain from speaking, and give a silent vote. Now, in view of the immense number of recommittals sought, it seems to me that there is no other course than to grant them, as a matter of courtesy, and trust to the good sense of honorable members not to occupy more time in proposing and discussing them than is absolutely necessary.

Mr. BARTON (New South Wales).-I do not know whether it would suit the convenience of members of the Convention, but there is a course which it seems to me might very well be adopted. It is a view that has been frequently expressed. The Bill can be, if necessary, twice recommitted. By doing that time may be saved. If the Bill is recommitted merely for the purpose of the Drafting Committee's amendments that I have proposed (which are mainly drafting amendments, with one or two exceptions) and honorable members in the meantime write out their notices of amendments and have them printed, then the Bill can be again recommitted for the reconsideration of such provisions as are embraced there. And when honorable members see the nature of the amendments which we propose, it will take very little time to decide whether they are amendments of substance, and whether there is the slightest reasonable prospect of a decision which has been come to being reversed. There are many cases, no doubt, in which there is such a prospect. There are other cases in which I suppose honorable members who are making the proposals may have no very definite expectation of succeeding in reversing a decision.

Mr. SOLOMON.-Are all the amendments to be proposed by you merely drafting alterations?

Mr. BARTON.-Not all. They cannot be left to the drafting stage, but they are endeavours to carry out what has been gathered as the sense of the Convention, except in two or three cases in which I have endeavoured independently to make proposals, but I will be content to leave some of these for a second recommittal.

Mr. SOLOMON.-You had better separate them.

Mr. BARTON.-I would suggest that we take the matters which are in print at the instance of the Drafting Committee, and also two or three other matters which are mentioned in their notice, but which are not in the printed list.

Sir JOSEPH ABBOTT.-You asked us to give notice of these proposals.

Mr. BARTON.-I made several requests.

Sir JOSEPH ABBOTT.-That has been done.

Mr. BARTON.-It has been done in some cases, but I can assure my honorable friend there is a vast number of cases in which I have seen no notice of them at all. What I wish to suggest, in order to save a great deal of discussion, is that those matters which have been in print at the instance of the Drafting Committee or of myself may be taken now, in order to give time for other members who
have not circulated their amendments to have them printed and circulated. That will give the Convention an opportunity at once to decide on its course, and will leave it perfectly open to obtain a second recommittal. The obtaining of a second recommittal will, under the circumstances, take no more time, but much less time than the obtaining of it now.

Sir JOSEPH ABBOTT.-Why not take all the amendments that have been printed?

Mr. O'CONNOR.-We will have quite enough to go on with.

Mr. BARTON.-If honorable members will withdraw their notices for recommittal in cases where they have not had their proposals printed, and let us go on with those which are in print, they can move for a second recommittal, and they can trust to the good sense of the Convention to grant it where there is any substance in the matter.

The motion, as amended, was agreed to.

The PRESIDENT.-I will put the next motion, which is moved by Mr. Reid.

Mr. REID (New South Wales).-I recognise the force of what has been said, and I think it would be greatly to the convenience of the Convention if those of us who have not given in print notice of the character of our proposed amendments are given an opportunity to do so. If we now carry a recommittal of the Bill for the purposes already mentioned, ample time will be given to all of us to put on the table in print the nature of our objects in proposing the recommittals. It will be understood, of course, that we will not be prejudiced by deferring our notices, because it would be a second recommittal.

Mr. BARTON.-Certainly there will be no attempt on my part to refuse a second recommittal all round.

Mr. REID.-I quite agree that if, in matters likely to provoke a long debate, a clear majority of the Convention has made up its mind, it would save time if that mind were expressed on the proposal to go into the matter again. We have reached a stage, I admit, at which it is of great importance that we should save time. I am prepared to withdraw my proposals till I can put them in print on the paper. I will engage to have my proposals in print for to-morrow morning, and I suppose every other member can make an effort to do the same. I may say that the proposals for recommittal which we have agreed to will take us into next week. For instance, the clause about the dead-locks clause 56B will lead to a long debate, so that honorable members will have plenty of time to put their proposals in print, without prejudice, I hope, to their, full discussion afterwards. On the understanding that I shall have an opportunity after I have put my proposals in print to move the further recommittal of the Bill, I ask leave to withdraw my motion.

Mr. HOLDER (South Australia).-Before the question that leave be granted is put, I wish to suggest to the leader of the Convention something which I think is important. Just now the idea was that we should take those questions which were more debatable first, and leave those which were less debatable until afterwards. The course we are now about to pursue I am afraid will lead to this result: We will take mere drafting amendments and matters which are not specially contentious during the next two or three days when we have a full Convention, and then, next week, when a number of honorable members will have left us, we will be at the points where we ought to have the fullest attendance of honorable members. I ask the leader of the Convention to consider that point, and to take care that that does not happen.

Mr. BARTON (New South Wales).-My amendments, with one or two exceptions, will not take any time to discuss, but where it is considered anything will take substantial time to discuss I could refrain from dealing with it on the first recommittal, so long as I have my right of
proceeding with it on the second recommittal. I want to meet the convenience of members in every way. The reason it is wise to consider this schedule first is that it gives honorable members an opportunity to put their amendments in writing and have them printed. If any little further time is required for that purpose, then instead of adjourning from half-past five until half-past seven I would ask for an adjournment from five o'clock to eight o'clock. By doing that we should be enabled to proceed with business.

The PRESIDENT.-If I understand there is a general desire that all these motions, other than that already carried, should be withdrawn for the present, I will put it in a general way that honorable members who have moved the recommittal of clauses have leave to withdraw.

Sir JOSEPH ABBOTT (New South Wales).-Some days ago Mr. Barton invited honorable members to submit in writing notices of motion of their desire to have clauses recommitted. I and others have done so, and why should we be placed at a disadvantage because other honorable members have not taken the trouble to give notice? It would only be fair to submit to the Convention every motion of which notice has been given, and which appear on the notice-paper. There are two notices of motion which I gave some weeks ago, and I cannot consent to the suggestion of the President. If the Convention chooses to reject my motion, well and good.

The PRESIDENT.-Under the circumstances, I shall not put any motion for leave to withdraw which is not asked for.

Leave being given, Mr. Reid's motion was withdrawn.

Mr. ISAACS (Victoria).-Mr. Reid having asked for leave to withdraw his motion for the present, I am bound to follow his example-on this occasion-the understanding being clear that I shall be at liberty to propose the same matter again. With all honorable members who have spoken on the subject, I do hope there will be an effort to save time, but also an effort to save the Bill. I hope there will be no difficulty thrown in the way of a fair reconsideration of such matters as honorable members generally think important. It is really important that there should be no idea outside that there is any attempt to avoid the fullest discussion consistently with a fair and reasonable time being afforded for that purpose.

Mr. SOLOMON.-We have avoided that by reversing our decisions every second day.

Sir GEORGE TURNER.-We are now trying to arrive at the original decision.

Sir RICHARD BAKER (South Australia).-In the House no honorable member can address the Chair more than once. I raise no objection when an honorable member confines himself to withdrawing his motion, but when a member proceeds to make a speech on the merits or demerits of a particular question, it is time the standing order is put in force.

The PRESIDENT.-As that point is taken, I shall have to say it is well founded. Do I understand that the honorable member (Mr. Isaacs) asks leave to withdraw his motion?

Mr. ISAACS.-I ask leave to withdraw my motion.

Mr. SYMON (South Australia).-Mr. President, I have not spoken-

HONORABLE MEMBERS.-Spoken, spoken.

Sir GEORGE TURNER.-The honorable member has spoken three or four times.

Leave being given, Mr. Isaacs' motion was withdrawn.
Leave was granted to Sir George Turner (Victoria), Mr. Deakin (Victoria), and Mr. Holder (South Australia), to withdraw their motions for recommittals.

Sir PHILIP FYSH (Tasmania).-There are notices of motion which have been printed for several days past.

The PRESIDENT.-All the motions not duly withdrawn will be put to the House.

[start page 1826]

Mr. REID (New South Wales).-We have accepted the leader's proposal-

The PRESIDENT.-I am afraid I must rule the right honorable gentleman out of order. Unless there is any further request to withdraw I will put the remaining motions.

Sir JOHN FORREST (Western Australia).-I ask leave to withdraw my motion.

Leave being given, the motion was withdrawn.

Sir PHILIP FYSH.-Then I ask leave to withdraw my motion.

Leave being given, the motion was withdrawn.

The PRESIDENT.-If there is no other motion for withdrawal, I will put the motions which remain.

Sir JOSEPH ABBOTT (New South Wales).-As Sir John Forrest, Sir Philip Fysh, and Mr. Holder have asked leave to withdraw, I also ask leave to withdraw my notice of motion.

Leave being given, the motion was withdrawn.

Mr. HIGGINS (Victoria).-I happen to have been out of the chamber for a moment. I understand that if the honorable leader's motion for recommittal involves a clause as to which I have given notice, the whole clause is open to me.

Mr. BARTON (New South Wales).-I was under the impression, Mr. President, that the intention was simply to discuss the notice I have given in the first instance. In that case the honorable member's purpose would be served by having his notice printed for the second recommittal.

The PRESIDENT.-I think the motion of Mr. Higgins had reference to clauses 80 and 93B, both of which are in the motion carried at the instance of the leader.

Mr. HIGGINS (Victoria).-I have already handed the few amendments I had in my mind to the Clerk, and these amendments are either printed or in the Clerk's hands. I do not want to have the same clause recommitted twice.

The PRESIDENT.-The clauses mentioned by Mr. Higgins have already been recommitted at the instance of the leader of the Convention.

Mr. HOWE (Tasmania).-I apprehend that clause 52 will be recommitted.

The PRESIDENT.-Only as to a certain paragraph.

Mr. HOWE.-My notice of motion in regard to this has been on the paper, and, as it is an important matter, I would like it discussed by the full Convention.
The PRESIDENT.-Does the honorable member ask leave to withdraw his motion?

Mr. HOWE.-I cannot be exceptional, and I ask leave to withdraw.

Leave being given, the motion was withdrawn.

Mr. WALKER (New South Wales).-Although my notice of motion is in print, I ask for leave to withdraw it.

Leave being granted, the motion was withdrawn.

The PRESIDENT.-The only clauses that have been recommitted are those recommitted on the motion of Mr. Barton.

The Convention then resolved itself into committee of the whole for the further consideration of the recommitted clauses.

Mr. O’CONNOR (Now South Wales).-I beg to move-

That the following new clause (6A) be inserted after clause 6 of the covering clauses:

After the passing of this Act the Colonial Boundaries Act 1895 shall not apply to any colony which becomes a state of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

This new clause becomes necessary for this reason: There is an Imperial Act, called the Colonial Boundaries Act, passed in 1895, which gives the Imperial authorities power to fix the boundaries of the colonies, and makes provision that those boundaries shall not be altered except with the consent of certain self-governing colonies named in the schedule. If this provision were not inserted there might be a difficulty as to how the Imperial Act affected the right of the Crown to still deal with the boundaries of the states of the Commonwealth, and it is to make it clear that the Commonwealth has control over the boundaries within itself that the insertion of these words becomes necessary.

The new clause was agreed to.

Mr. O’CONNOR (New South Wales).-I beg to move-

That paragraph (2) of clause 10 be omitted.

It is proposed to omit the second paragraph of clause 10, with a view of dealing with the question, and with another matter of the same kind relating to the House of Representatives, comprehensively in one clause. Clause 10 provides for the keeping up of the electoral laws of the different states until the Parliament of the Commonwealth may legislate. We think it will be better to deal with the matter in one way, and I propose, therefore, that the second paragraph of clause 10 be omitted, in order that the whole subject may be dealt with comprehensively later on, when there will be one clause for both Houses. The one clause will be new clause 44AA, which is as follows:-

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each state for the time being relating to elections for the more numerous House of the Parliament of the state shall, as nearly As practicable, apply to elections in the state of senators and of members of the House of Representatives.

Honorable members will see that in clause 44 there is a similar provision to the one we are dealing with, but we think it will be better to deal with both matters together. That, as honorable members see,
Mr. HIGGINS.-Have you examined the local laws to see if they can apply?

Mr. O'CONNOR.-Oh, yes, we know what the local laws are.

The amendment was agreed to.

Mr. O'CONNOR (New South Wales).-I beg to move-

That all the words from the words "several states " (line 3) inclusive to the end of the clause be omitted, with a view to the insertion of the following words:-

"Commonwealth. The number of members chosen in the several states shall be in proportion to the respective numbers of their people. But if by the law of any state the people of any race are not entitled to vote at elections for the more numerous House of the Parliament of the state, then, in reckoning the number of the people of the state, the people of that race shall not be counted."

Mr. GLYNN (South Australia).-Does not this amendment involve an alteration of the quota principle?

Mr. O'CONNOR.-No; that comes later on.

Mr. ISAACS (Victoria).-This amendment provides that if by the law of any state the people of any race are not entitled to vote, then, in reckoning the number of the people of the state, they shall not be counted. I should like to know whether the honorable and learned member has considered this in relation to the clause which gives the Commonwealth power to legislate with regard to the people of any race. Suppose that power is exercised by the Commonwealth in a manner over-riding the law of the state-is this provision sufficient?

Mr. O'CONNOR (New South Wales).-I think so, because the honorable member will see that what we want to get at is the number of persons to be counted. If by any law of any state persons of a certain race are not counted they will not be counted in this enumeration.

Mr. ISAACS.-Will the honorable member consider it?

Mr. O'CONNOR.-Yes. At the present time I think it is sufficient, but I will consider it.
Commonwealth. The number of members chosen in the several states shall be in proportion to the respective numbers of their people.

And so on. That provision directly negates proposed new clause 24A, which seems to continue the quota principle.

The CHAIRMAN.-There is a mistake in the printing. The amendment should read "Omit to the end of the paragraph," not "to the end of the clause."

Mr. GLYNN.-That makes a difference.

The amendment was agreed to.

Sir GEORGE TURNER (Victoria).-If there has been a mistake in the printing it will make a difference to the course of procedure which we shall have to take.

Mr. O'CONNOR.-Any of these clauses can be recommitted.

Sir GEORGE TURNER.-The amendment that has just been agreed to proposed the omission of certain words at the end of the clause, with a view to the insertion of other words, which are set out. Lower down, clause 24A provides that-

The number of members to be chosen in each state shall be determined by dividing the number of the people of the state, as shown by the latest statistics of the Commonwealth, by the quota.

If we retain the second paragraph of the proposed new clause we shall have to raise the question of quota when we are discussing it.

Mr. O'CONNOR.-The honorable member is quite right. It is necessary that the words at the end of the clause should be omitted, and that clause 25 should be omitted. Then the whole question can be raised again.

The CHAIRMAN.-I understand that the third paragraph of the clause stands in.

Mr. HOLDER.-That paragraph is contained in clause 24A.

The clause, as amended, was agreed to.

Clause 25 was omitted.

Mr. O'CONNOR (New South Wales).-I beg to move-

That the following words stand clause 24A of the Bill to follow clause 24:-

The number of the members of the House of Representatives shall be, as nearly as practicable, twice the number of the senators. Until the Parliament otherwise provides, the number of members to be chosen in each state, shall, whenever necessary, be determined in the following manner:-

I. A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators.

II. The number of members to be chosen in each state shall be determined by dividing the number of the people of the state, as shown by the latest statistics of the Commonwealth, by the quota; and if
on such a division there is a remainder greater than one-half the quota, one more member shall be chosen in the state.

But notwithstanding anything in this or the last preceding section, five members at least shall be chosen in each original state.

This clause is nothing more than a shortening of the provisions of two or three previous paragraphs. We have omitted clause 25 and the latter part of clause 24, and clause 26 is to be omitted. The provisions contained in these clauses have been embodied in this new clause. The Right Hon. Sir George Turner will see [start page 1829] that there is nothing new in the clause which I am now proposing, though it embodies a principle, to which he has taken exception, but to which the Convention has already agreed.

Sir GEORGE TURNER (Victoria).-As I intimated in Sydney, I propose to again test the feeling of the Convention with regard to the proposal to have a fixed quota. With that view, I move-

That the proposed new clause be amended by the omission of the words "The number of the members of the House of Representatives shall be, as nearly as practicable, twice the number of the senators," with a view to the insertion after the words "Until the Parliament otherwise provides " of the words; "each state shall have one representative for every 50,000 of its people."

In the Commonwealth Bill of 1891 we provided that each state should have one representative to every 30,000 of its people. That provision may, perhaps, have given us a somewhat large House of Representatives, but I think that the alteration which I now propose would provide a very reasonable number to commence with. As we know, provision is made for the increasing or the reducing of the number of members of the House of Representatives. But if we adopt the peculiar provision that the number of the members of the House of Representatives shall be determined by the number of senators, we shall be taking a very unwise step. I fail to see what connexion there can be between the number of the members of the Senate and the number of the members of the House of Representatives, which should limit the number of the House of Representatives in accordance with the number of the senators.

Mr. HIGGINS.-Or with the number of the states.

Sir GEORGE TURNER.-Yes, or with the number of the states. If we adopt this provision we shall be in the peculiar position that as population increases the number of the members of the House of Representatives must be determined by the number of members of the Senate. If new states came in, that would increase the number of senators, and the popular representation of the existing states, although their population might not have increased. Surely that, upon the face of it, would be unreasonable. Then, as was pointed out in Sydney, there might also be this difficulty: Some of the states would have five representatives in the House of Representatives, although their population would only entitle them to two. That, upon the basis upon which we worked in Sydney, would give a House of 78 members. But as these states became entitled as of right to their five representatives, the other states would have their representation reduced, because the provision is that the number of the House of Representatives must, as nearly as practicable, be twice the number of the Senate. Therefore, as the smaller colonies became entitled as of right to five representatives, colonies like South Australia, Victoria, and New South Wales would be reduced in their representation. Then, taking the figures which were supplied in New South Wales, it may happen that in a very few years New South Wales will be entitled to a representation of 26 or 27 members, while, on the other hand, Victoria, whose population may not increase so rapidly as that of the sister colony, may have her representation reduced from 24 to 13. While I cannot deny that the representation of Victoria will be, in proportion to her population, I think we shall find it difficult to make the people of this colony understand why their representation should be reduced from 24 at the present time to perhaps 13, twenty or thirty years hence. But that would undoubtedly be what would happen if the figures which were quoted in Adelaide and in Sydney are correct. I am not prepared to say that they are correct, because they come
from New South Wales, where other figures have come from. It is probable, however, that some of
the colonies will increase at a greater rate than others, with the result that the representation of some
of the colonies will increase while [start page 1830] that of the other colonies will decrease. After
thinking over the matter carefully I cannot see what reason there is why we should fix this quota at all,
unless we are to have what is called the Norwegian system, but which is not that system, unless we
are to have that system as a means of settling dead-locks by the two Houses meeting together. To my
mind, that can be the only basis upon which we can rest any such position. This matter was very fully
discussed in Sydney, and I propose now to set a good example with regard to these amendments. I do
not propose to discuss them at any great length, because I am sure everything that was said in Sydney
must be fresh in the minds of honorable members. We did take a division on the subject, but not in a
full Convention. I think the matter is of so grave importance to some of the colonies that we are
justified in having the matter reconsidered and voted upon again. This is undoubtedly a blot on the
Bill which we ought not to allow to remain in. There is no reason whatever why we should adopt this
system and not follow out the practice of 1891. It was also really adopted in Adelaide. That method is
having some fixed number as a quota, if you like, on which the House of Representatives should be
constituted. In the House of Representatives we provide for the representation of the individual
people, and the population of the different colonies ought to be entitled to have representatives for a
certain number of people. It may be said that will render necessary an immensely large House, but
that has not been the experience in America. When it was necessary to prevent the House from
becoming too large, steps were taken in that direction.

Mr. BARTON.-But, as you put it, would it not require an amendment of the Constitution?

Sir GEORGE TURNER.-No; my proposal is, until the Parliament otherwise provides, each state
shall have one representative for every 50,000 of its people, so that it will be entirely in the hands of
Parliament to make the necessary provision. The Treasurer will not allow the members to increase at
so rapid a rate as to involve very heavy expense, and no doubt Parliament would say that, whereas
50,000 was considered a sufficient number when the total population was 3,500,000, now that it is
5,000,000 or 6,000,000 the number for each representative should be increased to 60,000 or 70,000. It
will be wise to revert to the original number proposed, and with that object I move my amendment, to
test the feeling of the Convention, so that, instead of having a fixed quota for all time, which would
require an alteration of the Constitution to change we shall have a fixed number as I suggest. At
present it is made absolutely a portion of our Constitution that, until we alter the Constitution by the
very difficult mode we have adopted, the number of representatives in the House of the people must
be decided by the number of members representing the various states. It is immaterial whether you
have a state represented by four, five, or six members, but it is very material that you should have the
people in the House of Representatives represented by a limited number in conjunction with the
number in the Senate. It will be wise to retrace our steps and go back to what was originally proposed.

Mr. SYMON (South Australia).-I would point out to the right honorable member that his
amendment is not directed against the quota; it is directed against the relative proportion of members
of the Senate and members of the House of Representatives.

Mr. BARTON.-It proposes to omit the ratio, and to put in one member for every 50,000 people.

Mr. SYMON.-I do not care what becomes of the quota if you can substitute something else which
the right honorable gentleman desires, but I object very strongly to alter the relative proportion
between the Houses. This is the old [start page 1831] story of cutting away all the benefits we were
supposed to acquire from a strong Senate. I point out that the honorable member's amendment now is
not directed to the question of the quota so much as to the destruction of, the relative proportion
between the two Houses.

Mr. WISE.-Why not strike out the third line and let the first two lines stand?
Mr. ISAACS (Victoria).-The first two lines involve the whole question. This is a matter which goes very deep down upon the subject. I would like to point out to honorable members that by putting in this provision something is put in that is absolutely novel in any Constitution. It is not only novel to a Constitution, but it is taking from the larger states—the most populous states—something beyond the concession that was agreed, to with regard to equal representation.

Mr. HIGGINS.-Not agreed to, but given.

Mr. ISAACS.-I should like to point out again to the Convention, as briefly as as I can, the ground I took in Adelaide when this was first proposed I would like to impress on honorable members what a rooted objection we have to it, and what an objection there is which can scarcely, if at all, be got over. It has been, accepted, by way of compromise and concession in this Constitution, by those who do not believe in it, as a principle that the two Houses should, be appointed on totally distinct and antagonistic lines.

Mr. SYMON.-No.

Mr. O'CONNOR.-Not antagonistic lines.

Mr. ISAACS.-One to be the House of the people, and the other to be the House of the states, to check, or, if necessary, to checkmate the people, to use the words of a learned writer. The Senate we have agreed to is a concession, specially based upon the equality of the various states independently of their population. Indeed, we are to say that for the, purpose of constituting the Senate population is to be disregarded altogether. But we have claimed that the House of Representatives—the National House—shall be framed on the basis of population, not population as checked, or altered by the Senate but population simply, and we claim that this is to be a House of Representatives, and; representation is to have its fall sway. I do not hesitate to say that unless the people of Victoria are to have a genuine House of Representatives they will find considerable difficulty in acceding to this Constitution at all. I desire to make myself perfectly clear, because this is the moment to do so. We are now beginning to consider questions at a juncture when we should be acting dishonestly with each other if we did not speak frankly. Hereafter, if we should unfortunately find it to be our duty to take a position adverse to this Bill, which I trust will not be the duty of any of us, we should justly be chargeable with had faith to our fellow delegates, to the sister colonies, and to our own colony, if we did not express our views clearly and unmistakably in the Convention, so as not to allow particular questions to create any errors. Now, I would point out how very important this is. The Senate is not to be checked by the House of Representatives, but the House of Representatives is to be checked by the Senate.

Mr. BARTON.-You mean that the Chamber that speaks second is always a check on the other.

Mr. ISAACS.-No, I mean that you can make the Senate as large as you like without reference to population at, all. But although the needs of the population may require a larger quota in the House of Representatives, and although there may be no need whatever to extend, the number of representatives in the Senate, the House of Representatives cannot, be altered without altering the Senate, and what is worse, without the consent of the Senate. I do not argue that this—should be done without—the consent of the Senate, but I want that consent to be required only, as in America. If, for the purpose of enabling the people to choose their representatives freely and voluntarily, we intend [start page 1832] to say that there shall be one member for every 50,000 or 60,000 of the population, we may find that we have agreed in this way that there shall be only one member for every 100,000, 200,000 or 300,000 of the population. What opportunity will there be for a fair representation? The quota will be constantly altering, but the ratio will remain the same. When the people of the colonies are told that each state is to have six representatives in the Senate without relation to its population, they are also told that, although the population requires for a fair representation a quota less than that which prevails, the matter is to be governed, not by the population of the Commonwealth, but by the number of representatives in the Senate. What connexion is there between a House which is avowedly based upon equality of statehood without regard to population, and a House of Representatives elected
on the basis of population? We are told that this is the most democratic Constitution in the world. Is it
to be converted into the most conservative Constitution in the world? There is no Constitution that I
am aware of under which the people's House cannot be constituted, if desired, on the basis of
population pure and simple. Why have we departed from the example of America in this regard and
slavishly followed it in other respects?

Mr. SYMON.-We do not object to the House of Representatives being based on population pure
and simple. All we say is that the ratio should be preserved.

Mr. ISAACS.-That is not basing it on population pure and simple. In America the Constitution
started by fixing the number of senators for each state at two. It was then provided that the House of
Representatives should be constituted by giving not less than one member for 30,000 inhabitants. If
no further legislation had taken place the House of Representatives would by this time have been
enormous. There would have been from 2,000 to 3,000 members in it, but public opinion compelled
them, as it always will compel them, to reduce the number by increasing the quota. Gradually, as the
population increased, the quota went up from 30,000 to 40,000, and from 40,000 to 50,000, until now
it is close upon 200,000. They did not trouble to ask themselves how many members there were in the
Senate. What they did consider, was the number of people that each member should represent, and the
House of Representatives then proposed an amendment of the law in that regard. The Senate has
always agreed to these amendments, because it knew that if it did not the House of Representatives
would simply be enlarged. Inasmuch as it is always for the benefit of the Senate to agree to such a
Bill, there is no difficulty whatever. The House of Representatives, every ten years, proceeds to
diminish its numbers proportionately by increasing the quota. Here we are to start with about one
member to every 50,000 of the population. At a future period we may find that there is one member
for every 100,000 of the population, and we may desire to make the quota one member for every
80,000. We could not do that without the consent of the Senate, and the difference between us and
America is simply this, that if the Senate does not agree, the House of Representatives is kept lower in
numbers and the representation is made more difficult than would otherwise be the case. But if the
Senate does agree its numbers must also be increased. What a farce that is! We are told that if the
population of Victoria, as was shown by the figures supplied from Sydney, increased to 4,000,000-

Mr. WISE.-Are those Mr. Coghlan's figures?

Mr. ISAACS.-They came from New South Wales. We are told that if the population of Victoria
increased to 4,000,000, she would have on the basis of these figures 13 members, as against the 24
with which she starts the Federation.

[start page 1833]

Mr. WISE.-Many of us would go with you to knock out the quota.

Mr. ISAACS.-That is quite a different thing. You cannot alter the quota if you keep the ratio.

Mr. WISE.-You can increase the number of members of the Senate.

Mr. ISAACS.-Let us look at the, position. If we want, owing to an increase of population in
Victoria or New South Wales, to increase the number of members of the House of Representatives, so
as to keep pace with the population, so as to allow the electors to have a full and free choice, and so as
to prevent men of great wealth from having supreme command of the constituencies, then we are told
that we must increase the number of members of the Senate. What necessity is there for increasing the
number of members of the Senate? If the states are on an equal footing, what difference does it make
to them whether they have each six members or twelve?

Mr. WISE.-The Senate will be the people's House.
Mr. ISAACS.-Then all the more reason why we should alter this. I agree that this proposal, with its attendant consequences, will go far to emasculate the House of Representatives, and this is one of the points on which we must make a stand. It is one of the points I do not see my way to yield. We have conceded equal representation in the hope of getting some concessions. Not one solitary concession has been made to us. On the contrary, the advantage has been pushed further than we anticipated. The only House the people of the Commonwealth, as a people, have to rely on is to be tied hand and foot to the Senate, and its number cannot be extended as the requirements of population demand. It may be said where is the injustice if there are 60 members, as there will be without Queensland, and those 60 members are evenly distributed over the Commonwealth? That is no answer. You might as well say that if there were twenty members, they would be distributed over the Commonwealth, but we want to see that the people of the Commonwealth have opportunities in moderately-sized constituencies for electing their House of Representatives. And this does not give any play to that, because, as I said before, it simply appeals to the Commonwealth to increase the Senate at the same rate, and the Senate may not comply with the request. And when we recollect that there is no, provision for dead-locks—none whatever that is workable; and that this provision of the ratio of one to two is almost altogether futile, that is, the desirable so-called provision for dead-locks which is at present in this Constitution—it seems to me almost impossible to commit to the Commonwealth or to the Federal Parliament the gigantic interests at stake in this Federation. Now, I desire to take no uncertain ground in this matter, because it seems to me to be an objection which cannot be got over. There being no precedent for it, there can be no excuse for it, certainly not on the ground of economy, because on that ground we could reduce the number of the Senate. You could have three as well as you could have six senators, and the states equally represented. In America they have two, and the states are equally represented. But on the ground of economy it is idle to consider this question when we are framing a Constitution for the Federation. The whole basis of it is a Constitution of two Houses. The earth rests on the tortoise, but what does the tortoise rest upon? And when we get a Constitution resting upon the formation and operation of the House of Representatives as well as of the Senate, we may well ask ourselves what is the reason for departing from well-known rules and creating this new scheme of tying the House of Representatives to the Senate. The House of Representatives is the National House. It is supposed to be. It is supposed, I said, to be based on population only. The Senate is the [start page 1834] States House—a false position as I understand it, but still we have constituted it. Why mix these two things to the disadvantage of the people's House?

Sir WILLIAM ZEAL.-They are both people's Houses.

Mr. ISAACS.-There can only be one reason for doing that, and that is aggrandizing the Senate or crippling the House of Representatives. Without reiterating the arguments I urged in Adelaide, I do say that this is a matter that I do not see my way to get over. There are some thing one would be glad to get over, but this is not alone a mistake, for it carries with it other mistakes because it carries with it a proposal for the two Houses to sit together. When we consider that, and consider that under these provisional don't propose to discuss them in detail, but I must just briefly refer to them, because they are in connexion with this, showing as they de, the results that flow from it-when we remember that, when those two Houses meet together this Constitution gives Tasmania 5 members in the House of Representatives and 6 in the Senate, making 11, while Victoria will have 24 members in the House of Representatives and 6 in the Senate, making 30, we see that it gives Tasmania, a state that will contribute only one-tenth of the revenue that Victoria will contribute, more than one-third of the ultimate voice in the disposal of the revenue. I say it is impossible for us to accede to that. So far from extending our self-government, and making this a free and democratic Constitution, we are unmistakably, as it seems to me, taking the sure course of making the most conservative Constitution we have ever seen-more conservative than any colonial Constitution, and much more conservative than the British Constitution. For those reasons I do hope that the Convention will excise these words.

Mr. DOUGLAS.-Give a dog a bad name, and you may kill him at once.

Mr. ISAACS.-I do hope that the Convention will excise these words, not only to keep the Constitution in harmony with what we anticipated when we started, but for the purpose of making the
Constitution a liberal Constitution, and not saying to the men—and I hope the women—in the future, who have the franchise under this Constitution, that they are restrained in the exercise of the function which is nominally given to them by the fact that the principle of equality of representation prevents them from exercising it as freely and fully as they deserve to do.

Mr. BARTON (New South Wales).—I think the matter on which my honorable and learned friend touched the most lightly was the matter to, which he ought to have devoted most attention in his very elaborate and admirable speech—the fact that there is a provision in this Constitution to that effect that when there is a difference between the two Houses, under certain circumstances, they shall sit together, and that a majority of three-fifths shall carry a Bill. Now, we will put an instance of this kind. Supposing as a result of the adoption of the proposal of Sir George Turner there were a House of Representatives of 120 members, while the Senate stood at its original number of 30. There you have 150 members altogether. I am putting an illustration in fact first, which I think is the wisest thing to do in a matter of this kind. There you have 150 members with a provision that if they disagree and there has been a dissolution after which they still disagree, a vote shall be taken at a joint sitting; and that three-fifths of the members shall control the matter. Thus out of that number of 150, 90 votes would rule the roost, and, those 90 votes might be every one of them votes of members of the House of Representatives, while of the 60 there would be in that case 30 members of the House of Representatives and the whole body of the Senate.

Mr. ISAACS.—But we do not accede to that joint meeting.

Mr. BARTON.—No doubt you do not accede to that joint meeting; but for the present you must take the Constitution as it stands, unless we are to take it for granted that you are going to alter it wherever you will, and we are not going to take that for granted. Certainly, not to begin with. Now, I take it that a resolution which is likely to lead to that result is a resolution aimed, whether directly or not, at the subversion of every principle of federal government; that you cannot, if you retain this three-fifths proposal, consent to an amendment of this kind without contending that you intend to make this Constitution other than federal.

Mr. ISAACS.—I do not intend to do that.

Mr. BARTON.—I can quite understand my honorable friend wants the two things; but I say that, unless we intend to give him both, we should not give him this. If we intended to give him what he wants, which is a general referendum instead of a joint vote, then he may well ask for this as being consistent with that general referendum. But the very enormity of the one proposal will show honorable members the great enormity of the other.

Mr. ISAACS.—They have no referendum in England, and yet they do not have this provision there.

Mr. BARTON.—But the honorable member is leaving out of sight the fact that we are dealing with a Federal Constitution, and we do presume to preserve some equilibrium of power as respects the two Houses. I can understand those who think that there ought to be only one House either in a Federal Commonwealth or in an amalgamated Government taking up the position that, for instance, there should not be a House which Mr. Isaacs describes as a House to check or checkmate the people. If it is assumed that the people are only represented in one House the logical assumption to follow that is that there should be only one House, and it is better for honorable members who think that to throw off the mask at once and move that there shall be only one House. If you are going to make one House all-powerful and the other House absolutely powerless and not fit to be occupied, by branding politicians on the ground that all they do must be futile—if you are going to take that course, why not say right out you are going to take it instead of adopting expedients of that kind?

Mr. ISAACS.—Does the honorable member think it is fair to put it in that way, having regard to the fact that in America there is no such provision as I object to, and yet there is not government by one House?
Mr. BARTON. - It is fair, because I cannot understand my honorable friend making a proposal of this kind, and clothing it in the remarks which he made, unless he really feels that there ought to be only one House. If you are going to say that there should be only one House to determine everything, then you are saying that there should be only one House. If you are going to say that there should be only one House to determine everything, then you may as well leave out the other House. I am not in favour of any system of government except bi-cameral government until I am told and taught that the country I live in is doomed to be ruled by one House alone, in which case I will consider whether it is a good place to live in. The difference between the analogy which my honorable friend attempted to draw between this case and the American Constitution is this: That the American Constitution is not ruled by responsible government, and we propose to work our Constitution under responsible government; so that there is this very great difference, that the enormous preponderating power given to one House under the Constitution we propose here is very much greater than any preponderance which may be claimed by the House of Representatives in America over the Senate. But let the honorable member consider this position. If the powers of dealing with and amending Appropriation and Tax Bills, and the other strong monetary powers of the American Senate, as well as its executive powers, which are very large also, were to be taken away from it in favour of responsible government, do you think that the Senate of America would consent to an alteration of the Constitution to that effect without being guaranteed some numerical proportion to the other House which would enable the Senate to be reasonable factors in discussions outside money matters? All that is desired, all that is attempted, in this Constitution is that, apart from Appropriation and Tax Bills, the Senate should have some voice in ordinary legislation, and it is not sought to give the Senate the powers which have been so often contended for by Upper Houses in respect to Money Bills. There is the whole difference of the case. Who would ever dream of proposing in the Senate of America to give up the great powers they have in that respect for a system of responsible government, unless some ratio was to be preserved between the two Houses which would enable the Senate, at any rate, to be considered a strong factor in ordinary legislation? It is not correct to say that one of the Houses here is devised or will act as a check or checkmate on the other. That is, with the greatest respect to my honorable friend, an entire misdescription of the position. One of these Houses is devised in order that it may give some representation to the corporate capacity of the states, and in order that the voice of those states may be heard in ordinary legislation whenever it is necessary for the representatives of a state to act together. That is the main object of the proposal of a Senate. The entirety of that object would be done away with if the proposal of my honorable friend were carried. As the honorable member (Mr. Symon) has pointed out, it is aimed, not at the quota which was so much objected to by Sir George Turner, but at the numerical proportion between the two Houses. The real object of this amendment, if it is carried, is to make impossible any provision for dead-locks, if any is necessary, unless there is some such method as a referendum, because many honorable members say: "We had better take the chance of a national or general referendum than leave the Senate in this position, because the Senate then would be totally powerless in the event of a joint vote having to be taken." Therefore, this is a proposal, whether my honorable friend means it or not, to undermine the collective vote, and to make that collective vote a merely nugatory proposition, which, by consequence, would have to be taken out of the Constitution and make room for something more drastic for the purpose of entirely emasculating the Senate. I have always been in favour of working this Constitution by the method we know of-the method of responsible government. I have always been in favour of so much preponderance of power being given to the House of Representatives as will make that responsible government something more than a name, and will insure the due working of that machine. I have always been ready to go that far. I have always insisted that there is justice in the position of the states themselves when they say that, granted you provide for the working of responsible government, you must outside that allow the states to have some voice in legislation as the entities of government that they are themselves. My honorable friend's proposition has relation to other clauses, for instance, to clause 9. I will read the clause as it appears in print now:

The Senate shall be composed of senators for each state, directly chosen by the people of the state, voting, until the Parliament otherwise determines, as one electorate. Until the Parliament otherwise provides, there shall be six senators for each original state. The Parliament may, from time to time,
increase or diminish the number of senators for each state, but so that equal representation of the several original states shall be maintained, and that no original state shall have less than six senators.

Mr. ISAACS. - I do not think it touches that.

Mr. BARTON. - I think it touches clause 9, for this reason: That Parliament may increase or diminish the number of senators for each state. That requires the assent of two Houses. If there is a proposition that the number of the House of Representatives shall be increased without a corresponding proposition that the number of senators shall be increased that proposition may be expected to be rejected by the Senate. That is to say, if the matter is left open, as proposed by the amendment, that proposition may then be expected to be rejected by the Senate, and, under this dead-lock clause, if it is quite twice rejected, once before a dissolution and once afterwards, there may be a collective vote, which may be carried by a majority of three-fifths, or, if my honorable friend has it his way, there will be instead of that collective vote a mass referendum, of which he thinks he foresees the result.

Sir GEORGE TURNER. - I have never advocated a mass referendum.

Mr. BARTON. - No. I was speaking of my honorable friend (Mr. Isaacs), whom I have always understood to be a proposer of a dual referendum as an expedient in the Constitution, and to prefer a mass referendum. I am taking that as his honest opinion. The result would be simply this: Either there would be a constant state of dead-locks whenever a proposition of this kind came up, which would be finished in the way which has been spoken of, according to the expectations of those who would support such amendments as this, a crushing of the Senate on each occasion; or else, if the Senate had its way, it could hold out, if it was not altogether held down by a collective vote or by a referendum, it could go on refusing the proposition to increase the number of the House of Representatives till the Senate, in its own good time, chose to pass the Bill with a provision that the proportion of two to one, or any other proportion they thought right, should be maintained. I do not think that propositions which are likely to be fruitful of dead-locks, and fruitful of disagreements, should find a place in this Constitution, and I do think it is some security to the smaller states, which they ought to have, that the Senate should bear some fixed ratio to the House of Representatives. I have heard of honorable members who before voted for this proposal for a fixed ratio say it might be guarded by the words-"Until Parliament shall otherwise provide." I have always held there should be no words in the Constitution which should be altered without the process for the alteration of the Constitution being gone through. I hope to adhere to that opinion. I hope I have not spoken at undue length. I know this is not a time for long Speeches on the question of the ratio of representation in the Houses, which is now being discussed for the third time. Much more I might say, but I shall leave the matter now, and ask honorable members not to accept the amendment.

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

The committee divided-

Ayes ... ... ... ... 25

Noes ... ... ... ... 15

Majority against the amendment 10

AYES.

Abbott, Sir J.P.    Henning, A.H.

Briggs, H.    Henry, J.
But notwithstanding anything in this or the last preceding section, five members at least shall be chosen in each original state.

What is the precise meaning of those words?

Mr. BARTON (New South Wales).-It means those who have joined the Constitution in the first instance. You will find that in clause 9, as amended in Sydney.

The new clause was agreed to.
[The Chairman left the chair at seventeen minutes past five o'clock p.m. The committee resumed at half-past seven o'clock p.m.]

Clause 26.-When in the apportionment of members it is found that, after dividing the number of the people of a state by the quota, there remains a surplus greater than one-half of the quota, the state shall have one more member.

Mr. O'CONNOR (New South Wales).-I beg to move-

That clause 26 be omitted.

It is a necessary amendment, consequential upon the last one made.

The clause was struck out.

Clause 27.-Notwithstanding anything in section 24, the number of members to be chosen by each state at the first election shall be as follows:[To be determined according to latest statistical returns at the date of the passing of the Act, and in relation to the quota referred to in previous sections.]

Mr. O'CONNOR (New South Wales).-I beg to move-

That the words "section 24" (line 2) be struck out, and that the words the last preceding section" be substituted.

Mr. HIGGINS (Victoria).-I see in this clause that there is a gap after the words "as follows." At what stage is it proposed to have that gap filled up? Is it before this Bill is sent home, or afterwards?

Mr. O'CONNOR.-It is to be filled up according to the latest statistical returns, at the date of the passing of the Act, by the Imperial Parliament.

Mr. HIGGINS.-You leave it for the Imperial Parliament to fill in the gap?

Mr. O'CONNOR.-Undoubtedly. The figures may change in the meantime.

The amendment was agreed to.

Mr. O'CONNOR (New South Wales).-I beg to move-

That the word "by" (line 3), be struck out, and that the word "in" be substituted.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 28-Subject to the provisions of this Constitution, the number of members of the House of Representatives may be from time to time increased or diminished by the Parliament.

Mr. O'CONNOR (New South Wales).-I beg to move-

That clause 28 be omitted.

Sir GEORGE TURNER (Victoria).-I want to call attention to the striking out of this clause. It provides that, according to the provisions of the Constitution, the number of members of the House of Representatives may be from time to time increased or diminished by the Parliament. We have made a
special provision that the number of the senators may be increased or diminished, and we have
determined that there shall be as nearly as practicable two members in the House of Representatives
to one member in the Senate. I assume that, as we have done that, my honorable friend and his
colleagues on the Drafting Committee think that this clause is unnecessary. I do not know whether it
is so or not, but it maybe argued afterwards that as we have inserted a power to increase the number of
the Senate, we have no power to increase the number of the House of Representatives. Consequently,
a difficulty may arise as to whether we could really carry out the intention of the Bill, and from time
to time, as necessity arose and the number of the senators was increased, whether we should have
power to increase the number of the House of Representatives. However, I do not feel that I am called
upon to take the responsibility of moving in [start page 1839] this connexion. I assume that the
Drafting Committee have carefully considered the matter. I simply draw attention to it.

Mr. BARTON (New South Wales).-The fact of the matter is this: In clause 24A there is a
provision at the beginning, which is absolute, that the number of members of the House of
Representatives shall be as nearly as practicable twice the number of the senators, and that the number
of senators to be chosen in each state shall, whenever necessary, be determined in the manner set forth
in the clause. Then it is provided that the number of members shall be settled according to a quota, the
provision being that there shall be two members of the House of Representatives to one member of
the Senate, as nearly as practicable. But there are governing words "until the Parliament otherwise
provides," which give the Parliament further scope to deal with the whole question, except that the
proportion of two to one is to be maintained. And then if my right honorable friend will turn to clause
52 he will find that there is a provision, in the shape of new sub-section 34B, that the Parliament is to
have power to legislate with respect to all matters in regard to which provision is made by this
Constitution until the Parliament otherwise provides. So that we give power to make laws in respect
of all matters in regard to which provision is made by the Constitution, and accordingly the
Parliament is empowered to legislate whenever it is found necessary.

Mr. BARTON (New South Wales).-Surely that is determining the number of members?

Mr. ISAACS (Victoria).-I think it is so. You could introduce a Bill to increase the number of the Senate, and
then the law of the Constitution would operate upon that, and the number of the House of
Representatives would be consequentially increased. This only emphasizes the objection I formerly
had to the clause—but that matter is past and gone.

Mr. BARTON.-I do not think that is so.

Mr. ISAACS.-I think it is so. You could introduce a Bill to increase the number of the Senate, and
then the law of the Constitution would operate upon that, and the number of the House of
Representatives would be consequentially increased. This only emphasizes the objection I formerly
had to the clause—but that matter is past and gone.

Mr. BARTON.-It is quite true that a Bill would have to be introduced for increasing the number of
the one without the other.

Mr. ISAACS.-The way the matter presents itself to me is this: The only power by which the
Parliament could act would be by increasing the number of the Senate, and, according to the
Constitution, having done so, the House of Representatives would have to be as nearly as possible constituted in the proportion of two to one of the Senate.

Mr. BARTON (New South Wales).-Then if necessity arose for increasing the number of the Senate, the provision is quite simple, inasmuch as the number of the House of Representatives it is provided shall be increased proportionately. So that the purport would be to increase the number of the House of Representatives at the same time as the number of the Senate was increased. It is, however, probably just as well that the clause [start page 1840] should be left as it stands at the present stage.

The motion for striking out the clause was negatived, and the clause was agreed to.

Clause 29.-Until the Parliament otherwise provides, the electoral divisions of the several states for the purpose of returning members of the House of Representatives, and the number of members to be chosen for each electoral division, shall be determined from time to time by the Parliaments of the several states. Until division each state shall be one electorate.

Mr. BARTON (New South Wales).-I beg to move-

That the words "of the several states" be omitted, and the words "in each state" inserted in lieu thereof.

The amendment was agreed to.

Mr. BARTON (New South Wales).-I beg to move-

That the words "Parliaments of the several states. Until division each state shall be one electorate," be omitted, with a view to the insertion of the words "Parliament of the state. In the absence of other provision each state shall be one electorate. No electoral district shall be formed out of parts of different states."

Mr. HOWE (South Australia).-I should like the leader of the Convention to explain the meaning of the words "No electoral district shall be formed out of parts of different states." Has that ever been contemplated?

Mr. BARTON.-Whether it has or has not been contemplated, it might be done unless it were prohibited. I think that the provision is necessary.

The amendment was agreed to.

The clause, as amended, was agreed to.

Clause 42 (providing for the continuance of existing election laws until the Parliament of the Commonwealth otherwise provides) was omitted.

Clause 44A.-No elector who has at the establishment of the Commonwealth, or who afterwards acquires, a right to vote at elections for the more numerous House of the Parliament of a state, shall, whilst the qualification continues, be prevented by any law of the Commonwealth from exercising such right at elections for either House of the Parliament.

Mr. BARTON (New South Wales).-I beg to move-

That the words "has at the establishment of the Commonwealth, or who afterwards acquires" (lines 1-3), be omitted, with a view to the insertion of the words "at the establishment of the Commonwealth or afterwards has under the law in force in any state at the establishment of the Commonwealth."
Sir GEORGE TURNER (Victoria).—It appears to me that this proposal would make a very important alteration.

Mr. BARTON (New South Wales).—That is an alteration of substance which I will explain. I agree with the object of the clause as proposed to be limited by the amendment which I am now proposing. That is to say, I quite agree that any elector who, at the establishment of the Commonwealth or afterwards, has, under the law in force in any state at the establishment of the Commonwealth, the right to vote at elections should not be prevented by any law of the Commonwealth from exercising that right. But I wish to bring again under the notice of the Convention this point. The matter was discussed at Adelaide, and it did not receive as full discussion as it might have at the time. I wish to draw the attention of the Convention, lest honorable members should think that the matter had been in any way hastily done, to the effect of the provision inserted in Adelaide. I was induced to propose this as a matter of substitution, by the consideration that a great deal of harm might be done by the unlimited effect of the provision as in the Bill. Under the provision adopted in Adelaide, not only the elector who had at the establishment of the Commonwealth a right to vote for both Houses of Parliament of the Commonwealth, and could not have that right taken away whilst he remained qualified, even though the Commonwealth passed a law for a uniform suffrage. Not only could that be done-to which I did not object—but by the effect of the clause, as passed in [start page 1841] Adelaide, any state might alter from time to time its suffrage for its House of Assembly, and, having altered it, notwithstanding the existence of the Commonwealth, the person who acquired under that alteration a right to vote for the House of Assembly in that particular state might vote—although the extension of the suffrage gave it not only to women, but, perhaps, to such a class as the young persons of sixteen years of age who are now agitating in some places for a vote—notwithstanding the different suffrages of other states, at elections for either House of the Commonwealth. It all along struck me that in doing that we went too far; that we made a mistake in Adelaide. We did not make any mistake in Adelaide in allowing a person to retain, and preventing the Commonwealth from taking away from him, his qualification by any law in force at the establishment of the Commonwealth, but we made a mistake in leaving it open to every state to alter its own suffrage, which is right, but by altering its own suffrage to confer on persons not entitled to vote in other states the right to vote at elections for the Commonwealth, because, as they were given that right under the law of the state, they, by the operation of this clause, would be entitled to the benefit of every successive alteration of the law, no matter to what length or depth it went, and in such a way that they would be entitled to influence, and very strongly influence, the composition of both Houses of the Commonwealth. While we may legitimately say that until the Parliament makes a law for a uniform suffrage, the suffrage existing in the states at the time of the establishment of the Commonwealth shall prevail for the election of members of both Houses of Parliament it is not a rational provision to allow it to be in the hands of any state, not merely to alter its own suffrage for its own internal Legislature, but to alter it in such a way that it might affect the composition of the two Houses of the Commonwealth Parliament, and the character of its legislation.

Mr. PEACOCK.—Would not the effect of the proposal be that, if female suffrage were granted in Victoria after the establishment of the Commonwealth, it could not be exercised in elections for the Commonwealth?

Mr. KINGSTON.—Yes; we would have it, and you would not.

Mr. BARTON.—The right to vote which any person had at the time of the establishment of the Commonwealth would be continued. Alterations might afterwards be made in the suffrage of any state, which, if extended to Commonwealth elections, would, as I have said, affect the composition of both Houses of the Commonwealth Parliament and the character of its legislation. That is not a rational provision. It is a rational thing until the Commonwealth Parliament legislates to retain to every person the right which he possesses at the time of the establishment of the Commonwealth, but to do more than that would be to give the states power to legislate for the purposes of the Commonwealth. That is a power that the states ought not to have, and I do not think it is consistent
with the freedom of state rights which we wish to confer. Our purpose is to protect the states in the
management of their own internal affairs, in the election of legislators, and in the carrying out of state
legislation. To give a state the power, after the Federal Parliament is established, of altering the
composition and character of the Legislature and the legislation of the Commonwealth, would
certainly be unwise. The states might be satisfied with the rights that existed at the time of the
establishment of the Commonwealth, knowing that, by the influence they can exercise on the
Parliament of the Commonwealth, they can secure any legitimate reform. If a state passes a law
giving the suffrage to persons of sixteen years of age - and an agitation is already in force with that
object - that would certainly have a serious influence upon the character of the Commonwealth Parliament.

Mr. KINGSTON.- Where has that been seriously proposed?

Mr. BARTON.- I have seen it in the newspapers already. Let the honorable member not be under a
mistake about this matter. It is quite certain that movements for the extension of the suffrage will not
cease at any point at which he thinks they will cease. These movements go on, from time to time, and
those who have succumbed to them from the beginning have done so, in many cases, rightly. But
these movements will go on. When you have granted female suffrage, then you will have an agitation
for the extension of the suffrage to persons who are not of the ordinary age of discretion. It has begun
already, and will continue. There is no use blinding our eyes to that fact, because we all of us ought to
know it will come on. But, however that may be, the proposal is that the state should not be allowed
after the establishment of the Commonwealth so to alter its law as to the franchise that whenever the
Commonwealth comes to make a uniform suffrage it will be blocked because it cannot legislate
against rights thus created, if one state has altered its law so as to give an expansion of the franchise
with which other states do not agree. Still the suffrage of the Commonwealth cannot be made uniform
without conceding the Same form of Suffrage, not only to that state, but to all the states in which no
agitation for it exists. For instance, if in one state the suffrage were granted to persons of twenty or
nineteen years of age, males or females, or both, and the Commonwealth wanted to make a uniform
suffrage under this clause, it would be utterly impossible for the Commonwealth to do that without
making that concession in every state, whether the persons in that state wished to have the concession
mad to them or not. So that, by the action of one state, the Commonwealth would be left in this
position: That it must either make a suffrage repugnant to the public feeling of all the states except
one, or else not only leave the suffrage not uniform, but rugged and uneven; because it would be
deprived of making the suffrage uniform, unless it acted in a manner acceptable to that one state.
Now, I do not think it is right that by the action of one state the Commonwealth should be coerced in
that manner. This clause would, in my opinion, be a serious blot in the Bill. I am perfectly willing to
assent to it if it be amended as I propose, in which shape, I think, it would be entirely liberal to every
state in the Union.

Mr. HOLDER (South Australia).- I think this clause was put in because of a motion I moved in
the Adelaide Convention, and I regret exceedingly that, as the matter was fully discussed there, and
this very issue we are now debating was raised and deliberately provided for, the question should be
resuscitated now. Not at the instance of a private member, but at the instance of the leader of the
Convention, we have here an effort made to upset the decision which was come to in Adelaide. I
protest against this course of procedure, and I hope the Convention will stand by what it did in
Adelaide. I am supported by a reference to clause 30, which is entirely in harmony with this clause, as
it ought to be; but it is entirely out of harmony with this clause as the leader of the Convention seeks
to make it. In fact, if this clause is altered as the honorable member now proposes, clause 30 will
unquestionably have to be altered also. Clause 30 provides what we intended, namely, that until the
Federal Parliament adopts a uniform federal franchise, the qualification of electors and members of
the House of Representatives shall be in each state that which is prescribed from time to time (until
the Commonwealth Parliament moves in the matter), as the qualification of the electors of the more
numerous House of the Parliament of the state. The idea clearly was that until the Federal Parliament
moved [start page 1843] in the matter, the state Parliaments were free to make the franchise what they
pleased. I remember that, at Adelaide, Victoria was mentioned. It was said that it was possible that in
the near future Victoria might adopt the adult suffrage. The question was asked whether the franchise in Victoria would permit women to become electors, and it was distinctly stated that the clause, as then framed, would certainly permit them to exercise the franchise. Now, we are asked to go back and provide that only the franchise in force in the various states at the time of the establishment of the Commonwealth shall prevail. So that this extraordinary position would be the effect, that whilst in South Australia women had the franchise, in the other colonies they could not get the franchise until the Federal Parliament chose to give it to them. If the clause is altered as our leader wishes it to be altered, the right of the state Parliaments to expand the franchise would cease on the establishment of the Commonwealth, and the federal action in reference to the franchise might not be taken for some years.

Mr. MCMILLAN.-Wasn't it a concession to South Australia?

Mr. HOLDER.-I moved it as a special concession to South Australia; but when an honorable member-either Sir George Turner or Mr. Isaacs-pointed out that the concession ought not to be confined to one colony, but ought to be made large enough to take in any, colony which might desire to avail itself of it, I at once saw the force of that argument. The Convention saw the force of the argument, and it deliberately determined that, until the Federal Parliament acted, the rights of the state Parliaments should be protected. It is that for which I am striving now. I do not want there to be an interval, up to which the state Parliament may act, but during which the state Parliament may not act, although the Federal Parliament has not acted. I want the right of the state Parliament to be protected up to the moment when the Federal Parliament moves. We have done that with everything else. There is not another case where we have stayed the power of the State Parliaments in these optional matters except by the action of the Federal Parliament. Then, why make an exception in this case? I ask honorable members to accept this amendment only with the omission of the words "at the establishment of the Commonwealth." If those words are omitted we will give effect to what we desired in Adelaide, and in a somewhat more scientific way, I think, than we did then, but if we retain the words we will be reversing our decision in what seems to me to be a most mischievous way.

Mr. HIGGINS.-I find that it was carried by eighteen votes to fifteen votes.

Mr. HOLDER.-I beg to move-

That the proposed amendment be amended by the omission of the words "at the establishment of the Commonwealth."

Mr. BROWN.-Will the honorable member answer Mr. Barton's argument as to uniformity of suffrage?

Mr. HOLDER.-I did not think that that needed answering. If there was a uniform suffrage now, and it was desired not to depart from that uniformity, I think there might be great force in the argument that we should not depart from it. But there is no uniformity now. The only question is whether one out of five states shall have a special form of suffrage and the other four be the other way, or whether two shall have a special form of suffrage, and the other three be the other way.

Mr. MCMILLAN.-Did not we give up to the Federal Parliament the right of the states to determine the suffrage?

Mr. HOLDER.-As soon as the Federal Parliament moved, not before. If the honorable member will look up the debates he will see that the particular issue which is raised in this amendment was raised, debated, and decided then.

[start page 1844]

Mr. BARTON.-How many things have we undone which were raised, debated, and decided then? Dozens! For instance what has the Finance Committee done, and very properly done?
Mr. HOLDER.-We have, I am sorry to say, altered some things, but I have never heard any request made for this alteration. If the suggestion had come from any other member than the leader of the Convention I should have had no complaint to offer, although I should have given the same resistance to it.

Mr. BARTON.-Am I deprived of the power of suggestion then?

Mr. HOLDER.-If the honorable member (Mr. McMillan) will look at the debates, he will find that this particular issue was raised at Adelaide, and it was deliberately determined that the power of a state to extend its franchise should be protected till the Federal Parliament took action. We deliberately arrived at a conclusion then, and I do hope we will not upset it now. As to the leader of the Convention losing his personal rights, he has all these as an individual, and a weightier influence far beyond these. I do not like the idea of the special weight and influence which attaches to his position being cast, without the request of a single honorable member, so far as I know, against the decision so deliberately arrived at, and so consistently arrived at.

Mr. BARTON.-I can assure my honorable friend that many members have been discontented with that decision ever since.

Mr. HOLDER.-I do not know that any Parliament has raised its voice against it, or that the Sydney Convention raised its voice against it; and I hope the present Convention will adhere to its previous resolution.

Mr. MCMILLAN (New South Wales).-So far as I understand the history of the affair, it was understood in the Bill of 1891 that each state, according to the American system, should have the right to decide its own franchise, and then, by a certain amount of evolution in public opinion, the Federal Parliament would have the right to dictate its own franchise. That, I think, was admitted by almost the whole of the Convention. Then came the question of South Australia, which we admitted was a great difficulty. A certain state of affairs existed there, and out of deference to that state of affairs, it was decided that no interference should take place in existing conditions. Beyond that the whole matter was left absolutely in the hands of the Federal Parliament. It was looked upon as an infringement of the rights of the Federal Parliament to dictate the franchise in any other state outside South Australia. It was purely in deference to the condition prevailing in that colony that the clause was drafted. I recollect the debate very well, and I do not think the construction Mr. Holder puts upon it could very well be sustained. The point was brought up and it was settled that it should only apply to the people of South Australia.

Mr. HOLDER.-I assure you the reverse.

Sir GEORGE TURNER (Victoria).-My honorable friend the leader of the Convention appears to attach great force to something he has discovered something which none of us appear to have discovered--that an agitation has arisen to reduce the voting age from 21 years to sixteen years. I think we may dismiss that from our minds, because, if federation is to come about in a reasonable time, we need have very little, if any, fear that when the time arrives we will have reduced the age to sixteen. But this amendment certainly strikes a very serious blow at female franchise. When this matter was brought forward in Adelaide, if I recollect rightly, it was contended that the adult vote should be the basis on which the election should take place. As there was some objection to go the length of declaring that in the Federal Parliament the adult vote should exist when it did not exist in some of the states, it was thought we might protect those who had the vote. But when it was proposed, I pointed out [start page 1845] how unfair and unreasonable it would be to other colonies. South Australia had gone in the van and proposed the adult vote, but New South Wales and Victoria were discussing the matter, and probably would, before long, pass laws on the lines adopted in South Australia. I have no doubt in my mind as to what was the intention at the time. The intention was simply this: We said we were prepared to leave to the Federal Parliament the right to lay down a uniform franchise whenever
they chose, but when they did, that they must not take away from anybody who had the right to vote that right. I pointed out then, as I do now, that if the right were simply limited to those who had it at the establishment of the Commonwealth, and a day or two afterwards, or a month or two afterwards, before the Federal Parliament legislated, Victoria should grant this right to the women of that colony, those women would not have any right to vote in the election for the Federal Parliament. That was thought to be very unfair, and, therefore, if my recollection serves me right, it was determined that all who had the right to vote when a uniform franchise was brought into operation should retain that right. If that be not done, see what will happen under this proposal. We should have a uniform franchise with an exception, which is this: That those who at the inception of the Commonwealth have the right to vote, and are not included in that franchise, are to still continue to exercise that franchise; that is, that the women of South Australia having that power at the establishment of the Commonwealth will continue to have it even after the uniform franchise has been laid down by the Parliament. But, perhaps, a few days before the uniform franchise is established our friends in New South Wales will think proper to do justice to the women there, and give them a vote; and a little later, we in Victoria may follow the good example of New South Wales and give our women a right to vote. Then we shall have the anomaly that the women of South Australia will have this right, whilst the women of New South Wales and Victoria, because those colonies extended the franchise to women rather later, will be deprived of that right. Surely that is not what we intend. We give the Federal Parliament full power to establish a uniform franchise, and if at that time the states have not thought fit to give the right of voting to certain persons within their colonies those persons will have to suffer. But I do not think we could cut it down any lower than saying that all who have the right to vote at the time of the fixing of the uniform franchise should continue to have that right. We should not, of course, after the federal franchise has been fixed, allow the states to impose a law having the effect of compelling the Commonwealth Parliament to give votes to persons whom it does not think ought to be enfranchised; but it is going too far, and doing what was never intended at Adelaide, and what the leader of the Convention has shown no justification for, to agree to the amendment which has been proposed. I am prepared to agree, so far as I see at present, that, when the Federal Parliament chooses to legislate early or late, as the time may be-after they have laid down such a uniform franchise as they think fit, all persons who up to that time have obtained the right of voting should have that right granted to them.

Mr. HIGGINS (Victoria).-I should like to remind my honorable friend (Mr. McMillan) of what took place at Adelaide. If he looks at the report of the proceedings of the Convention there, page 732, he will see that Mr. Holder clearly expressed his views in the following words:-

What I wish is that these rights should be preserved which have been acquired up to the time that the Commonwealth makes its franchise.

Mr. MCMILLAN.-I do not doubt the debate, but I doubt what the effect of the division was.

[start page 1846]
Mr. HIGGINS.-This statement was made just before the division.

Mr. MCMILLAN.-I am speaking of the effect of the vote that was given.

Mr. HIGGINS.-I think that if my honorable friend looks at page 732 of the Adelaide debates he will alter his view. I may also say that some misapprehension has arisen as to the necessity for a uniform franchise being prescribed by the Federal Parliament. That is a mistake. The Premier of Victoria has just spoken as if the franchise must be a uniform franchise all over the states. But if honorable members will look at clause 30, they will see that it simply says that "Until the Parliament otherwise provides the qualification of electors of members of the House of Representatives shall be that which is prescribed in each state by the law of the state. So that the Federal Parliament can prescribe, if it thinks fit, that in Victoria males and females may vote, and that in South Australia males and females may vote, but that in Western Australia only males may vote. It is possible, and, inasmuch as the number of electors does not in any way act as the test of the number of the members
of the House, it is not at all beyond the bounds of probability, that matters may be so arranged. Therefore I think the criticism of the leader of the Convention upon this provision must fall to the ground.

Mr. HOLDER (South Australia).-I only desire to support what I said on this particular issue when it was raised in Adelaide. I would ask the attention of honorable members to page 1196 of the proceedings of the Convention in Adelaide, on 22nd April, 1897. I find it recorded there that Sir George Turner moved precisely the same amendment which I have moved, and used in support of it almost the same arguments. The amendment was to strike out the words "At the establishment of the Commonwealth," and a little later on the words were struck out. So that we voted there upon the same issue.

Mr. O'CONNOR (New South Wales).-My honorable friend is quite right as to what took place at Adelaide, but if he looks at the clause which was carried there, even after being amended by the Drafting Committee's amendments, he will find-as we thought-that the clause as it stands goes far beyond anything that he asked for, even in the course of the debate. I will point out why I say that. If the honorable member looks at clause 44A as it stands, he will find that it is provided there that if a right to vote has been granted by a state the Commonwealth cannot take away that right to vote, even though subsequently the state itself may have taken away the right to vote. That is the clause as it stands now. That is to say, so long as the qualification which gave the vote continues, although the qualification in the state may have ceased, the right to vote must be still continued, and cannot be altered for all time. That is to say, for instance, supposing it should be thought fit at any time to impose certain disqualifications upon persons who have a right to vote at the present time-

Mr. HOLDER.-Are you going back to alter clause 30?

Mr. O'CONNOR.-Supposing it was seen fit to impose disqualifications on persons voting now, notwithstanding that the persons would thereby be prevented from voting in the state, they would be still entitled to vote for elections in the Commonwealth.

Mr. ISAACS.-What effect do you at-tribute to the words "whilst the qualification continues"?

Mr. O'CONNOR.-They are the words upon which I rely for the statement which I made just now. There is a difference made between that qualification and the right to vote. No person who has acquired the right to vote shall, says the provision, whilst the qualification continues, be prevented by any law of the Commonwealth from exercising such right at elections for either House of the Parliament of the Commonwealth. Honorable members will observe that it is not while the right to vote in the state continues, but while the qualification continues, and it is clear that a blot would be placed against the establishment of the Commonwealth law, which I am certain was never contemplated. It seems to me that although Mr. Holder's opinion and view with regard to the matter were clearly expressed, yet this clause goes beyond his view, and, in addition to that, the views he expressed were so directly contradictory to the right to impose uniform legislation on this question that the Drafting Committee thought it fairly a matter for reconsideration. What is the position with regard to the preservation of these rights?

Mr. DEAKIN.-If you substitute "the right to vote" for "qualification," it would get rid of the difficulty.

Mr. O'CONNOR.-It would; but I am only pointing out the condition in which the clause was left to show that there was a clear apprehension of what the honorable member intended. After all, what is the position in which the Commonwealth stands in this matter? Surely the intention is that this House, which is to represent the whole Commonwealth, shall have its franchise settled by the Parliament of the Commonwealth as early as possible, and that what we are speaking of as a uniform franchise shall be imposed. I agree with the honorable member (Mr. Higgins) that, as a matter of law, it would not be necessary to have this franchise absolutely uniform throughout the Commonwealth. But the difficulty
is this: The more differences you create in the franchises of the various states, the more difficulty there will be in arranging for anything like a uniform franchise. I hardly see the use or the necessity for legislation by the Parliament of the Commonwealth upon the subject, if it is met in every state by conflicting systems of franchise, of which any reconcilement is impossible. Therefore, it appears to me just that we should preserve the rights we know of, that is to say, all rights existing under laws in force at the establishment of the Commonwealth; but that in the interval no state should have the right to pass, perhaps, fantastic legislation to satisfy public opinion at a particular time, and to imprint that legislation upon the Constitution for all time.

Sir JOHN FORREST.-A state might increase its representation.

Mr. O’CONNOR.-In this way a state might increase its representation. Whatever franchise may exist in any state, if this clause is to stand as the honorable member (Mr. Holder) wants it to stand, is for ever afterwards to be embodied in the political system of the Commonwealth, and cannot be altered. I say, let up preserve what there is, and what we know of; but do not let us give power to the states to increase the difficulties to uniformity, and to throw further obstacles in the way of anything like a universal franchise.

Mr. HOLDER.-The difficulty can be got over by the Federal Parliament passing a franchise law.

Mr. BROWN (Tasmania).-I should like to say a word in regard to the remarks of the honorable member (Mr. Holder), as to the action of the leader of the Convention in bringing before us the amendment which has been proposed. I think that, so far from the honorable and learned member being condemned or criticised in a hostile spirit for introducing an amendment which the close study that he has made of this subject has recommended to him, he should be thanked for what he has done.

Mr. HOLDER.-I did not intend to make any hostile reference to the honorable and learned member’s action; but the amendment nearly slipped through as a draftsman’s amendment.

Mr. BARTON.-Nothing of the kind. How can you say that, when I was ready to explain the amendment? If the right honorable member (Sir George Turner) [start page 1848] had not said a word, I should have explained the amendment.

Mr. HOLDER.-I accept the honorable and learned member’s assurance.

Mr. BROWN.-Passing away from this subject, I wish to point out to honorable members that if the clause which we are now considering is to remain as it stands, it will simply mean that, although we ostensibly give to the Federal Parliament the power to provide for a uniform franchise, that power can be only exercised in the direction of framing the franchise upon the broadest suffrage existing in any colony. I can understand that our friends from South Australia, with their ardent desire to maintain female suffrage-

Mr. MCMILLAN.-Their chivalrous desire.

Mr. BROWN.-I can understand that, with their chivalrous and ardent desire to retain female suffrage for themselves, and to impose it upon the electors of all the states, they must be very much opposed to the amendment of the leader of the Convention. But I should like to point out that, in regard to this matter, as in regard to others, honorable members appear to be too much inclined to regard the Federal Parliament which we are about to create as a foreign body—as though it were a body which would be disposed to act in a hostile manner, and to tyrannize over the states, instead of as a body composed of those who will have a direct interest in doing the best they can to arrange the suffrage upon the best basis for all the states. If public opinion takes the turn which I have no doubt the honorable member (Mr. Holder) and others hope that it will take, and there is a general desire to include in future arrangements for elections the voting of women, the Federal Parliament can, of course, make provision for that.
Mr. HOLDER.-I am content to leave the matter to the Federal Parliament.

Mr. BROWN.-It appears to me that, in his opposition to the amendment, the honorable member is not content to leave the matter to the Federal Parliament. If we do not adopt the amendment proposed by the leader of Convention the practical result will be that the uniform franchise must be based upon the broadest possible suffrage now existing in any state.

Mr. HOLDER.-That will be so even if the amendment is agreed to.

Dr. COCKBURN.-The honorable member would not like to see the franchise based upon the Tasmanian suffrage.

Mr. BROWN.-I do not think that that would be a bad basis for it. I am not at all sure that the honorable member (Dr. Cockburn) will not, before he is very many years older, see a revulsion of feeling in regard to the franchise of South Australia which will astonish him.

Mr. MCMILLAN.-Tasmania is decently conservative.

Mr. BROWN.-We all know that communities go a little astray occasionally; but they correct their mistakes again, and I think it is quite possible that those who are now such ardent advocates of the reform which is so dear to the heart of the honorable member (Dr. Cockburn) may perhaps see that they have gone a little too far, and they or their successors will perhaps desire to retrace their steps. The practical question which I wish to put before the Convention is this: That, as I understand matters, unless the amendment proposed by the leader of the Convention is carried, there can be no uniformity of suffrage except upon the broadest basis adopted in the most radical—perhaps progressive would be a less offensive word—colony of the group. I think that that is a provision which we should not place in the Constitution.

Mr. GLYNN (South Australia).-There are two difficulties in connexion with this matter which we must recognise. There is the difficulty suggested by the leader of the Convention, that you ought not to place it in the power of a state to fix a maximum of uniformity, and the difficulty suggested by a representative of Victoria, [start page 1849] that the women of Victoria, so far as the federal suffrage is concerned, should not be placed in a worse position than the women of South Australia. We are not going to argue the policy of this clause again, because it was settled in Adelaide, but I should like to suggest a way out of both these difficulties. It would lie this way, to provide for the insertion of words after "right" in the second line of clause 44A, to this effect, "similar to that enjoyed by the electors of any other state at the time of the establishment of the Commonwealth." The clause would then read:-

Any elector who has at the time of the establishment of the Commonwealth, or who afterwards acquires, a right similar to that enjoyed by the electors of any other state at the time of the establishment of the Commonwealth to vote at elections for the more numerous House of Parliament of the state, &c.

The position would then be this: If Victoria adopted adult suffrage, that is, the South Australian suffrage, which is the maximum suffrage at present as to the right to vote, the women of Victoria would have the right to vote not only in the state elections, but also for representatives in the Federal Parliament because the right would be fixed by the similar or adult suffrage which obtains in South Australia. I think honorable members will recognise the expediency of adopting that course. As long as the change is made, subsequent to the establishment of the Commonwealth, to a suffrage in existence in any other state at the time of the establishment of the Commonwealth, then that extension of suffrage should apply to the federal as well as to the state Parliaments. That would conserve every right that Victoria asks for, and at the same time it would recognise the difficulty pointed out by Mr. Barton, that if you make a still further state change, for instance, by fixing sixteen years as the limit, that must not be the test of uniformity with regard to the Federal Parliament. It may be made by the
Federal Parliament the universal suffrage, but it is not to be made the test of uniformity by the
Constitution. Unless you make an amendment from the point of view of Mr. Barton, you will certainly
put it in the power of the states to interfere with the breadth of uniformity of the suffrage. Then you
will bring about this result: That any state may, after the establishment of the Commonwealth, bring
about the change of suffrage to the extent enjoyed by any other state. If the committee wishes it,
perhaps I had better propose that addition. Any state can establish the South Australian suffrage, and
why should it not do so? There will be no diminution of the powers of the Federal Parliament, and, if
Victoria wishes to extend its suffrage to the same extent as South Australia has done, why should it
not be able to do so?

Mr. HIGGINS.-It would exclude baby suffrage.

Mr. GLYNN.-Undoubtedly it would. Mr. Kingston has pointed out that my amendment would
make it apply to the same rights as are in existence at the time of the Commonwealth. That is quite
fair. After the establishment of the Commonwealth, if there is to be uniformity on a broader basis, it
must be the federal policy, because it is the Federal Parliament that would be affected by the change. I
recommend the insertion of the words I propose in the old clause, instead of putting in Mr. Barton's
amendment. If Mr. Barton's amendment is put in, I would ask for a change in the grammar, because at
the present it is not correct. The word "has" only governs the last part of the disjunctive proposition,
whereas it ought to govern both parts, and it should be put after the word "Commonwealth."

Mr. O'CONNOR.-Would there be any difference in the meaning?

Mr. GLYNN.-There would be a difference in the grammar. My proposal may now be rejected and
afterwards be carried out, because I notice to-day that what I proposed three days ago, and which was
rejected, was adopted by the Convention. [start page 1850] I do not insist on the particular words I
have suggested, but I think they would provide a way out of the difficulty.

Mr. HOWE (South Australia).-I am sure the Convention owes a deep debt of gratitude to Mr.
Glynn, because during the debates he has always been forward in offering a solution of many difficult
questions. But in this particular instance I do not go with him, because he aims at uniformity. I
believe, in electoral matters and as far as the franchise goes, that in the vigorous life of a free people
each individual state should he allowed to work out its own destiny. What does it matter to the
Commonwealth whether South Australia has female suffrage, or even if they go further, and say that
every one who has attained the age of eighteen years shall have a vote? They can only send a certain
number of representatives to the Federal Parliament according to the population of the state. It is not
because we have two or three times the number of electors within our own boundaries that the other
states have got that we should try to dominate any other state. Under this Constitution South Australia
can only send seven members to the Federal Parliament, it matters not whether you give a vote to
women or to people of eighteen years of age. Why should not each individual state be permitted to
work out its political destiny in its own way? I do not believe in uniformity, even in families. So long
as people are created as they are now, they should be allowed to do the best they can for themselves.
If that applies to the individual, why should it not apply to the state? I cannot understand honorable
members objecting to the state enfranchising its own people when they are limited by their population
as to the number of members they can send to the Federal Parliament. So far as women's suffrage is
concerned, if we pass the clause in the form in which it is proposed by the leader of the Convention,
we shall undoubtedly say to the states that they are not to adopt women's suffrage.

Mr. DOUGLAS.-It does not say anything of the sort.

Mr. HOWE.-If they adopt women's suffrage it is not to apply to the Federal Parliament. That is
the meaning of it. It is to insert the thin end of the wedge to say that the states shall not work out their
own destiny so far as the franchise is concerned. The only fear I have in regard to women's suffrage is
that there may be an alteration in the franchise of the states that have it, and if so it kill be owing to
conservative influence. The vigorous life of the Commonwealth depends on the vigorous life of the
several states that compose the Commonwealth, and I should be sorry to see any proposal carried that
would interfere with the right of the people to adopt any franchise. I should object to a franchise being
adopted by a state that would double the number of members it returned to the Federal Parliament.
But so long as the representation is on the basis of population, I see no reason why the more populous
states or the Federal Parliament should interfere with the state franchise.

Mr. GLYNN (South Australia). I beg to move my amendment in this form—

That the following be added to the clause:—“Provided any such right acquired in any state after the
establishment of the Commonwealth shall not be more extensive than the same right enjoyed in some
other state at the time of the establishment of the Commonwealth.”

An HONORABLE MEMBER. What will be the good of that?

Mr. GLYNN. It will enable any state to adopt a suffrage as extensive as that of South Australia.
The complaint is that you tie us down to the narrow suffrage we have at present, and that if we do
extend the suffrage the extension will not apply to elections for the Federal Parliament.

Mr. GORDON. Supposing that women's suffrage is adopted in Victoria to apply only to women
having property.

Mr. GLYNN. It would not be so extensive as the suffrage we have in South Australia, and my
proviso would meet such a case.

The CHAIRMAN. I would ask the Hon. Mr. Holder if he desires to submit his amendment?

Mr. HOLDER. Yes, I beg to move—

That all the words after "state" be struck out.

Mr. ISAACS (Victoria). We should be willing to consent to some such modification of the clause
as this: To insert, after the word "afterwards," the words "and before the Parliament prescribes the
qualification of electors for the Houses of Parliament." It would then read—"Any elector who has, at
the establishment of the Commonwealth, or who afterwards, and before the Parliament prescribes the
qualification of electors for the Houses of Parliament, acquired a right to vote," and so on.

Mr. MCMILLAN. Is not that the same?

Mr. ISAACS. No; it takes away one objection. The state will have full power to prescribe the
qualification until the Parliament of the Commonwealth does that for itself. If the Parliament of the
Commonwealth chooses to prescribe the qualification and prevent any state from enla
franchise, it may do so. If it remains inactive, it seems to me that there is no reason why the state
should not prescrib
franchise, I say, therefore, that the objection raised that there will be an
indefinite power in the hands of the states to constantly enlarge the franchise will not exist any longer.
If you cut down the clause any further than we suggest, a large amount of opposition will be created
to the Bill. The Right Hon. Sir George Turner has pointed out how it would work injuriously. I would
support the clause as it stands rather than have it cut down as proposed, but I would ask the members
of the Drafting Committee to consider the suggestion I have made.

Mr. DOBSON (Tasmania). If the Convention desires some compromise as between the clause as
it stands and the amendment proposed by our leader, I think that Mr. Glynn's suggestion is an
admirable one. There is an objection to the clause which makes me rather incline to the amendment of
Mr. Barton. We ought not in this Constitution to interfere more than is absolutely necessary with state
rights and state affairs. The clause as it stands will have the effect of exerting an influence in state
politics. The representatives of South Australia—and I admire their earnestness and loyalty—have obtained women's suffrage, and are so much in favour of it that they are not content with having it themselves, but they desire to drag other states along with them. I hardly think that is quite fair. If you lay it down in the Constitution that if, after the establishment of the Constitution, any state enlarges or liberalizes its franchise, that enlarged or liberalized franchise may be exercised in Commonwealth elections, you deliberately affect state politics, and in this way: If the Government in Tasmania, say, were advocating women's suffrage, and if the Opposition were against it, you would put a weapon into the hands of the woman suffrage party by enabling them to say: "The ladies of South Australia have votes, and if you pass this Bill the ladies of this colony also will have votes for both Houses of the Federal Parliament." Now, there may not be very much in the argument, because I look forward to the time when the women of South Australia having votes will compel the Federal Parliament, in the interests of justice, to make the franchise uniform. I can well understand energetic politicians in opposition, who want to play a good card against the Government, running this proposal for what it is worth; but how absolutely unfair it would be to interfere with our state franchises. I do not think the honorable members for South Australia need to be so earnest in this matter outside their own state, and insist on grafting women's suffrage on the franchise of other states.

Mr. HOLDER. - We do not ask the other states to do that.

Mr. DOBSON. - The South Australian representatives evidently want the other states to take a step forward faster than they are inclined to do. Whenever this matter comes forward, they try to engraft women's suffrage on to the franchise of every other state. Now, I ask them to leave us alone. As a representative of Tasmania, I ask them to leave the women of Tasmania to do as they like in the matter. May I point out to them that in the United States the movement in favour of the extension of the franchise to women is dying out? There are two or three little states in the backwoods where they are agitating for women's suffrage, but the movement, generally speaking, is not within the range of practical politics. The South Australian representatives are the champions of women's suffrage in their own colony. Well, they have women's suffrage there, and why should they not leave our women and the men in our Parliament to do as they think fit in regard to this matter? I say to them—"Do not hold out to the women of Tasmania a kind of bait to get them to go faster than they otherwise would go."

Mr. ISAACS. - Then you admit it is a bait to the women of Tasmania?

Mr. DOBSON. - I admit that in many things we are going far too fast already, and I do not wish the representatives of these colonies to attempt to influence the women of our colony in regard to the franchise.

Sir JOHN DOWNER (South Australia). - I do not know that there is anybody here who wishes that persons under 21 should have the vote. If there is, I should like him to say so.

Mr. HOWE. - Your leader said so.

Mr. KINGSTON. - The leader of the Convention did not say that he wishes it.

Sir JOHN DOWNER. - What I said was that I do not believe anybody here wants the franchise to be given to persons under 21 years of age. I was not referring to anybody outside. Now, what are we discussing? You certainly have provided in the clause with regard to the amendment of the Constitution to the effect that the South Australian vote, being an adult vote, shall be allowed to continue. You want to carry that out logically, and therefore you provide that any other colony shall be allowed to adopt franchise laws similar to the franchise law of South Australia. I do not suppose that anybody wants to provide more than that; but you want to make the provision of this particular clause broad enough to allow any other colony to extend its franchise to the same extent as the franchise has been enlarged in South Australia. The amendment of Mr. Glynn would certainly allow the colonies to make any laws they like—baby suffrage, I think, was one of the interjections I heard.
Mr. GLYNN.-None of the states could do that. They could not go beyond the South Australian suffrage, and have baby voters.

Sir JOHN DOWNER.-But I think the honorable member will admit that this does not relate to the present time, but to the time when this Bill is passed by the Imperial Parliament.

Mr. MCMILLAN.-We are on very dangerous ground.

Sir JOHN DOWNER.-I think so too, and if we are going to alter the clause at all we had better have a very precise limitation as to what we mean. Many of the colonies consider that, the South Australian law is an innovation on the laws that they are accustomed to, and I do not think that anybody in Australasia wants to go one bit further than South Australia has gone in the direction of extending the franchise.

[start page 1853]

Mr. DOUGLAS.-Oh, yes; there are such people.

Sir JOHN DOWNER.-Are there? I did not know there were. I do not think any responsible person in Australasia would contend for more than adult suffrage. That being so, may I suggest that we make the clause commence:

No elector who at the establishment of the Commonwealth, or who, being an adult, has the right to vote at elections,

and so on. That is the wording we have used in clause 121, where we have provided that-

Until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the votes for and against the proposed law shall be counted in any state in which adult suffrage prevails.

Mr. HOWE.-That is the clause for amending the Constitution.

Sir JOHN DOWNER.-Exactly. I must say, speaking for myself and not for anybody else, that it appears to me that it would be an exceedingly unreasonable thing if South Australia was placed in a different position from the other colonies. I think it is highly reasonable, seeing that we have recognised the position of South Australia, that the other colonies should have the same right. It might prevent much discontent, and it is only fair and just. I would ask the committee to consider whether, if we use the words I have already suggested, we shall not do all that is needed. I think that the amendment I have recommended would express all that is required. However, I only put it as representing my view of a proper policy to be adopted in this case. I do not suggest it on behalf of the Drafting Committee. I speak for myself only. In fact, the Drafting Committee has no politics. Their business is to draft. I think these words would do all that is wanted, and prevent much that is dangerous in the amendment proposed.

Mr. HOLDER.-After the suggestion that has been made by Sir John Downer, I think the best direct way of taking a vote would be to accept his advice, and insert the words "being an adult" after the word "who" in the second line of clause 44A as it appears in the Bill, and then keep the clause as it stands. I have no doubt that Mr. Isaacs would accept that, but the amendment cannot be submitted until Mr. Barton's proposal is withdrawn.

Mr. BARTON (New South Wales).-The suggested amendment would simply go to this extent: That if the Parliament of the Commonwealth wish to make a uniform suffrage, it would be of necessity that that suffrage should be an adult suffrage—that is to say, that it should include womanhood suffrage—and that, until the Parliament of the Commonwealth so legislated, the existing
legislation of any colony would be preserved, together with such extension, but not beyond adult suffrage, as might be established. I think, on the whole, that I might consent to that amendment. I therefore withdraw my own amendment and accept this.

The amendments were, by leave, withdrawn.

Mr. ISAACS. - Insert the amendment after the word "afterwards." "Who, being an adult," would mean at the time of the passing of the Bill.

Mr. BARTON. - Yes. I beg to move -

That after the word "afterwards" the words "being an adult" be inserted.

The amendment was agreed to.

Mr. BARTON (New South Wales). - I do not know whether there will be any objection to a further verbal amendment; at any rate, it seems to me to be almost a verbal amendment. There was some question raised, I do not remember what it was, but perhaps Mr. Holder can help me, in regard to it, as to the word "qualification" in this clause.

Mr. KINGSTON. - An elector would be liable to be disqualified for crime.

Mr. HOLDER. - If the elector's name was struck off the roll he would lose his right to vote.

[<start page> 1854]

Mr. BARTON. - Is not the right process to alter the word "qualification" to "right"?

Mr. KINGSTON. - Qualification means registration.

Mr. BARTON. - If the person has a legal right, he has to retain that legal right. Supposing he lost the legal right, but in some mysterious way retained the qualification, it is not intended that the law should help him? It is only intended that the law should help him if he has a legal right. I should say that, unless there is some reason given for what we did in Adelaide, which I do not recollect at this moment, the word "right" would be the proper word to use.

Mr. ISAACS (Victoria). - In our Electoral Act a difference exists between the right to vote and the qualification. A man is qualified to become an elector.

Mr. KINGSTON. - This is a limitation on the right to vote.

Mr. O'CONNOR. - Suppose a man has a right to vote in some colony by virtue of property. While the qualification continues to exist you cannot take away that right.

Mr. ISAACS. - Suppose he has the right to vote by virtue of an elector's right, and that by some accident he does not renew his elector's right for a day. Is he to be deprived of his vote because he takes out an elector's right the day afterwards? The qualification exists, but the right to vote does not.

Mr. BARTON. - Would you mind putting that again?

Mr. ISAACS. - A man is qualified to become an elector. He has not the right to vote until certain conditions are fulfilled; he may have to register, or be may be struck off the roll through some accident. His right to vote is gone through some accident, but his qualification continues. He is a person whose right would not be preserved under this clause, because it applies to the individual-the elector.
Mr. BARTON.-If he loses the right in his own state by his own negligence, is it not right that he should lose the right also in the Commonwealth?

Mr. ISAACS.-He may lose it without negligence; he may lose it without any fault of his own. That has been the case with tens of thousands in Victoria.

Mr. DOBSON (Tasmania).-I was going to put the converse case. In Tasmania, and I suppose in every colony at every election, there are a number of persons whose names are on the roll, but who have lost their qualification. As our Electoral Act makes the roll the evidence of the qualification, you find a number of men who have sold their property to somebody else whose names remain on the roll, but who have lost their qualification, while the name of a man who has bought a property just after the roll has been made up, although he has the qualification, is not on the roll. I think we ought to consider whether the word "qualification" is to remain in the clause, because you may have a number of persons on the state rolls who have lost their qualifications, and who therefore, under this clause as it stands, would not be able to vote in the Commonwealth, but they would have a vote in the state. You will have a roll which governs all state elections, but which does not apply to Commonwealth elections, and you will have to direct an officer to go through the different state rolls, and see whether a man is entitled to vote for the Commonwealth, if you keep in the word "qualification."

Mr. DOUGLAS (Tasmania).-The honorable member (Mr. Dobson) is perfectly correct in what he says. The rolls are made up from time to time. A man sells a property, and his name remains on the roll for years and years, because no notice is taken of the change of property. The man is not qualified to vote in strict law, but, as his name is on the roll, he is entitled to vote. Therefore the word "right" should be inserted in place of the word "qualification." He has not the qualification, but he has the right to vote, because his name is on the roll, and no objection can be taken at the time of an election to any person whose name is on the roll. Under the old system of voting a man, when he came up to vote, had to show his qualification, and, therefore, the roll should settle all questions of dispute. The only question which can be put to him is: Is this your name on the roll? He signs his name, and he is not asked his qualification at all. The word qualification is entirely misleading. It does not carry out the meaning of the clause. Apparently it was put in because the draftsman could not consider it proper to use the word "right." I move-

That the word "right" be substituted for the word "qualification."

Mr. GLYNN (South Australia).-I would suggest to my honorable friend (Mr. O'Connor) whether it would not be better to chance "elector" into "person," and make the clause begin: "Any person who at the time of the establishment of the Commonwealth is or afterwards becomes entitled to." As it stands, the word "elector" excludes persons who are not registered, and there is a very great body of people who are not registered. For instance, in South Australia there are a good many Germans who are not naturalized, but who, under a change in our laws, are becoming naturalized. They are entitled to become electors, but they are not electors, and they would be excluded under the clause as it stands. We do not want that to be brought about. It would apply to other colonies. The first part of the clause deals with persons entitled to vote under laws existing prior to the passing of the Bill. I hope the honorable member will consider the advisability of substituting "person" for "elector" in the beginning of the clause at a subsequent stage.

Mr. O'CONNOR.-It seems to me that the suggestion is well worth considering. The amendment was agreed to.

The clause, as amended, was agreed to.

Mr. BARTON (New South Wales).-I move-

That the following new clause follow clause 44A:-
Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each state for the time being relating to elections for the more numerous House of the Parliament of the state shall, as nearly as practicable, apply to elections in the state of senators and of members of the House of Representatives.

This proposed new clause is to be substituted for the last portion of clause 10, and for the corresponding clause dealing with the House of Representatives. These are clauses which prescribe that until the Parliament makes laws on the subject the laws in force in each state relating to certain electoral matters shall as nearly as practicable apply to elections in that state of senators and of members of the House of Representatives. This is a substituted provision which deals with both the elections to the Senate and the elections to the House of Representatives, and practically puts into one clause the work of two. It shortens up the provisions by speaking of the laws relating to elections instead of enumerating certain laws which are parts of the electoral law, and it guards the change by inserting the words "subject to the Constitution," and saying the application shall be as nearly as practicable. It seems to me to be a beneficial shortening of the matter, and I propose that it should take the place of the two clauses which have been struck out.

The new clause was agreed to.

Clause 52.- (12) Fisheries in Australian waters beyond territorial limits.

Mr. BARTON (New South Wales).-I beg to move-

That the sub-section be amended by the insertion, before "fisheries," of the word "Sea"; and the omission of "beyond territorial limits."

Mr. ISAACS (Victoria).-What I am going to say may be a little out of order, but I would like to draw the Drafting Committee's attention to the fact that in clause 52, sub-section (2), there has been a considerable change. Two matters in that sub-section seem to me to deserve attention. First, it is provided that all taxation shall be uniform throughout the Commonwealth. That means direct as well as indirect taxation, and the object I apprehend is that there shall be no discrimination between the states; that an income tax or land tax shall not be made higher in one state than in another. I should like the Drafting Committee to consider whether saying the tax shall be uniform would not prevent a graduated tax of any kind? A tax is said to be uniform that falls with the same weight on the same class of property, wherever it is found. It affects all kinds of direct taxation. I am extremely afraid, that if we are not very careful, we shall get into a difficulty. It might not touch the question of exemption; but any direct tax sought to be imposed might be held to be unconstitutional, or, in other words, illegal, if it were not absolutely uniform.

Mr. BARTON. We were inclined to the opinion that "uniform" would not apply so as to prevent the graduating of a tax. I am glad to have the suggestion from the honorable member, because the committee will be going into the matter again.

Mr. ISAACS.-I will point out to the leader of the Convention the last words of the sub-section, and ask whether they are necessary in view of clause 89? The words are-"No tax or duty shall be imposed on any goods exported from one state to another." I want to point out that, though it might be thought necessary no duty should be imposed on goods, it might be held possible to put a tax on persons passing from one state to another. I should also like to know whether this provision as to navigation and shipping is necessary in view of subsection (1)?

Mr. BARTON (New South Wales).-I am very much myself, although I cannot say I represent my colleagues, inclined to the opinion that the trade and commerce sub-section is sufficient without the insertion of the words about navigation and shipping. The committee have not come to any conclusion about it, and I would prefer to leave the matter open until we arrive at what is called the drafting
stage. As to whether the words in new sub-section (2) are necessary in the light of clause 89, a great deal might be said, and I will pay the matter the best attention.

Mr. DEAKIN (Victoria).-As to the emission of "Navigation and shipping," I hope the honorable member is not overlooking the fact that there are many enactments requisite on the part of the colonies, in order to take advantage of the provisions of the Merchant Shipping Act, which are very indirectly, if at all, connected with trade and commerce, but affect in the the most important way the well being of seamen, the safety of passengers, and a variety of other matters of the same nature.

Mr. BARTON.-In the United States they have been enabled to legislate on the subject under the trade and commerce clause.

Mr. DEAKIN.-But there the interpretation of the trade and commerce clause, and in fact of the whole Constitution, from the days of Marshall downward, has been quite as liberal as any one could expect, and possibly more liberal than anything we can calculate on.

Mr. BARTON.-I might mention that this is another of those matters still under the consideration of the Drafting Committee.

Mr. DEAKIN.-If there be any effect of sub-section (8) as a limitation on sub-section (1), words might be added to make it clear that it was not a limitation. The sub-section in regard to navigation and shipping would then continue to have effect as regards matters not connected with trade and commerce.

Mr. BARTON.-So as not to limit the construction of sub-section (1).

Mr. DEAKIN.-So as not to limit the construction of sub-section (1), and give both powers.

Sir JOHN FORREST (Western Australia).-I would like to ask Mr. Barton whether it is intended to take away the state control of fisheries on the coast by this clause?

Mr. DEAKIN.-It says "Sea fisheries."

Sir JOHN FORREST.-But sea fisheries means fishing close to the port. It would not be desirable to take away any power from the state of legislating in regard to these kinds of fisheries. The words "beyond territorial limits," which it is proposed to omit, are very good words. The Federal Council, under the Imperial Act, has exercised the power of legislating for waters beyond territorial limits with great advantage to some colonies. Western Australia and Queensland have both Acts of the Federal Council which have been very useful in controlling fisheries, such as pearl fisheries, far beyond the 3-mile limit. It may probably be said that without those words the power would be there, but I see no reason why we should not take the power.

Mr. KINGSTON.-You have no power unless it is given.

Sir JOHN FORREST.-We have the power-we have an Act.

Mr. KINGSTON.-Because the power is expressly given.

Sir JOHN FORREST.-The power is expressly given by the Imperial Act, and I think we ought to take power for the Federal Parliament to legislate on matters beyond the territorial limits. I would like to ask what object Mr. Barton has in desiring to strike out "beyond territorial limits"?
Mr. BARTON (New South Wales).-I have had considerable doubts about the sub-section all the time. If I remember rightly, it is taken from the Federal Council Act. I do not think any law has been passed by that body in connexion with the matter.

Mr. KINGSTON.-Yes, in relation to both Queensland and Western Australia.

Sir JOHN FORREST.-Yes, in regard to Queensland and Western Australia.

Mr. BARTON.-The doubt I feel about the whole matter is this: What effective legislation can be passed in regard to fisheries beyond territorial limits, except so far as that legislation relates to a commercial operation in connexion with the catching and selling of fish? That might possibly be dealt with under the navigation clause, or more presumably, under the commerce clause. I have a doubt as to the efficacy of this sub-section, and whether it is absolutely necessary to give the Commonwealth any rights in this respect.

Mr. DEAKIN.-It is another of the powers derived from the Federal Council.

Mr. BARTON.-A law giving such a right had better not be subject to conflict. If you have a state law for fisheries within the 3-mile limits under the state, and a Commonwealth law beyond the 3-mile limit, the unlucky fisherman who does not always know whether he is 2 1/2 or 3 miles away will get into the pickle instead of his fish.

Sir JOHN FORREST.-The state now has no power to legislate.

Mr. BARTON.-Within its territorial limits?

Sir JOHN FORREST.-No, beyond.

Mr. BARTON.-The state cannot legislate beyond territorial limits.

Sir JOHN FORREST.-Yes, it can, in regard to British subjects.

The CHAIRMAN.-I must ask the honorable member (Sir John Forrest) to allow the honorable member (Mr. Barton) to address the Chair.

Mr. BARTON.-Oh, it is usual when I am speaking. I am afraid there is a great deal of law about the subject, and I thought that was the reason the honorable member asked me the question. I quite agree that every state has the right to legislate as to its own fisheries within the territorial limit of 3 miles, but it has no right to legislate beyond that limit. It is questionable whether the power as it stands in the Bill would enable the Commonwealth to legislate for anything beyond territorial limits. Although it has been taken and acted upon in regard to the Federal Council, and granted also that the states have power to legislate within territorial limits, it is nevertheless obvious that you come at once into a conflict of laws, because there are vessels which are occupied in fishing within the territorial limits, and which are at the same time often occupied in fishing without those limits, and very often the men having charge of those vessels will be unable to distinguish whether they are within or without the 3-mile limit. It will be very hard on them that there are two sets of laws, because they will not know where they are. Fishing may sometimes be conducted by wealthy syndicates, but, as a rule, the persons employed in this occupation are a very poor and humble class, who certainly ought not to be bothered by having to ask whether they are under one set of laws or another. I can understand that the law in regard to fisheries within territorial limits might apply to the regulation of ships engaged in fishing outside those limits. But, in the first place, it is a doubtful subject for legislation, and might lead to conflicts. That is why I have proposed "Sea, fisheries." It will allow the Commonwealth to legislate with regard to the whole area.

Mr. ISAACS.-What are "Australian waters"? How far do they extend?
Mr. BARTON. - It is impossible to say. I suppose that with all my honorable and learned friend's ingenuity it would puzzle him to say what are "Australian waters." I question whether there is a lawyer in the land who could say. If you insert the word "Sea" before the word "fisheries," and leave out the rest of the provision, you leave one jurisdiction with regard to legislation, and get something clear, and something which the persons conducting, the fishing business can understand; but if you leave the thing as it is you will have something which is not very clear, because you will have a conflict of laws. If you leave the clause out it is possible that it may be done very well without. I do not know myself how far, even with the authority of the Imperial Parliament, any legislation with regard to fisheries may be applicable beyond territorial limits, except as affecting the regulation of the vessels conducting the trade, and that can be done under the trade and commerce or the navigation sub-sections. Consequently, I do not think there is much necessity for the sub-section at all. But my position is this: We do not want to establish a conflict of laws between the Commonwealth and the state with regard to a class of persons who will suffer severely from that conflict. We can, perhaps, do without the clause at all, because I do not know how far any power given to us by the Imperial Parliament will allow us to legislate upon the subject, except with regard to vessels engaged in the fishing trade, and that regulation can be done under the navigation and shipping provisions. We had better avoid falling into either the trouble of legislating outside our jurisdiction or of establishing a conflict of laws. If you insert the word "sea" before the word "fisheries" you will not fall into the trouble you may otherwise fall into. So far as the jurisdiction may extend from the coast outwards, the Commonwealth would be entitled to legislate in regard to these fisheries. Let me take the case of the trawling operations which are now in progress upon parts of our coast. These operations extend over short distances, varying from 15 to 20 miles from the coast. It is obvious that a vessel conducting this trawling ought not to be under one set of laws when she is close to the coast, and under another set of laws when she is compelled to go further out to find fish. I take it that it would be a ridiculous state of things to have two sets of laws applying to such vessels. I shall move the amendment which I have suggested, but I should be just as content if the whole sub-section were struck out.

Mr. HIGGINS (Victoria). - I hope that we shall keep to the words which have been taken from the Federal Council Act, unless there is a very strong reason to the contrary, as these powers have been given to the Federal Council by the Imperial authorities. I might inform the leader of the Convention that a few years ago an attempt was made in Tasmania to stop or to interfere with a Victorian fisherman, who was fishing for trumpeter off the coast. It is of importance that while we are trying to establish free-trade within the Commonwealth power should be given to the federal authority to say that there shall be no obstruction to fishing upon any part of the coast by any member of the Commonwealth.

Mr. KINGSTON (South Australia). - I hope that the leader of the Convention will pause before he asks us to finally decide to strike out these words. Under the Federal Council Act power was given to legislate for the control of fisheries beyond the territorial limits; and, whatever the effect may be, there is no doubt that by the passing of that Act power was given to the Federal Council to do that which neither any particular state alone nor all the states collectively could do. It was a concession and a grant to Australia. As to its importance, I recollect being present at a session of the Federal Council when a Bill was introduced, I think by Sir James Lee Steere, affecting the control of pearl fisheries in Western Australian waters, but beyond the territorial limits. That Bill was, I believe, to some extent founded upon a similar measure passed at the instance of Sir Samuel Griffith, and which related to Queensland fisheries; and I have the most lively recollection that Sir Samuel Griffith, than whom there has been no greater federal apostle, always attached very considerable importance to this particular clause, as giving to Australia a power which was not possessed by the states, either collectively or individually. It seems to me that if we retain a clause of this description we ought to amend the previous clause, which regulates the application of the laws of the Commonwealth, by providing that they shall run in Australian waters. Of course they only apply to British subjects and to British ships. That provision will necessitate either a definition of "Australian waters," or the constitution of Some authority by which this definition may be framed. For my own part, I am
disposed to think that the better plan would be to provide this definition within the four corners of the Bill. By parallels of latitude and longitude that could be easily done, or the power could be declared to exist in the Imperial Executive or the Federal Executive, with the consent of the Imperial Executive, could by proclamation provide for the definition of what should be termed Australian waters. But the point to which I wish to direct especial attention is this: The Bill, as we passed it, gives us an authority which otherwise it will be impossible to exercise in Australian waters, and we have proof that this is a matter of considerable importance by the fact that the chief legislation of the Federal Council has been in connexion with the exercise of these powers. I ask the leader of the Convention not to lightly surrender the concessions to Australian self-government such as will be given if we retain the Bill as we passed it in Adelaide and Sydney, and in the shape in which we originally had it in the Federal Council.

Mr. BARTON. - Is it much better than the blessed word "Mesopotamia"?

Mr. KINGSTON. - I think it is of considerable importance. I think the Premier of Western Australia will say that it has been of considerable importance, and that he would be sorry indeed to lose it. If we had the good fortune to have representatives of Queensland in this Convention tonight, I am sure the same testimony would be forthcoming. As regards what has been said by Mr. Barton as to the possibility of the clashing of state regulations and federal legislation, my recollection and experience is that this legislation is generally prompted by the state which is nearest to the fisheries concerned, and that it simply harmonizes with the local legislation on the subject. If you had not this power it would simply stand thus: Instead of the possibility of the clashing of local and Commonwealth legislation you would be utterly without power to regulate the fisheries once those engaged in them had passed without the territorial limits. I think the possibility of clashing which has been referred to will be infinitely preferable to the absence of any Australian law to regulate the subject. I would urge Mr. Barton not to ask us at this particular moment, without further consideration, without an opportunity of studying the legislation which has been passed on the subject by the Federal Council, to commit ourselves, by striking out these words, to a deprivation of Australia of a power which is sought to be conferred on it willingly by the Imperial Government, following the course which was adopted with regard to the Federal Council Act, and which can undoubtedly be exercised to the advantage of Australia.

Mr. BARTON (New South Wales). - I feel a difficulty about this matter, because I cannot understand how any law, unless it was merely for the regulating and registration of vessels -

Sir JOHN FORREST. - There is also the collection of duties in our case.

Mr. BARTON. - I cannot understand how any law affecting fishing outside territorial limits would be operative if once tested. It is all very well to say that the Imperial Government can give us power to legislate outside territorial limits, but the Imperial Parliament cannot give us any powers which they do not possess themselves.

Mr. SYMON. - How far is the limit to extend beyond territorial limits?

Mr. BARTON. - That is what I say. The words here are "Australian waters." The words in the Federal Council Act were "Australasian waters." Will any honorable member point out the difference between Australasian waters and Australian waters? Can he tell me where he finds the line of demarcation?

Sir JOHN FORREST. - You can legislate for British subjects.

Mr. BARTON. - You can; but that is shipping law, and you have power already to do that under the Constitution. You would not get any additional power from the words "beyond territorial limits."

Mr. KINGSTON. - You would have to define the waters.
Mr. BARTON.-Will any honorable member assist me in defining, within the limits of the law, what Australian or Australasian waters are? It would be idle to take a power to legislate which would break down immediately it was tested.

Mr. ISAACS.-Can there be any Australian waters beyond the territorial limits?

Mr. BARTON.-No. But in connexion with an Act like the Naval Agreement Act you may make an agreement for the purpose of effectuating your compact. You may say that certain ships shall not be taken beyond Australian waters, and you may define those waters, but the Act would simply be a contract between the two parties. If you were to attempt to define Australian waters except within the limits of a contract you would have no locus standi or aqua standi at all. The Queensland Fisheries Act does define Australian waters in the schedule. That is a Federal Council Act, and so far as it applies beyond the 3-mile limit it would if tested break down. Surely we are too sensible to take powers here which would break down in their exercise, and would make the Commonwealth not a power but a laughing-stock. I would suggest strongly that the words "in Australian waters beyond territorial limits" would have no application in law to give them any validity. It would be an attempt to transfer power from the British authority to the Australian authority, which the British authority does not possess.

Dr. COCKBURN.-It is the highway of Great Britain.

Mr. BARTON.-Yes; Britannia rules the waves. The sea is a highway that belongs to all nations. We have a right of passage on it under international law; but how does that help us? Your jurisdiction is limited to the land and 3 miles of water around it. You have no more jurisdiction, and the Imperial authority could not give it to you.

Mr. SYMON.-How could you regulate a fishery to which all the nations of the earth have access as well as yourself?

Mr. BARTON.-Yes, and this was suggested to me. Supposing that the Commonwealth did pass such a law, and a German ship over 3 miles from land took no notice of that law, what could be done? I replied in the words which were attributed to a certain speaker when he was asked what would happen if he "named" a member. Then I was informed that the only thing the Federal Council ever did was to pass a law which, if it was tested, would be laughed at. We had better alter these words to "Fisheries," if we do not strike them out altogether. That will give the Commonwealth the power of legislating within its own limits, and outside them, if there is any power to legislate outside its limits. Is it not better, after all, that we should leave the state to legislate within its own borders? There can be no legislation outside that 3-mile limit, except under the navigation and shipping law, under which we have sufficient power to regulate matters for all practical purposes.

Mr. DOUGLAS (Tasmania).-The original Act gives the power to the Federal Council to regulate the pearl-shell and beche-de-mer fisheries in Australian waters beyond the territorial limits. Then, in pursuance of that Act, in 1889 an Act was passed by the Federal Council limiting the power of the original Act by providing that-

This Act applies only to British ships and boats attached to British ships.

Therefore, the jurisdiction is complete. There was a very elaborate and most important decision delivered some years ago by Judge Cockburn with respect to a murder on the high seas. The question was whether in England a foreigner, a Dutchman, could be tried for a murder on the high seas committed beyond 3 miles from the territory. Although the man had been found guilty of murder, Judge Cockburn, one of our best, Judges, held on appeal that he could not be found guilty according to the English law, the murder not having been committed within the 3-mile limit. But this only refers to British subjects, and it is most important as regards Queensland and Western Australia that this
power should be retained. Therefore, why not retain the words used in the British Act of Parliament giving the Federal Council the power? I see no difficulty in adopting the clause in the Bill as it now stands.

Mr. KINGSTON (South Australia).-I take it that a British ship is floating British territory, and just as the British Parliament has the right to legislate in reference to that ship, so it has the right to delegate its right of legislation to another Legislature. That is what was done in connexion with the Federal Council, and it is what is proposed to be done here. Therefore, I hope we shall adhere to it. As pointed out by Mr. Douglas, that is the limitation affecting Queensland, and no doubt Western Australia, namely, that their control applies only to British subjects and to British ships.

Mr. BARTON.-Then the navigation and shipping law goes beyond that power.

Mr. KINGSTON.-I think not. That is distinctly provided. The other provisions of the Act only apply within the Commonwealth and to ships whose port of clearance and destination is specified; but otherwise there is no power to legislate beyond the territorial limits. On a previous occasion the leader of the Convention made a similar point as to want of uniformity and clashing, arising from the state and Commonwealth jurisdictions. The preamble of the Queensland Act, which, no doubt, is followed in the Western Australian Act, shows that the very reason for asking the Federal Council to legislate on this subject was for the purpose of securing uniformity and preventing anything in the shape of clashing—for extending Queensland legislation beyond territorial limits. The recital in the preamble to the Act is as follows:-

Whereas, by certain Acts of the Parliament of the colony of Queensland, provision has been made for regulating the pearl-shell and beche-de-mer fisheries in the territorial waters of that colony; and whereas, by reason of the geographical position of many of the islands forming portion of that colony, vessels employed in such fisheries are, in the prosecution of their business, sometimes beyond the territorial jurisdiction of Queensland; and whereas it is expedient that the provisions of the said Acts should extend and apply to such vessels during all the time they are so employed, and that for that purpose the provisions of the said Acts, so far as they are applicable to extraterritorial waters, should be extended to such waters by an Act of the Federal Council of Australasia.

Mr. DEAKIN.-The preamble to the Western Australian Act is identical.

Mr. HIGGINS.-What is the number of that Act?

Mr. KINGSTON.-It is an Act of the Federal Council passed in the session of 1888. I think the leader of the Convention will see that the power so conferred for the purpose of securing uniformity, and which has been exercised for that purpose-

Mr. BARTON.-You take the trade and commerce, navigation, and shipping provisions together, and they give you every bit of this power, so far as those Acts were valid.

Mr. KINGSTON.-I do not think they give us any power to legislate beyond territorial waters.

Mr. BARTON.-Well, then, nobody else can.

Mr. KINGSTON.-Not even the Imperial Parliament, with reference to a British ship, which is a portion of British territory? I take it that it can, that it intended to do so, and that it did. The Imperial Parliament passed a Bill conferring in good set terms the power and the Bill was assented to in the ordinary course. A Bill was passed by the Federal Council, in pursuance of that power, for Queensland and also for Western Australia; each Bill was reserved for Imperial consideration, and the Imperial consent was granted. I trust, at least, that at this moment our leader will not ask us to strike out the provision.
Dr. COCKBURN (South Australia).—I think the clause is very well as it is. We have toiled over the clause for an hour, and we have caught nothing. I think we ought to pass on to the next subject. Great Britain has given us a concession in the Federal Council Act, and I do not think we ought to inquire too closely into her title. We can assume that it is good enough. It would be a mistake to limit the extension of these fisheries outwards, and it would be a pity to bring them further inshore. It would be a pity to bring the federal authority within the territorial waters. The question of fishing within the territorial waters is a local question, much better left in local hands. It would be much better to leave the clause as it is, and to go on with the next business.

Mr. BRUNKER (New South Wales).—I would suggest to the leader of the Convention that this matter should be given very much further consideration. It is one of far greater importance than perhaps honorable members can realize just now. I am one of those who have believed for very many years that our fishing industry has been very seriously neglected. I am also of the opinion that it might be [start page 1863] made one of our most profitable resources. It is quite clear to me from the course the discussion has taken that this is a matter which might be further considered, and I would suggest to my honorable friend that we might postpone the consideration of the clause until he has been able to inquire into the technicalities and also to understand what has been done by the Federal Council.

Mr. BARTON. —I do not think there is any doubt about the legal position.

Mr. BRUNKER. —If there is any doubt about the legal position, we should have some power to deal with this matter from a local stand-point. It is said a little practical experience is worth a great deal more than theory. It happens that during the last fortnight or three weeks we have been experimentalizing in New South Wales in regard to trawling for deep-sea fishing. I am pleased to say that an hour or two ago I received a telegram from the person in charge of the trawling vessel to say be has had very great success again to-day. He says—

I am glad to find your opinion as to the Newcastle Bight has been borne out. We trawled there at different depths, and obtained over 15,000 fishes. We got these in three trawels, and as much as one ton in one cast of the net. We have now tested waters 8 miles by 20 miles.

So he has been beyond territorial limits. The telegram goes on—

I am leaving for the Manning to-morrow, and will try the southern waters after that visit is made. I could not wish for more success than has been obtained to-day.

I think that is very pleasing information in regard to this industry, and, therefore, I suggest the subject should receive attention. We should endeavour to legislate in such a way that we will contribute to the benefit which is likely to be derived from the industry.

Mr. HOWE. —Take possession, that is the way to do it.

Mr. BRUNKER. —I should like to know from the leader of the Convention whether it is likely anything can be suggested which would give us the power to treat this matter in the same form as it has been treated by the Federal Council? If the Federal Council can establish a law which gives the right to fish in Australian waters, I see no reason why this Convention should not give the Federal Parliament equally liberal powers.

Mr. BARTON (New South Wales).—I will ask, in a few moments, that progress be reported, because I think a little thought over this matter will lead us to a very early determination tomorrow morning. The position is that, under the commerce clause and the navigation and shipping clause, there is a right to deal with a British subject carrying on a trade. If people go fishing for pearl-shell, schnapper, or anything else, when they come back, and the fish is marketable, then the trade and commerce clause will apply. If the trade is conducted purely within the limits of the territory, then the state itself can deal with it. That is so far as licences are concerned—the mere licence for carrying on
trade. The registration of the vessels themselves comes clearly under the navigation and shipping law, so that it seems, one way or another, there are already powers in the Commonwealth and the state which render any question unnecessary. I cannot see how the addition of the words would give any added powers or any particular validity to a law if the law exceeded that for the regulation of trade apart from it, and for the regulation of navigation and shipping. Decisions would be liable to be tested, and there would arise the danger of litigation, which honorable members deprecate.

Sir JOHN FORREST (Western Australia). - Before progress is reported, I would like to say that, in my opinion, no reason at all has been advanced why those words should not remain in the Bill. They have been in since 1891, and now it is suggested to remove them because some other words of a general character may cover the ground. It should be plainly stated that the Federal Parliament will have power to deal with the question. An Imperial Act was passed giving the Federal Council power to legislate in this matter in regard to British ships and British people in the territories named in the Schedule. The Federal Council passed the Queensland and Western Australian Acts. Those Acts have been in force for years, and there has been no difficulty. Duties of customs have been collected, the trade has been protected, the pearl fisheries have been protected, police regulations have been enforced, and everything that was expected and desired has been attained. That being so, why should we hesitate to put these words in this Bill? The Imperial Parliament surely considered the question when they passed the law giving the Federal Council power; the Home Government thought of it when they advised Her Majesty to assent to the two Bills-the Queensland Act and the Western Australian Act; and it is rather too late for us to be afraid to give the Federal Parliament power in this direction. If we do not put these words in, it is questionable whether it will be within our power to legislate, because the Federal Council Act will be swept away, the Imperial Act will be of no effect, and we shall have to fall back upon the trade and commerce sub-section or the navigation and shipping sub-section in order to exercise authority. This matter is of considerable importance in connexion with the pearl fisheries, the beche-de-mer fisheries, and the deep-sea fisheries. We should not be acting wisely at all. I am speaking on behalf of a colony that has a great interest in this matter, and I am not saying too much when I urge honorable members to take the power under this Constitution which has been given to us after a good deal of trouble by the Imperial authorities. My honorable friend (Mr. Barton) says that the power exists already. We have been told that a good many times. Perhaps it does. But if it exists already, hidden away in other clauses, what object can there be in not having it inserted here in plain words? I hope that the words will be allowed to remain in the Bill. I presume that they refer to all kinds of fisheries. The pearl fisheries are the most important to us, and, of course, the deep-sea fisheries are also important. In regard to the 3-mile limit, I do not think that the Federal Parliament need trouble itself. It will be very undesirable that the sea within 3 miles of our coasts should be under the control of the legislation of the Federal Parliament. The Federal Government will not have the means of carrying out the provision without great expense. The police protection which will be necessary will be expensive. It will require an army of officers all over the coasts to supervise our local fisheries, and that can be better and more cheaply done by the local Government.

Mr. O'CONNOR. - The Western Australian and the Queensland Acts are preserved by this Constitution. All Acts passed under the Federal Council of Australasia are preserved.

Sir JOHN FORREST. - That removes some of my objections, but there are other places besides Western Australia and Queensland. Some of the finest pearl fisheries in the world are located on the coast of the Northern Territory of South Australia.

Mr. KINGSTON. - You might want to extend your Act.

Sir JOHN FORREST. - Certainly we might. I hope the leader of the Convention will not be so-obstinate? No. I will say that I hope he will give way on this matter, as it is one that is considered of very great importance by the people of Western Australia, and, I am sure, also by all those colonies that have fisheries, especially pearl fisheries and beche-de-mer fisheries.
Mr. DEAKIN (Victoria).—The Right Hon. the Premier of Western Australia need not have any apprehension with regard to the local control of fisheries, inasmuch as it is only a concurrent power which is proposed. Until the Federal Parliament chose to exercise it the power of control in the several states would absolutely remain. I have no doubt that the control of fisheries within territorial limits would remain with them for all time. I interpose at the present moment to call the attention of the leader of the Convention to the fact that there are sections in both these Acts which a good deal exceed mere trade and commerce regulations, and regulations relating to navigation and shipping. In the Queensland Act there are provisions regulating the employment of Polynesian labour, and, curiously enough, the Western Australian Act also contains a special provision with regard to the coloured labour employed in those fisheries. I find, too, that in the schedule to the Western Australian Act jurisdiction is actually given, and with the Queen's consent, over the whole of an enormous territory of ocean. The boundaries are parallels of latitude and longitude, and an enormous slice of the Indian Ocean is brought within the scope of this Act.

Mr. SYMON.—What will the Russians say to that?

Mr. DEAKIN.—That is not a matter of concern, but a jurisdiction which Her Majesty's Government have thought fit to define cannot be a mere façon de parler. The schedule to which I am drawing attention confers rights and powers which the Imperial Government have thought worth conferring. These circumstances might be weighed by the leader of the Convention and his colleagues before they lightly part with anything which contains a promise of a power. Personally I will seek to keep in this Constitution not only every power, but every promise or shadow of a power, we can obtain for the Federal Parliament.

On the motion of Mr. BARTON, progress was then reported.

The Convention adjourned at three minutes past ten o'clock p.m.