Legislative Council.

Wednesday, 28 July, 1897.

The late Murderer Butler — French Soldiers — Sunday Trading Regulation Bill—Federation Bill.

The PRESIDENT took the chair.

THE LATE MURDERER BUTLER.

The Hon. Dr. MACLAURIN: I desire to ask the Attorney-General, without notice, has he any objection to lay on the table of the House copies of the papers connected with the expense incurred in the matter of the extradition of the late murderer Butler?

The Hon. J. H. WANT: There is no objection to the papers being laid on the table of the House, and I will try and do so to-morrow. But I want the House and the people to understand clearly that it was not our application for extradition; it was an application by the British Government.

FRENCH SOLDIERS.

The Hon. D. O'CONNOR: I desire to ask the Representative of the Government, without notice, is it true that the Government of this colony refused the Consul-General of France facilities for housing some soldiers on their way home from Noumea, their ship having been wrecked?

The Hon. J. H. WANT answered,—I am not aware that any number of soldiers were at any time shipwrecked. It is true that application was made for a number of French soldiers returning from Noumea to be allowed to take up their residence in the Victoria Barracks, but inasmuch as the Secretary for State had specially enjoined this Government many years ago that transactions of that kind were not to be permitted, we could not comply with the request, and we followed in the footsteps of the Government of Sir George Dibbs, of which the hon. and learned members, Mr. R. E. O'Connor and Mr. Barton, were members. We acted upon a minute to this effect: that under no circumstances was any body of foreign troops to be landed, armed or unarmed. These soldiers were not shipwrecked.

The Hon. D. O'CONNOR: The ship was disabled!

The Hon. J. H. WANT: She was in the harbour, and the men were quite as safe as my hon. friend is here.

The Hon. D. O'CONNOR: What did the French people do the other day when a number of British sailors were in danger?

The Hon. J. H. WANT: They were shipwrecked sailors.

The Hon. D. O'CONNOR: They were in danger!

The Hon. J. H. WANT: These men were not in danger here.

SUNDAY TRADING REGULATION BILL.

Bill presented by the Hon. D. O'Connor, and read the first time.

FEDERATION BILL.

Debate resumed (from 22nd July, *vide* page 2224) on motion by the Hon. E. Barton:

That, in pursuance of section 26 of the Australasian Federation Enabling Act, 1895, this House do, on its next day of sitting, resolve itself into a Committee of the Whole for the consideration of the draft constitution framed under the provisions of the aforesaid act.

The Hon. Sir JULIAN SALOMONS: Mr. President, unfortunately we have not in New South Wales many men of "learned leisure," and speaking for myself, I deeply regret that, in the interval which has elapsed between the adjournment of the debate and now, I have found it impossible to throw my views into a harmonious or attractive form; but I think that my hon. and learned friends who are in charge of this bill, and who were this colony's representatives at the convention, will be generous enough to admit that I have shown that I have a knowledge of the subject we are dealing with, and that I am competent to criticise its provisions. If I should be able—I say it with all humility—to force the minds of impartial persons to the conclusion that the provisions of this measure are premature, and are on too grand a scale for the present position of this colony, or on any other grounds that we ought not to adopt it, I think I may safely assume that even my learned friends, in justice to their reputation, will not then turn round upon me and try to persuade the country, which I am now addressing as much as I am this legislature, that I am not to be listened to by dubbing me a provincialist, or say that my views are narrow and parochial. Sir Henry Parkes, who was no

doubt the originator of the movement, and whose mantle has now fallen upon my hon. and learned friend, Mr. Barton, and whose chameleon-like utterances we can no longer enjoy, in a fit of poetic enthusiasm thought fit to say to the people of this colony and the legislature, that the creation of a federal parliament was the most solemn subject that could occupy the minds of civilised men. Now I do not think so. But no doubt it is a matter of grave importance, far-reaching in its influences, and I think we should be safe in saying that the words addressed to this Chamber by the distinguished gentleman, Dr. Garran, Vice-President of the Executive Council, in moving the second reading of the enabling bill, may well be applied to the subject we are now considering. On the 11th December, 1895, my hon. and learned friend said :

> This Australian Federation Enabling Bill differs from any measure which we have had before us this session in being intercolonial in its importance, and I may also use the larger word, and say in being national in its importance, because it is proposed ——

What is proposed I will show in a few moments. But, before I attempt to do that, it is necessary to show to the legislature and the country that we must act with great caution and deliberation in regard to the bill, the merits of which, not its demerits, have been dwelt upon by my hon. and learned friends, Mr. Barton and Mr. R. E. O'Connor. The Parliament of the country —I say it in the least offensive sense possible—has no doubt been deceived; I mean with regard to the enabling act. I do not intend, even if I had the power, to try to amuse any one who may honor me by being present. The subject is too great and serious a one. It is of the greatest magnitude, and must be dealt with as a matter of duty, and duty only. It may be tiresome; that cannot be avoided. My hon. and learned friends cannot be answered, nor can the country be satisfied on that side of federation which is fatal to it, and which is always kept in the shade by merely a few words. I shall say nothing offensive to any one. We know that ambition is the last infirmity of noble minds; and this is one of those occasions in which, aiming at what was thought to be a great end—the means and the nature of them are lost sight of—my hon. and learned friend, Dr. Garran, endeavoured to induce this Chamber to commit what I may be pardoned for describing as a most unwise act—to pass in one sitting a measure like the Federal Enabling Act —an act which limited the two houses of Parliament to making suggestions to the convention, which it is not denied, can utterly disregard them, and which provided that the bill, in the form it will assume when it leaves the convention, shall not come before this House at all, but shall go direct to the people. Was there ever in the history of any government or parliament such a travesty, such a burlesque upon good sense and government, as to dare to pretend that that is the way to get a constitution? The Constitution Bill contains 120 clauses, which require even the most skilful lawyer to understand. The majority of the inhabitants of New South Wales, like the majority of the inhabitants of other countries, are occupied the greater part of the week in keeping themselves and those who are dependent upon them. Apart altogether from the question of time, how could they have the knowledge without at least the prior guidance of the two houses of Parliament—the guardians of the Constitution—to say "aye" or "nay," What to? Not to any particular provision, not to any particular alteration of our Constitution, but to a new form of government. My hon. and learned friend, Mr. Barton, will admit that there is no precedent for this form of government in the world. I am not now dealing with it. I only want the Parliament of the country to see that we must walk slowly and with the greatest deliberation. My hon. and learned friend, Mr. Barton, in a forcible way, and supported by no less distinguished a lawyer than the hon. and learned member, Mr. R. E. O'Connor, has told this and the other House, that although the enabling act says that we "may" forward a resolution to the Queen requesting that the bill may take the form of an Imperial statute, the word "may" does not mean "may," but means "shall." My hon. and learned friend, Mr. Barton, who has a great reputation to take care of, will, I think, see that the language which he used with regard to the people may one day be used against him. I do not believe—because, though I may not have physical, I hope I have some moral courage—that in regard to the bill *vox populi* is *vox Dei*. The thing is ridiculous. It may be that 50,000 persons

will vote in favour of the bill, and 48,000 against it. Although my hon. and learned friends say that under the bill "may" does not mean "may," I humbly think it does mean "may" in the most absolute and unqualified sense; and when the occasion arises I think I shall be able to satisfy hon. members of the fact. Whilst I think of it I want to point out that before we get to that critical period, and to avoid a danger of agitation from which no good can flow, a bill, either in the Council or in the Assembly, ought to be introduced to interpret those words as they were represented to both houses of Parliament. With regard to the question of 50,000 electors voting for the bill, does my hon. and learned friend know that last year alone 24,000 persons were brought up in this colony on a charge of drunkenness? I admit that, with regard to numbers, our colony attained an unenviable distinction; but, fortunately, with regard to the consumption per head we must give way to the colony of Victoria. It will be seen before I sit down that the objections to this measure have never been touched at all. The Attorney-General was honored only with amusing references by the hon. and learned member, Mr. R. E. O'Connor, to what I may call the fringe of his most powerful speech. The substance of the objections were in no way handled. I want first, however, to show that when the enabling act was before the Legislative Council Parliament was entrapped into a position which is a very dangerous one. On the occasion in question the hon. member, Mr. Pigott, to whom we are often indebted for most valuable suggestions, saw at once the danger of passing a great bill like that without any opportunity for deliberation. We know that in connection with the smallest measure time is taken in order that the Council may deliberate and come to a conclusion which will be of value. The hon. member, Mr. Pigott, was induced to withdraw his amendment to postpone the debate on this ground: It was then the 11th December, approaching the hottest time of the year, when the members of this Chamber—not being as young as the hon. and learned members on my right and left, Mr. Barton and Mr. Want—were no doubt tired with legislative and other work. The Vice-President of the Executive Council pointed out that unless the measure was passed then we might be here for weeks.

The Hon. H. C. DANGAR: He said we should have to sit six weeks!

The Hon. Sir JULIAN SALOMONS: Yes, six weeks. I will suppose, but merely for the sake of argument, that there will not be any large minority against the convention bill. I will suppose, in order to prevent the possibility of any one being misled when the hon. and learned member, Mr. Barton, replies, that 50,000 persons vote in favour of the convention bill and only 10,000 persons vote against it. Strictly speaking, the hon. and learned member has no right to reply, but I hope the Chamber will support the President in ruling that he ought to be allowed to reply. My hon. and learned friend has no more personal interest in the matter than I have. I have no doubt he is animated by a strong desire to do what he believes will be for the benefit of the land of which I think he is a native. At the same time, he is no more free from liability to err than we are. The view taken by the Vice-President of the Executive Council on the occasion to which I have referred must be, and is, the same now. He has admitted in his recent speech in this Chamber that he does not agree with the view taken by the hon. and learned member, Mr. Barton, with regard to the interpretation of the word "may" in the enabling act, and I hope that, before the week is over, notice will be given in the Assembly to repeal the section to which reference has been made, and word it in such a way that no one can doubt the meaning, namely, that although the people ought to speak with regard to this great change in our Constitution, the bill upon which they are to speak ought first of all to come before the two houses of Parliament, in order that they may know what are the prevailing opinions in the legislature upon it. No doubt if they saw that the best minds in both houses were in favour of it, they would be perfectly safe in allowing the experiment to be made. On the other hand, to take an example, they might see—as turns out to be the fact—that without the clause giving equal representation in the senate the smaller colonies will not federate. So the hon. and learned member, Mr. Barton, has said, and so it has been said over and over again by the members of the convention. No doubt that particular clause will be left in the bill, because the gentlemen who formed the convention are honorable

and capable men, and they have deliberately told us, not once or twice, but many times, and in varied forms—and they are supported by my hon. and learned friend, Mr. Barton—that it must be retained. About that I will have something to say presently. Then, of course the bill, whatever the convention might say about it, would be returned to the place from whence it came. It could not pass. It is admitted by everyone that, although the two houses of Parliament can suggest amendments, the convention are not bound to adopt any of those amendments. Further, it is admitted with regard to one or two amendments—particularly in regard to whether the representation in the senate should be according to population, or should be equal for all the colonies, no matter how small they may be—that the convention will not depart from their decision, and that has the support of the hon. and learned members, Mr. Barton and Mr. R. E. O'Connor. How can it be that the two houses of Parliament should pass such a measure? The Right Hon. G. H. Reid is not in the colony. I will, however, read what he, no doubt in perfect good faith, told the Assembly. The substance of it was this, "What are you trifling about? This is a mere form. We are only going to allow these gentlemen to meet just the same as gentlemen may meet to draft a treaty. When they have drafted the constitution it will have no effect whatsoever. Although the people approve of it, Parliament can reject it." On that assurance the Legislative Assembly were induced to allow the Federal Enabling Bill to pass, and when it came before this House my hon. friend, Mr. Pigott, said, "What are you doing? We have been now for a hundred years without federation." (I am now supposing what may have passed through my hon. friend's mind) "Without prejudging the question at all, surely you must admit that there must be a reasonable time allowed to the legislature to examine the bill which is going to give great powers to the convention." The Vice-President of the Executive Council then told the House the very opposite of what is now insisted upon. He said:

> The first word indeed rests with Parliament, and the second word, and the last word rests with Parliament. The first word rests with us now, and will rest with each colony when it deals with this bill, or a bill of a similar character, and when the whole work has been completed Parliament will have the last word again in sending the measure forward with an address to her Majesty; but, apart from the fact that Parliament technically begins and winds up the whole procedure, all the process rests with the popular vote.

I am sure that if ever the question arises before any law officers in England it will be held beyond all doubt that these views as to our being dominated by the people have no reference whatsoever to a measure of this kind, because the legislature, in passing the Federal Enabling Act, although allowing the bill to go to the people before it was placed before Parliament—and this bill is of no moment whatsoever, inasmuch as it may be shaped in any form by the convention—reserved to itself the right of speaking the last word—not speaking the last word in the deceptive sense indicated by my hon. and learned friends. I ask any one to read the utterances of my hon. and learned friend, Mr. Barton, on that matter. I have tried to reconcile them, but it is impossible to do so. In the end they come to this: although we can do it, the people must be obeyed, and though we may refuse to send an address to the Queen, yet if there is a dissolution upon the question, and the people again say "yes," we must send it home. I deny that altogether. Is it not plain that the bill which the convention passes may be entirely different from this one? Is it not equally clear that that bill will never have been before our houses of Parliament. There are some things more to be dreaded than the fear of war. I would a thousand times rather see revolution or civil war than at the beck of any people be forced to do what I know is founded on dishonor. Let me read what the Premier said over and over again to the Assembly, because I admit that on the spur of the moment I could not put the matter in such apt and lucid language. On the 6th of November the Federal Enabling Bill was before the Assembly, and some hon. members there noticed the provision as to this bill going back to the convention with amendments which it was admitted were only to be suggestions—of course, whoever could read saw that—and it was admitted that the convention need not adopt any of them. The discussion was altogether out of proportion, both in length and quality, to the kind of matter that was before the Assembly, by reason of its

being represented to the Assembly that the thing was a simple form—that the legislature remained the master of the situation, and that the convention was of no more moment than plenipotentiaries who sat down to draft a treaty, which treaty had to go before the powers which sent them to draft it. At page 2401 of *Hansard*, the Premier is reported to have said this, in reply, on the 6th November:

> How it can be said that this bill ignores either branch of the legislature passes my comprehension ——

See the different view that is taken now by my hon. and learned friend, Mr. Barton. I am sure that the hon. and learned gentleman will prefer my candour to any flattery, and he must pardon me for saying, with all humility, that no greater mistake was ever made by any politician than that of standing up, as he did, in the House of which he is a member, and telling us that he was the guardian of this bill. The guardian of this bill! How can my hon. and learned friend put himself in a position of that kind? He must forgive me for saying that he occupies no different position in this Council from that of any other hon. member. If he had not used the word "guardian," I certainly, from his speech, would have said that he was the advocate of this bill; but I am not so rude as to alter the term which he saw fit to use.

The Hon. D. O'CONNOR: He was specially asked by the Government to occupy a seat in this House for that purpose!

The Hon. J. H. WANT: Not for that purpose at all!

The Hon. Sir JULIAN SALOMONS: My hon. friend, Mr. D. O'Connor, will pardon me for saying that I am not here to attend to trifles. I am speaking on this matter to the best of my judgment, and my hon. and learned friend, Mr. Barton, will have the right of reply. I quite admit that that to which I was referring, does not affect in any way the substance of the matter between us. The right hon. the Premier said:

> How it can be said that this bill ignores either branch of the legislature passes my comprehension. In the first place, this legislature was not elected to legislate for all Australia; it was elected to legislate for New South Wales. In the second place, the legislature of New South Wales will bring the scheme into existence, if it is brought into existence at all. Therefore, it will be the creation of the legislature of New South Wales. In the next place, it is proposed that when the convention of all Australia has finished the draft constitution, every line of that constitution shall be considered in both houses of Parliament. Then, after the constitution is finally drafted ——

Finally. The Premier said, "Do not get angry over this bill; it is not the final form. It may be changed in many ways." Suggestions may be made which it will be seen are better than the provisions in the bill. What final shape it may take, as my hon. and learned friend, Mr. Barton, said, we do not know. Before I sit down, I will show what, perhaps, is not generally known, the view that is taken by a most prominent member of the convention of the position, the powers, the influence, and the respect due to the legislature of this colony in connection with this very matter. The right hon. the Premier said:

> After the constitution is finally drafted, and even after it has been approved of by the electors, either house of Parliament can arrest the consummation of this union; so how it can be said that either house is ignored, passes my understanding.

And on those last words, except formal ones, the Federal Enabling Bill was got through. It is of no use for any hon. member to try and draw a distinction such as that which was drawn by my hon. and learned friend, Mr. Pilcher, who, when for a moment, echoing the view adopted by my hon. and learned friend, Mr. Barton—which I do not think he will adhere to on reflection, because he said he had not given consideration to it—said, "you may do it, but if you do there is a power greater than you." My hon. and learned friend, Mr. Barton, said that "may" did not mean may. But if the Premier had said that at the time the bill was before the Assembly, the bill would never have been passed. However, it was passed by the Assembly. Not only that. Unfortunately politicians, particularly party politicians, have not the most unbounded confidence in each other. They think they are liable to make mistakes, and that any of them may be misunderstood. Consequently, later on, on the 7th November, when the bill was in Committee in the Assembly, hon. members drew attention to this matter again. I want to show that if the Federal Enabling Act, in the view of two distinguished lawyers, admits of a construction it was not intended to have, Parliament, in self-defence, is bound, at the earliest moment, to pass an

act, in order that the convention and the people may know that the convention's work may be considered—of course, with all due respect—by this Parliament before it becomes law. The representatives at the convention were the same in number for this great colony and for Victoria as they were for Tasmania—all the colonies were represented by an equal number of representatives—and it is necessary, therefore, that the convention, in dealing with this bill, should understand that they are not masters of the parliament. How can a representative be greater than the body he represents, or how can you place an agent in a position paramount to that of his principal? Before I sit down I will show the consequences of passing the Federal Enabling Bill in that form. But who caused it to be passed in that form? The very same body which wants to bring this bill into operation. On the 7th November my hon. and learned friend, the Premier, said this:

> I think there is some confusion of thought with reference to the function of the representatives of the different colonies. To listen to those who are supporting the amendment, one would think we were framing a compact which, once framed, would have absolute force. Far from that being the case, this is a friendly conference of separate colonies to consider in what way they can come into partnership upon terms which will be mutually satisfactory. What follows from that? This will be a convention in which the different colonies will wish to impress their views of what a federal constitution should be, and the views of each colony will be fully considered by the inhabitants of every other colony.

I think it is much better for my hon. and learned friend, Mr. Barton, to turn back to the distinguished position which he holds in the first house of the legislature than to pride himself on being the guardian of the bill of the convention, at least in the view of the Premier.

> It is a sort of tribunal, in which public opinion will be challenged by representatives of all the colonies as to the best form in which the constitution should be framed. The analogous case to this convention will show at once the principle on which the present proposal is made. The analogous case is the case of a number of nations meeting to consider the terms of a treaty. None of them are bound by that treaty, although they agree to it at the council chamber, until it is ratified by the governments.

This is on the point of obtaining equal representation at the convention for the smaller states:

> Whoever heard of Russia, at a board of the powers of Europe, requiring that it should have five representatives more than Greece, or Turkey, or Belgium? The thing is never heard of. There is never any attempt to represent geographical area or the population of these great countries when they are assembled round a treaty board.

This is very important with regard to my hon. and learned friend's speech:

> Suppose five firms wished to discuss whether they would go into partnership, who would object to every member of the five firms being present, although the smallest firm might consist of five partners and the largest firm of two?

Then a very thoughtful gentleman, as I should judge him to be—Mr. W. M. Hughes—asks:

> But what about drawing up the deed of partnership?
>
> *Mr. Reid:* Drawing up a deed of partnership, which is to be ratified and considered by others.

The others, of course, could only be Parliament. Now, I want to point out the way the enabling bill was got through the Assembly to show how careful we shall have to be about this bill. My hon. and learned friend, Mr. Barton, was not a member of this House at that time; and whether my hon. and learned friend, Mr. R. E. O'Connor, was in the Council or not I do not know; but whether he was or was not, he is under no responsibility. I am not complaining of what the hon. and learned member did, because no one ever anticipated that this position would be taken up, and that it would be said, "You, the Parliament, have been outwitted; you may only make suggestions." That, to my mind, is a most undignified course; but it was got over by saying: "If the convention does not adopt your suggestions you need not adopt the bill." Now we are told that we have no option with regard to the bill, the bill not having been revised by Parliament or seen in the sense of Parliament being able to touch it. Either this Parliament can alter the bill—and if they can alter it they can alter the whole of it, and if they can alter they can reject it—or my hon. and learned friend, Mr. Barton, and those who support his views, are right, that we should have to send an address to the Queen. This subtle reasoning is put by Mr. Reid. Do not let anyone think that I am imputing to Mr. Reid that he would take up this position. I am only explaining what Mr. Reid, in perfect good faith, put before the Assembly, and the hon. and learned member, Dr. Garran, put before the Council, and which Dr. Garran says is the proper thing to do;

and the Attorney-General, who is the legal adviser of the Government, admits that my view is right.

The Hon. J. H. WANT: The bill has to come back!

The Hon. Sir JULIAN SALOMONS: I hope it is well understood that I am not complaining of what Mr. Reid said to the Assembly. I want to show how it was insisted upon, put beyond question, by a statement made by the head of the Government. In answer to an interjection, Mr. Reid said:

In drafting a deed of partnership, which is to be considered, if it were wise to do it, there would be no reason why there should not be fifty from each colony, if it were reasonable and proper and necessary. In the task of drafting you do not distinguish between one probable partner and another probable partner; the voice of the least influential man is entitled, on grounds of reasoning, to exactly the same weight and influence as the voice of the most influential man who proposes to go into that partnership. The task of the convention is not to parcel out the destinies of the country according to the relative populations and wealth of the colonies, but to bring the reasoning powers of the different communities together into a focus, to see what sort of constitution can best be framed which will answer all requirements. The moment that is framed; it is to be submitted—certainly to this Parliament, at any rate; I will answer for that—this constitution will have to be submitted to the test of every parliament—every line of it.

This is not the bill that is going before the people. This is only a suggested form. The convention has only been sitting for a short time, under rather disadvantageous circumstances, and it has adjourned to the 2nd September, when this suggested form is to come before them. Section 26 of the enabling act says:

When the constitution has been framed by the convention, copies thereof shall be supplied to the members of the convention, and the president shall declare the sitting of the convention adjourned to a time and place to be fixed by the convention, not being less than sixty nor more than one hundred and twenty days thereafter. And as soon as convenient the draft constitution shall be submitted for consideration to each house of Parliament sitting in Committee of the Whole, and such amendments as may be desired by the legislature, together with the draft constitution, shall be remitted to the convention through the senior representative.

Then section 27 says:

On the reassembling of the convention, the constitution as framed prior to the adjournment shall be reconsidered, together with such suggested amendments as shall have been forwarded by the various legislatures, and the constitution so framed shall be finally adopted with any amendments that may be agreed to.

The Premier represented to the Assembly the same as my hon. and learned friend, Dr. Garran, represented to the Council, that the bill would have to be submitted to Parliament. I may state, without fatiguing the House, as I have matters of much more importance to deal with than this, that this position is frequently repeated. It is the same all through, and at last the Assembly yielded to that view. I may mention that the right hon. gentleman at the head of the Government said this:

"You have only got so many people, and mighty Russia has got so many more; therefore, mighty Russia must have 100 ambassadors at the table, and you must have only one; or we will allow you five." Such talk never prevails at meetings of that sort. Why? Because there is nothing binding on any one. The transaction binds no one until it is ratified. So here. What harm is there in ten men coming from Tasmania—and surely that is not giving way to the earth question, because Tasmania is not a mighty continent of earth; it is a very small spot; it is nearly all humanity ——

I am afraid that the hon. member has there gone beyond my comprehension —

what harm, I say, is there in ten of the best men of that colony meeting ten of the best men of this colony and threshing out all the questions connected with federal union—not to decide them, but to thresh them out! What harm can be done? If this were a convention to settle the constitution by which the people were to be bound, I would admit very seriously much that has been said; but we must not forget that we are engaged in a friendly task of endeavouring to bring these colonies together, to bind no one, but simply to consult as to the means of arriving at a basis on which we may frame a federal body, which basis will afterwards have to be sifted by each parliament and settled by the people. Under these circumstances, I hope that the House will not place it out of my power to proceed with this bill any further. That is the plain English of it. If this amendment be carried, it will be impossible for me to go on.

An Hon. Member: Why?

Mr. Reid: It may astonish the hon. member, but it will be impossible, because I decline to waste the time of the House. It will be absolutely impossible for me to approach the other colonies and ask them in a mere preliminary convention to be regulated according to the views of the hon. member. I cannot do it, therefore I give it up. It is no use beating about the bush. I am very anxious to carry out this proposal, but I am not going to waste the time of hon. members or my own time. I feel that the amendment is so objectionable and impossible that I cannot go on with the bill if it be carried.

Over and over again that is mentioned and persevered in to the end; in fact, on the 7th November, in answer to an objection that it was really a waste of time, the

Premier said: "It might not be a waste of time; it might be that the movement, in consequence of the convention, would grow." Well, we know that some plants grow and die, and I think I may venture to say that if the people are wise and their eyes are opened, this is one of them. It will be seen by any candid person that every position that I have taken up in no way depends upon any opinion of mine. I will satisfy any person of competent intelligence and fairness that there never was in the history of government such a rash and senseless proposal as to ask us to adopt this bill; but I am not going to do it on my own opinion. The hon. and learned member, Mr. Barton, drew a technical distinction which has not the support of the hon. and learned member, Dr. Garran, because that hon. and learned member knows well that it would be a gross breach of faith. The hon. and learned member, Mr. Barton, is under no obligation to the act. He was not in the Council when it was passed. But with all respect to his great knowledge, I say that his view is erroneous. It is opposed to what was represented to the Legislative Council and the Legislative Assembly when the act was being passed. The sooner a bill is brought into either House the better—it will not take long to pass it—to let the convention know when they meet on the 2nd September that they cannot take up the position which my hon. and learned friend, their guardian, has pointed out. There is no use our being involved in disputes which would give rise to litigation when there is no necessity for it. My wish at the present moment is to satisfy this House, and, I admit, the country, because I desire, after the one-sided view to which, in very numerous addresses of every form and kind, the press has not only given circulation, but its support, that at least the people may know that the members of this Council, of varying political views, of different callings, united together by no personal political bond, are unanimously of opinion that they ought not to pass this bill. I should like to include in my speech one paragraph out of the able and long address of my hon. and learned friend, Mr. Barton. Speaking on the 14th instant the hon. and learned member said:

> I was a moment ago dealing with the point that the House had reserved to itself the power to decline to send this bill to the Imperial Government for enactment into law because the word "may" was used.

The hon. and learned member quoted the section, and continued:

> I have said that this House and the other House are amenable to popular opinion. I believe that this House is as loyal to popular opinion as the other House.

That is what is called a little "soft-sawder"—

> If popular opinion expresses itself in the form of an acceptance of this constitution at the polls, whatever the form of the declaration of the 36th section may be, it is no flouting of Parliament, but it is only a respectful pointing out of the conditions which the legislature itself has laid down, to say that the popular will so expressed will not be rejected by any parliament in Australia—in other words, that the legislature of any colony whose people would accept this constitution will certainly not reject that constitution by declining to send it to the Imperial Government for enactment into law, for the plain reason that, if it does so, it will have said that it has set up this power in the people to declare for themselves whether they will or will not have federation as a mockery and a sham.

I said "no." We have done no such thing. That is begging the question. I insist that the meaning of the act of Parliament is that it has to come before this House just as if it had not gone before the electors at all, for the reason that it must take absolutely some particular form of federation. Many hon. members know here that the forms are numerous. They are not consistent with one another, and the literature in connection with federation would itself make a very respectable library, and therefore it is palpable that the bill might assume a shape substantially different in all important matters from what it is now. As I have said before, reiteration under some circumstances, and in regard to serious matters, is not only justifiable but necessary; therefore, I repeat that the position that the people should say "aye" or "nay" to a bill which the Parliament had never seen is an impossibility. It is no good my hon. and learned friend in his amiable way, similar to what I suppose is often done in the other House, to obtain the assent of the legislative body, saying, "You have always been generous in your views, always amenable to public opinion," and so on. I hope that the Council, and I am sure that the Assembly, will not be led by any such flattery in discussing the bill. When I interrupted my hon. and learned

friend by saying "no," then the hon. and learned member said:

> I say it will have said so; and then if the hon. and learned member says "no" all the time I am speaking, it will still be true that this House and the other House, having consented to set up that tribunal for the final decision of this matter, will, if it declines to abide by the verdict of that tribunal, be confessing it has set it up as a mockery and a sham.

It is with such fawning flattery upon the people that the hon. and learned member speaks with reference to a matter upon which he must know that they are no more competent to judge than they are to read Sanscrit. Let it never be forgotten that the way to the butcheries and horrors of the French Revolution was prepared and paved by the writings of one of the most able prose writers, and one of the most sentimental that ever lived, Jean Jacques Rousseau. Does my hon. and learned friend know that that man himself, who prated of universal brotherhood, of all the false sentiment that led the people of France to the horrors of 1793, put his own children into the box of the house for foundlings? What, after all, is the use of telling me about the people, or flouting them, or that we have done this or that? There are public matters which are matters of serious business as this is, and they cannot to my mind, and to the minds of thinking men, be affected by any expressions which might adorn a poem, but are here unsuited to the cold atmosphere of the legislature. Now I have done with that matter. I do not presume to think I have satisfied my hon. and learned friends, Mr. Barton and Mr. R. E. O'Connor. I might just as well try and satisfy a young lover, enamoured of some beauty at a watering place, who had been told she had certain defects, or had been the mistress of a nobleman. I might just as well preach to the idle winds. I hope my hon. and learned friends will not imagine that I should be so foolish, to use a common expression, as to expect that they would "give themselves away," before the convention. It is not likely that they will submit to go back to the convention saying, "We have altered our minds." I am not so silly as to imagine that they would do so. I am indebted to both my hon. and learned friends for staying here to listen to me; but as far as the effect of my arguments go, I know they might just as well leave me with their overcoats. All I have done hitherto has been to show what a difference there has been in the representation of the position in the Assembly, on the part of those who desired to give this power to the convention, and that which is now made by the hon. and learned member, Mr. Barton, and those who support him. My hon. and learned friend has used many forms of expression which seem to imply that with regard to this matter, he held in this Chamber a position different from that of any other hon. member. With all due respect to the hon. and learned member's opinion, I think that is a mistake. Let me invite him, or any friend of federation in this House or the country, to point out any possible ground why I should take a position hostile to this measure, unless it were that I could satisfy others that I have good grounds for it. I have been for forty-three years a resident of this city. I have children and grandchildren born here, and if I did not feel in my heart of hearts that this is the product of that ambition, of that seeking after greatness which is not synonymous with distinction, I would certainly not undertake a burden which, on my part, is a great one. I may, without presumption, say that after thirty-seven years' practise at the bar, and having spoken with some effect on this matter—not lately, but more than seven years ago—I have some knowledge of the subject to enable me to come to some conclusion. I suppose my hon. and learned friends will not deny that. I am not saying that that conclusion is to be accepted, but it entitles me to disregard altogether the language which is used by those who are supporting the bill—I mean the language of those who attribute certain actions to selfishness, parochial views, narrow views, provincial prejudices, and so on. I may say for myself that such language passes me as the idle wind, which I regard not. The hon. and learned member, Mr. Barton, in a very interesting, and proceeding from him, I need hardly say, most intelligent explanation of the whole of the clauses of the bill, occupying between three and four hours, never once—and I have looked again this morning to see if I am right—gave any reason for adopting the measure. Although I am not given to analogies, the hon. and learned member reminded me of this: It is just the same as if the hon. and learned member, Mr. R. E. O'Connor, proposed to me and to others to

engage in a joint venture to be personally conducted for profit to the Arctic regions, and we met to discuss the matter. Then my hon. and learned friends limited themselves to this: To pointing out that the ship "Federalist" was tight, staunch, and seaworthy, that she was a splendid boat, well manned, splendidly equipped, and that she would take so long to go there and so long to come back; but they gave me no reason whatsoever why I should go into the venture at all. My reply to them would be: "I have not met you to tell me about the machinery of the ship; I have met you to consider whether I will go into the venture, whether I will leave my home and go to the Arctic regions; and I want to know what profit I shall get from it? You have wasted my time in not telling me anything of that kind, nor yet what the expedition will cost." In the course of his speech the hon. and learned member, Mr. Barton, said:

> If that argument is seriously put, it must go to that extent, and those who are the authors of it, if they gain their wish, will be able to strut about in the immense superiority which such a position will give them, with about as much dignity ——

I admit this does not throw much light on the matter; but I do not object to it. I am so little free to seek amusement out of this Chamber that I am delighted to know that someone can throw a little serious diversion into our proceedings:

> as a savage chieftain would, who gave away his war-club to keep his peacock's feathers.

I am obliged to my hon. and learned friend for that. That is exactly what he wants the colony to do. He wants it to give up its war-club to take the peacock's feathers of this mighty federation. I am much indebted to the hon. member for that picturesque illustration. But the hon. and learned member also said this:

> I shall be willing, as I need not assure hon. members, to listen to every reasonable suggestion for the improvement of the bill.

Will the hon. and learned member forgive me for saying that I do not want him to listen to any suggestion. I deny that he holds any position so far as the country and this House are concerned with regard to it. It is for the Council itself to decide in an ordinary, deliberative way, what amendments it will make, and it is perfectly idle to talk to the Council in that paternal way about listening to their suggestions. There is a member of the convention now in the Legislative Assembly, and we will suppose that he adopted the same language as the hon. and learned member. In that case the two houses of Parliament—the governing body of the country under the Constitution—would be told by two private members that they would listen to their suggestions. Is it possible to bring home to any intelligent man the view held by my hon. and learned friends—to give up the great Constitution we have, and to place ourselves in the position we should hold under a new form of government, complex and difficult to work, as seen in other countries. I accept the challenge thrown out by my hon. and learned friend, Mr. R. E. O'Connor, in regard to that matter. The hon. and learned member, in one of his fits of enthusiasm, asked me to show that the evils and corruptions which seam the life of politics in the great republic of America, and which are beginning to live in Canada, are the result of the federal form of government. I appeal to all men who have read whether it is not so, and I will show that that is the conclusion that all the greatest writers have arrived at. Whilst I think of it I wish to point out that a federal form of government creates a double allegiance. There is the allegiance to the state or provincial parliament, and there is the allegiance to the central government. When you have two great bodies, as is proposed here—both elective—and the elections take place every three years, or more frequently, there is such a field for individual effort as to make honest legislation nearly an impossibility. I will cite, before sitting down, a paper which is strongly in favour of federation, but which admits more than I have submitted to this Council. Going back to what he said as to not giving any reasons, the hon. and learned member, Mr. Barton, remarked:

> I shall be willing, as I need not assure hon. members, to listen to every reasonable suggestion for the improvement of the bill. I do not propose to bring forward many amendments myself.

"Many" is very ambiguous. It is like "a lump of chalk." "Many" may be fifty, or two:

> It seems to me that I have been put in the position rather of the guardian of the bill of the convention, and that it is not any part of my duty to propose any drastic amendments in this House.

It must be seen that if my hon. and learned friend is the guardian of this bill, his views on it are of no value whatever. What are the views of the guardian of any person as to the person of whom he is the guardian? To my mind, you might just as well ask an advocate in the court to give his candid opinion as to the character of his client. The thing is absurd. If the hon. and learned member viewed himself as the guardian of this bill, his course was to make no speech whatsoever, but to allow the bill, under the act, to be considered in Committee, and to leave the Council to do with it as they thought fit. But first of all try, by every ingenious device of argument that the hon. and learned member's experience will enable him to think of, to induce us to pass the bill, and then to turn round and state that he is not only a member of the Council but also the guardian of the bill, are, to my mind, two inconsistent positions. I submit that the hon. and learned member is open to this correction: he must be taken to know that, when the enabling bill created the convention, it was intended that the convention bill would come before this Parliament; and the hon. and learned member, in accepting a seat in this Council, though here, no doubt, to throw any light he can on the measure, entered the Chamber in no different position in relation to the bill from that of any other hon. member. It is impossible, to my mind, to say anything opposite to that. The hon. and learned member knew that the act left the matter to the two houses of Parliament, and therefore he cannot put himself in the position of saying that he is the guardian of the bill. Whatever my hon. and learned friend may mean by that, it seems to me that it has no effect whatever on this Chamber. The hon. and learned member went on to say:

> Wherever I think that the framework of the bill may be improved by amendment, I trust that hon. members will find me faithful to my task in the convention.

My hon. and learned friend, Mr. R. E. O'Connor, has admitted that we cannot have federation without sacrifice. That cannot be denied. The question to be considered is the balance of benefits and injuries. No one has yet shown that benefits will arise to New South Wales. If there are any benefits they can be obtained in a much simpler way, and if they cannot, we do not want to pay this price for the whistle. The hon. and learned member, Mr. R. E. O'Connor, said:

> The Attorney-General has challenged me to give reasons in favour of federation. I might decline to do so.

That is a most extraordinary position. It reminds me of a young man who is asking for the hand of his sweetheart from her father. The father inquires, "Who are you?" The young man replies, "I decline to tell you." "What is your position?" "That is my business." "Where are you going to live?" "Mind your own affairs." The father thereupon remarks, "My dear friend, I will do for you what is usually done after a wedding; I will throw the slipper after you, but I will not take my foot out of it." The hon. and learned member, Mr. R. E. O'Connor, continued:

> But out of respect to the hon. and learned member and his position as leader of this party, I am not going to take up that attitude. It will be impossible in the limited time at my disposal to go very fully into these advantages; but I will tell the hon. and learned member some of the reasons which have actuated, and are now actuating that great force of public opinion outside this House which has declared in favour of federal union of some kind.

I am not able to discover that great force of public opinion. I know it is the habit of party politicians to make use of certain statements so frequently that they come to believe them; but even if that be so, there has been no expression of public opinion in favour of this bill, nor have the people any chance of knowing what are the pros and cons of the federal form of government. There are many forms of government, one quite different from another. There are confederations, there are federal unions, there are federations which, it has been properly pointed out, are not viewed as confederations; there are leagues, there are customs unions, and so on. This particular bill has never been before the country in any way whatsoever, and had I come back from the convention, being one of the representatives, supporting this bill, I should have thought that it was my duty, not to read the clauses, which we can read for ourselves and can understand, but to show what is said in a small book which I am about to quote, and which, in my judgment, is a very useful book. It seems to be very accurate, very fairly put together, and it saves reference to a great many writers

whose names it gives. The book is entitled, "A Manual of Reference to Authorities for the use of the Members of the Sydney Constitutional Convention"—that was the convention that assembled in 1891—"for the purpose of Drafting a Constitution for the Dominion of Australia." I understand that this book was compiled by Sir Richard Baker, the President of the Legislative Council of South Australia. I have not the honor of knowing that distinguished gentleman; but I admit that the use of this book has saved me from bringing a small library into this Chamber. At page 30, the following quotation is taken from the great Professor Freeman's work entitled, "Federal Form of Government." Professor Freeman says: "This federal form of government"—that is, the form now proposed with a slight difference, for this is substantially the same as the bill that was drafted by that convention. I admit that I would equally oppose that bill as I do this, but do not let me be represented as being opposed to any union. That would be just the same as if I saw my hon. and learned friend, Mr. Barton, about to go and buy some machine to cut and shampoo his children's hair, and I said to him, "Why go and buy that expensive machine, you are living near a very respectable hairdresser. I would not do that. It would be foolish on your part to do it," and then I was represented to the public as being opposed to my hon. and learned friend's children having their hair cut. That is how I have been represented to the public in regard to federation, because I am opposed to the great strides that my hon. and learned friends propose to take now in the direction of creating a great national body with a great judiciary and executive body attached to it. I am against that absolutely, whether you found it on the American or the Canadian model, because I think we are not ripe for it. We have not the men in the country to take the positions that this bill provides for, and if you are going to do this, the sooner you give women votes the better, in order that at least they may help to create them, for if you take members out of the local legislatures and let them be members of the central parliaments, what would become of these houses of Parliament? To get over that difficulty, the convention have actually adopted a clause, which has been condemned by every writer on this subject, and my hon. and learned friend, Mr. Barton, was a little tremulous in reading it, and did not say he was in favour of it. But any one will see, from looking at the hurried way in which this matter was necessarily dealt with by the convention, that they were willing to do what is called give and take. You will see that from the expression, "Well, look how generous we, the smaller colonies, were yesterday. Now, surely you are going to show some similar generosity?" With the greatest respect to the distinguished men who were at the convention—whose ability, whose honor, whose unselfish motives I admit in the most ample and unqualified way—I say that is not a right position to take up when you are acting either as a delegate or a representative of a great colony. It may be, as I admit is the fact, that Tasmania would be devoid of reason if it entered into a confederation where the representation in the senate was in proportion to the population. But that is no reason why these colonies should yield to it. I am afraid that by reason, as I stated to the House in the beginning, by way of apology, of my not having time nor any reasonable or fair opportunity of committing to paper my views, they are not submitted to the Council in that logical order which I should desire. But I hope I may be pardoned. It will be found in the end that although I am not orderly hitting the head of every nail in this proposed building, in the long run there will not be one of the nails untouched. That it may be plain to everybody that the point of view taken at the convention was the one I have indicated, I would venture to point out that in the Tasmanian House of Assembly a distinguished gentleman, who was also a member of the convention—Mr. Henry—in the delightful and placid atmosphere of that beautiful little isle, made use of the following words on the 21st or 22nd of the present month, and I will certainly hand to my hon. and learned friend, Mr. Barton, this small pamphlet, for which I am indebted to the Attorney-General, in order that he may, if he can, pick out any portions that may uphold his views. Mr. Henry said:

> Then it was asserted that there could be no federation unless equal representation were agreed to—without the smaller states were safeguarded in their power of veto by equal representation in the senate. Should the federation

be entered into, Western Australia and Tasmania would send 5 members to the house of assembly. On the mainland there would be 1 representative returned to the lower house for every 50,000, and according to that Tasmania and Western Australia would only be entitled to 3 each. He had pleaded with the delegates from the larger colonies in this way: "Remember how we assisted you over the money bills, and let us have in return 5 members instead of 3, and" ——

says that able advocate, "they gave way." So I think no one will deny that my form of stating the position is always within the truth. I have given some time to this matter consistent with other duties which were pressing upon me. I have looked at the debates at the convention, and, if the occasion were not serious, it would be amusing to see the rapid way in which great matters were dealt with—sometimes for one reason and sometimes for another—but there ran through the whole of it this amiable key of conciliation: "We gave you that yesterday, now you give us something to day"; and here an hon. gentleman, who, if his ability is as great as his candour, must be a very distinguished man in Tasmania, has let the cat out of the bag. I humbly submit to this House and the country that that is not the frame of mind in which to approach this subject. I quite admit that you have to consider what is right and what is just, and if I were a representative of any colony, great or small, I would take that as my guiding principle. I am familiar with the books to which my hon. and learned friend, Mr. Barton, referred as to the question of representation in the senate, and it is only out of regard for the time of this Chamber that I do not refer to those authorities. But if any hon. member should intimate to me that I have not exhausted the great patience of the House, I will point out that the quotations which my hon. and learned friend read are of no more weight on this question of the federation of the Australian colonies than would be the views of a prisoner as to the sentence the judge ought to pass upon him or what the people in gaol think of the ten commandments. My hon. and learned friend quoted a work by Mr. Justice Storey—of course a very high authority—written even before the passing of the Reform Bill in England. I will make this concession—I think I have already done it—that if I were an inhabitant of Western Australia or of Tasmania I would not agree to a federal union in which equal representation in the senate was not yielded. On the other hand, I say that this colony would be mad to allow such a senate to be formed. What does that prove? That we are not agreed. The fact is that it is an absurdity to propose a federation in which an island like Tasmania is to be one of the federal states. That is a fundamental error, for Tasmania ought to stand out or she ought to become part of Victoria. Take the case of the small island of Heligoland in the North Sea, which Great Britain recently ceded to Germany. Supposing that that island had been where Tasmania is, and equally beautiful, and with inhabitants equally respected, would not any one have said, "Well, you must either join with one of the other colonies, or remain as you are." The thing is to be considered by the circumstances and position of the colonies that are going to unite, and although it may be a sensible thing for one of the colonies to say, "We will not join in a federal union where all the colonies are not equally represented in the senate apart altogether from their wealth, their position, their population, or their territory"—although that might be reasonable, what I say in answer to it is this, which applies to the affairs of ordinary life, which applies to every transaction you may think of—whether the sacred one of marriage or that of dealing with cattle—they cannot come into line. But it does not follow at all that either party is unreasonable. However, what I deny absolutely is that my hon. and learned friends, Mr. Barton and Mr. R. E. O'Connor, and the hon. members of the Assembly who represented us at the convention had any authority whatsoever to bind the Parliament and the country on this matter. It might be quite reasonable for them to allow it to be submitted—I do not complain about that—in order that it might come before us and we might see the views the representatives of those colonies took. But what I most strongly object to—and I certainly will not put it in any offensive sense—is the expression used by my hon. and learned friends in this Chamber, these gentlemen being foremost citizens and ornaments of the Legislative Council, when they told us in the most distinct language that they would not agree to a federation in which Tasmania and Western Australia had not those rights. This is the most extraordinary thing I can

imagine. I have no doubt my hon. and learned friend, Mr. Barton, thinks it is just. But he does not represent Tasmania. It may be just, from the point of view of Tasmania; but it is not just from the point of view of the larger colonies. It proves that all the members of the proposed federal union as independent states cannot be admitted into a union of this kind. That is all it proves. I have no doubt that both my hon. and learned friends were actuated by the strongest sense of justice, but I humbly beg to be allowed to differ from them—not to take a different view from theirs in regard to allowing this matter to appear in the bill; but in regard to my hon. and learned friends, who are citizens of New South Wales, taking up the position that they will not move from it when it is perfectly indifferent whether they move from it or not. But, of course, if my hon. and learned friend is right, and I venture to think he is wrong, in saying that he occupies the position of guardian of the bill, then it is perfectly plain that he is not free in any way whatsoever, and it may be on that account he sought to find out reasons why we should pass it. What I was about to do when the Attorney-General was good enough to give me that extract from the debate in the House of Assembly in Tasmania, in order to support my recollection of the form of discussion in the convention, was to read an extract from Professor Freeman's "Form of Federal Government." Professor Freeman says:

> This federal form of government may be looked upon as one form of government amongst others, having its own advantages and its own disadvantages, suited for some times and places, and not suited for others, and which, like all other forms of government, may be good or bad, strong or weak, wise or foolish, as just may happen.

I have the courage to submit to the two houses of Parliament of this country that it comes under the last word "foolish." That is a matter of opinion. Let me in a general way first indicate why I think it is foolish. Of course, if I took the view which the founder of this movement, Sir Henry Parkes, expressed in one of his rhapsodical utterances on this matter, that New South Wales alone was a mere patch, then I could not submit to this Council what I am about to do. I know, however, that instead of being a patch New South Wales alone is nearly three times the size of England, Scotland, Wales, and Ireland put together. Now, it is a question of means to an end. What is the machinery that you want to create? And when you have got it what will it do? I will give my hon. and learned friend the result of my mature thought as to what form federation ought to take when the time comes to adopt it. And he will find no authorities in England, America, Canada, or anywhere else, against the suggestion which I would make. I do not see any probability of its being adopted, for reasons which I shall indicate—I regret to tell my hon. friend so—either in my lifetime or his. In what position are we? Every speaker—and even the very distinguished gentleman who has enabled us to find many authorities in a very short and easy way—Sir Richard Baker—seems to have overlooked this most important consideration, that, as I will show before I sit down, there is no analogy whatsoever between our position and the position of America or Canada. None of any kind, because, although I am opposed to federation, because I believe greater evils than benefits will arise from it, I admit that there are other reasons which might sway me to adopt it. Self-preservation is equally the law of peoples as it is of persons, and had I been a citizen of any one of the states at the time they broke away from England, of course, I should have been in favour of federation. I want to draw the attention of thinkers to this: When those states broke away, they would either have had to be a number of independent republics, or to have had a unification of the whole of the states. That is to say, that they had not already that legislative union which, fortunately, these colonies have. It would have been impossible for the American states to pass any form of bill which would have been binding on all, whether they agreed or did not agree. They could pass an act, and next day repeal it or set it at naught. We, fortunately, which seems to be overlooked by those who want to have a uniform tariff, and the whole of the military forces under one head, and other matters similarly dealt with have already an Imperial Parliament which, if we agree, will pass what we want into law. There is no magic in the name of a federal parliament or commonwealth. If anything is wanted, show what it is, put it down, and let the other governments agree to it, and submit it, if you

like, as you are going to submit this—to the people; then let it be passed in an imperial act, and it will bind the whole of the colonies, and cannot be set at naught or touched, with this mighty difference, however, that the Imperial Parliament can, in case of political difference, or if it is the wish of one or two colonies, repeal or alter it. But this is an indissoluble constitution which we have before us, and it commences by telling you that it is not capable of being dissolved, except by revolution or civil war. I do not think I am self-sufficient in taking to myself the credit of pointing out the great difference with regard to the American states. They had no body in relationship to them which could pass any law of any kind whatsoever. But happily we have the great Imperial Parliament not only free from any injurious prejudices, but most rapturously in love with everything that can advance the happiness and the greatness of the Australian colonies. With America it was, in the words of their greatest statesmen, union or destruction. Two of their ports were still in possession of the British, and several of the confederate states threatened to go back to their allegiance, there was no time to lose, and under the necessity of self-preservation they united in a federal union. What analogy is there in that to our case? None of any kind whatsoever. What was the position of Canada? All effective government had ceased; there was a danger of some of the Canadian provinces being drawn into union with the United States; there had been rebellions and inroads made, some of which we know ended by persons being executed. That distinguished gentleman, Sir Richard Baker, who is strongly in favour of federation, at page 20 of his book says something to which I will refer. I am indebted to my hon. and learned friend, Mr. R. E. O'Connor, for this book. I am not astonished that he did not quote it. I have not found anything in it in his favour; whether there is anything in it in his favour or not I do not know. I hope it will be borne in mind that I am in no way quoting from, or replying, I say it with all respect, upon the opinion of Sir Richard Baker. I do not know that hon. gentleman, by repute or otherwise, and I am perfectly indifferent to his views, whether they are in favour of mine or not. I am simply using a book in which he has had printed quotations from acts of Parliament, despatches, Queen's instructions, or books of authority; that is all. There may be here and there a few words where Sir Richard Baker has summarised the effect or conclusions of some of these writers, and I may read them. But I want it to be understood that I am not relying on it, if I do read any opinion of this gentleman. I ought to say that the matter seems to be very fairly stated by him in every part that I have had time to refer to. I have already explained to the Chamber that I have not been able to command sufficient leisure to put my views into what I may call an orderly form; but I think that no harm will be done in substance to the position that I take up, and I should like now, whilst I think of it, to say that the Vice-President of the Executive Council, in a speech the other night, and I suppose I must take it seriously, said that the effect of a federal form of government would be to purify our politics. It is very difficult to understand how any gentleman with the great reading and accomplishments of my hon. and learned friend could say that. The fact is the very opposite. I am not going to found any argument upon my own limited personal knowledge, though the fact is that I have sat many times in both the House of Representatives in America and in the Senate. I have been a spectator in their state courts, and in the Supreme Federal Court of the United States. I have also visited Canada, and had the advantage of learning the views of some of the men there as to the working of their form of government. But apart from that altogether, I am startled that any one could think that the result of federal government, by reason of its admitting of so much combined corrupt action, would purify our politics. I will read a few words from the book of Mr. Bryce on the American Commonwealth, to which my hon. and learned friend, Mr. R. E. O'Connor, referred ——

The Hon. E. BARTON: ——

The Hon. Sir JULIAN SALOMONS: I am not able to distinguish between the utterances of my two hon. and learned friends. I am in the position of the man who, having married one of two beautiful women who were twin sisters, somebody said to him, "I really wonder how you can distinguish your wife from her sister." He said, "Well, I do not try." I am not

able, I admit, to distinguish between the utterances of my two hon. and learned friends. If they will forgive me for saying so—and I have a great respect for both of them—they are both in the same boat, though perhaps their wives will say, "with different sculls." I will ask the Vice-President of the Executive Council to admit that he has made a great mistake. I am about to quote from page 7 of the first volume of "Bryce's American Commonwealth"—a book which is far too favourable, as I can well understand, to the institutions of America. It is written with an easy hand. But even that writer says this with regard to the American political machine:

The whole machinery both of national and of state governments is worked by the political parties. Parties have been organised far more elaborately in the United States than anywhere else in the world, and have passed more completely under the control of the professional class. The party organisation, in fact, forms a second body of political machinery, existing side by side with that of the legally constituted government, and scarcely less complicated. Politics considered not as the science of government, but as the art of winning elections and securing office, has reached in the United States a development surpassing that of England or France, as much as the methods of this country surpass the methods of Servia and Roumania.

Where could there be a more weighty and more condemnatory passage than the one I have just read? I recommend the country to compare that with the generous and benevolent opinion expressed by the hon. and learned member, Dr. Garran. I was delighted to see something which was published on the 24th of this month in one of our daily papers. The *Daily Telegraph* has been good enough to publish a valuable leader, which, according to my small reasoning, appears to furnish the strongest argument against the adoption of any form of government founded as this is with regard to many of its provisions on that of the United States. I will read this as confirmatory of the view put forward by Mr. Bryce in the passage which I have just read. This article is headed "Government by Boss in the United States." I would ask my hon. and learned friend, Dr. Garran, before he speaks again on the matter, to reconsider the position which he has taken up—that federal government would purify our politics. The writer says:

There is a third objection about which foreign opinion would not be certain, perhaps, if it were not for an abundance of convincing American testimony, namely, that as government itself in the United States is controlled by the worst form of trust, no law is really effective that does not begin by cleansing the source of law in a way that is plainly and badly needed. The modern electioneering system of the republic originated over sixty years ago, during Jackson's second term of office, when that democratic machinery which was described as built on ——

And this is a quotation well known in America—

"the cohesive power of public plunder" made its first appearance and a brilliant success. It has been developed since, and perfected by successive political speculators, each improving on his predecessor, until now a recent writer in that reputable American magazine, *The Forum*, declares that there prevails a despotism according to the description of Montesquieu as the state of government in which "one man, without law or rule, controls everything by his will and caprice."

Further on we may read in the same article:

In fine, this peculiar development of American politics, which so effectively prevents "government of the people, by the people, and for the people" in the country where that splendid claim was made, is national as well as provincial. There was already ample evidence of that, a case in point being the attack so successfully made by the sugar trust a few years ago on a scheme for reducing its bounty-fed bulk. That it cannot be easily interfered with the experience of President Cleveland plainly shows. Mr. Cleveland, one of the ablest, stubbornest, and most honorable men who ever occupied White House, announced at the outset of his presidential career that he did not intend to follow the current system of sweeping all the public officers of importance out of their positions and replacing them with his own partisans. But he had to change his mind. The grand old tradition of spoils to the victor was not to be annihilated so easily. The principle which Mr. Cleveland had laid down fell into "innocuous desuetude"—to use a phrase of his own—and the close of his second term saw himself threatening dismissal to any civil servant convicted of voting against Major McKinley.

I beg the attention of hon. members to these most weighty and accurate words, because it will save me from referring to many writers who take the same view—that is, as to the life of a nation being taken up with political elections and agitation. This article concludes with these words:

What is the matter with the United States is that it has too much politics. So many offices are elective that elections seem to be constantly going on at a pace the public mind either cannot, or does not, want to keep up with. Consequently, politics has become a pleasant and paying game for a few to play at, and great numbers

of the people really know no better how they are voting than the peasants of Alsace-Lorraine knew when they thought they were voting for peace in Louis Napoleon's plebiscite.

I forgive anything that that paper may have allowed to appear trying to belittle those who take my view, because, to my mind, the antidote that is before them there is much stronger than any intellectual force to be found in the articles that have been written in favour of federation. I regret that I am not able conscientiously to rank myself under the banner of federation. I think I know, as well as anyone, that if I did so I could revel to the greatest length and height in the language of fancy. I could enrapture unthinking multitudes by quotations from prose and poetic writers as to union, fraternity, and topics of that nature. But I know well that the world ought not to be governed by words. Notoriety is not celebrity; popularity is not distinction; glory is not greatness. These are words. It is in the things you lead people to believe those words typify where you are unfaithful to your trust. I quite admit that I myself am open to this rebuke, otherwise I would not put it so strongly. When I was a young man—and no one can doubt my sincerity—I subscribed to the meeting to which I am about to refer, and at which I took the chair, the sum of £100 which I could not afford, in order to make it a success. That meeting was in favour of a national system of education, which should be free, secular, and compulsory. I have ever since been filled with remorse. I live near a great public school, and day after day I see upon the palings of my own and my neighbours' residences—mine I had to pull down and put up a stone wall to prevent it—not once or twice, but always, forms of language, and expressions of indecency and obscenity which would disgrace grown-up men. I myself have made no representation to the head of that school, but I am told by a friend of mine that he has said that his duties were limited to the boys in the school. It has, however, convinced me of this: that education without religion is like putting a sword into the hand of a savage, and I have come to the conclusion that any one of the branches of the great Christian religion, or any great religion analogous to it, although they may differ in their theological forms, is better than no religion. Just as the twig is bent the tree is inclined. And now, in the same way, my hon. and learned friends are, I submit, equally being made the fools of words. To think that any men, with the ability of my hon. and learned friends, would ask to submit this most important bill, consisting of various novel provisions affecting the executive, the two houses of legislature, the electors and the elected, the judiciary, the power of amendment, the relation of the state parliament to the federal parliament, the relation of the state parliaments to each other—to think of the audacity of submitting a bill of that kind, which will not even be before Parliament before it goes to the people, but will go direct from the convention to the people, for them, in the words of the bill, to say "aye" or "no" as to whether or not they would accept it, is absurd. Let me try to state some of the reasons why this bill ought to be rejected. I am not referring to differences of opinion on minor points. I am not going to take up the time of the Chamber as to provisions upon the form of which the best of men may differ. My reasons stand on a much higher ground. Some of them are these: I agree with Mr. Bryce in thinking, and he is not alone in his opinion—it is the conclusion at which all great political writers have arrived—that a country's greatness may be impeded by too much government. It is, to use a common phrase, "too much of a good thing." The Attorney-General referred to a point which I am about to indicate, and which I strongly accentuated in a speech which I had the honor of delivering more than seven years ago, and I should like the hon. and learned member, Mr. Barton, to attempt to answer it. We have here 1,300,000 inhabitants, scattered over territory nearly three times as large as Great Britain and Ireland. Suppose—and that, in my opinion, is a very valuable method to adopt as to all private as well as public matters—suppose, when you are in doubt, that the thing you contemplate is done—suppose that by some subtle arrangement, similar to that which beguiled the Assembly and this House to pass the enabling act, this bill were to be allowed to become the law of the land. Would life be bearable? What should we have? We should be living in a country, with a small population spread over a large

territory, and having had, in the proper sense, but a very small experience of the Constitution under which we live, with municipal government, local government —

The Hon. Dr. CULLEN: They are the same thing!

The Hon. Sir JULIAN SALOMONS: I beg my hon. and learned friend's pardon. If my hon. and learned friend thinks so, let him expose his absurd view when he comes to speak, and not interrupt me with such nonsense. I will show him in a moment, from the words of a gentleman whom he at least respects, the nonsense of telling me that municipal government is local government. Of course my hon. and learned friend is a greater enthusiast than the gentlemen to whom I am about to refer. He seems to have lost his balance altogether on this great matter. I am about to quote from a speech delivered by the hon. and learned member, Mr. R. E. O'Connor—I quote it from the same number of the *Daily Telegraph* as I used some moments ago. The hon. and learned member, in an address headed "A Policy for the Protectionists" is reported to have said—and I know he is correctly reported because it is taken from a well-known paper called the *Catholic Press*, and I hope the hon. and learned member, Dr. Cullen, will digest it before he interrupts me again so erroneously and unnecessarily:

> I speak only as a member of the protectionist party with the fullest possible consideration and respect for the difficulties surrounding the position of the leader of the party. . . . In my view, the only course of action which the Opposition could take in the interests of the country would be to reverse absolutely the whole of the policy which Mr. Reid and his Government have introduced and carried out.
>
> Under a carefully adjusted scheme of protective duties the industries of the country would be stimulated, capital now long idle would be unlocked, and hope and confidence given to enterprise of every kind. The present system of land and income taxation has been tried and found wanting, and should be swept away absolutely.
>
> I am not opposed to a land-tax; but in my opinion it should be imposed by local bodies and for local purposes. Now is the opportunity for introducing local government ——

Why, we have municipal government all over the country. Everyone knows that local government is as different from municipal government as the views of my hon. and learned friend, Dr. Cullen, are from the views of the authorities to which he has been referring—

> under which the whole of the lands of the colony might be taxed for local purposes, and I see no reason why such a system with liberal subsidies to local bodies in the first years of its existence should not be completely successful in relieving the Treasury of a large amount of expenditure which now takes place upon the roads and bridges of the country. . . . . .
>
> In the meantime, as a party, they should steadily support the cause of union. It appears to me that as the protectionists are the exponents of a national policy, the party should naturally support federation.

I wish to accentuate my astonishment that those who are free-traders, and who are free-traders even under the present form of provincial government—that is to say, who are now allowing the products of Great Britain to come into this colony free of duty—should think for a moment of a uniform tariff, allowing the products of Western Australia to come here, and denying the same right to the home people. What could be more grossly absurd? I will show before I sit down my views upon that matter. But I am startled that, at the beck and call of the two distinguished gentlemen who are the head and front of the cause of protection, free-traders will follow them to do what? What my hon. and learned friend, Mr. R. E. O'Connor, points out would be the salvation of the protectionist cause. The hon. and learned member went on to say:

> In the meantime, as a party, they should steadfastly support the cause. It appears to me that as the protectionists are the exponents of a national policy, the party should naturally support federation. Many free-traders fear that federation will be the death of free-trade.

My hon. and learned friend is not very candid there. We all know from the debates that federation must be the death of free-trade. My hon. and learned friend says that it may be. He goes on to say:

> The protectionist on the other hand must see that under federation his doctrines would be carried out practically in a larger area.

That is one of the reasons why I am opposed to federation; that is to say, this colony now admits the products of Great Britain free, but then they would be shut out. That is what that sentence means.

The Hon. J. H. WANT: At the dictation of the other colonies!

The Hon. Sir JULIAN SALOMONS: And, mark you, not by resolution come to by our own Parliament, but by the action of the house of representatives and the

senate, which senate, according to my hon. and learned friend, Mr. Barton, could prevent any legislation, except that which is in accord with the views of the smaller colonies. It is plain that, as each colony is to have an equal number of members, the matter will be under the control of the smaller colonies, comparatively insignificant—that is to say, Tasmania, with 160,000 inhabitants, and Western Australia, with perhaps the same population, and removed hundreds of miles from Sydney. It is proposed not only that a parliament so constituted should have that power, but, further, that a parliament like that of South Australia should be enabled to give weight to a question which we at least can say has not yet been decided —upon which I shall express no strong opinion now, seeing the number of ladies I may have to meet on quitting this Chamber—for they have womanhood suffrage there and we have not. I think it would be senseless for a great colony like New South Wales to allow its destiny to be controlled by electors who, if they lived in this colony, would not have the suffrage. If we are to adopt the so-called advanced systems, let us do it after debate in our own houses of Parliament, in accordance with the views of our own people, and not as an indirect consequence of this commonwealth bill. My hon. and learned friend, Mr. R. E. O'Connor, went on to say :

> The policy of the commonwealth, it is apparent, must be one of protection against the outside world, and I cannot see why a reasonable system of protection, while advancing the interests of New South Wales, would in any way prejudice the interests of federation at the present time.

As I have already said, my hon. and learned friend would not intentionally say anything to deceive the people of this country, or of any of the other colonies, and he there admits, as he had to admit, that the result would be universal protection—that is to say, in exchange for the markets of the other colonies being thrown open to us, we are by a discreditable bargain to shut out the products of the country from which we sprang. I think it will be admitted by any hon. member that my hon. and learned friend, Dr. Cullen, has derived no advantage by his interruption of me when I was speaking of local government. I now come back to the point where I was improperly interrupted. I hope I have satisfied every one but my hon. and learned friend, Dr. Cullen, that local government and municipal government are entirely different. I quite admit that the happy state in which the advocates of this measure wish to place us would bring about the same kind of nocturnal comfort as if you were to sandwich yourself between a hedgehog and a porcupine ; you could not turn round. As a matter of fact, you would have municipal government, local government, provincial government, federal government, and the great Imperial Government, too, for a small body of 1,300,000 people. I say it is out of proportion. What further would you have? You would have a great house of representatives. I beg his excellency the governor-general's pardon. You would have at the apex of this ambitious scheme the governor-general at a salary of £10,000 a year. You would have the members of the house of representatives in receipt of £400 a year each. You would have the senators in the receipt of the same sum. My hon. and learned friends must not be angry—they are only mortal ; but when I see what has been done as to the enabling act, when I look at the provision of this bill, of a most disgraceful kind, allowing a man to be at the same time a member of the provincial parliament and a member of the federal parliament, am I not justified in saying that that is the grossest bribery and corruption? He will be in receipt of £400 a year as a member of the federal parliament, whether in the house of representatives or the senate, and also in receipt of £300 a year as a member of the Legislative Assembly, and consequently he would receive £700 a year, and a free railway pass, with the use as a club of the Parliament House, and the advantage of the pickings of a position of this kind. My hon. and learned friend, Mr. Barton, in a fit of candour, told us that the reason why they consented to that was because of the difficulty of finding suitable men. Does not that show that we have not arrived at a time when it is fit we should bring into existence a great central parliament like this? I must be excused from accentuating this which is disregarded by some people, particularly by those who mislead the public far from Sydney, as I see by the papers. They do not see that in many matters opportuneness is the essence of the thing. Because a man may object to his daughter's

affections being won when she is a child of 8 years of age, you must not represent him as being opposed to matrimony. The thing is premature. I could illustrate in a hundred ways that, with regard to numerous relationships, political and private, the thing may turn entirely on the point whether you are ripe for the thing you want to do, and I submit respectfully to this country and this Chamber that we are not ripe for this magnificent scheme. I do not deny that we might find useful and competent ornaments of the character it is proposed to create by the bill, in my opponents on this measure; but they are far too few to form either a house of representatives or a senate, and you would have not only the expenses in regard to the remuneration awarded to the members of both houses, but also the expenses of the official administration of the government. It is put down I think at £300,000. Any one familiar with the arithmetic of politicians knows that those are only fancy figures. They are like the letter x in some sciences; their ultimate resolution is unknown. But supposing that the expenses were £300,000, do we not know that already this colony alone has a public debt of over £60,000,000, and you propose that I should go into a federal union with other colonies, the total amount of whose public debt—that is to say with ours—is over £222,000,000. Suppose that the matter were referred to me as an impartial adviser, would I advise New South Wales to go into such a federal union? I am quite aware that the debts may perhaps not be taken over by the commonwealth, but there is the power to take them over; and I decline to go into this political prison, and only when I am there—for that is what this bill provides for—to learn what they are going to do with me. The most important acts of legislation are left at large in this bill—they are not defined—and we are trifled with—at least I am trifled with, because I know the absurdity of it. There is a provision that within two years the federal parliament is to bring into force a uniform tariff. But who is to compel them to do it? If you are right in saying that the colonies either through a convention, or the premiers, or the parliaments, cannot bring about a uniform tariff, I do not believe—particularly if you give equal voting powers to the small colonies—that the states will agree about it. They will not agree. As to making them agree, no one has the power to do that. There is no such power in this Parliament or the Imperial Parliament. I commence with the legal truism that it is useless, and is never done in any Imperial act, to put into legislation a thing that is mandatory, which there is no mode of enforcing. It is turning the legislature into ridicule. There is no mode in the world of forcing the federal parliament to bring about a uniform tariff in two years; and supposing it could not be done. The only effect of putting in the provision as to two years would be to make some state say, "We were generous towards you yesterday, and now you should not be too difficult with us." I hope that my hon. and learned friend will never misrepresent me as saying that I do not want to bring about any union. I admit that nobody can have everything, but there are certain things that no man, in private matters any more than in legislating on a public matter, will yield. For instance, the constitution of the senate is so important that no great colony will join with another colony which is so small as to be compelled, in order to defend itself, to ask for the same number of representatives in the senate as the larger colonies have. Never let it be said that I have been one of those who said that in order to bring about a union nothing was to be conceded. But you have to consider what it is, just in the same way as if some indigent relation of mine were to propose that he should come and live in my house, I should want to know what he wanted, for he might want what I would not yield, and it would be useless to say to me, "You are refusing to take him." Of course I should be, because he wanted what no sensible person would yield to him. You have to see what the particular matter is. You cannot, in this question, deal with generalities. To alter the legal phrase, nonsense lurks in generalities. You cannot argue upon them, you must have definite things in lucid language, showing the beginning and the end of the argument. Those I can understand, those I can answer; but, as for telling me that you will have the "crimson thread of kinship" of a deeper colour, or that you will have a line of coast going round a territory as large as Europe, or that you will be able to speak to other people with the voice of a nation, or to con-

trol the destinies of the South Sea Islands —those are useless things to say when you are thinking of what ought and what ought not to be in an act of this nature. It seems to be forgotten by those persons who revel in those fancies, that what applies to an individual applies to a nation. A person, like a people, may have millions of acres of land, tens of thousands of horses, unnumbered heads of cattle, and possessions that you could not count, but that person may be ignoble, and as mean as people who own many million times as much. The greatness of a nation must stand on other and upon higher matters. It must stand upon the wiping away of the grave faults that any one who looks through Mr. Coghlan's book on the seven Australian colonies, must admit are not to our credit. I am told on authority that cannot be questioned, that this colony alone spends £5,000,000 a year on strong drink, and that the public-houses in Sydney, if they were put one against the other, would extend over 6 miles. It would be much better for us to put our own house in order, to try and bring to perfection our own institutions rather than deal in this universal philanthropy, which is the common weakness of political men, who are the friends of mankind but entirely disregard their own dear little ones at home. We have too many examples of that in this country. Further, with regard to this bill. Perhaps I misunderstood my hon. and learned friend, Mr. Barton, and I admit he allowed me to correct him; of course it was only a slip of the tongue, but it is well it should be quite understood what the fact is. This bill proposes that no matter how large may be the amount at stake between two citizens, no matter how great the question that is being decided in the courts, no matter how large the interests involved—it may be a matter of £100,000 or the honor of a man's family, or the happiness of his children—he is not to be allowed under any circumstances to go to the Judicial Committee of the Privy Council. That is a most grave error. I think that I may, without affectation, think that I am competent to express an opinion on this point. I have never said a word disrespectfully of any tribunal in this country, but I should be open to serious condemnation as an interested hypocrite if I disguised from the public that my opinion is that we have not in any of the colonies men to compare for a moment with the great lawyers who sit upon the Judicial Committee of the Privy Council. There died the other day a man whom I once had the honor of knowing—Lord Justice Bowen. I have also been privileged with the friendship of Lord Bramwell, and through the introduction of one of our governors I knew that great man, Lord Cairns. There exists in England, even at the present time, judges on the bench who are members of the Privy Council who are at least their equals, and it would be simply a piece of folly and altogether untrue if I were to say that there are judges in the colony to compare with those. Supposing you were to disregard my views, though mine of course would be inclined quite the other way—it is only from a sense of duty that I have said what I have—whose voice would you have? Would you not ask the judges of our own court? I challenge any one to go and ask the Chief Justice of the colony. I know that that learned and distinguished man, once the pride and the guide of this Chamber, has said, over and over again, that he is opposed to it. But, further, the Privy Council costs us not a farthing. There the judges are all paid out of the Imperial exchequer, and we now propose to create a tribunal of our own, and to, of course necessarily, pay their salaries out of our own treasury. What can be more absurd? Do you think that I would leave the hospitable and luxurious table of my hon. and learned friend on my left, and go and pay for a little dinner of my own at some small pot-house in Lower George-street? The thing is childish. The real truth is this: the matters embraced in this bill would take skilled lawyers and great statesmen many months to work them out; instead of which, if you take up the official report of the National Australian Convention, you will find that, necessarily, from the circumstances under which these distinguished gentlemen met, from the time at their disposal, and from the unfortunate circumstance that the premiers had to go to England, and some delegates to return to Western Australia, the thing was done so rapidly as to give, even had they more competency, no chance of its being done thoroughly. I will follow up this assertion by proof. The bill proposes that from the Supreme Court of New South Wales there shall be no appeal to the Privy Council,

no matter what the subject may be; it may be a firm's solvency, a joint-stock company's existence, a banker's credit, or even serious interests of the Government and a subject may arise, or the liberty or life of persons. I happen to have had leisure enough to read a little, and never forget that you must not assume because a man is charged that he is guilty. There is on record a case in which a great member of my own profession was tried under most suspicious circumstances for a foul and horrible murder, and, though tried by a great chief justice, the impression of the court was against him. The result was almost the turn of a hair, and, although he was acquitted, a number of people had a doubt about it. That man himself afterwards became—and he was a man of noble family—one of the judges of the High Court of England. You might have a case here in which some man of distinction might have to cope with a conspiracy of the lower grade of people who are not absent from this colony, and he would have no power whatsoever of taking himself out of the local surroundings and carrying his case to a tribunal that would know nothing of A and B, and allowing it to be tried according to the rules of law, unswayed by personal, political, or social influence. This bill not only destroys that, but it stupidly proposes, and most improperly, to create a high court of five judges—four puisne judges and a chief justice. And, of course, we all know that three judges—a majority—will decide. Just imagine this for a moment. Suppose that the Chief Justice—probably I have him near me now, therefore I should speak with bated breath and whispering humbleness—suppose that this tribunal were to reverse a judgment of our Supreme Court. A case may be heard by the Chief Judge in the Court of Equity. I will suppose that it is a case between a bank and a customer; one of the parties dissatisfied with the judgment carries it on appeal to the Supreme Court, and the case is then heard by the Chief Justice, with two of our most experienced puisne judges, who dismiss the appeal, thereby agreeing with the judgment of the Chief Judge in Equity. This judgment may be reversed not only by the Chief Justice and the four puisne judges of the Court of Appeal, but it may equally be reversed by three puisne judges of that court. Two of the judges may be of the same opinion as our own court; so that there would be six judges in favour of the judgment, and that could be reversed by three puisne judges. A judgment of that kind would leave without authority and would return without respect. You would do away with the great confidence that our people have in the purity and the ability of those who administer justice, because, thank God, I am living in a country where, although people of repute have often, with regard to political parties and persons opposed to them, used language derogatory to their honor and character, no man of any reputation has ever dared yet to doubt that in every one of the Australian colonies the judges are beyond reproach—that they administer the law without fear, favour, or affection. I think men often are unconsciously moved by considerations that have very little, perhaps ought to have no, bearing on the matter. You are enabled now to go to a great tribunal, which, remember, is not necessarily constituted of any fixed number. It will be seen by any one familiar with that great court, as I am, and as is known by my hon. and learned friends on both sides of me, that when, as lately, a very important matter has come to be there considered, the greatest lawyers that sit in the House of Lords have sat in the Privy Council. They are all members of it. I have seen the Lord Chancellor, two late chancellors, judges of the Court of Appeal, and men of such renown and real distinction, that I say, without any pretended humility, that I bow my head in great reverence before them. I do not believe in the equality of men. I know that nothing could make me their equal. And, forsooth, we who are at no charge for that distinguished body called the Judicial Committee of the Privy Council, are actually craving—a foolish and thoughtless craving, no doubt—after nationality, and all the mighty promise that can be gathered around it, we are going to throw that court of appeal away absolutely, to cut asunder another tie that binds us to Great Britain, and to have courts sitting where I know not, nor do I inquire, for I know they will never come into existence.

The Hon. J. HOSKINS: There is an appeal in Canada from the Supreme Court to the Privy Council.!

The Hon. Sir JULIAN SALOMONS: The right of appeal under the Constitution

of Canada has been decided by the Privy Council not to be in any way limited. Although this bill allows on certain matters of the possibility of an appeal to the Privy Council—I will state what they are—they have nothing to do with individuals at all. The 75th clause says:

> No appeal shall be allowed to the Queen in Council from any court of any state or from the high court or any other federal court, except that the Queen may, in any matter in which the public interests of the commonwealth, or of any state, or of any other part of her dominions, are concerned, grant leave to appeal to the Queen in Council from the high court.

It will be seen that the possibility of an appeal is limited to matters in which the public interests of the commonwealth or of any state, or of any part of the Queen's dominions is concerned. But an appeal by any corporation, or by any individual, or any firm is absolutely prohibited. Now, if a matter arises in this colony, which concerns a sum of money or property, amounting to over £500, you can, on giving security for the costs of the appeal, obtain leave to appeal as a matter of right. It cannot be refused. But under this bill, even with regard to the state, you would have to petition first to the Queen in Council. Therefore, it would do away with the right of appeal with regard to small matters. In the case of a state or the commonwealth, the Government would actually have to apply to the Queen in Council for leave to appeal. I submit that that is a very grave error. It is like a child trying when he is just out of his cradle to use his father's sword. We are a people small in numbers, and I have shown that either in Parliament or out of Parliament we have not men, nor could we be expected to have men, equal to the leading statesmen or jurists of a country like Great Britain. Yet that being the case, we actually voluntarily ask to have a court of appeal of our own, and to take away this right. I should have thought—and my hon. and learned friends will admit that upon this I am most reasonable—that any hon. member proposing it would give some reasons for it. They gave no reasons. My hon. and learned friend, the guardian of the convention, says that he is not called upon to do so. Surely my hon. and learned friend forgets that he could not speak in this Chamber as a member of the convention. When my hon. and learned friend spoke, he spoke, as he could not otherwise do, as a member of the Legislative Council. When he asked us to go into Committee, it was his duty to tell the Chamber why we should take away the right of appeal whilst we are even still a colony. My hon. and learned friend, Mr. R. E. O'Connor, with a courage that shows that he was not intended by nature for the peaceful arena of the law—that he should have led conquering armies—ventures to say it is for us to show why we should not have it. It is just the same as if a surgeon were to say to me, "I am not very busy; I had better take one of your legs off, and you ought to show why I should not do it."

The Hon. R. E. O'CONNOR: I never said it!

The Hon. Sir JULIAN SALOMONS: My hon. and learned friend is more witty than correct. I will read the passage in which he said it.

The Hon. R. E. O'CONNOR: The hon. and learned member is speaking about something else—he is speaking about the Privy Council!

The Hon. Sir JULIAN SALOMONS: My hon. and learned friend is getting a little technical. This proposal as to the judicial committee is in this bill, and my hon. and learned friend was asked to point out the advantages of passing this bill.

The Hon. R. E. O'CONNOR: Of federation!

The Hon. Sir JULIAN SALOMONS: Well, federation is in the bill. I beg the hon. and learned member's pardon, I withdraw my remark that he ought to have been a soldier; he ought to have been a comedian, for the hon. and learned member thinks he can laugh himself out of this difficulty. Here is a bill which proposes to do away with our present court of appeal and to substitute a colonial appeal court. My hon. and learned friend is asked to give reasons why we should adopt the bill and he says, "You are only asking about federation." What is this but federation? You might as well tell me, when I am objecting to any other great proposal, that I have not gone into every point. This is the bill that we are talking about. The hon. and learned member, as a great advocate, knows that the more ground you spread the better is the position of your opponent—that is, if my hon. and learned

friend, Mr. Barton, had ventured to say anything at all about the duties of the Committee, he would have gone out of the frying-pan into the fire. But he was perfectly safe when dealing with general matters. The whole of his time was taken up by talking about the bill from Victoria Regina down to the name of the printer. He told us what was the machinery, the relation of one part to another; he explained the legislative and judicial powers. He admits that this is a mighty change; he admits that it will throw upon this colony a very serious burden, and ought he not to tell us why we should adopt the change? We all know that the burden of proof is upon the man who wants you to give up what you have got, and try to get something better. The hon. and learned member, Mr. R. E. O'Connor, says, "The Attorney-General has challenged me to give reasons in favour of federation." My hon. and learned friend does injustice to his own reputation and great abilities. Of course when the Attorney-General or any one else says, "Give me reasons," he refers to the Commonwealth Bill. In that bill this is one of the chief proposals. You might as well say when I come to criticise the constitution of the senate, "Oh, I am talking about federation." That is part of federation; it is the judicial part of it. My hon. and learned friend, Mr. R. E. O'Connor, when asked to give reasons in favour of federation, replied:

> I might decline to do so; I might say that we are now beyond that stage.

That would be just as sensible as if a man who is engaged to a girl whose father says, 'You cannot take her home until you are married," were to say, "I am beyond that stage." It would be just as sensible to say we are beyond that stage. We have not got to it. My hon. and learned friend has not even bought the properties to open the play, much less is he prepared to close the theatre. He says:

> Out of respect to the hon. and learned member and his position as leader of this party, I am not going to take up that attitude.

I have looked through the speech of my hon. and learned friend; but I can find nothing about these points I have referred to. I have no doubt that as a matter of right my hon. and learned friend, Mr. Barton, has not under our rules the right of reply; but I hope he will be allowed to reply, because I want to hear what he has to say. I know he has got the vessel; I know it is well equipped; I am aware of all these clauses. But, do what you said you would do. You admit that the question of a federal system of government, whether under this bill or the Canadian system, the American system, or any other system, is to be decided by the advantages that we have as against the burdens. Show me the advantages of this bill? They have not done it yet; they will do it at a time when no one can correct them. I am sorry my hon. and learned friend, Mr. R. E. O'Connor, has not the right of replying. because if he were following in this vein he would be most amusing, for after he is challenged he actually says:

> In the first place, I would say that it almost seems as if the proof should be on the other side.

Now when an hon. and learned gentleman says that, you may like him as a friend; but on the subject he is talking about you cannot take him seriously. That is to say, it is on the side of those who do not want to change the Constitution, it is on the side of those who want to remain as they are, on terms of amity and friendship with the surrounding colonies, to agree to any proposal that is reasonable, and from which either party can go back, or to let all the colonies agree to a uniform tariff and to a single control of the defences and give it the sanction of an act of the Imperial Parliament, which no one can go back from without the aid of the same Parliament. Does it not show how this impression has got abroad, and has been adopted by thousands, that we are ripe for federation—it is by able but mistaken positions taken up in the same way? And this reminds me of a very correct complaint that my hon. and learned friend, Mr. Barton, indulged in; but I do not think he saw where he was going to; in fact he proved what I have been trying to say, but amid the deafening and dinning sounds of those who do not know what they are asking for, like in some fables, you cannot be heard. Now what I said seven years ago is admitted. My hon. and learned friend says: "There are numbers of persons who call themselves federalists, and, when you point out to them this bill, they are opposed to this, they are opposed to that, they are opposed to the other. They want federation with-

out these things, without which it is impossible." That is perfectly true. Why is it? Because this question of a federal parliament is new to nearly everyone in the colony, and, consequently—I say it with all humility—there are very few persons outside the bar or the body of attorneys who know what the term implies. Persons here are engaged in useful duties. What use can arise to any ordinary persons from mastering the intricacies of the American state parliaments and the American Congress, or the provincial governments of Canada, and why they went into union, and what are the theory and the working of the Dominion Parliament? Why should they do it? Now, that the thing is put in black and white, and they know what it means, they tell you what is true — that they are not federationists, that is to say, they are willing to be parties to the abolition of border customs-houses, they desire to see intercolonial free-trade, which is the same thing as a uniform tariff; they desire to see the military defences brought under one head; they desire, in a word, all the necessary things which politicians have been prating about for the last thirty years, but they do not want them settled. They are just in the same position as a newspaper is when a great trial is on —they do not want to see it come to an end. But, now that it has been explained, partially, at least, through recent utterances and recent publications—that is to say, these debates—people have begun to see what it means; in fact, an intimate friend of mine whom I could hardly talk to with patience a few years ago, has had the magnanimity and the kindness to say openly, without qualification, "I did not understand it, Sir Julian; and now I do I am utterly opposed to it." Do not be the plaything of words. This is what you mean by a federal commonwealth—two great houses of parliament, with the members of both houses paid, with a governor-general at £10,000 a year, with a court of appeal, with no right of going to the Privy Council, and with provisions—you may say that my language here arises from the courage of ignorance — with financial provisions which I read until I came to the conclusion that my best chance of understanding them was to take them backwards. I can make nothing out of them, and my hon. and learned friend, Mr. Barton, must not be offended by my saying that I tried but I derived no aid from the acres of figures and particulars he was good enough to read from some prepared paper. It made confusion worse confounded. The real truth is that the problem is no more capable now of equitable solution than it is possible to square the circle. My hon. and learned friend and the public out of doors who are in favour of federation do not seem to recognise that there are certain things at a certain time which are not capable of adjustment. And so it is with all these matters as to the financial arrangements; but I admit frankly, as my banker would tell you, I am not very strong in matters of finance. My hon. and learned friend, Mr. R. E. O'Connor, as I said, actually told us that it is for the opponents of this bill to take up the burden. This bill proposes, mark you, to leave this colony as all the other colonies will be left—with two houses of parliament, with a governor and an executive council, and with a judicial body. Now, this bill proposes to do—what? It proposes to take away from the control of the local Parliament absolutely—what?—some of the most important matters we might have to consider. I do not want to fatigue the Council; but, as hon. members are aware—and I state this most certainly—there are matters in the bill which are so ambiguous that they must necessarily give rise to interminable litigation. That, I admit, is one of my main objections to the bill. It has been said to me by one or two kind-hearted but thoughtless friends that they could not understand, after reading my previous speech, where I showed the enormous amount of litigation which must arise —and I will show you in a moment how —why I should be so foolish as to oppose this bill. I quite admit that if I could reconcile my self-respect to the advocacy of any measure for my private benefit, I should certainly join my learned friend; but I prefer to sacrifice my life rather than do any such thing. As regards many of these matters, I appeal to my hon. and learned friend's sense of justice to admit that I am right, and if it is said I am not right, I hope I shall have another occasion to prove that I am; but I do not doubt that he will admit it. You must see that there are some things which cannot be done. If you are to give certain

legislative powers to the federal parliament, and certain powers to the provincial parliaments, you must divide them. Now, there are only two ways thought of by the mind of man to do that, and there are no others possible. You must either define the powers of the central parliament, and leave the residue to the states parliaments, which is the foundation of the federal form in America, or you must do what the statesmen of Canada said, and in which they have the approval of the statesmen of England as the better plan—mark out the powers of the provincial parliaments, and give the residue to the central parliament. Here, also, I rely on my hon. and learned friend, Mr. Barton, in his reply, because I cannot reply to his reply, to admit frankly and fully that my view of this matter is not a view, it is the only view. The statesmen of Canada and England were of opinion that unification—that is what is called a legislative union in contradistinction to a federal union—was preferable; but they saw the impossibility of doing that at that time, and the consequence was that they went as near to it as possible. That is to say, they gave to the Dominion parliament all the great powers of government without defining them at all, and they mentioned the powers to which the provincial parliaments were limited, and outside these the provincial parliaments cannot go. I hope it will not be thought—and it would be most inappropriate to do so—that I am discussing the question as to whether we should have a legislative union. We have not time to argue about matters which are only of a speculative matter, and which may not arise for useful deliberation for a hundred years. Therefore, let no one say that I have expressed any opinion about that matter. I am only stating a fact. This bill adopts the American mode; it leaves the provincial parliaments with all their powers excepting a great number of important powers which it expressly takes away. Some of them it takes away partially; that is to say, gives power to the federal parliament to do equally with the local parliaments. Other great powers it takes away absolutely from the provincial parliaments and give exclusive power to the central parliament. What is the consequence of that? If any persons doubt it, if they come to my chambers, I will show them a large volume which has nothing in it but appeals to the Privy Council, by reason of the federal form of government. I will show the solution of this problem if ever I am called upon. The Quebec Convention passed seventy-six resolutions which, bear in mind, were submitted to their parliament, and subsequently to that the British North America Act, commonly called the Canadian Dominion Act, was drafted and perfected in London with the aid of the best men that the great metropolis could afford to do it, and it is a wonderful piece of work. But, notwithstanding that, you must see this—and no one but an impostor can lead the people to any other conclusion; it is demonstrable—whether you adopt this or the Canadian system you must have some fountain of litigation running without ceasing of this kind: Every act which a provincial parliament passes may trench on the powers of the central parliament, or an act of the central parliament may trench on the powers of a provincial parliament. It must be acknowledged, and ought to be known to every one, that when you adopt this form of government with a double allegiance—that is to say, they have both legislative powers which are supreme within a certain ambit, one of them having a much larger scope than the other. There will be six provincial parliaments each bound together under a federal parliament with certain defined powers, and the provincial parliaments with powers undefined. When I say undefined, let it be remembered that it can only be done by language, and it has been found utterly impossible beforehand to find any one, whatever master he may be of language, to sufficiently define these matters to prevent dispute over them. These disputes, sometimes causing both great litigation and great expense, have been upon comparatively small subjects. Let me point out what I mean—and I hope all hon. members will know that it is no more a pleasure than an advantage to me to obtrude myself so long on the House, but I see clearly that this is an admirable opportunity for allowing persons who are far removed from Sydney to know what it is that they are about to be asked to accept. That is to say that when the bill framed by the convention goes before the people for them to say "aye" or "no" to the whole of it, they may have, at least, as far as my

humble abilities will allow, material for coming to a conclusion as to what it means. Therefore I want it to be well understood that it is beyond the power of mortal man to create a federal government of the form indicated in the bill, or of the form of the Canadian Dominion Act, or of the form of the Constitution of America, without letting the fountain of litigation overflow. It is by reason of the complexity of the act of Congress, and by reason of the difficulty of following out the consequences of the acts of the state legislatures in America, which are now very numerous, and the acts of the House of Representatives and the Senate, that nearly the whole of the politics of America are carried on by lawyers. I appeal to the members of this Chamber who are not lawyers, whether, if this measure were the act under which we lived, and we had to consider it, and also to consider our Constitution, they would not see that, when they were debating an act of parliament, they would not have to regard this bill; or whether, if they were in the federal parliament they would not have to consider whether the power they were exercising was one they could exercise. I want hon. members and the country to know that they would require that political education and that legal knowledge which only a few could master. I wish to read one or two other passages from the speech which the Attorney-General was good enough to say ought to be again printed, but which is not possible, and which is not advisable :

> In the year 1885 there arose an appeal before the Judicial Committee of the Privy Council between the Attorney-General of Quebec and a person named Reid, respondent. I will read a word or two from the Privy Council Law Report to satisfy you that it is unavoidable under a system of federal government that there should always be arising questions as to the limits of the state legislatures *inter se*, and the powers of the federal parliament with regard to each state.

The reference which I am making is in a speech which I had the honor of submitting to this Chamber on the 4th June, 1890, and it is published in that part of *Hansard* which is devoted to the records of the proceedings in the Legislative Council. It is therefore more than seven years ago :

> It was contended that the act in question was within the province of the provincial legislature. It was passed several years ago, duly received the assent prescribed by the Imperial act (the act creating the American federation) in lieu of the former royal assent, ——
>
> That is, that the act, instead of receiving the royal assent as in former times, received the assent of the Governor-General, with the advice of the Executive Council.
>
> was never disallowed, and was acted upon.

I will explain that in this way : We, as a provincial parliament, might pass an act to day in perfect faith, which might be accepted by the whole of the community. But next year some citizen, having an interest against it, or some citizen of another of the provinces, to whose prosperity that act was opposed, might submit it to some skilled lawyer, who might point out truly that the act was beyond the competency of our Parliament. If it were beyond the competency of our Parliament, it would necessarily come before the court of appeal, and the court of appeal would have to hold that the act was a nullity. Supposing that we now were to pass an act which was contrary to the Merchant Shipping Act of England. It could not be carried out, because the Imperial Parliament is supreme, and we cannot pass any act which will contravene an Imperial statute. In the same way this would be an Imperial act of Parliament, and we should have no control over it. I am quite certain that neither of my hon. and learned friends would stoop to deceive hon. members in regard to that. They will admit, I think, that I am perfectly correct in saying that if a local act of ours, or a local act of any of the other state legislatures of the provinces, were in contravention of this measure, or trenched on the powers which are exclusively the powers of the commonwealth parliament, that act of Parliament, although we had given months to its consideration, and though it had received his Excellency's consent, would be an absolute nullity. The case I am reading proves it. The act I am referring to had been in force for some years, and had received assent. It was never disallowed and was acted upon.

> And what was the effect? Was it an act affecting the liberty of the subject, the foundation of the constitution, or the powers of the federal or provincial parliament? It was an order under 33, 34 Victoria, No. 9, declaring that a certain duty of 10 cents, imposed by an act of the Quebec legislature on every exhibit produced in the courts of justice in any action depending therein, was not warranted by law, the act imposing it being *ultra vires* of the provincial legislature.

For the sake of those outside the Chamber who do not know the meaning of the ex-

pression, I may state that that means being beyond the power of the provincial legislatures.

Here, then, was an act of Parliament that had received the Imperial assent, and had been acted upon a number of years; but a man named Reid thought fit to question it, and there was an appeal from an order of the Supreme Court reversing a judgment of the Court of Queen's Bench of Quebec, and restoring a judgment of the Supreme Court of Montreal. Then the case was taken to the Privy Council. The court held that the act was beyond the power of the provincial parliament, and that it was consequently void. I tell hon. members that the judges of all the courts in Canada are constantly differing on this very matter as to whether the provincial parliaments are capable of legislating in particular matters, or as to the form in which they have legislated. This act, 33 Victoria, was held to be *ultra vires* of the provincial legislature.

I do not think I need read any more as to what I said about that matter. The number of judges proposed in the bill for a federal court would never be able to dispose of the litigation which in a few years would arise, when it was known what a treasury of forensic profit was lurking in the clauses of the measure. But beyond that, *bonâ fide* persons would be often compelled to consider that question, and there is no mode that any one can point out in which that can be avoided. Do not let any one be misled. The provisions of the Dominion statutes are not the same as these; but these give rise to exactly, in principle, the same difficulty. That is to say, it is proposed to limit the powers of the central parliament, in regard to some things exclusively, and in regard to others co-ordinately with those of the local legislature. Therefore, as my hon. and learned friend has said, we must have someone somewhere to say when a statute of either of these great parliaments is trenching on the province of the other. In America that is done by the Supreme Court of the United States. I have often sat there, and have heard great questions discussed. Here it is proposed that they shall be heard by a local court of appeal. In all private matters the decision of the court will be final. Will anyone tell me, excepting in the interests of the Incorporated Law Society and the gentlemen of the long robe, to whom I have the honor to belong, that they want to create this power? At the present time when our acts come into force they are, within the ambit of this colony, as potent as the act of an Imperial parliament. If Victoria or South Australia should pass an act which conflicts with ours, it has no force in this colony, any more than our acts have force in the neighbouring colonies. Each colony is limited to its own legislature. The only power which can legislate for all of the colonies is the Imperial legislature. What man of sense, business, or fairness; what man who is not carried way by a desire for premature distinction and grandeur, would ever propose this? Remember that in the United States it is inevitable, because in the United States they have no legislative superior. The Imperial Parliament have no more connection with them than have the supporters of this bill with common-sense. They are divorced from each other. The Canadian Parliament have a most complex judicial system. It is not that I have not mastered it, but if I referred to it, it would lead me to an irrelevant consideration of most complex arrangements, which could throw no light on this subject. In Canada there was a great diversity of origin, a great diversity in religion, and an impossibility of passing useful legislation. I will now do what I was about to do when we adjourned for tea. I was about to read a passage from page 20 of the manual to which I have referred—I mean the "Manual of Reference," by Sir Richard Baker. One of the most distinguished statesmen who ever controlled the destinies of a colony, and who has an English reputation, was Lord Durham:

The federation of Canada was foreshadowed by Lord Durham in 1838. He urged that a federal union would enable the provinces to co-operate for all common purposes, and above all it would form a great and powerful people, possessing the means of securing good and responsible government for itself, and which, under the protection of the British Empire, might in some measure counterbalance the preponderant and increasing influence of the United States on the American continent.

I want to show the reasons which weighed with Canada again on page 22:

This state of affairs rendered all government impossible. The antagonism between the two sections was so pronounced that between May 21st, 1862, and the end of June, 1864, no less than five ministries had been formed, none of which could do anything. At this critical juncture the leaders of the two sections formed a coalition government for the purpose of arranging for a federation of the British-American provinces, or, if that proved impossible, of putting an end to

the disunited unity which existed between the two Canadas, by forming a federation between them alone.

Then, on page 24:

The proceedings of the Quebec convention were in secret ——

This is the language of Sir Richard Baker himself, and I have not the slightest doubt it is perfectly correct—

and if they have been subsequently published I have not seen them, and can only conjecture the influences at work on the minds of the members.

Hon. members have only to remember the year in which Canada federated, and the awful war being waged between the Northern and Southern States.

It is, however, certain that the war between the North and the South in the United States was then raging. A war between the Northern States and Great Britain, if not imminent, was far from improbable. A minority in the various Canadian provinces, far from inconsiderable in number, "looked to Washington," and advocated incorporation with the United States. Most of the provinces were geographically divided and disconnected. Some of them were in antagonism on grounds which have been before referred to. "The preponderant and increasing influence of the American Union" referred to by Lord Durham rendered it necessary to take some steps. The British Government had in various ways, both direct and indirect, been continually urging federation on them, as the only possible means to secure their own safety and prevent their absorption in the United States, and, above all, "the deadlock into which the faction fight with forces equally balanced had brought the position of the united but unassimilated Canadas" rendered it necessary to do something, and to do it quickly; and what was practicable was more considered than sound principles or lasting results.

On page 56 there is a reference to Mr. Goldwin Smith, who, whatever any thoughtless person may say to the contrary, is one of the clearest and soundest thinkers of the present day. In order to show what animus or mistake may do, I may mention that certain views were read by my hon. and learned friend, the Attorney-General, from an article in the *North American Review*; and considerable ridicule has been cast upon those views, because it was thought they were those of Mr. Goldwin Smith. As a matter of fact, they were not written by Mr. Goldwin Smith at all. One of the daily papers, not taking the care it usually takes in matters of this kind, and desiring to make little of the matter, belittled Mr. Goldwin Smith—not successfully. The fact of the matter is that the article was not written by Mr. Goldwin Smith. I only wish I had the knowledge or the skill of that very learned writer, who has had the finest education England could give, and who has made a home and a great name in Canada—a man who has published many books, all of which are characterised by wonderful political sagacity, great fairness, and absence of prejudice. He shows you what might be adopted in a panic. The Canadian form of government not only gives the Lieutenant-Governor the power of dissolving the Ministry of the Dominion Parliament; but actually the Dominion Ministry have the power of disallowing the acts of the provincial parliament. Sir Richard Baker points out:

Mr. Goldwin Smith wonders how "the barefaced proposal that the leader of a dominant party should have the uncontrolled appointment of the members of one branch of the legislature" could ever have been acceded to.

And then Sir Richard Baker goes on to say:

The position in Canada was such that it was necessary to do something, and to do that something quickly. What wonder is it that any scheme which was practicable was welcomed, and that cleverness in framing a scheme which would be acceptable was more considered than wisdom in adopting one which would stand the test of criticism and time!

That gentleman's writing is perfectly correct, because numbers of members of the bar in Canada, whatever may be their fate in another world, are finding a paradise in this world by travelling constantly with a generous remuneration, between the courts of appeal in Canada and the Judicial Committee of the Privy Council; and if you take up the *Times* any day you like when the Judicial Committee is sitting, you will see that a number of cases on appeal are from Canada; that is to say, cases that must arise under this form of federation as well as under any other—cases which arise from the impossibility beforehand of using language to make everything clear. In some cases you can, but in the majority you cannot; and therefore it depends on the judicial view taken of it, just in the same way as when the question arose in the United States, whether the issue of incontrovertible paper, popularly called "greenbacks," was in accord with the Constitution of the United States. Now, it is admitted frankly, as far as I know, by most writers that, properly speaking, it was not; but America was then in a struggle which

meant life or death, and by majority the Supreme Court of the United States held that the American Government had that power, from which, looking at the honor, and the greatness, and the impregnable position of America, no harm has arisen to anybody. It must be seen, as was stated necessarily by my hon. and learned friend, Mr. Barton, in reading these clauses, that this power must be put somewhere. It is put here in the court of appeal. But there is no appeal from that court, except in certain cases. I admit that it must be put somewhere; but I do not want to be a party to the creation of that complex form of government which makes it necessary. That is my answer. You may tell me that if I have a certain disease I must take one of two medicines. What I want to know is why should I have the disease? Why should I be a party to bringing into force this political and judicial machinery, which will only make us be in a constant turmoil of political excitement and judicial expense? In order that I may not again ask the House's attention to any extracts from this, I will do now what I intimated earlier in the evening I thought I ought to do. Apart altogether from what I have pointed out, everybody knows not only the different condition of America politically, but also the discouraging result of the political system of America. This learned compiler at page 15 of this book says:

> A reference to the dates——

that is, the dates of the formation of the American union—

> will show that it is not entirely correct so far as regards the Americans.

That is, in regard to the clauses.

> Their federal constitution was formed mainly in consequence of the proved inadequacy of the Confederate Government. They had achieved their independence in 1783, and although fear of foreign powers no doubt exercised considerable influence, the fear of domestic wars—which the confederate form of government has been proved not only powerless to prevent but even active to incite—exercised more. They felt that they must form a federation or become a number of independent republics either actually at or prepared for war with each other.

As I could not but hear a thoughtless remark made by one of my hon. and learned friends just now, let me answer it. The difference is this: you are not talking to people out of doors. The reason is palpable; it is, as I mentioned, that the United States of America had no common political superior. If they had been colonies of Great Britain and Ireland the Imperial Parliament could have passed an act to control them all. But having no connection with the Imperial Parliament they were all equal; they were a number of disunited small republics, and therefore they would have had to wage war singly against England or any other foreign power, and would have waged war with each other by reason of jealousies if they had not been united. But we are not in that position because we are subject to the Imperial Parliament. We have the Imperial Parliament to control us. We can invoke its aid, in fact it can control us without our invoking its aid. It may in cases of difficulty suspend our Constitution or that of any of the other colonies. I quite admit that that would be unconstitutional, but when war speaks, laws are silent; and that is the position that is contemplated in this bill. In ordinary times, as we are not republics but are colonies springing from the great Government of England, we fortunately are able to control the whimsical caprices of any colony, to unite upon any subject to bring about controlling and irresistible legislative provisions by the force of an Imperial act of Parliament. To that we only need agree. If we do not agree in the objects at which this aims why should we submit to it? If we do agree to it what charm is there in calling it a federal commonwealth? Why not then let this convention or another convention frame a uniform tariff? Why not let them keep to the very phrase here with regard to having a single commander of the forces of the whole of Australia. Everybody knows that if the colonies agree to that, a statute of Great Britain will have exactly the same binding force as a statute passed by a federal parliament. But I may be forgiven for pointing out that that could be amended or have its errors rectified at the instigation of any one colony or of a number of the colonies—that is, to say if injustice seemed to be worked by some provisions of it. No one can foresee what political machinery may bring about. You are dealing, not with automata, but with the passions of men, and their ingenuity sometimes triumphs over their generosity, and, if it does, the Imperial Parliament can remedy it. This proposed constitution is practically un-

touchable. That is to say, the provisions in it for altering it are so difficult—I do not want to exaggerate—that they are almost incapable of being brought into play. I have looked again to see whether the hon. and learned member, Mr. Barton, was right or whether I was right, and I find I was perfectly correct. Perhaps it was a form of expression that my hon. and learned friend used that created the difference between us. I do not refer you to publications by Englishmen but only to the literature of America itself. I refer you to publications like the *Forum* and the *North American Review*, and the writings of all the great jurists of America, and you will see a picture of the result of their politics which is enough to make one shudder. We know well that the best men in America are not to be found in the House of Representatives. We also know the difficulty of bringing that constitution into accord with, say, the year 1860. It is now, of course, much more than a hundred years since the colonies of America achieved their independence. The fact is, as I stated the other day, that, until the war broke out, there were only two or three occasions on which amendments of the American Constitution were made. Those amendments, it is true, were two or three clauses. There were, I think, only two—I am sure there were not more than three—occasions on which it was possible to bring about any alteration, although nearly a hundred years had elapsed since the Constitution was framed, and the other three occasions were since the war, and they have nothing to do with what we are discussing. Speaking from memory, there have been six alterations. One of them—I say it with great respect, but, I think, with the sanction of every one who has thought the matter out—was an awful mistake. By one alteration they gave an equal voting power to the coloured races of America. The consequences of that alteration no one can yet foresee. I hope that my idea, that it may prove in its consequences more serious than anyone wishes, may not be realised. The other one was in providing that those who had taken part in the war should not hold office, and there was another of a similar nature which for the moment I forget. I think you will find in the end of the first volume of Bryce on the "American Commonwealth" a copy of the whole of the American Constitution and of the whole of these amendments, and you will see that, putting aside that which has nothing to do with what we are discussing—the giving of votes to the coloured races, and the consequences flowing from the insurrection—there have been only three occasions on which it was possible to bring about a change of that Constitution.

The Hon. J. H. WANT: I suggest that, as the hon. and learned member, Sir Julian Salomon has gone through nearly four hours of arduous labour—and I am sure we are all indebted to him for the very exhaustive manner in which he has dealt with this question—with your permission, sir, the hon. and learned member might resume his speech to-morrow. This is not without precedent, for I find, on reference to "May," that a similar thing was done on a former occasion when the House was anxious that an hon. member should continue his speech.

Debate adjourned.

House adjourned at 9·40 p.m.

Legislative Assembly.

Wednesday, 28 July, 1897.

President of the Council of the Churches—Secretary for Mines: Conferences—Government Metallurgical Works—Boarded-out State Children—N.S.S. *Sobraon*—Sunday Closing—Major-General's Report—Applications for Patents—Telluride Ore: West Australia—Cudal Court-house—Mail: Lockwood and Boney's Rocks—Improvements on Crown Lands—Customs and Excise Revenue—Boundary of Jurisdiction—Salary of the Governor—Civil Service Examinations—Comptroller-General of Prisons' Report—Conditional Purchase of Mrs. E. J. Ormsby—Artesian Water at Grafton—Haulage of Coal—Notices of Motions—Accidents on Racecourses—Newtown Police Court—Pumping Plant, Western Suburbs Sewerage Scheme—Public School Teacher at Wilberforce—Crown Lands Bill—Native Flora Protection Bill—Australasian Federation Enabling Bill—Adjournment (General Post Office Building)—Personal Explanation—Port Kembla Harbour Bill—Federation Bill—Hunter District Water and Sewerage Act Amendment Bill—Adjournment (Finance Committee: Federal Convention—Action of Justice of the Peace at Gundagai—Need of Police Magistrate at Brewarrina).

Mr. SPEAKER took the chair.

PRESIDENT OF THE COUNCIL OF THE CHURCHES.

Mr. SCHEY asked the COLONIAL SECRETARY,—(1.) Has any suggestion been