LEGISLATIVE HISTORY AND THE SURE AND TRUE INTERPRETATION OF STATUTES IN GENERAL AND THE CONSTITUTION IN PARTICULAR

I

During the debate in the House of Representatives on the *Broadcasting and Television Act* 1960, there occurred the following interchange:—

> "Whatever the Postmaster-General may tell us tonight or at other stages of the bill, the Attorney-General has already pointed out that once this question reaches the court the opinions expressed here in speeches and answers to questions will have no bearing on the issue. I should like the Attorney-General to inform us later whether an opinion expressed by him in this House as Attorney-General of this nation, would have any bearing in litigation concerning interpretation of legislation."
>
> *Interjection*—"The honourable member could have two bob on it."[1]

In the second reading debate in the New South Wales Legislative Assembly on the *Industrial Arbitration (Female Rates) Bill* 1958, the Minister presenting the Bill uttered some comments in similar vein:—

> "I am attempting to explain what the Government intends. The Honourable Member must know that what is said in this House does not matter in the interpretation of the words of a measure. At times Honourable Members think they are doing certain things in this House, but a court will give an entirely different interpretation to the words contained in the legislation."[2]

To these quotations may be added the following remarks of Lord Reading in a debate in the House of Lords:—

> "Neither the words of the Attorney-General nor the words of an ex-Lord Chancellor, spoken in this House, as to the meaning intended to be given to language used in a Bill, have the slightest effect or relevance when the matter comes to be considered by a Court of Law. The one thing which stands out beyond all question is that in a Court of Law you are not allowed to introduce observations made either by the Government or by anybody else, but the Court will only give

1. Commonwealth Parl. Deb. (1960) H. of R., p. 1899.
2. N.S.W. Parl. Deb. (1958), p. 2345.

consideration to the Statute itself. That is elementary, but I think it is necessary to bring it home to your Lordships because I think too much importance can be attached to language which fell from the Attorney-General."[3]

II

Let those quoted passages furnish the text for this article, which consists of an examination of the rule of construction that states that the parliamentary history of an enactment is not admissible to explain its meaning. Exclusion extends, not only to the proceedings in Parliament, but also to extra-parliamentary materials such as the report of a royal commission or committee of which the legislation may be the fruit.[4] Given that the words of Parliament itself, formally enacted in the statute, are the authentic expression of the intention of Parliament, it follows that parliamentary history or other materials cannot be allowed to alter the perceived meaning of the statute. It follows less clearly, though it appears to be equally well established, that these materials may not be resorted to where, on an examination confined to the legislative text, the meaning eludes confident perception and the interpreter is driven beyond the bare text in order to complete his task.

III

The exclusionary rule has been examined critically in other places.[5] The justification for examining the matter afresh lies in two recent decisions of the Supreme Court of Victoria in which parliamentary debates were referred to as aids for construing in the one case an Act of the Victorian Parliament, and in the other an Act of the Commonwealth Parliament. That the references were made is on the face of it surprising and warrants investigation.

The matter before the Victorian Supreme Court in *T. M. Burke Pty. Ltd. v. City of Horsham*[6] involved the interpretation of a difficult provision of the *Local Government Act* 1946 of Victoria, the provision having been amended in 1949 and again in 1954.

3. 94 H.L. Deb., p. 232 (1934).
4. *Maxwell on the Interpretation of Statutes*, 10 ed. (London, 1953), pp. 27-8; *Craies on Statute Law*, 5 ed. (London, 1952), pp. 121-3.
5. See C. K. Allen, *Law in the Making*, 6 ed. (Oxford, 1958), pp. 476-8, 485, 497-501, 504-7, 512-4; F. Frankfurter, "Some Reflections on the Reading of Statutes", 47 *Columbia L. Rev.* 527 (1947); D. G. Kilgour, "The Rule Against the Use of Legislative History", 30 *Can. Bar Rev.* 769 (1952); K. C. Davis, "Legislative History and the Wheat Board Case", 31 *Can. Bar Rev.* 1 (1953); J. A. Corry, "The Use of Legislative History in the Interpretation of Statutes", 32 *Can. Bar Rev.* 624 (1954); and B. B. Benas, "The Construction of Statutes", 102 *L.J.* 269 (1952).
6. [1958] V.R. 209.

In his judgment, Sholl J., having reached a certain view of the provision, went on to say:

> "The view which I have taken appears to me also to accord with what one would expect to have been the intention of the Legislature having regard to doubts which had arisen in legal circles prior to the amendment of 1949; see Victorian Hansard 1949, vol. 230, p. 2176, where it is recorded that Sir Jas. Kennedy, the then Minister of Public Works, and the Minister in charge of the Bill, said in his second reading speech: 'Section 586 of the Local Government Act provides that where some private street construction works are urgently required, a council may execute the urgent works, charge for them, and postpone the other works until later. Doubt has arisen as to whether the urgent works should be done as a separate scheme or whether a complete scheme should be prepared and only the urgent portion executed. There have been conflicting opinions on that question.'
>
> I do not continue the quotation to the point where the Minister stated the purpose of the amendment, but it is, I consider, legitimate to refer to his statement of the problem which had arisen in relation to the matter in legal and local government circles, and which it was obviously the purpose of the amendment to deal with. I do so the more readily because it is well-known that the practice was in 1949, as it is today, for the second-reading speech of the Minister in charge of such a piece of amending legislation as the *Local Government Act* 1949, to be prepared for the Minister by the parliamentary draftsman from information in his possession."[7]

The other judges on the case, Lowe J. and Martin J., while concurring in the result reached by Sholl J., do not appear to have made themselves a party to his reference to parliamentary debates.

In *Langhorne v. Langhorne*[8] the question was whether the jurisdiction under Part IIIA of the Commonwealth *Matrimonial Causes Act* 1943-1955, which provided that a woman with three years' residence in a State may institute matrimonial proceedings in the Supreme Court of the State as though she were domiciled in the State, was available to a woman who, though qualified by residence, was also in fact domiciled in Victoria so that the ordinary State matrimonial jurisdiction was open to her. The Court, consisting of Barry J., in holding that Part IIIA was applicable, appears to have thought that support for this conclusion was to be found in the consideration that Part IIIA, inserted in the Principal Act by an amending Act of 1955, was intended to continue and, at the

7. *ibid.*, at p. 216.

8. *ibid.*, 500.

same time, widen the limited jurisdiction, based on residence, conferred by Part II of the Principal Act.

> In May 1955 an amending Bill was introduced in the Commonwealth Parliament. It was passed by both Houses, and received the assent on 15 June, 1955, and commenced to operate on 13 July, 1955. *It was avowedly designed* to continue the beneficial effects of Part II of the Principal Act and to remove the limitations as to time and other restrictive conditions contained in the original legislation. (Commonwealth Parliamentary Debates 1955, pp. 451-4, 1451-1464 (Representatives); Vol. 55 (Senate) pp. 737-9, 761-7).[9]

The italics have been added. The pages referred to comprehend the whole of the debates in the House and Senate on the 1955 Bill.

The judgments of Sholl J. and Barry J. raise a number of issues. What is the real import of the rule against legislative history? May it be that, as has been suggested,[10] the text writers have mistaken its nature and erected into a canon of construction what is no more than a counsel of caution? May parliamentary debates be looked at, not to see Parliament's intention, but for the purpose of ascertaining what was the mischief Parliament was dealing with?

IV

To begin somewhere near the beginning, in the Middle Ages one finds English judges making free use of any means available for ascertaining the actual intention of the lawmakers. Three examples mentioned by Professor Plucknett are given here.[11] In the reign of Edward I Hengham C.J. settled a difficult question in the words: "We agreed in Parliament that the wife if not named in the writ should not be received."[12] Thorpe C.J. recalled in 1366 that there had been a discussion before him on the interpretation of a statute "and Sir Hugh Green C.J., K.B., and I went together to the council where there were a good two dozen bishops and earls, and asked those who made the statute what it meant." The archbishop told them what the statute meant, after remarking that the judges' question was rather a silly one.[13] In the famous case of the Statute *De Donis*, though the Statute referred only to the first generation, Bereford C.J. said: "He that made the statute meant to bind the issue in fee tail, as well as the feoffees, until the tail had reached the fourth degree, and it was only through

9. *ibid.*, at pp. 501-2.
10. Kilgour, *op.cit.*
11. See T. F. T. Plucknett *Statutes and their Interpretation in the First Half of the Fourteenth Century* (Cambridge, 1922), and *Concise History of the Common Law*, 4 ed. (London, 1948), p. 311, *et seq.*
12. Y.B. 32 and 33 Edw. I (Roll Series), 429.
13. *Concise History*, p. 312.

negligence that he omitted to insert express words to that effect in the statute; therefore we shall not abate this writ."[14]

These cases belong to a period when there existed a close association between the judges and the lawmakers. In such a setting, a casual attitude to the legislative text, joined with what to modern eyes seems an uninhibited search for the true legislative intent, was natural. For one thing, a reliable means of ascertaining that intent was likely to be available—it might merely involve the judge consulting his own memory, or seeking access, freely given, to those who made the law, or relying on a tradition as to what was the actual intent. However, towards the middle of the fourteenth century the intimacy between those that made and those that construed the law disappeared as the judiciary developed into a separate and isolated institution. A stricter approach to the interpretation of statutes emerged and the legislative text began to be given the primacy that it has today.

Problems of meaning were not thereby dissolved. It would have been quite consistent with the view that the text is the best evidence of legislative intent to allow supplementary evidence of that intent when the text was not clear; on the other hand, a bold rewriting of the text in the style of Bereford C.J. would be ruled out. However, moving now to the sixteenth century, the judges are to be found grappling with the difficult problems of meaning by arming themselves with "rules of construction". Granted that there may have been difficulties in the way of obtaining satisfactory supplementary evidence of legislative intent, an intricate system of rules of construction is drawn up and applied with such enthusiasm and devotion as to suggest that the exercise was undertaken, not as the best that could be managed in the circumstances, but as the natural and correct way of tackling the task of interpretation. The nature of the rules ranged from rules that turn on matters of grammatical structure to the comprehensive and now discarded doctrine of the equity of a statute, whereby the words may be broadened or narrowed so that they accord with equity and reason. The emergence of judge-made rules of construction was a development of critical importance. With it, the view became established, and familiar, that the correct solution of difficulties in meaning lies, not in trying by such direct ways as peering into the legislative process to ascertain the legislative intent, but in applying professional canons to the lifeless letters of the legislative text. Though it is not until 1769 that the exclusionary rule is first mentioned and not until about 1900 that its position becomes practically unassailable, the seeds of the development were sown in the sixteenth century.

14. Y. BB. Edward II (Selden Society), **xi. 177**; **xii. 226**.

At the same time the picture in the sixteenth century was not unmixed. In *Heydon's Case*[15] in 1584 the Barons of the Exchequer promulgated the famous "mischief rule" for the "sure and true interpretation of all statutes in general." One of the matters, the Barons said, to be discerned and considered was the mischief and defect which the statute was intended to remedy. This provided some leverage for the admission of evidence of legislative transactions, as providing the surest evidence of the mischief. Significantly, however, the report offers no advice as to how the mischief is to be ascertained. In the note by Plowden on the equity of a statute, one may suspect that, despite the philosophic adornments with which the statement is studded, some of the cases cited turned, not on equity and reason, but on an historical knowledge of the purposes of the lawmakers.[16] In the seventeenth century there were two occasions where a judge, favoured with knowledge of the actual legislative intent, used that knowledge in construing the statute. In 1662 in *Hedworth v. Primate*,[17] in holding that an Act operated upon contracts made before it, Hale C.B. said that its predecessor was expressly limited to future contracts, "but those words were left out of the Act on purpose to leave it general, to my own certain knowledge." Lord Nottingham in *Ash v. Abdy*[18] in 1678 claimed the *Statute of Frauds* as his own: "I said that I had some reason to know the meaning of this law; for it had its first rise from me, who brought in the bill into the Lords' House, though it afterwards received some additions and improvements from the Judges and the civilians."

What appears to be the first expression of the exclusionary rule was made by Willes J. in *Millar v. Taylor*[19]: "The sense and meaning of an Act of Parliament must be collected from what it says when passed into a law; and not from the history of changes it underwent in the house where it took its rise. That history is not known to the other house, or to the Sovereign".[20] But an examination of the judgments shows the dictum to be a very feeble thing indeed, for each of the judges, including Willes J. himself, considered the parliamentary history of the Act![21] Reference was made to the petition of authors, book-sellers and printers that led to the passage of the Act, Aston J. providing a citation of the volume of the Journal of the House of Commons in which the petition appeared. Reference was made to changes in the Bill in committee in the House of Commons, with Willes J. making use in this connexion of the rule of parliamentary practice that a new Bill cannot be made in a committee. As to the suggested ignorance

15. 3 Co. Rep. 7a.
16. 2 Plowden 465.
17. Hardres 318.
18. 3 Swans. 664.
19. 4 Burr. 2303.
20. *ibid.*, at p. 2332.
21. *ibid.*, at pp. 2333-4, 2350-2, 2390-1, 2405.

of the House of Lords about the transactions in the Commons on the Bill, it appears from the judgment of Yates J. that the Lords and the Commons in fact conferred on one aspect of the Bill.

It has been suggested that the principal historical reason for the adoption of the exclusionary rule was the unavailability of legislative records.[22] In fact, as *Millar v. Taylor* demonstrates, the Journals of the Houses, in which were reported the formal legislative history of enactments, were available. Willes J. bases his dictum, not on the unavailability of evidence, but on the assumed irrelevance of what takes place in one House in construing an enactment that required the assent of another House and the Sovereign as well. It was true, however, that reports of parliamentary debates, when they began to appear, were fanciful and unreliable and, in the opinion of Parliament, unlawful as constituting a breach of privilege.[23] On the other hand, cases continued to occur where, as in *Ash v. Abdy* above, the judge had knowledge of legislative history. Thus in 1793 Lord Kenyon referred to the fact that the statute had been drawn by Powell J. "and that accurate judge would not have introduced all these different words if the last alone would have been sufficient".[24] In England at any rate, the isolation of the judges from other governmental spheres has never been entirely complete; the Lord Chancellor, for example, has a place in all of the three traditional departments of government, legislative, executive and judicial.

V

Surveying the scene at the end of the nineteenth century, it may be said that, on the evidence of the reported cases, occasions where the possibility of using legislative history arose were rare and in those cases in fact the history was put to use. The one thing against their use was the dubious dictum of Willes J. in *Millar v. Taylor.* By contrast, in the next hundred years there

22. K. C. Davis, *op. cit.*
23. One may date effective reporting of the debates of Parliament from 1803. However, throughout the nineteenth century the reports were based substantially on newspaper reporting and it is not until the commencement of official reports of the House of Commons debates in 1909, followed shortly by official reports for the House of Lords, that a completely satisfactory system was established. See W. Law, *Our Hansard* (London, 1950). In the Australian colonies, satisfactory reporting systems were established in the latter half of the nineteenth century, with the exception of Tasmania, where even today there are no official reports of parliamentary debates and no alternative comprehensive reports. See *The Australian Encyclopaedia* (Sydney, 1958), vol. 4, pp. 424-6. There have been official reports of the debates of the Commonwealth Parliament since it commenced to function in 1901. There are also official reports of the debates of the Legislative Councils of the Northern Territory (commencing 1948) and the Territory of Papua and New Guinea (commencing 1951).
24. *R. v. Wallis*, 5 T.R. 375, at p. 379.

are more than twenty reported cases concerning the admissibility of legislative history—an indication that the materials were becoming more freely available and more reliable—and the dominant and prevailing judicial view was firmly against admission. The issue now being fairly and squarely raised, in case after case, the judges on the whole remained true to the attitude to interpretation struck by their predecessors in the sixteenth century.

In 1833 in *M'Master v. Lomax*[25] Lord Brougham was inclined to read down the general words of an Act so as to exclude Scotland, relying on knowledge that the measure was submitted to Parliament on the suggestion of Lord Plunkett, whose object was to deal only with England and Ireland. But one year later in *Cameron v. Cameron*[26] the legislation was held to extend to Scotland, Lord Lyndhurst saying: "What Lord Plunkett intended is, for the purpose of construing the Act, immaterial, for the words of the Act must speak for themselves". In *Fellowes v. Clay*[27] in 1843 Lord Denman C.J., speaking for the Court, used the reports of the Real Property Commissioners, on which the Act in question was based, but added that such materials were "sometimes dangerous guides in the judicial construction of public Acts, which ought to speak for themselves". In the opinion of the judges in *Salkeld v. Johnson*[28] some few years later, it was a case where second thoughts were best and the reports should not have been used.[29] Pollock C.B., speaking for the Court of Exchequer Chamber, took some pains to describe the proper approach:

> "We propose to construe the act of Parliament, according to the legal rules for the interpretation of statutes, principally by the words of the statute itself, which we are to read in their ordinary sense, and only modify or alter so far as it may be necessary to avoid some manifest absurdity or incongruity, but no further. It is proper also to consider the state of the law which it proposes or purports to alter, the mischiefs which existed, and which it was intended to remedy, and the nature of the remedy provided, and to look at the statutes in pari materia as a means of explaining this statute. These are the proper modes of ascertaining the intention of the legislature; and we shall not, therefore, refer to the Report of the Real Property Commissioners published shortly before the passing

25. 2 Myl. & K., 32.
26. *ibid.*, 289.
27. 4 Q.B. 313, at pp. 354-360.
28. 2 C.B. 749; 2 Ex. 256.
29. Lord Denman's "lapse" in *Fellowes v. Clay* is rather remarkable as he and his Court had two years earlier in 1841 refused to look at the reports of the ecclesiastical commissioners "for the direct purpose of construing the statutes founded upon them": *In the Matter of the Dean of York*, 2 Q.B. 1, at p. 34. In 1840 he had refused to take notice of the parliamentary history of a proviso: *Queen v. Capel*, 12 Ad. and El. 382, at p. 411. Subsequently in 1848 he refused to look at speeches in Parliament: *R. v. Whittaker*, 3 Car. & K. 636.

> of this act, and to which it is supposed to have owed its origin, in order to explain its meaning; not conceiving that we can legitimately do so, however strongly we may believe that it was introduced in order to carry into effect their recommendation to establish a new statute of limitations for tithes."[30].

Pollock C.B. spoke again in *Barbat v. Allen*[31] in 1852, where he alluded to a judgment of Lord Truro explaining how a section came to take the form it did. Pollock went on to say that the history of a clause in a statute was certainly no ground for its interpretation in a Court of Law and he would guard himself against being considered as resorting to any such means.

In 1880 Cockburn C.J. in *South Eastern Railway Co. v. Railway Commissioners*,[32] swimming against the current of judicial opinion, boldly attempted to formulate a rule for the admission of parliamentary materials: "where the meaning of an Act is doubtful, we are, I think, at liberty to recur to the circumstances under which it passed into law, as a means of solving the difficulty." He mentioned that the Act was a government measure and went on to refer to the speech in the Commons of the member who introduced the Bill and to the speech of the Lord Chancellor in the House of Lords. On appeal to the Court of Appeal counsel submitted that an Act cannot be construed by reference to a debate in Parliament, and Lord Selborne emphatically and peremptorily agreed.[33]

Enough has been said to indicate the dominant judicial trend in the nineteenth century,[34] but one more case, a particularly instructive one on judicial attitudes, is given. In *Attorney General v. Sillem*[35] in 1863, a case concerning some extremely difficult points of construction of the *Foreign Enlistment Act*, counsel ranged far and wide, drawing heavily on parliamentary history and quoting debates freely. The Court's reaction to the onslaught was, not so much to explicitly rule the materials inadmissible, as to take the view that they were unhelpful, though Pollock C.B., not surprisingly, set his face against admissibility. He said: "But neither this Court, nor any other Court, can construe any statute, and least of all a criminal statute, by what counsel are pleased to suggest, were

30. 2 Ex., at p. 273.
31. 7 Ex. 609, at p. 616.
32. (1880) 5 Q.B.D. 217, at pp. 236-7.
33. (1881) 50 L.J. Q.B. 201, at p. 203.
34. Other cases where parliamentary transactions or the reports on which legislation was based were considered to be inadmissible are *Martin v. Hemming* (1854) 24 L.J. Ex. 3; *Ewart v. Williams* (1854) 3 Drew. 21; *Queen v. Hertford College* (1878) 3 Q.B.D. 693; *Richards v. McBride* (1881) 8 Q.B.D. 119; *Herron v. Rathmines Improvement Commissioners* [1892] A.C. 498. Cases where such materials were let in were two ecclesiastical cases before the Privy Council—*Hebbert v. Purchas* (1871) L.R.P.C. 605, and *Ridsdale v. Clifton* (1877) 2 P.D. 276— and the case of *Hudson v. Tooth* (1877) 3 Q.B.D. 46. The P.C. decisions are discussed later in the article.
35. 2 H & C 431.

alterations made in Committee by a Member of Parliament, who was 'no friend to the Bill', even though the Journals of the House should give some sanction to the proposition. This is not one of the modes of discovering the meaning of an Act of Parliament recommended by Plowden, or sanctioned by Lord Coke or Blackstone."[36] Bramwell B. commented thus: "It may be said that this is a lawyer's mode of dealing with the question, merely looking at the words. It is so, and I think it right. A Judge, discussing the meaning of a statute in a Court of law, should deal with it as a lawyer and look at its words. If he disregards them and decides according to its makers' supposed intent, he may be substituting his for theirs, and so legislating. As has been excellently said, 'Better far be accused of a narrow prejudice for the letter of the law, than set up or sanction vague claims to discard it in favour of some higher interpretation, more consonant with the supposed intentions of the framers or the spirit which ought to have animated them'."[37]

After 1900 the question is regarded as having been settled against admissibility. The Court of Appeal in 1906 refused to consider parliamentary history—"Both sides sought to refer to what passed in Parliament . . . but such evidence was of course inadmissible, and we have confined ourselves, as we were bound to do, to an attempt to collect the meaning from the language used."[38] Lord Atkinson and Lord Parker in *Hollinshead v. Hazleton*[39] and Lord Haldane, Lord Dunedin and Lord Wrenbury in *Viscountess Rhondda's Claim*[40] regarded the rule as "well settled" and "well established". If more was needed, it was provided by the judgment of Lord Wright in *Assam Railways & Trading Co. v. Commissioners of Inland Revenue*,[41] with which Lord Warrington, Lord Atkin and Lord Thankerton concurred. "It is clear that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the Report of Commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted".

The deep seatedness of the judges' aversion to examining legislative processes is illustrated by *The Queen v. Bishop of Oxford*,[42] and the same case on appeal under the name of *Julius v. Bishop of Oxford*.[43] The Court of Appeal had allowed the opinion of the Lord Chancellor on section 3 of the *Church Discipline Act of* 1840.

36. *ibid.*, at pp. 521-2.
37. *ibid.*, at p. 537.
38. *R. v. West Riding of Yorkshire County Council* (1906) 2 K.B. 676, at p. 700. See also pp. 716-7.
39. [1916] 1 A.C. 428.
40. (1922) 2 A.C. 339.
41. [1935] A.C. 445, at p. 458.
42. (1879) 4 Q.B.D. 525.
43. (1880) 5 App. Cas. 214; 49 L.J. Q.B. 577.

given in a speech during the third reading debate on the *Public Worship Regulation Act*, 1874, to be read to it. It is to be noted that the speech was used, not in relation to the Bill then under consideration, but as embodying a view of some authority on a provision passed many years before; also, that the speech did not purport to give "inside information" about what Parliament intended by section 3 of the *Church Discipline Act* but proceeded along ordinary lines of construction. It is submitted that the Court of Appeal was right in what it did, although, the speech having been let in, two members of the Court, Baggallay L.J. and particularly Thesiger L.J., had doubts as to whether their action was correct.[44] On appeal to the House of Lords, the Lord Chancellor, Lord Cairns, and Lord Selborne strongly disapproved of the action taken by the Court of Appeal.[45] This looks like a view that nothing good can come out of Parliament—whatever its nature and whatever its relevance. Mention may also be made here of the opinion expressed by a majority of the Law Lords in *Viscountess Rhondda's Claim* that the rule of exclusion applied before a committee of privileges of the House of Lords, although Viscount Birkenhead all but jeered at the holders of such a view, and a lay member of the committee spoke of the absurdity and absolute futility of telling the very peers who had passed the Act in question a short time ago that their declared intention and the construction on which they proceeded were not to weigh with them.[46] In *Hilder v. Dexter*,[47] Lord Halsbury is to be found declaring that the worst person to construe an Act is the person responsible for its drafting, because he is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. On this ground his Lordship abstained from giving any judgment in the case.

VI

The general development of the rule of exclusion has been traced, but there remain three matters to be dealt with. The first matter concerns two decisions of the Privy Council of the late nineteenth century on ecclesiastical subjects in which legislative history was extensively used. In *Hebbert v. Purchas*,[48] in which the *Act of Uniformity* 1662 was considered, reference was made to

44. (1879) 4 Q.B.D. at pp. 576-7, 599-600.
45. See 49 L.J. Q.B., at p. 578.
46. [1922] 2 A.C., at pp. 349-350 and 403.
47. [1902] A.C. 474, at p. 477. See also *per Sargent*, L.J. in *Re Ryder and Steadman's Contract* (1927) 2 Ch. 62, at p. 84: "Nor is any importance to be attributed to the views of the writer, because he may be recognized as the draftsman of the statute in question. On the contrary, that very fact may disable him from taking an unbiased view of the expressions used in the Act". *Cf.* Lord Nottingham in *Ash v. Abdy* above.
48. (1871) L.R. P.C. 605, at pp. 648-9.

the introduction of a proviso by the Lords, its rejection by the Commons and the reasons relied on in the subsequent conference between the two Houses. The Journals of the Houses were referred to. Use was made of similar materials in *Ridsdale v. Clifton.*[49] Probably the better view of these cases is that in relation to old ecclesiastical laws a freedom is permitted that is elsewhere denied. An argument of necessity may be invoked to justify the exception, for if the judges were not able to range freely through contemporaneous writings and records, they would often have difficulty in assigning a precise content to ecclesiastical laws.[50] It does not seem possible to take the decisions any further. A submission by the Attorney-General in *Viscountess Rhondda's Claim,* based on *Hebbert v. Purchas,* that the general exclusionary rule does not extend to entries in the Journals of either House failed to gain acceptance.[51]

The second matter concerns the question whether the rule amounts to an absolute embargo on the use of legislative materials or whether it is only their use for a certain purpose, "for the direct purpose of construing the statute", that is proscribed. *Julius v. Bishop of Oxford* above may be read as suggesting that the prohibition is, at least so far as concerns speeches in Parliament, absolute. However, Lord Halsbury in *Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs, and Trade Marks*[52] referred to the report of the commission that led to the enactment in question for the purpose of seeing what was the mischief or defect intended to be remedied. In doing this he based himself on the canons of construction recorded in *Heydon's Case,* remarking that no more accurate source of information as to what was the evil or defect in mind could be imagined than the report of that commission. Lord Halsbury's action was noted without adverse comment by Lord Wright in *Assam Railways & Trading Co. v. Commissioners of Inland Revenue*[53] and there are other cases in which reports have been used in this fashion.[54] If reports may be so used, why not speeches in Parliament as well? The answer given by Lord Westbury in *Re Mew and Thorne*[55] was that they

49. (1877) 2 P.D. 276.
50. See Lord Halsbury in *Read v. Bishop of Lincoln* (1892) A.C. 644, at pp. 652-3.
51. [1922] A.C., at p. 346. Lord Wrenbury suggested that the Privy Council in *Hebbert v. Purchas* did not refer to the Journals as materials upon which it relied in forming its opinion of the question of construction, but arrived at its opinion independently and merely used the reference by way of "illustration". See *ibid.*, at pp. 398-9. Viscount Birkenhead was sceptical of this narrow reading of *Hebbert v. Purchas* and, it is suggested with respect, rightly so.
52. [1898] A.C. 571, at pp. 573-5. 53. [1935] A.C., at pp. 458-9.
54. *Farley v. Bonham* (1861) 30 L.J. Ch. 239 and *Re Mew and Thorne* (1862) 31 L.J. Bk. 87. See also *Shenton v. Tyler* (1939) 55 T.L.R. 522 and the note thereon in 55 L.Q.R. 488.
55. (1862) 31 L.J. Bk. 87.

can. After referring to the report of the commission that led to the legislation and to the speech of the member who introduced it into the Commons he said:

> "Now, I advert to these matters for the purpose of abiding by that rule of interpretation which was approved of by Lord Coke, that in the interpretation of a statute it is desirable first to consider the state of the law existing at the time of its introduction, and then the complaints or the evils that were existing or were supposed to exist, in that state of the law. I do this for the purpose only of putting the interpreter of the law in the position in which the legislature itself was placed; and this is done properly for the purpose of gaining assistance in interpreting the words of the law, not that one will be warranted in giving to those words any different meaning from that which is consistent with their plain and ordinary signification, but at the same time it may somewhat assist in interpreting those words and in ascertaining the object to which they were directed."[56]

To this may be added the view expressed by Griffith C.J., in *Municipal Council of Sydney v. Commonwealth* that parliamentary debates may be referred to "for the purpose of seeing what was the subject matter of discussion, what was the evil to be remedied, and so forth."[57] This is, of course, using legislative history to ascertain intent, but by the indirect means of discerning and considering the mischief or defect to be remedied. In *Re Mew and Thorne* the question was whether the enactment excluded a discretion as to the discharge of bankrupts; the defect revealed by the materials looked at was the evils attendant upon the existence of a discretion under the pre-existing law No great powers of reasoning were required to conclude from this that Parliament meant to exclude the discretion.

Thirdly, mention must be made of *Deputy Federal Commissioner of Taxation (N.S.W.) v. W. R. Moran Pty. Ltd.*,[58] a case dealing with the constitutional validity of the Commonwealth *Wheat Industry Assistance Act* 1938, the preamble of which referred to the conference between the Prime Minister and State Premiers which had

56. *ibid.*, at p. 89. In the middle stages of the U.S. Supreme Court's journey from a position where legislative materials were excluded to the present position where they are let in, the Court was saying much the same sort of thing. "Although debates may not be used as a means for interpreting a statute, that rule, in the nature of things, is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law; that is, the history of the period when it was adopted": *Standard Oil Co. v. U.S.* (1910) 221 U.S. 1, at p. 50.
57. (1904) 1 C.L.R. 208, at pp. 213-4.
58. (1939) 61 C.L.R. 735; at pp. 754, 766, 776, 796; P.C. (1940) 63 C.L.R. 338, at p. 341.

led to the passage of the Act and other connected legislation, Commonwealth and State. The High Court and, on appeal, the Privy Council, considered that in the circumstances the record of the conference could be referred to.

It seems then that the position in relation to legislative history may be stated as follows. Legislative history may not be looked at for the purpose of providing direct evidence of the intentions of the lawmakers, but there is a probable exception in favour of old enactments dealing with church matters. There is however precedent for using it as indirect evidence of intention, by way of indicating the mischief or defect intended to be remedied by the enactment. This includes speeches in Parliament. It would be undoubtedly correct to add that such indirect evidence of intention will not be allowed to alter or contradict the clear meaning of the legislative text. Where a statute expressly refers to a conference or similar proceedings as a result of which the legislation was proposed to Parliament, the record of the conference or other proceedings may be looked at, and there do not appear to be any limits to the purposes for which the knowledge thus gained may be used, except that, no doubt, it would not be allowed to alter or contradict the clear meaning of the legislative text.

If this statement be accurate, then, with respect, Sholl J. was probably justified in the use he made of parliamentary debates in *T. M. Burke Pty. Ltd. v. City of Horsham* discussed above. On the other hand, once again with respect, there can hardly be any doubt that Barry J. in referring in *Langhorne v. Langhorne* to the "avowed design" of the Commonwealth Parliament infringed established principles.

VIII

In the United States, where legislative materials are looked at for the direct purpose of ascertaining intent, it has been facetiously said that only when legislative history is doubtful do you go to the statute. The quip makes an important point: legislative materials, if used at all, must not be allowed to swallow up the words of the statute, which is the appointed vehicle for the expression of the legislative will.[59] English judges have reacted to the danger by favouring complete exclusion. There is, however, an

59. Some members of the United States Supreme Court would countenance modification of the clear ordinary meaning of the words in the statute, provided the evidence from legislative history is sufficiently convincing. See the dissenting judgment of Frankfurter, J. in *Commissioner of Inland Revenue v. Acker* (1959) 4 L. ed. 2d 127, at p. 133: "But if Congress chooses by appropriate means for expressing its purpose to use language with an unlikely or even odd meaning, it is not for this Court to frustrate its purpose. The Court's task is to construe not English but congressional English. Our problem is not what do ordinary English words mean, but what did Congress mean them to mean".

intermediate position available and that is a judicious and informed consideration of such materials in cases where, on a reading confined to the text, the meaning remains unclear.

But, in addition to the danger just mentioned, there are other grounds for arguing that legislative materials should be excluded, for the reason that they are of little weight, or of uncertain significance, or just irrelevant. These arguments have been put ably and at length by J. A. Corry in the Canadian Bar Review[60] and what the objections seem to come down to is an assertion that to speak of the intention of a plural legislature, particularly a bicameral one, is mere fiction, and the belief that parliamentary debates offer a reliable guide to the nature of that intent, supposing it could exist, an illusion. It really amounts to a view that parliamentary debates are on the whole a rather meaningless political rite, from which no useful information can be derived. But is the position as bad as this? Although debates may not always be as able, informed or coherent as one might desire, and although most issues debated are seen and discussed as part of the bigger and ever-running political debate as to whether Her Majesty's Government should become Her Majesty's Opposition, it is suggested that there is sufficient coherence, relevance and ability present in debates to justify a general rule that these are materials from which assistance may be sought. Whether in fact assistance is provided, and the weight to be given to it in construing the statute, are matters to be considered in the particular case. Not that the writer harbours rose-coloured views that, with the admission of legislative materials, most problems of construction would be decisively solved. Still it is thought to be a possible and proper position to take, in relation to the assertion that these materials should be excluded because they are of little use, to assert in reply that they should be used, though their utility in many cases may not be very great. For one thing, the lawmakers would have the comfort of being a little surer that they are in fact doing what they think they are doing.

The sceptics as to legislative materials are referred to the following modest use of them as an aid in construing section 44 of the *Criminal Justice Act* 1948 of the United Kingdom. Put shortly, section 44 provided that, if the accused is acquitted, "the court may, if it thinks fit, direct the payment . . . of such sums as appear to the court to be reasonably sufficient to compensate the accused for the expenses properly incurred by him in carrying on his defence."

> While section 44 in terms imposes no limit on the discretion of the court, it was never intended, and it would be quite

60. N. 5 above. See also the statement by Latham C.J. in the *First Uniform Tax Case* (1942) 65 C.L.R. 373, at pp. 409-410.

> wrong, that costs should be awarded as of course to every defendant who is acquitted. Its use should be reserved for exceptional cases and every case should be considered by the court on its merits.
>
> I may add that a reference to *Hansard* (499 H.C. Deb. 5 S. 1294) shows that this is in accordance with what the Attorney-General stated in Parliament was the intention of the clause when it was being considered in committee.

The words are those of the English Court of Criminal Appeal in 1952.[61]

IX

In what follows, the use of legislative history in the field of Australian constitutional law, is considered. In other fields of law, Australian courts have been content to follow the established English position and the only matter of particular note, apart from the Australian cases already discussed, is an extensive use of parliamentary history by the New South Wales Industrial Commission, consisting of A. B. Piddington, K.C., in a case in 1927.[62]

> "I have made use, and shall make use, of the history of this legislation not as in any way altering the view we ought to take of the meaning of the words now found in the law, but as guiding the tribunal to analyse their meaning, knowing how they came to be used. It is clear law that the debates of Parliament cannot be used for construction purposes, but a lawyer may often find a line of inquiry opened to him by reading the debates and seeing from them what was contemplated."[63]

The distinction suggested by the Commissioner is, to say the least, a fine one, and in fact he appears to have used the debates "for the direct purpose of construing the statutes" in question.

Coming now to the interpretation of the Constitution, when the High Court began to function in 1903 there was available a comprehensive record of the Conventions and Conferences in Australia that drew up the draft Constitution, of the negotiations between the colonial delegates and the imperial authorities when the document finally agreed upon was sent to England for approval and enactment by the Imperial Parliament, and, of course, of the proceedings in the Imperial Parliament on the Constitution Bill.[64] This quite formidable mass of materials was made more accessible

61. (1952) W.N. 175. See the comments in 102 *L.J.* 269.
62. *In re Standard of Living Determination and Living Wage Declaration*, 36 I.A.R. (N.S.W.) 250.
63. *ibid.*, at p. 257.
64. A list of materials is appended to this article.

by the excellent history of federation presented in Quick and Garran's *Annotated Constitution of the Australian Commonwealth*, published in 1900. Further, the members of the original High Court, Griffith C.J., Barton and O'Connor JJ., had played a leading part in the fashioning of the Constitution, as had also the next two appointments to the Court, Isaacs and Higgins JJ. The question of admissibility arose early in the life of the Court. In 1904 in *Municipal Council of Sydney v. Commonwealth*[65] counsel was prevented from quoting a statement of opinion from the Convention debates that section 114 of the Constitution referred only to future impositions of taxation on property of the Commonwealth by the States. But it is important to note the remark made by Griffith C.J. that the Convention speeches "are no higher than parliamentary debates, and are not to be referred to *except for the purpose of seeing what was the subject matter of the discussion, what was the evil to be remedied, and so forth.*"[66] A few months later, in *Tasmania v. Commonwealth*,[67] the High Court, whilst stating that "the expressions of opinion of members of the Conventions should not be referred to," on the other hand considered that the successive draft bills of 1891, 1897 and 1898 prepared by the Conventions could be. The Privy Council in *Webb v. Outrim*[68] in 1906, in considering the effect of the Constitution on appeals to itself, derived assistance from the observation "that the appeal to the King in Council was, as a matter of history, one of the matters that was prominently before the British Legislature at the time it passed the Commonwealth Act. . . ." In *Baxter v. Commissioners of Taxation (N.S.W.)*[69] in 1907, the joint judgment of Griffith C.J., Barton and O'Connor JJ., referred to section 74 of the Constitution (appeal to the Privy Council) in the form it took in the draft finally produced by the Convention proceedings of 1897 to 1898, and to the fact that changes were made in the draft, though not affecting section 74, as a result of the Premiers' Conference of 1899, adding that the draft, together with the changes made, were set out in the Schedules of the Victorian *Australasian Federation Enabling Act* 1899. The Judges, however, stopped short of referring to, although they were inclined to think they could refer to, the subsequent negotiations in London whereby section 74 was altered to the form it took in the Constitution as passed by the Imperial

65. 1 C.L.R. 208, at p. 213. See also *Stephens v. Abrahams* (No. 2) (1903) 29 V.L.R. 229, in which the Victorian Supreme Court had held that it could not have regard to what was said in the Conventions by members upon the scope, purview and effect of the provisions of the Constitution.
66. *ibid.*, at pp. 213-4. Writer's italics.
67. (1904) 1 C.L.R. 329, at p. 333.
68. [1907] A.C. 81, at p. 91.
69. 4 C.L.R. 1087, at pp. 1114, 1115. See also p. 1148.

Parliament. In fact in 1904 in *Deakin v. Webb*[70] Griffith C.J. and Barton J. had referred to these negotiations, the latter in some detail.

As to subsequent events, in the *Engineers' Case*[71] Knox C.J., saacs, Rich and Starke JJ., referred to the speech of Lord Haldane in the debate in the House of Commons on the Constitution Bill as evidence that Australian federalism was radically different in conception from the federalism of the United States. In *Newcastle and Hunter River Steamship Co. Ltd. v. Attorney-General for the Commonwealth,*[72] Brissenden, K.C., referred to Convention speeches throwing light on the drafting history of section 98 of the Constitution, and argued that the history of the provision could be used as an argument as to its meaning, citing the *Engineers' Case* and *Baxter v. Commissioners of Taxation* (*N.S.W.*) among other cases. From the report it appears that the Court did not object to the reference, although it summarily rejected the submission as to the meaning of section 98 based on it. In *Deputy Federal Commissioner of Taxation* (*N.S.W.*) *v. W. R. Moran Pty. Ltd.,*[73] Evatt J. suggested, in relation to the intention of section 96 of the Constitution, that perhaps the Court should take judicial notice of the fact that the sections 96 and 87 were closely associated together—this being a clear reference to the section as forming part of the agreement on the vexed issue of Commonwealth-State financial relations that was reached at the Premiers' Conference 1899. Dixon C.J. also touched on this point in the *Second Uniform Tax Case,*[74] but indicated a rather different approach.

> "Section 96 forms part of the financial clauses of the Constitution which we know as a matter of history were the final outcome of the prolonged attempts to reconcile the conflicting views and interests of the colonies on that most difficult of matters. The fact that it came out of the Premiers' Conference in 1899 (see the Victorian statute *Australasian Federation Enabling Act* 1899 (No. 1603) particularly s. 2 and first schedule), when the opening words of s. 87 (the Braddon clause) were inserted, does not assist in its construction *nor ought the fact to be used for such a purpose,* notwithstanding that now it has a place, however inconspicuous, as part of the history of the country."

The italics have been added. On the other hand, the same Judge

70. 1 C.L.R. 585, at pp. 622, 626-7. O'Connor J. considered that only if the words failed to yield a reasonable meaning could the Court have resort to the history of the clause: *ibid.*, at p. 630.
71. (1920) 28 C.L.R. 129, at p. 147.
72. (1921) 29 C.L.R. 357, at p. 363.
73. (1939) 61 C.L.R. 735, at p. 803.
74. (1957) 99 C.L.R. 575, at p. 603. Kitto J. agreed with Dixon C.J.'s judgment.

in the *Bank Nationalization Case*,[74a] in proposing a certain view of section 75 (iii) of the Constitution, said that the "view is completely confirmed by the history of the provision, which explains, if indeed it does not illuminate, the whole matter." In his Honour's opinion, that history disclosed that the variation in wording between section 75 (iii) and the provision in the American Constitution from which it was derived, was effected by the framers of the Australian document out of regard to a line of judicial decisions on the American provision. For this information, he relied on the awareness of the Australian founding fathers of the judicial exegesis of the American Constitution, but added:

> "We may be permitted to know as a matter of history that what is now s. 75 (iii) appeared in its present form in the draft Constitution presented at the Convention of 1891 and that before it so emerged it had gone through the hands of Sir Samuel Griffith who had before him the report of the Judicial Committee over which Inglis Clark J. presided."

In the form it took in the report of the Judicial Committee, the provision followed its American model closely, without the variation subsequently introduced.[74b]

The story is quickly told, but it is not so easy to say just what precisely it amounts to. It may be taken as accepted that it is not permissible to refer to speeches in the Conventions or in the Imperial Parliament on the effect of the provisions of the Constitution. The use of Lord Haldane's speech in the *Engineers' Case* appears to go against this, but it is suggested, with respect, that the reference to the speech, and indeed the argument of which it forms part in the judgment, have never been taken very seriously.[75] But as to the drafts prepared by the Conventions, it does seem that they may be referred to although the faculty appears to have been rarely exercised. If the drafts produced by the Conventions may be referred to, there would seem to be no objection to referring also to the draft in the form it took after the modifications agreed to by the Premiers' Conference. Returning to the use of speeches, may they be used for the limited purpose of ascertaining the mischief to be remedied? Griffith C.J.'s dictum in *Municipal Council of Sydney v. Commonwealth* turns upon the assumed existence of a general rule of admissibility of parliamentary debates for this

74a. (1948) 76 C.L.R. 1, at pp. 363-7.

74b. On this see G. Sawer, *Australian Constitutional Cases*, 2nd ed. (Sydney, 1957), p. 245, where it is suggested that, as a matter of history, it is more probable that the founding fathers in framing s. 75 (iii) were guided by Australian rather than American experience.

75. *Contra* D. Kerr, *The Law of the Australian Constitution* (Sydney, 1925), p. 50, but see H. S. Nicholas, *The Australian Constitution*, 2nd ed. (Sydney, 1952), p. 319, and W. A. Wynes, *Legislative, Executive and Judicial Powers in Australia*, 2nd ed. (Sydney, 1956), pp. 25-6.

purpose; the authority that exists for such a rule has been considered above.

In order to complete the description of the position it is necessary to add something on the operation of the doctrine of judicial notice in this field. It has been said that an "astral intelligence," unprejudiced by any historical knowledge, and interpreting a constitution merely by the aid of a dictionary, might arrive at a very different conclusion as to its meaning from that which a person familiar with history would reach. The main items, at least, of the story of federation qualify admirably as matters which may be judicially noticed[76] and notice has in fact been taken of (1) the general motives for federation,[77] (2) that the work of fashioning the Constitution was carried out by a series of conventions and conferences among the Australian colonies,[78] (3) that the statesmen concerned were familiar with the political system of the United States,[79] (4) some of the events of the Premiers' Conference 1899[80] and (5) the battle of the colonial delegates in London on the matter of appeals to the Privy Council.[81] It would be proper for the judges to refer to the records to refresh and verify their notional judicial knowledge of the matters of which notice may be taken. May matters judicially noticeable be used in construing the Constitution ? We have the authority of the Privy Council that the general circumstances of the making of the Constitution and the familiarity of the makers with the Constitution of the United States are two items of background against which the Australian document must be interpreted.[82] As has been seen, in the early years, the negotiations in London were used in relation to the import of the Constitution on the matter of appeals to the Privy Council, although the present tendency appears to be to derive the policy of section 74 on Privy Council appeals from the section itself, with little or no assistance from its history.[83] The position should probably be stated as being that such general matters as provide the broad historical background against which the Constitution must be viewed may be used in construing the Constitution. As to matters of more particularity, the judgments of Evatt J. in *Deputy Federal Commissioner of Taxation (N.S.W.) v. W. R. Moran Pty. Ltd.* and

76. On the doctrine of judicial notice, see Dixon C.J. in *Australian Communist Party v. Commonwealth* (1951), 83 C.L.R. 1, at pp. 196-7.
77. *Baxter v. Commissioners of Taxation (N.S.W.)*, at pp. 1108-9.
78. *Attorney-General for the Commonwealth v. C.S.R. Co. Ltd.* (P.C.) (1913), 17 C.L.R. 644, at p. 652. *Attorney-General for the Commonwealth v. The Queen* (P.C.) (1957), 95 C.L.R. 529, at p. 536.
79. *D'Emden v. Pedder* (1904), 1 C.L.R. 91, at p. 113. *Attorney-General for the Commonwealth v. The Queen* (P.C.), at p. 536.
80. Dixon C.J. in the *Second Uniform Tax Case* quoted above.
81. *Deakin v. Webb* and *Webb v. Outrim* referred to above.
82. See notes 78 and 79.
83. See *O'Sullivan v. Noarlunga Meat Ltd. (No. 2)* (1956), 94 C.L.R. 367, at pp. 375-6.

of Dixon C.J. in the *Bank Nationalization Case* and the earlier cases on section 74, suggest that they, too, may be used for construction purposes. However, it may be prudent to entertain some reserve on this latter point. In this connexion, the passage from the judgment of Dixon C.J. in the *Second Uniform Tax Case*, quoted above, may be of some importance; it can be read as indicating an opinion that some matters within judicial notice may not be used for construction purposes.

The overall picture, then, is one in which the legislative history of the Constitution has been largely, though not wholly, excluded for construction purposes. It is not easy to assess the extent of the assistance that would have been derived had the materials been freely resorted to. The Convention debates, in particular, are rambling affairs and by no means univocal on many important points. In this regard, it is of interest that investigations that have been made into the intentions of the founding fathers on the much-litigated section 92 failed to produce unanimity.[84]

It remains only to note the opinion of Evatt J. in *Deputy Federal Commissioner of Taxation (N.S.W.) v. W. R. Moran Pty. Ltd.*[85] that there is a fundamental distinction between cases where the Court is simply interpreting the language of a statute and cases where it has to consider whether a statute infringed an overriding constitutional provision.

> In the latter case, the Court may entirely fail to fulfil its duty if it restricts itself to the language employed in the Acts which are challenged as unconstitutional. . . . In principle there is no reason whatever why public announcements of governmental policy, official governmental records and communications, and even the records of the proceedings in parliament, including records of debates, must necessarily be excluded from the field of relevant evidence.[86]

However, the other members of the High Court, and, on appeal, the Privy Council, did not recognise the suggested distinction, but proceeded on the basis that the ordinary rules applied where a statute is challenged on constitutional grounds.[87]

P. BRAZIL*

84. See F. R. Beasley, "The Commonwealth Constitution: Section 92 Its History in the Federal Conventions", 1 *U. of W.A. Annual Law Review* 97, 273, 433 (1948-1950) and compare R. L. Sharwood, "Section 92 in the Federal Conventions: A Fresh Appraisal", 1 *M.U.L. Rev.* 331 (1958).
85. (1939) 61 C.L.R. 735, at p. 793.
86. *ibid.*, at pp. 793, 794.
87. *ibid.*, at pp. 766, 776; (P.C.) (1940) 63 C.L.R. 338, at p. 341.

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APPENDIX

Materials on the making of the Constitution.

Official Record of the Proceedings and Debates of the National Australasian Convention, Sydney, 1891 (Sydney, 1891).

Official Report of the National Australasian Convention Debates, Adelaide Session, 1897 (Adelaide, 1897). Proceedings of the Australasian Federal Convention, Adelaide Session, 1897 (Adelaide, 1897).

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Official Record of the Debates of the Australasian Federal Convention, Melbourne Session, 1898 (Melbourne, 1898). Proceedings of the Australasian Federal Convention, Melbourne Session, 1898 (Melbourne, 1898).

Minutes of the Conference of Premiers on the Commonwealth Bill, Melbourne, 1899 (printed in the *Argus*, 3 February 1899). Reprinted in C.H.M. Clark, *Select Documents in Australian History*, 1851-1900 (Sydney, 1955), p. 510.

Papers relating to the Federation of the Australian Colonies. *Vic. P.P.* 1900, Vol. 3.

Commonwealth of Australia Constitution Bill, Reprint of the Debates in Parliament, the Official Correspondence with the Australian Delegates, and other Papers. (London, 1900).