

THE INNER HISTORY
OF
THE NATIONAL CONVENTION
OF SOUTH AFRICA

BY

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Together with a
MEMORANDUM by MR. GYS. R. HOFMEYR,
One of the Secretaries to the Convention.



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PREFACE.

THE plan followed by the author before the publication of this record was suggested by a prominent member of the National Convention. The manuscript was sent to Mr. Gys. R. Hofmeyr, the Clerk to the House of Assembly of the Union and one of the Secretaries to the Convention, and he was requested to read and express an opinion as to the impartiality of the record. Mr. Hofmeyr's report is printed as an appendix to the book and it has been thought better to adopt that course rather than to attempt to reconstruct those portions to which Mr. Hofmeyr alludes. So far as he himself is concerned, the author cannot go beyond his own notes and his own memory. It is fair to direct special attention to Mr. Hofmeyr's recognition of the labours of the members who served on the several committees. It is not too much to say that the Act of Union owes its existence to the committee work, and obviously as the author only served on a share of these committees it is impossible for him to attempt to embody in his record any detailed account of the labours of the committees.

E. H. WALTON.

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CHAPTER I.

HOW THE CONVENTION WAS BROUGHT ABOUT.

IN 1859 Sir George Grey in his speech at the opening of the Cape Parliament said: "You would in my belief, confer a lasting benefit upon Great Britain, and upon the inhabitants of this Colony, if you could succeed in devising a form of federal union." It was almost exactly half a century later that the National Union Convention met in Durban to attempt to give effect to the great pro-consul's suggestion. In the interval the idea had germinated. It was a favourite topic for the after dinner speech, for the set oration in Parliament and for the daily paper. It recommended itself for many reasons to practical statesmen and it survived the friction of clashing interests and of conflicting ideals, but though the idea survived it made no headway. It would come, was bound to come, but in the meantime it was not practical politics, and

the way was blocked. Attempts to hasten matters by promptings from London ended in failure and in South Africa we adopted the phrase that Union must come from within, it must come as the spontaneous will and effort of the people of South Africa and it was clear the spontaneous effort would be delayed.

In fact it is easy to see now that South Africa was not then ready. The North was not prepared to come in, indeed was ready to fight rather than come in and fought to keep out. There were ideals in the North which were incompatible with union, ideals which found a leader and a vigorous protagonist in Paul Kruger. To many the establishment of a great Dutch Afrikaner Republic was an aspiration which moved them profoundly, it was the dominating passion of their lives and it could not be reconciled with the idea of a Union of British South Africa including the Transvaal.

This opposition was a rock against which the waves of appeal from the Cape or from London broke idly and well might the advocates of union despair of success. The Transvaal was not opposed to union if the Cape and Natal were free to enter the republican fold as independent states, free from all British control or Imperial responsibility. A South African Republic, and the Transvaal called itself The

South African Republic, might bring about union and would have friendly treaties with Great Britain but there was no open way to a united South Africa under the British flag.

It was feared by many that Sir George Grey prophesied truly when he wrote in 1859 to the Colonial Office:—"I, however, much fear that the opportunity of establishing such a federation as I had proposed has now been lost for ever." There seemed to be no pass over the unsurmountable obstacle of Northern opposition. There was no prospect of any concession in the Transvaal terms, and still less prospect of those terms being accepted by the Cape and Natal. And Mr. Kruger held aloof in other matters.

Though there might not be political union it was urged upon Mr. Kruger that all South Africa would benefit from a common understanding with regard to Customs and Railways and strong appeals were made that there might at least be a Customs and Railway Union. The President however stood firm. There should be no treaty or understanding which in any way fettered his freedom of action more than it was already affected by his agreement with the British Government. There could be no union in matters of commerce until there was political union and in the meantime the Transvaal would have its own customs tariff and laws and man-

age its railways in its own way. It was said that Mr. Kruger had a design in this attitude and that he wished to bring the Cape and Natal into a state of mind consonant with his ambitions by creating the fear that they might be excluded from the rich markets of the Transvaal. It is probable however that Mr. Kruger's policy was dictated rather by his own anxiety to avoid any step which might complicate his relations with Great Britain and it is certain that he acted in no unfriendly way towards the farmers and producers of the neighbouring state and colonies. A Customs Union was formed and though the Transvaal remained out of it the Orange Free State joined as did Natal, but it brought us no nearer to the realisation of the ideal of South African Union. Mr. Kruger opened his markets to the Cape, Natal, and Free State farmers and we seemed to have reached a stage in our advance beyond which further progress was impossible.

But the thought remained and found expression as before on platforms and in the press. If patience was required then South Africans must have patience and it was a quality which conditions had helped to cultivate. Patience, perseverance, dogged persistence, were the qualities which had brought South Africans through the multitude of troubles

which for generations they had endured or fought, and it was not only common interest that made for union, not only even the aspiration towards nationhood, for there was ever present in their minds a common danger. Lack of Union meant for South Africans disunion, for the two European races in the country were not only disunited but the political movements were driving them further apart. There were growing up the two opposing ideals of a British South Africa and a Dutch Africander South Africa. The republican influence of the Transvaal and Free State was spreading through the Cape Colony and winning many adherents among Dutch Cape Colonists. On the other hand there was a growing British population in the Transvaal irking under a rule in which it could have no voice without sacrificing its British nationality. The whites were scattered over a large area among a native population five times as numerous as themselves and there were not wanting those who urged with insistence the danger of a divided white population. When native troubles arose suspicion that it had been inflamed by white men for political objects was rife and charges were flung broadcast, further embittering the division. The situation filled many thoughtful South Africans with anxiety but even the common danger was

not sufficient to bridge the gulf or to break down the republican opposition to union on any terms save those consistent with the republican ideal. It would be a mistake, too, to assume as is often done that the resistance in the North against union with British Colonies was due in any special sense to the character and policy of Paul Kruger. In his attitude towards this movement he represented his people, practically the whole of them in the two Republics.—His political opponents in the Transvaal such as General Joubert, General Botha and the rest were with him in this and the wit of man seemed powerless to devise a solution of the problem.

And still the aspiration survived. It was not only a British ideal, an ideal advocated by Sir George Grey, taken up and pressed disastrously during the Government of Sir Bartle Frere, that of course could be reckoned on as a permanent factor in the case. From the British point of view the union of South Africa under the British Flag was a thing every lover of the British Empire would welcome with rejoicing. It would put an end to all anxiety as to the future of South Africa and be a sensible addition to the strength of the Empire. There was no question as to the enthusiastic support of Englishmen in South Africa as elsewhere. But

among many thousands of Dutch South Africans the ideal was cherished with no less affection. The pioneers who had gone north were men of their nation, united to them by ties of kinship, bearing names found in every district of the Cape Colony and their numbers were recruited from year to year by the best blood in South Africa. Their heroic struggle had been watched with loving interest, and in the hearts of all there was the feeling that they were one people and a people bound to find their ultimate destiny in a common nationality. The ideal was too strongly implanted, its roots struck too deep for it to die however discouraging may have appeared the hope of realisation. It was clear that if the difficulties could be removed union would be acclaimed throughout South Africa and welcomed as the greatest of boons.

That was the position in South Africa with respect to union before the war. In this book it would be out of place to deal with that war otherwise than as its results affected the question of union. The literature of the war itself is already extensive and various, and every part of the field has been covered, but there were many who believed that after the first rifle had cracked it was all but certain that union would follow the cessation of hostilities. The war

would have been impossible had union been achieved earlier in South Africa, had the British statesmen of half a century earlier been more clear sighted, had they been willing to listen to the advice of those who had studied the conditions on the spot, had Sir George Grey's despatch not failed to carry that conviction which it carries today—and the nation paid the penalty for the neglect of its ministers. It is singular indeed how prophetic was the warning of the great statesman and how true his forecast. The war he foretold came and while it raged the voice of the rifle and the cannon drowned all other sounds, but as time sped and as the end drew near and settlements were discussed among South Africans all were agreed upon union as a part of the great settlement. As to how it should come there were differences of opinion but the war had created new conditions. The British scheme, that in the mind of Lord Milner, was outlined by him before the close of the war. He wished to see the whole of South Africa including the Cape Colony, brought temporarily under Crown Colony Government and after a few years of settled rule and recovery from the devastation of the war to emerge as a united Colony under a responsible union government. The point is worth recording

as an incident in South Africa's progress towards union but Lord Milner's plan was defeated by the refusal of the Imperial Government to consent to the temporary suspension of the Constitution of the Cape Colony. Lord Milner then proceeded on another plan. Removing his office to the Transvaal he assumed direct control of the government of the Transvaal and Orange River Colony and before the end of the war he had created an organised government. He rapidly completed his work with the hope that when the two new Colonies were prepared to assume the responsibility of full self-government union might be accomplished and the Cape and Natal brought into the common fold. He believed that the economic pressure would bring about this result and he feared that the creation of an independent self-governing Colony in the North would leave South Africa as far from union as when faced by an independent republic. Lord Milner's plan unquestionably rendered it necessary to force the pace in South Africa. To his clear mind the South African wagon would not be rescued from the mud without a giant heave and his ardent temperament could not endure the prospect of a slow sinking back into the old conditions of non possumus. He believed that, if guided into union, South Africans would quickly realise the

benefits of co-operation and that the seed of nationality would quicken into life. He feared indeed to leave the after war settlement to work itself out in its own way and dreaded a relapse into the old divisions and hopeless separation.

Nor was he alone among leading South Africans in his view. He was entirely supported by Cecil Rhodes who, dying as he did just before peace was declared, thought deeply during those last weeks of the future of the country to which he had unsparingly given his life. Rhodes thoroughly approved of the Milner policy of re-settlement and the last meeting he ever attended was one held in Capetown in February 1902 to arrange for a deputation to Sir Gordon Sprigg, then Prime Minister, to urge upon him to agree to and support the temporary suspension of the Cape constitution. His illness prevented him from forming one of the deputation next day but he sent an urgent message to Sir Gordon Sprigg by a friend and anxiously awaited the decision of the Cape Ministry. In his opinion union had to be accomplished quickly and there was danger in delay. "It must come in a year or eighteen months" he would say "or it may not come at all." In Rhodes's view the danger lay in the Transvaal. The place was rich and would grow richer, its very

wealth would enable it to dominate South Africa and if there were delay in bringing about union the Transvaal would be disinclined to sacrifice its predominant position or share it with the rest of South Africa. Rhodesia too, Rhodes felt to be in the same position. Rhodesia should be brought in while South Africa was in the melting pot or it might remain out indefinitely. There was danger in delay and Lord Milner assuredly had the support of Cecil Rhodes in forcing the pace and of giving union to the country rather than waiting for the chance of the country taking it when the resettlement had crystallised.

The second Milner plan however shared the fate of the first, for a change of government in England brought about a change of policy in South Africa. The Crown Colony governments in the Transvaal and Orange River Colony were swept away and responsible government granted to the people. Lord Milner himself retired from the country before the change and South Africa found itself with four separate and independent Colonies in the place of two Colonies and two Republics. Conditions so far as union was concerned were not greatly changed.

It is not necessary to enter here into any prolonged discussion of the comparative merits of

the Milner and Rhodes policy and that eventually adopted. Since however a number of persons have not hesitated to blame both statesmen for the proposal it is necessary to remember that each of them had before them the history of the country for the past half century and both feared that unless advantage were taken of the opportunity then offering the prospects of union were dim. The party divisions in South Africa had naturally become more marked during the war and party feeling ran high. It was feared that which ever party brought forward union it would be opposed by the opposition and a knowledge of the fact was calculated to give responsible ministers pause. It was not a subject for a party wrangle. It is quite fair to contend that both Lord Milner and Rhodes were right and that South Africa's adoption of union on a different plan is no proof that the other plan was unstatesmanlike. The historical point however is that the granting of selfgovernment to the two new Colonies put an end to any idea of Union on the lines suggested. It became a subject to be discussed between independent responsible governments representing the several Colonies.

The next step towards union was taken by the Progressive Government in the Cape which made representations to the High Commission-

er eliciting from him the despatch of January 1907. The Progressive Government found the extreme difficulty of managing Railway and Customs matters under conditions when a single line of railway passed over three administrations each of which of course had full control over its own portion of the line. A new Customs tariff had been agreed upon including the Transvaal which had entered the Customs Union after the war. The tariff had only been agreed upon however after prolonged debate extending over some weeks and it was clear that the various interests concerned were growing more and more difficult to reconcile. The Minute of Cape Ministers was despatched by the Prime Minister, Sir Starr Jameson, in November 1906 and in it he says: "In view of the Conference on Railway matters to be held between the various governments of South Africa within the next twelve months, Ministers have the honour to inform His Excellency the Governor that in their opinion any serious attempt on the part of the several British Colonies to establish a settlement of this question brings them to the border line of the larger question of political unification or federation, a subject which has engaged the earnest consideration of this Government and, they are happy to think, is receiving increasing attention on the part of the people of South Africa.

“Speaking from the experience of the last three years, which covers a period unique in the history of South African administration, owing to the extension of British authority to the two central Colonies, Ministers are impressed by the number of matters affecting the interests of the Colonies which could not be settled by them except with the concurrence of one or more of the other South African Governments. The discussion of such points has almost in every case absorbed an undue proportion of the time and energy of the Administration while it has proved impossible to arrive at any complete and lasting settlement of some of the more important questions. The absence of an authority competent to dispose of questions in which two or more Colonies are involved and the time which the several Governments waste in attempting to negotiate settlements, is, in their opinion, operating to retard the free development of the country generally. The state of friction which has at times existed and which in their opinion must constantly recur, so long as the present conditions remain unaltered, impairs the good relations of the various South African communities and tends to excite a feeling of mutual distrust which renders increasingly difficult the settlement of disputes between them. This state of affairs they attri-

bute to the inadequacy of the present system of administration to meet the increasingly complex conditions of the country, which should be capable of settlement by some duly constituted South African authority responsible to all parties in the country.

“Ministers doubt whether any solution of the railway problem which may be suggested at the forthcoming Conference can be final or effective unless it is based on a consideration of the system of administration now existing in South Africa. They can only state the position as it appears from the point of view of the people of the Cape Colony. Other Governments are similarly limited to the point of view of the respective Colonies they represent. The fact that so many of the questions have to be settled by negotiations between the various Governments has in many cases rendered it impossible to make information on these matters public. For these reasons Ministers feel that the present situation is such as to render it difficult for the people of the various communities to understand the present situation of affairs or to view problems common to all the States as a whole.

“Ministers recommend therefore that the Governor be pleased to submit these representations to Lord Selborne with an expression of their desire and hope that in his capacity of

High Commissioner for South Africa, he will undertake to review the situation in such a manner that the public may be informed as to the general position of affairs throughout the country. Their object in urging this course being that they consider it due to the people of South Africa that they should have a timely opportunity of expressing a voice upon the desirability, and if acknowledged, the best means, of bringing about a central national Government embracing all the Colonies and Protectorates under British South African administration."

Lord Selborne in his despatch in reply dated Johannesburg, January 7th, 1907, reviewed the situation, pointed out the growing difficulty of reconciling the various interests unless some form of union were adopted and showed that the alternative was the gradual growth of four separate states the disputes between whom might grow to be so acute as to be capable of settlement only by arbitration or the sword. Lord Selborne continued "It is not an exaggeration to say that a field more thickly sown with the seed of future quarrel and strife than the railway systems of South Africa does not exist, —as long as the Governments of the five British Colonies in South Africa are wholly separated from, and independent of, each other, their rail-

way interests are not only distinct but absolutely incompatible." And he proceeded to show the nature of the competition between the ports and the competition between the various administrations to divert traffic as much as possible over their own lines for the sake of the revenue to be derived. This element of discord he showed would disappear under union since the railways and railway revenue would belong to a united South Africa. Customs tariffs offered a no less fruitful source of strife. A tariff of a protective character had been general throughout South Africa and various industries had been established under it. Naturally the persons interested in each separate Colony would wish to protect themselves if possible from neighbouring competitors and even under Crown Colony Government discriminating measures had been adopted by the Orange River Colony. In Republican days the Transvaal Government had attempted to put an end to a dispute by placing a high railway tariff on all goods crossing the Vaal River and by closing the wagon drifts, and it required the strong arm of the Imperial Government to prevent the dispute from leading to hostilities. Lord Selborne reviewed the whole situation, dealt with the problems of defence, justice, government of the natives and the general questions of develop-

ment, and his despatch undoubtedly created a deep impression on the country. It was circulated throughout the various Colonies and on July 23rd, 1907, a discussion took place in the Cape House of Assembly on a motion, introduced by Mr. Malan, one of the leaders of the Afrikaner Bond, in the following words:—“That in the opinion of this House it is desirable that the Government of this Colony should during the recess approach the Governments of the other self-governing British Colonies in South Africa to consider the advisability of taking preliminary steps to promote the union of British South Africa, the result of such negotiations to be laid before the next session of Parliament.” This motion was seconded by Sir Starr Jameson, the Prime Minister, and was carried unanimously. The incident is of great significance since it showed that the question would be considered apart from party politics and that so far as the Cape Colony was concerned there was no opposition to be feared from any section of its people. Mr. Merriman the leader of the opposition in the Cape Parliament had already in 1906 declared himself in favour of closer union, the Natal Parliament passed a similar resolution, ex-President Steyn early in 1907 publicly declared that in his belief South Africa would be united within five years and

the new Transvaal Government under General Botha expressed its willingness to co-operate. The position seemed favourable for the kind of union so frequently demanded, that springing from the will of the people themselves, and the South African public looked forward to and were prepared for the first practical steps.

So far as the Cape Colony was concerned, however, it became absorbed in a political crisis brought about at the close of the Session of 1907 by the refusal of the Legislative Council by a majority of one to go into Committee of Supply. The crisis resulted in a general election which occupied some five months and early in Feb. 1908 the Progressive Ministry under Sir Starr Jameson had resigned and the South African Party was in power with Mr. Merriman as Prime Minister. When the Parliament met on April 22nd 1908 the Governor's Speech contained a reference to a Customs Union and Railway Conference, rendered necessary by the denunciation by the Transvaal of the existing Customs Union, and further announced that the subject of Closer Union would also be discussed at the Conference. That Conference met at Pretoria on May 4th and its proceedings are of the utmost interest as indicating the situation in South Africa. It was assumed that the main object of gathering was to settle a new Customs

Tariff and arrange the terms of the Customs Union and to enter upon a new railway agreement. The references to the Conference, in the Governor's Speech at the opening of the Session of the Cape Parliament in June 1908 after it had met read:—"You will be asked to give your assent to the proposal to hold a National Convention for the consideration of the steps necessary to establish a United South Africa and to nominate delegates to such Convention. It was unfortunately not found possible to arrive at any basis of Common agreement on the subjects of Customs and Railway matters that would reconcile the divergent interests of the communities concerned, the true solution of this difficulty will probably be found in Union." The National Convention therefore was the result of the failure of the delegates from the several Colonies to come to any agreement on Customs Tariffs or Railway Rates. The Colonies already found themselves faced by the situation indicated by Lord Selborne when the five Colonies would be in the position of five European States each bent on preserving its own interests and equally bent upon protecting itself from the competition of its neighbours. It was not merely that the several Ministries were sure of the support of the country in taking the first steps toward union, it

was that they were driven to face the alternative that if they did not unite it would probably not be long before they would fight. The resolutions arrived at by the Conference were submitted to the four Colonial Parliaments and read as follows:—

A. That in the opinion of this Conference, the best interests of the permanent prosperity of South Africa can only be secured by an early union, under the Crown of Great Britain, of the several selfgoverning Colonies.

B. That to the union contemplated in the foregoing resolution Rhodesia shall be entitled to admission at such time and on such conditions as may hereafter be agreed upon.

C. That the members of this Conference agree to submit the foregoing resolutions to the Legislatures of their respective Colonies and to take such steps as may be necessary to obtain their consent to the appointment of delegates to a National South African Convention, whose object shall be to consider and report on the most desirable form of South African Union and to prepare a draft Constitution.

D. The Convention shall consist of not more than twelve delegates from the Cape Colony, not more than eight delegates from the Transvaal, not more than five delegates from Natal and the Orange River Colony respectively and

it shall meet as soon as convenient after the next Session of all the Parliaments; provided that as soon as at least two Colonies shall have appointed their delegates the Convention shall be considered as constituted.

E. The Convention shall publish the draft Constitution as soon as possible and shall in consultation with the Governments of the self-governing Colonies determine the future steps to be taken in reference thereto.

F. In the Convention the voting shall be per capita and not by States. A Chairman shall be elected from the members who shall have the right of speaking and voting and in the event of an equality of votes shall have a casting vote.

These resolutions met with no opposition in any of the Legislatures and the delegates were duly appointed, the selections being as follows:—

Cape.

The Rt. Hon. Sir Henry de Villiers, P.C.,
K.C.M.G. (now Lord de Villiers)

The Rt. Hon. J. X. Merriman, P.C., M.L.A.

The Hon. J. W. Sauer, M.L.A.

The Hon. F. S. Malan, M.L.A.

The Rt. Hon. Sir Starr Jameson, Bart., P.C.,
M.L.A.

The Hon. Sir T. W. Smartt, K.C.M.G.,
M.L.A.

The Hon. Sir E. H. Walton, K.C.M.G.,
M.L.A.

Sir J. H. M. Beck, M.L.A.,

Mr. J. W. Jagger, M.L.A.

Mr. C. H. van Heerden, M.L.A.

Col. W. E. M. Stanford, C.B., C.M.G., M.L.A.

Mr. G. H. Maasdorp, M.L.A.

Natal.

The Rt. Hon. Sir F. R. Moor, P.C., K.C.M.G.,
M.L.A.

The Hon. Sir T. Hyslop, M.L.A.

Col. The Hon. E. M. Greene, K.C., M.L.A.

The Hon. C. J. Smythe, M.L.A.

Mr. W. B. Morcom, K.C., M.L.A.

Transvaal.

Gen. The Rt. Hon. L. Botha, P.C., M.L.A.

Gen. The Hon. J. C. Smuts, M.L.A.

The Hon. H. C. Hull, M.L.A.

Sir G. H. Farrar, Bart., M.L.A.

Sir J. P. Fitzpatrick, K.C.M.G., M.L.A.

General S. W. Burger, M.L.A.

General J. H. de la Rey, M.L.A.

Mr. H. L. Lindsay, M.L.A.

Orange River Colony.

The Rt. Hon. A. Fischer, P.C., M.L.A.

Gen. The Hon. J. B. M. Hertzog, M.L.A.

The Hon. M. T. Steyn.

Gen. The Hon. C. R. de Wet, M.L.A.

The Hon. A. Browne, M.L.C.

Southern Rhodesia.

His Honour Sir William Milton, K.C.M.G.,
K.C.V.O.

The Hon. Sir C. P. J. Coghlan, K.I., M.L.C.

The Hon. Sir Lewis Michell, K.I.

(the only change in this list was made after the retirement of Mr. Morcom of Natal after the sitting in Cape Town in January. His place was taken by the Hon. Sir T. Watt, M.L.A. of Natal.)

Lord de Villiers was elected President of the Convention and ex-President Steyn vice-President, while the Secretaries appointed were:—

1. Sir E. F. Kilpin, K.C.M.G., Chief Secretary (from Cape).
2. G. R. Hofmeyr (from Transvaal).
3. G. T. Plowman, C.M.G. (from Natal).
4. A. M. N. de Villiers (from Orange River Colony).

Sundry pour parlors were exchanged after the several Parliaments had risen and the Convention met in Durban on October 12th 1908, just nine years after the opening of the South African War.

CHAPTER II.

THE CONVENTION.

THE object of this book being rather to supply South Africans and others interested with an amplification of the official minutes and a permanent record of the work of the Convention than to attempt to give a complete history of the Union movement in South Africa no apology is needed for the omission of much which might prove of interest to the enthusiastic student. The various events leading up to Union have been summarised in the preceding chapter but it has not been within the scope of this work to deal with what may be termed the contributory causes of union, nor its history, nor to give prominence to the efforts of those who undoubtedly did patriotic service in bringing it about. We have but briefly referred for instance to Lord Selborne's despatch, the publication of which did so much to bring South Africans to realise not only the imperative need

but the possibility of achieving union. It is necessary however to remember that Lord Selborne's efforts were not confined to his despatch but that by his personal influence with the leading politicians in South Africa he was mainly instrumental in bringing about the meeting of the National Union Convention, in smoothing away difficulties and in active help in the way of preparation. Such service is all in the way of public duty no doubt but South Africans should remember to think with gratitude of Lord Selborne's work on their behalf. By his energy and forethought no less than by his tactful help the Convention was made possible. The meeting of the Convention was a historic event. Many men sitting round that room had known of each other only by name and met now for the first time to work together to draft a constitution for United South Africa. There were men who had led the Republican armies in the field and had won the enviable distinction of hostile respect and esteem, men who had met for years in the political arena as opponents and who had dealt and taken many a knock out blow. All were men who had rendered public service in some capacity and all of them felt the inspiration of the occasion and all realised with some feeling of anxiety the responsibility which rested upon them and the

effect for good or ill which their deliberations must have for their common country. "Everything depends" said the Chief Justice in his opening address, "upon the spirit with which we approach the performance of our task. Failure is certain if we start with a feeling of distrust and suspicion of each other and with the sole desire to secure as many advantages as we can for our respective political parties or our respective Colonies. Success is certain if we give each other our fullest confidence and act upon the principle that while not neglectful of the interests of those who sent us here, we are for the time being, representatives of the whole of British South Africa." Certain it was, as the members looked upon each other's faces that this was a grave as well as a great occasion, that there were many difficulties to be overcome, many problems to be solved, and mutual trust and confidence are not to be created at will or in a moment. The members had to know each other and the knowledge could only come with experience and intimate companionship. That the trust was given is proved by the result and the delegates rose to the occasion putting behind them party differences and realising that public duty demanded of them the recognition of the paramount need of South Africa for unity. Still for some days there was watchfulness and

reserve and it was not indeed until the Language question was settled that this reserve disappeared. It was clear that not only was the Convention being watched with anxious interest by South Africa and from all sections of South Africans came addresses of hope and prayer, but there was a special message also from His Majesty the King expressing his deep interest and cordial good wishes while a squadron of four of His Majesty's ships were in the Durban Harbour sent to do honour to the eventful gathering. Failure indeed would have been not only a South African but an Imperial disaster and no delegate would lightly incur the responsibility of being the cause of failure.

There was abundant evidence of ample preparation for the work on the part of the delegates and it would be hard to say how many complete drafts of constitutions were reposing in the pockets of members as they first met. There were voluminous notes, piles of resolutions ready drawn, stacks of books of reference and it was clear that every delegate had undergone a course of training for the event, but there was also a general though unexpressed feeling that the lead in the business should be left in the hands of the Prime Ministers of the several Colonies. No trouble had been spared by the Transvaal in this direction and the Transvaal

delegates were accompanied by a staff of no fewer than nineteen advisers and secretaries. The Cape and Orange River Colony with their staffs of four each and Natal with its five seemed comparatively unprovided for, but there was not likely to be any fear of the Convention suffering for lack of assistance and much extremely valuable work was done by these staffs especially in the later stages of the sittings in drafting and revising. Provided the members were able to come to an agreement on the main principles involved there was little danger of the draft Constitution being imperfect by the omission of essential provisions and in that respect there was some safety in numbers and in the preparation which had produced the voluminous notes.

One of the earliest resolutions passed by the Convention is the cause of this book. A lengthy debate took place on the subject of whether the deliberations of the Convention should be private or public, what records should be kept of the discussions and what communications should be made to the public through the press. Opinions varied but the majority of the delegates felt that in the public interest it was better that their work whatever its value should be completed before it was submitted to public criticism. If a draft Constitution could be

drawn up well and good, it would remain for the people of South Africa to accept, reject or amend it. It was also felt however that work would be impossible if a discussion on important principles were to be going on inside and outside the Convention walls at the same time and members were to be harassed by demands and interference from without. It was probable also that delegates would talk more freely if unreported and after discussion Mr. Merriman moved at the first day's sitting:—"That after this date the proceedings of this Convention shall be absolutely secret; that no records of any speeches be made, but that records of all resolutions, proposals and amendments and of any divisions thereon be kept." This was agreed to and except for rough notes by individual members was adhered to. There exist therefore no records of the speeches and though it has since been resolved that the minutes be published the official staff have nothing beyond the bare and somewhat complicated official minute which has already appeared. In giving a somewhat fuller record for the perusal of South Africans the writer hopes to avoid any indiscretion which may be regarded by any delegates as a breach of confidence and he hopes to incur the censure of no single delegate for what may appear in these pages. The effect of the resolution was

undoubtedly beneficial and notwithstanding the number of men who shared the secrets of the Convention and notwithstanding the interest taken in the proceedings by the public the seal of confidence remained intact.

Another point worth mentioning is that of the language in which many of the members spoke. It was found that though all of the members could follow speeches in the English language yet some found a difficulty in expressing themselves in any tongue but Dutch. It was therefore arranged that Dr. W. E. Bok, the Secretary to the Prime Minister, should attend the sittings and act as interpreter as occasion demanded and though some of the speeches were lengthy and dealt with delicate and intricate argument it was seldom that any Dutch speaking member had any correction to make to Dr. Bok's interpretation. General Botha spoke almost invariably in Dutch, as he does in Parliament, and Generals De la Rey, Burger and De Wet also used the Dutch language, while some of the bilingual speakers used either the one language or the other. The delegates naturally desired not to occupy time unnecessarily and of course when Dr. Bok's services were requisitioned the speech took twice as long to deliver as when spoken in English. However there was the best possible understanding among the members on

this subject throughout the whole of the sittings and no difficulty whatever was experienced. The question of the reception of petitions was brought up by a telegram respecting a petition on the subject of Women's Franchise and though some members regarded it as dangerous to open the door to petitions while the work was proceeding it was decided that the usual Parliamentary practice be followed, that is that petitions should be received and it should be open to members to move any resolution upon them.

The first act of the Convention was the election of a President and the choice fell naturally on the Chief Justice of the Cape Colony, Lord (then Sir Henry) de Villiers. After acknowledging the honour conferred on him Lord de Villiers continued:—"It is well that we should at the outset clearly understand the nature of the duties entrusted to us by the different Parliaments which have appointed us as delegates. They have accepted the resolutions of the Pretoria Conference to the effect that the best interests and the permanent prosperity of South Africa can only be secured by an early union under the Crown of Great Britain of the several self-governing Colonies, and that the object of the Convention shall be to consider and report upon the most desirable form of South African Union and to prepare a draft Constitution.

“We have a mandate therefore to enquire, not whether an early union is desirable, for that has already been decided upon by our principals but what form the union should take and what should be the machinery for bringing it into being.—There seems to be an impression abroad that this Convention is going to lay down the lines to be followed upon such questions as to what should be the future native policy of South Africa, but I think you will agree with me that questions of that nature can only be dealt with by us in so far as they bear upon the immediate matters submitted to us for consideration. The chief argument in favour of closer union is that by that means only can we obtain one Legislature for all the Colonies of South Africa that will be able to cope with the great problems which are common to all the Colonies and which they cannot individually and at the same time effectually deal with. We cannot usurp the functions of such a Legislature but at the same time we cannot avoid the discussion of the wider problems if such discussion becomes necessary for the due performance of the duties actually entrusted to us. The difficulties which we shall have to encounter are great enough without our going out of our way in order to add to them but I feel confident that they will not prove to be insurmountable. Everything depends upon the

spirit with which we approach the performance of our task. Failure is certain if we start with a feeling of distrust and suspicion of each other and with the sole desire to secure as many advantages as we can for our respective political parties or our respective Colonies. Success is certain if we give each other our fullest confidence and act upon the principle that, while not neglectful of the interests of those who have sent us here, we are for the time being representatives of the whole of British South Africa. A great opportunity now lies before us and it is an opportunity which may not soon occur again. We have the best wishes not only of those who sent us but of Great Britain and of the Empire. No more striking proof could have been given by Great Britain of her sympathy with our aspirations than the sending of the squadron which lies at anchor in this harbour to greet the Convention. As to the feelings of the rest of the Empire if they are at all reflected by what I recently experienced in Canada they are more than sympathetic. The ardent wish was expressed to me by every Canadian Statesman I met that our Convention may immediately lead to great and practical results. Wherever those of us who come from the Cape Colony have called on our way we have been greeted with enthusiasm and with the best wishes for our success.

With so much to cheer us on we may proceed hopefully with our difficult task and with the full determination not to dissolve until we have succeeded in framing a scheme of Union which shall be durable and destined to create a strong and united, prosperous and contented South African Nation within the folds of the British Empire."

Before proceeding with the business the President then read the following message:—

"From the Secretary of State for the Colonies, London.

"His Majesty has commanded me to ask you to receive and convey to the members of the Convention at Durban an expression of his deep interest in the subject of closer union which has brought them together and of his cordial good wishes for the success of their deliberations animated by their whole-hearted desires and unswerving efforts for the common good of South Africa."

CHAPTER III.

UNION OR FEDERATION.

THE ground having thus been cleared and the necessary preliminaries concluded the Convention proceeded to discuss its first great principle as to the nature of the Constitution which it would recommend to South Africa and Mr. Merriman moved the resolution of which he had given notice. It was of course known that some division of opinion existed in the country as to whether the various Colonies should be joined together in a federation, each Colony retaining its full state sovereignty and local independence after the model of Australia, or whether they should be united in one great Colony with one sovereign Parliament, ruling the whole. In previous discussions the word 'federation' had been most generally used, though few had really studied the question in any detail. When Rhodes discussed the subject he used the word 'federation' and during a visit

to Groote Schuur some few years ago the writer had the opportunity of two or three days talk on the subject. There were a couple of days public holiday during a Parliamentary Session and in his way Rhodes had suggested that they should be given up to talking out federation for "it is coming" he would say "and coming quickly." Such books of reference as were available were requisitioned and the comparative merits of the systems of the United States and Canada discussed. In Rhodes' mind it was clearly necessary to allow each Colony to retain its individuality, though on that point later events would probably have converted him to the actual proposals of the Convention. His idea was however embodied in a series of notes which are now before me and the first reads:— "The Confederate States shall include Cape Colony, Natal, Rhodesia, Transvaal, Orange Free State and if possible the present Portuguese Possessions on East Coast South of the Zambesi." It would clearly have been impossible to include the Portuguese Possessions in such a Union as now exists while they remain possessions of Portugal, but it seems to have occurred to Rhodes that the prospect of being excluded from trade benefits with the Transvaal and Rhodesia would have influenced the Portuguese authorities and led them to part with a portion at least

of their sovereign power rather than have left on their hands a costly territory cut off from its natural hinterland. Probably however the inclusion of Portuguese Territory was more in the nature of a note so that later one might see what was possible and that the point should not be overlooked. In this connection it is worth while recording that a similar idea had occurred to General Botha and his colleagues in the first Transvaal Ministry. In their minute acknowledging Lord Selborne's despatch on closer union and after declaring themselves to be strongly in favour of such a proposal they conclude:— "their attitude towards Portuguese East Africa will always be that of sincere friendship and they would welcome a solution of the federation question which would extend the comity of South African co-operation to the Province of Mozambique." The Transvaal did not proceed to discuss this suggestion and it never came up during the Convention where it was no doubt realised to be inconsistent with the principle which the delegates adopted. In the Rhodes notes the next two paragraphs touch the question of federation or union. The first reads: — "Federal Chamber. The Federal States shall be controlled by a Chamber elected by the registered voters of each state in proportion to their numbers" and the second: "Duties.

The Federal Chamber shall control Customs, Railways, Defence, Native Administration, Public Debt, Posts and Telegraphs, Territorial Extension, Ports and Harbours, Judicial (? appeal only) Extradition, Excise (?), Immigration, and questions which in the opinion of the Federal Chamber are Federal and not State questions (?)." The notes of interrogation are inserted as they appear in the notes and it was evident that the points were to be reserved for further consideration. There is also a note of interrogation to another paragraph which reads — "Each State shall retain its own independent Government and all rights not expressly delegated to the Federal Assembly." The impression left on my mind is that while Rhodes realised to the full the advantage of union and of the creation of one sovereign parliament for united South Africa he wished to allow the local authorities wide powers with regard to local affairs. A paragraph for instance appears: — "Land and Minerals. The Local State Legislatures shall frame their own land laws, all laws relating to the tenure or working of land, of labour supply, working of minerals and rights in minerals or precious stones and all products of the soil and everything connected with the land." There was probably in his mind the special conditions of Rhodesia and he was strongly of

opinion that the mining laws under which the industry had been built up in the various Colonies and States, widely as they differed, could not be interfered with. He was even doubtful whether the judgments of Courts of Justice should carry throughout the Federation for there is a note of interrogation to a paragraph making that provision. He was clear that disputes between States should be settled finally by the Federal Court of Appeal though the right of appeal to the Privy Council remains. No railways were to be constructed save by the Federal Government or with the consent of the Federal Parliament though the respective States might build railways with consent. In that case however "All junctions of such lines with the Federal railways shall be under the sole control of the Federal Chamber." There was to be no doubt as to the Federal control of railways. Another paragraph relating to taxation and trade reads:— "The Federal Chamber shall impose and collect taxes, duties, imposts and excises, but all duties, imposts and excises shall be uniform throughout the Federation and in no case shall the imposts on British goods be higher than those collected upon the manufactures of any other country. There shall be complete freedom of trade between the states both by sea and land and all articles shall

pass without tax or hindrance from any one state into any other state." There was to be no risk of any "Drifts Question" and all armed forces were under the sole control of the Federal Government which was entirely responsible for defence. On the question of Public Debt a section reads:— "The Federal Chamber shall take over, control and administer the present public debt of each state and such further debts as it may sanction and arrange for. It may loan money to the various states. In the event of the refusal of the Federal Chamber to grant or sanction any loan it shall be open for the State concerned to make such other arrangements as it deems fit for raising a loan (?)." The note of interrogation refers to the last sentence but the paragraph suggests the precise provision which has been adopted by the National Convention.

Rhodes, it was clear, had not come to grips with the details of the problem. He was all for closer union but he evidently desired to protect local states with their ideas and systems from being swamped. He believed in federal sovereignty with full freedom for local enterprise and energy and it is probable that in his mind there was some fear lest the wealthy mining population of the Transvaal should seek to dominate the country and to remove the centre

of South Africa from Cape Town to the north. Rhodesia too was ever present in his thoughts and he wanted a free hand for the people and their friends in the development of the country. He wished also no doubt to protect the mining and land owning arrangements of Rhodesia and felt possibly that there would be an objection on the part of Rhodesians to place themselves unreservedly in the power of a Federal Government or Parliament in which their representation would be comparatively small. There is no question too that Rhodes felt strongly that the Federal capital of South Africa should be in the Cape Peninsula and he feared that if the local capitals were robbed of their importance there would be a strong attempt on the part of the Transvaal to establish the Capital in that country. Rhodes was a great lover of the Cape Peninsula and he did his best to prevent the ruin of the natural beauties of the place by the inhabitants. He spent a large sum in the purchase of the Estate at Groote Schuur and secured the mountain side from Mowbray to Constantia from falling into the hands of speculating builders and land syndicates. He not only preserved the natural beauties of the mountain but made them accessible to the public and he created for the Cape Peninsula one of the finest parks in the world. Wonderfully sen-

sitive himself to the beauty and grandeur of scenery he believed that it was in that spot that South Africa's statesmen should grapple with the problems of the country, inspired by nature in magnificent array. Were each of the federated states to retain its capital there would, he probably believed, be little opposition to Cape Town remaining the chief city of South Africa and in his will in bequeathing the estate to the country he stipulated that his house should be the residence of the Prime Minister of Federated South Africa. Such evidence as we have in fact leads us to the conclusion that Rhodes was in favour of federation rather than union but without doubt he was a strong supporter of closer union.

Another federationist rather than unionist was Jan Hofmeyr who passed away after Union was agreed to but before it was consummated. A great South African as he undoubtedly was, Jan Hofmeyr was for Cape Town to the bone. He would see everything centred in Cape Town and all South Africa administered from that town. The historical associations of the place appealed strongly to him, his whole life had been spent there and he could almost have been said to have loved the very dust in the streets. He too feared for the position of his beloved city under Union. He felt like Rhodes that if the existing capitals

were bereft of their importance there would be a fierce struggle for the possession of the capital city and in that struggle he feared the power of the wealthy north. Had Jan Hofmeyr been a member of the Convention he would probably have voted for Federation rather than union for this reason alone and though he eventually withdrew his opposition to the proposed union he only did so because he was convinced that the arrangement by which Cape Town became the Legislative Capital of the Union was permanent. Up to the day of his death he was a great influence in the Cape Colony and realising that fact his friends among the delegates probably felt some little anxiety as to his attitude towards this subject. Of other influential men Mr. Schreiner who had withdrawn from the Convention in order to conduct the defence of the Zulu Chief Dinizulu had much sympathy with the advocates of a federal form of government. Sir Starr Jameson the leader of the Progressive Party in the Cape though in favour of union was afraid it was unattainable as was Mr. Advocate Sampson the ex Attorney General of the Cape. And it would be difficult to say that so far as the Cape Colony was concerned there was any predominant public opinion in favour of union as opposed to federation. Closer union had been put to the people and had their

approval but as to the form it should take there was an open mind. There was undoubtedly also a fear in many quarters that union would mean a handing over of South Africa to the Transvaal with its opulent industry and overflowing treasury. There was a fear lest gold should control the votes and rule the country and by many union was regarded with a feeling of apprehension.

In the Transvaal there had been no mandate from the electors as to the particular form of union and among the Transvaal people there was a fear, openly expressed, that there would be an attempt on the part of the rest of South Africa to exploit the Transvaal Treasury. The Cape had been passing through a prolonged period of financial depression, had carried over several deficits, had suspended its sinking fund, had temporarily reduced the pay of public servants and had increased its income tax bringing within its impost all persons of incomes of £50 a year and over. In the event of union there were many in the Transvaal who feared that Transvaal taxpayers would be called upon to make good deficiencies in the Cape and elsewhere. There was, however, no protest against union and the Government had a free hand. In the Orange River Colony the approaching Convention was regarded without any evidence

of enthusiasm but with quiet approval. The idea of union with the rest of South Africa and the creation of a South African nation had few if any opponents.

There was, however, a good deal of apprehension in Natal and a strong feeling existed in favour of federation. The opposition to Union was based on many arguments. Natal, it was said, had made history for itself and was proud of its separate individuality and independence. It was moreover so small a corner of South Africa that under Union it would inevitably be swamped, absorbed and lost. The British Natalian too feared lest he should be overwhelmed in a Dutch South Africa. Among the commercial classes too there was a feeling that if Natal held out it would be in a better position to secure favourable conditions for its trade with the Transvaal in competition with other ports and in fact the attitude of Natal was for some time in doubt. Beyond these local influences there were others in favour of federation rather than union. The native populations for instance enjoyed greater privileges in the Cape than elsewhere and they feared that under a union these might be sacrificed and it will be seen that during the discussions this point received considerable attention.

So far as the delegates were concerned therefore they had no definite lead from the country in regard to the principle they were to recommend. It was a point in regard to which they must take the responsibility upon their own shoulders and must be prepared to justify and advocate their decision.

Mr. Merriman, the Prime Minister of the oldest Colony and the senior Prime Minister present brought the question to a head on the second day of the meeting of the Convention and as soon as the formal work was finished he moved:—

- A. That it is desirable for the welfare and future progress of South Africa that the several British Colonies be united under one Government in a legislative union under the British Crown.
- B. That provision shall be made for the constitution of Provinces, with power of local legislation and administration: the present self-governing Colonies being taken as Provinces.
- C. That provision be made for the admission into the Union, as Provinces or Territories, of all such parts of South Africa as are not included from its establishment.
- D. That the Union shall be styled South Africa.

In his opening remarks Mr. Merriman outlined the problem the delegates were called upon to solve. In South Africa, he said, we could not compare our situation with that of the United States of America or Switzerland where elaborate unifying constitutions had been accepted by the people. They were in the position of independent nations with all the power and responsibility of complete independence. We in South Africa were a portion of an Empire and all that related to our relations with other nations, all our external affairs and even our defence from enemies were in the hands of the Imperial Power. "We" said Mr. Merriman "miss the great binding force" of common danger and consequently we had to proceed on different lines to those adopted by independent nations. It was this fact he thought that made the constitutions of the Dominion of Canada and the Commonwealth of Australia imperfect. He proceeded, however, to examine the working of the constitutions adopted elsewhere. In the United States the sovereignty of the individual state was retained unimpaired. The local control was absolute and the States had only accepted union under conditions which left the individual state free to make its own laws for its own government. As a consequence there was found to be lawlessness in certain

states which the Central Government was powerless to cope with, there was every possible variety of law on matters of vital common concern and the people were bound to the terms of a Constitution which they were almost powerless to alter, and the principle had led to one of the greatest civil wars on record. In Canada though the draughtsmen of the Constitution had avoided some of the errors of the United States they still found that the local jealousies and differences of race and religion had prevented the achievement of a union other than imperfect. Those who had studied the Canadian Constitution and its working would agree that admirable as it was in many respects there were in it blemishes which it would be wise for South Africa to avoid. Happily for us in South Africa we had not the same obstacles to face. In religion there was no dividing line for the great bulk of the European population belonged to Protestant Churches. In race the people were essentially the same and experience proved to us that the race difference was superficial and would disappear. We were therefore free from the causes which led the Canadians to secure independence to certain provinces because the Provinces differed from each other in race and religion.

One great aim we must keep before us, continued Mr. Merriman, was purity in our administration and the experience of the world had shown that corruption flourished more vigorously under federation than under a union government. It was not necessary to elaborate the point and instances in support of his contention would occur to all of them. If they wanted pure government they must have central control. Turning to Australian Federation Mr. Merriman pointed out how the inevitable friction had arisen between the independent local governments and Parliaments and the central Government and Parliament. The Australians were already endeavouring to alter their constitution and the feeling in the Commonwealth was now probably in favour of unification. The machine was found to work badly in many ways but change was difficult. *Facilis descensus Averni* and to remodel a constitution and correct an error once made was a stupendous labour. Let them beware of false steps at the outset of their career. With regard to his resolution he was in favour of a supreme central power for one reason because under it far larger powers could be given to localities and he was a strong advocate of local self government. He was in favour of creating provincial governments under an executive officer or president appointed

by the central government and he would like to see local self government developed on the lines which had proved so successful in the Cape. He would not at that stage go into details, they would come later, but he might indicate a scheme he would submit for an Upper Chamber nominated by the Governor and Provincial Councils, a Lower House or House of Assembly of 120 members, a Supreme Court for the whole Union and provision for the administration of the Native Territories to be transferred from the control of the Crown to that of Parliament.

That is of course but a bare outline of Mr. Merriman's speech and it cannot convey to the public an idea of his eloquent periods. He spoke however with even unwonted earnestness and made an evident impression on his hearers. He was followed by General Smuts to whom the Convention was deeply indebted through its sittings. General Smuts had made full use of the able staff which accompanied the Transvaal Ministers and the information he was able from time to time to supply was of the utmost service. He himself had made a deep study of the question in all its details and there seemed to be no aspect of the problem which he had not investigated with his habitual thoroughness. The clearness of his mind too was fortunately accompanied by a corresponding lucidity in

expression and after the opening days of the Convention there was no delegate who carried greater weight than General Smuts. In his opening sentences General Smuts appealed to the Convention to fix their minds on great principles and not to allow their work to be spoiled by too much attention to material interests or difficulties of the day. Material interests he urged were evanescent, the problems of the future would not be the problems of to-day and they were working for the future and were endeavouring to lay down a constitution which the people of South Africa would live under for many generations to come. There were three points which he thought the delegates should bear in mind. In the first place they must trust the people of South Africa and must trust each other. Distrust and suspicion would be fatal. They must also trust future South Africans, trust their wisdom, and they had no right to attempt to hamper them and bind them down by any cast iron system or constitution which only a revolution could amend. In the second place he urged an open mind on the part of the delegates and hoped they would avoid the danger of following too closely the precedent handed down to them by former constitution framers. They should endeavour to profit by the errors and experiences of other countries and

with their own knowledge of South Africa do their best to solve the special problems of this country. In the third place their problem was easier of solution than that of either Canada or Australia. Canada was divided by race, religion and interest, Australia was economically divided while in South Africa we already had a Customs Union and other close connections.

Turning to the resolution General Smuts pointed out that they had before them three courses. They might adopt federation, or a Union such as that of the United Kingdom or they might take the middle course suggested by Mr. Merriman of a Legislative Union with a system of provincial government under the authority of the central power. With regard to the first, in his opinion federation was inapplicable to South Africa. Federation he took it was a treaty or a pact, an agreement between independent powers. In South Africa they were not independent powers but brothers. Let them study the history of the United States of America, let them see what grave trouble had arisen purely from the nature of the Constitution. Such a machinery for legislation would be unworkable in South Africa, for the Sovereign power was so dispersed as to be ineffective for the essential purposes of civilised government. In South Africa we already had

adopted the British system of responsible government which worked well and which the people understood; in the United States of America they had a Legislature, one Chamber of which represented the people while the other represented the States and they found the power of the Upper Chamber or Senate increasing. In those States there was no power responsible for order among the States, no power to punish wrong doing by a State. In establishing the Commonwealth of Australia they adopted the American principle for forming Parliaments and for investing the individual States with sovereign power but the British system of responsible Government. It would be believed be found that in Australia the real power was vested in the Senate and that a deadlock was inevitable.

General Smuts asked too what powers could be given to the Judiciary under federation. Are the Courts to have the power to decide whether the laws passed either by the State Parliaments or by the Commonwealth Parliament are within the four corners of the Constitution and if not who is to decide? Are they to leave the Supreme power of government in the hands of an unrepresentative body such as a Court of Justice and shall it be made possible for a Court of Justice to over-ride an Act of Parliament? That how-

ever was what was happening in Australia where the Supreme Court was giving judgment against the Parliaments of the country. A natural result of such a system was that the appointments to the Courts were political, for a political party was likely to take such precautions as were possible to ensure itself and its measures against adverse judgments. He advocated the British system under which the Courts administered the law as laid down by Parliament but had no power to alter the law. He wished to emphasise the essential point that federation was a contract between states and that if a federal system were adopted the Courts must have power to interpret those contracts. Another objection, almost fatal in his opinion to federation, was that federal constitutions were practically unalterable by nature. They could only be altered by unanimous consent. The Constitution of the United States had only twice been altered, for the difficulties in the way of alteration were almost insuperable and the States were now working under a Constitution made in the eighteenth century when the conditions of the country were entirely different from what they were to-day. Machinery for alteration was devised but it was found to be almost unworkable and the experience of the States was an object lesson for us. The hands of South

Africa should not be so tied and they had no right to shackle further South Africans. He supported Mr. Merriman's contention that corruption was almost inevitable under federation because power was so dispersed that there was no authority able to punish and it was difficult to fix the responsibility. He hoped sincerely that they would avoid a situation in South Africa under which honest men would decline to enter public life. The alternative to federation was the union as it existed in the British Islands. It was he believed the most successful system the world had ever seen and it was a model which all free people could safely copy. It was true that in Great Britain there was a demand for greater local powers and with a sovereign parliament in the United Kingdom it was possible to delegate any powers which it was necessary for localities to exercise. It was now being contemplated to grant such powers to Ireland and to carry that measure would merely require an Act of the Imperial Parliament. They were told that there were exceptional difficulties in South Africa and that under Union the Central Parliament would be overloaded with work and become congested. It was also objected that the interests of the respective Colonies were very divergent and required special attention. There were the Wine Farmers

of the Western side of the Cape, the tea and sugar planters of Natal, the gold mines of the Transvaal and the diamond mines and it was urged that one Central Parliament would be unable to do all the work required of it to the satisfaction of South Africa and that therefore there must be local Parliaments to control and promote local interests. He had much sympathy with that argument but in his opinion South Africa required a whipping boy and that whipping boy would be most safely found in the Central Government and Central Parliament. To meet the argument advanced he was in favour of a Central Sovereign Parliament together with local Legislatures with delegated and defined powers and of course subject to the Central Parliament. In his opinion that middle course would give the least possible occasion for friction in the future for it could accommodate itself to the needs of the people from time to time and the powers of the local Legislatures could be extended or curtailed as occasion demanded. What was essential was that they must create machinery which "will work" and that they must as far as was humanly possible ensure themselves against future trouble or deadlock.

Finally and in solemn and impressive words General Smuts urged the Convention to re-

member that if they were not successful in drafting a Constitution which South Africa would accept, if they were not able to bring about union in South Africa then there was grave trouble in the future for their common country. Union he believed was the only means of averting terrible disaster and he urged upon every delegate present to come to a determination that the Convention should not separate without having come to an agreement. The above but conveys the main heads of a speech which was followed throughout with the closest attention by every delegate and which made an impression which will never be effaced from the minds of those who heard it. The Cape and the Transvaal had spoken, for it was understood that General Botha had nominated General Smuts to put the Transvaal view and that in both cases the delegates of the two Colonies were in agreement with the first two speakers. That there was not to be unanimity in the Convention on the resolution was however at once made evident when the Prime Minister of Natal, Sir Frederick Moor, rose to follow General Smuts.

It was his duty, said Sir Frederick Moor, to traverse some of the arguments addressed to the Convention by the previous speakers and to dissent from their conclusions. The assumption

that federation was a failure was unfounded and federation had not by any means been the failure that had been depicted. Frequent allusion had been made to the United States but he would ask them to consider the progress of that country during the past century and to tell him whether the United States had not progressed enormously under federation. Did not the history of that country afford a sufficient reply to those who sought to persuade them that the federal system was an evil and that it hampered and hindered the growth of a nation? He did not wish to suggest to the Convention any slavish imitation of the Constitutions either of the United States or of Canada or of Australia but he urged that they should adopt a system which would fit in with the conditions, the ideas and the genius of the South African people. What was the position? We had five Colonies with their Customs Union and a common customs tariff throughout British South Africa. They had their agreements as to railway management and tariffs and similar agreements with respect to their harbours and the position was that they were sovereign states desiring to come together for mutual protection and for the promotion of common interests. He would however put it to the Convention that they would fail in their object if they did not provide protection for the

local interests of the country. In his opinion it would be impossible for a central Government in so large a country to perform this task to the satisfaction of the people and the consequence he believed would be that the Central Government would neglect the local interests and would thereby create the gravest discontent. He agreed that what we had in common in South Africa should be dealt with in a South African Parliament but he also contended that local Parliaments must exist for the care of local and individual interests. By all means let the rights of the local Parliaments be defined and clearly stated in the Constitution but let there be such Parliaments and let the existing Colonies remain intact. General Smuts had mentioned the case of Ireland and he (Sir Frederick Moor) would point out that Ireland had almost brought the work of the Imperial Parliament to a standstill because it could not get local self government and because its aspirations towards nationality were denied to the people. With regard to the working of the resolution Sir Frederick Moor expressed the hope that the respective Colonies should retain their names and he did not approve of the word "Province." So far as Natal was concerned the people would wish it to continue to be known as the Colony of Natal.

Sir Frederick Moor as will have been seen did not take up an attitude of implacable hostility to the resolution, his argument was rather directed towards a greater enlargement of the powers of the local chambers than seemed to be indicated. It may here be explained that the Natal Government and delegates had been at considerable trouble to prepare for the Convention a statement of their views and of the kind of Constitution they wished to see adopted. A complete draft of such a Constitution was printed and supplied to each delegate and it proved to be of considerable value during the subsequent discussions.

It remained for the Prime Minister of the Orange River Colony to speak and Mr. Abraham Fischer said that the discussion so far as it had gone had left him with an open mind. He might say that theoretically he was in favour of Unification and that individually in his opinion the interests of South Africa would best be served by what had come to be known as Union. Practically as statesmen they must put before the country some proposal which the country would take. He would therefore be prepared to support what General Smuts had called the "Middle Course" if he was sure that it was the middle course and if he believed the people of the country would adopt it. In this matter it

was necessary to consider not only the local interests of the country but the sentiments and opinions of the people. Would the country be content if the Central Government assumed all the Sovereign powers and left to the local Parliaments only the things that did not matter? An important point had been brought before them by General Smuts who argued against Federation for one reason because it would necessarily leave in the hands of the Judges of the Supreme Court the power of interpreting the clauses of the Constitution and of determining the rights and powers of the Central and Local Parliaments. In his view that power should be placed in the hands of the Judges rather than in the hands of Parliament. They could not always rely upon obtaining from a Parliament an absolutely impartial decision as to the extent of its own powers and he would prefer a judicial decision. That point however could be considered later but he would put it to the delegates that the people would wish that the several Colonies should decide what were to be local and what central interests. If unification was to come he for one would not oppose it and would do his utmost to make it a success in South Africa but unification must not mean the elimination of the smaller States. They must not be merely absorbed and lost in their

greater neighbours. So far, concluded Mr. Fischer, nothing had been said with regard to the language question and that seemed to him to be one of the questions that should be left to the decision of the local Parliaments. Why for instance should a Dutch State force the Dutch language on an English community, or vice versa? Mr. Fischer's tone throughout was one of friendly and helpful criticism. He wished to hear and wished for a full discussion on the points raised and ample consideration of all views.

Colonel Stanford followed. It is hardly necessary to state that Colonel Stanford had been selected as a delegate chiefly because of his unique knowledge of the native question in South Africa. For very many years he had been at the head of the Native Affairs Department of the Cape Colony, had served on the Native Affairs Commission and had spent the greater part of his life among the natives themselves. He told the Convention that from the standpoint of the interests of the Natives he would state his views later.

Mr. Steyn then spoke. He was a notable figure among the delegates for he was but just beginning to recover the health and strength shattered by the war. It was a heroic act for Mr. Steyn to attend the Convention for he could

only walk with assistance, could not yet use his hands and obviously felt the strain of the sittings. His mind however was as clear and active as ever and at any risk he was determined to take a part in a gathering whose deliberations must in any event vitally affect the destinies of his country. He made indeed an impressive picture as he rose: tall, massively built, his hands moving spasmodically and only partially under control as he spoke, his voice deep and strong and his eyes half closed for he had not yet recovered control of the eyelids. He had been President of the Free State until seven years earlier and as President Steyn he was always known to his fellow delegates. They meant it in kindness and he accepted the title in the same spirit. He was always in his place, always full of kindly courtesy, always ready with common sense suggestions and while he maintained that a common understanding in South Africa could only be attained by mutual goodwill and respect and made it known he stood for Dutch South Africans, he was ever ready to realise the position and recognise the claims of his English speaking fellow countrymen. He was he declared strongly for unification and for the obliteration of boundaries which were not natural but artificial. We could not, declared Mr. Steyn, erect boundaries or

maintain boundaries on the basis of local interests and if they wished to maintain their boundaries it showed that they did not realise the ideal which he believed inspired the South African people. If that was the case let them sorrowfully admit it, let them realise that union however beneficial, however necessary indeed for the future welfare of South Africa yet was not practicable and let them take the nearest thing possible. If they could not realise their ideal then let them at least accept such union as would prevent the repetition of the recent troubles which had devastated their common country. It had been argued that South Africa was too large for unification. There was a time when there would have been force in such an argument for distances were great and means of transport difficult and slow but rapid communication had altered all that and from that point of view there was no problem to solve. However it was no use attempting to force even unification upon an unwilling people and if it was to be opposed he would not press it but let them at least realise that they must have one strong central government. So far as federation was concerned he would tell them frankly that he was afraid of federation. Knowing South Africa, as he might claim to do, he believed it would lead to friction and ulti-

mately to dissolution. Sir Frederick Moor had spoken of the progress of the United States of America under federation. Did he for a moment imagine that it was because of federation that the people of the United States had progressed and did he not realise that it was because of the magnificent capacity of the country and its people and in spite of federation that the United States of America had attained to their present position. He repeated that he was afraid of Federation in South Africa. He was afraid of a system under which the Central Government would collect the revenue and the local parliaments control the expenditure and assume the greater responsibility. He recognised of course that there was a natural anxiety in many parts of South Africa with regard to the protection of local interests and he would willingly meet that by guaranteeing in the Constitution itself the protection of those interests. He spoke as one who had entire confidence in the people of South Africa, he believed in them and would trust them and they would work out their own destiny. There was one point he would urge upon the Convention and that was to erect safe-guards against ill-considered change. He would leave to the Central Parliament the power to test the working of the Constitution but changes he thought

should not be made in it without a majority of three fourths of the members.

After Mr. Steyn had spoken a Natal delegate Mr. Morcom, one of the leading lawyers of the Colony rose and said much had been urged against federation and previous speakers had emphasised the differences between unification and federation. He was not prepared to enter into lengthy discussions as to differences of meaning nor to waste time in dialectics but he would remind the delegates that they must consider the people behind them and in his opinion the people of Natal would absolutely refuse to surrender their independent powers of legislation. Natal would insist on the powers of the Central Government being clearly defined and upon wide powers being left to the local Parliaments. He spoke with a due sense of responsibility when he said Natal would insist upon this and would definitely insist upon retaining for the local Parliament all rights and powers which were not definitely delegated to the Central Parliament and so abandoned. It would be seen therefore that he was in favour of a federation of the Colonies and, in spite of what had been urged by General Smuts, of leaving disputes between the Colonies, or between any of the Colonies and the Central Government to be settled by the Supreme

Court....Finally Mr. Morcom was strongly opposed to any measure which would tend to submerge the existing Colonies and above all there must not be even the appearance of compulsion. Mr. Morcom it will be seen went further than Sir Frederick Moor in his views as to the feelings of the people of Natal and the delegates had to comfort themselves with the hope that as Prime Minister of that Colony Sir Frederick Moor was probably better acquainted with the feeling of the Colonists than his fellow delegate.

Mr. Sauer declared his intention of supporting unification. Historical comparisons he declared were often dangerous and Sir Frederick Moor had drawn an argument from the present demands of Ireland for greater self government than was to be found under the existing Union. It was sometimes urged that the condition of Ireland was solely due to that cause but what had been the experience of Scotland? Scotland had joined the Union even earlier than Ireland, a century earlier, and Scotland had progressed and prospered under the Union while Ireland had been given over to discontent and misery. What was the reason? There must be a cause and it was unsafe to use arguments of that character without going fully into the circumstances and conditions. In

his opinion the differences in South Africa were mainly due to the fact that there had been different Parliaments and if the history of the country taught one lesson with greater emphasis than any other that lesson was union. Putting aside what might be considered the ideals and aspirations of the South African people there were cogent material reasons in favour of union. Separate Governments and separate Parliaments meant extra cost and heavier taxation and one of his strongest reasons for supporting union was the belief that under it the country would effect great economies. Again what was the paramount question in South Africa to-day? Would anyone deny that it was the native question? They had a native and coloured population of four to one of the whites. They had in the several Colonies different laws, regulations, rights, privileges and taxes for the natives and the only hope of putting the native question in South Africa on a satisfactory and permanent basis was to have one strong central Government. If they wanted historical comparisons let them look at the history of Holland when the States of the Netherlands were practically ruined by their failure to unite. He did not wish to labour that point nor to detain the Convention by repeating arguments which had

already been eloquently and clearly put and with which he agreed but his firm conviction after a lifetime spent in the public affairs of South Africa was that there was but one way to avoid friction and trouble and that way lay in unification.

Commerce was represented in the Convention by Mr. J. W. Jagger a prominent South African merchant who had not only taken a leading part in commercial congresses but had also won his spurs in the Cape Parliament by his keen criticism on matters of finance and his industry in collecting and presenting to the House facts and figures relating to trade. Rising after Mr. Sauer Mr. Jagger pointed out that we had already a basis of union in South Africa in our Customs, Posts and Railway agreements. These had been brought about because the necessities of the people had demanded them and in themselves they afforded irrefutable evidence of the interdependence of the South African Colonies more especially in matters of trade. Happily too for them the conditions of South Africa were more favourable for union than had been the case in other countries when the same problem had presented itself for solution. In the United States of America for instance the framers of the Constitution had to deal with the bitter jealousies of the various States and the

settlement arrived at left those elements of discord untouched and even to-day they existed in the United States. Sir Frederick Moor had spoken of a federation under which the powers of the Central and Local Parliaments would be clearly defined but if he would turn to the United States he would find that even the State Judges had power to declare that the decisions and laws of the Central Parliament were contrary to the Constitution and were therefore illegal. That way indeed lay chaos. In the Australian Commonwealth too actions at law had already taken place between the local Governments and the Central Executive and the rights of even the taxing officials were held in question. He also emphasised the difficulty of amending federal constitutions and let them remember that provisions which seemed now to be perfectly suited to the people and conditions of the country might be very imperfect twenty years hence. Some anxiety had been expressed as to the treatment of local interests under Union but in his opinion local interests would not suffer and every district would be represented in the Union Parliament and members would see that the interests of their constituents were safeguarded. It was true that South Africa was a larger country and contained some 474000 square miles but it was not so

large as Australia with its four millions square miles nor as Canada with its three and three quarter millions square miles. As has been intimated rapid communication removed any danger of unwieldiness. As to cost let them remember that in adopting federation Australia increased the expense of administration. It was estimated at first that the increased cost would amount to one shilling a head or £188,000 a year. In 1902, however, the increased cost was £205,000 and in 1906 this had grown to £807,000 and in 1907 to £1,200,000. These figures were significant and the tendency to-day in Australia was towards unification. Should we in South Africa not profit by Australia's experience? Federation he believed would be enormously costly in South Africa. He had been told that the people of Natal were proud of the name of Natalians why should they not feel even a greater pride under the larger name of South Africans?

General Schalk Burger who spoke in Dutch and whose speech was interpreted declared himself to be in favour of unification. In his opinion there had long been a feeling in South Africa in favour of this form of union and he for one would not be afraid to put his views into the draft Constitution and submit them to the judgment of the country. If South Africa were

to gain Union it would be necessary for all to make sacrifices for the good of all and the Transvaal was prepared to make sacrifices. Small things however must not overshadow great. In the Transvaal there was great prosperity now and every prospect of continued prosperity but what would the Transvaal gain from a form of federation such as was suggested by Natal? The Transvaal was prepared to make sacrifices for unification but it would not be worth while to make sacrifices for federation. With regard to the settlement of differences between the Central and the local Parliaments there could only be one judge and that judge must be the representatives of the people themselves in Parliament.

General Burger spoke earnestly and impressively and was immediately followed by General Botha who also addressed the Convention in Dutch. General Botha said he had not intervened earlier in the debate because though he held strong views he wished to hear the discussion and consider the arguments brought forward before speaking. He would say at once that he was in favour of unification for South Africa and he must add that all the arguments he had heard had strengthened him in his conviction and he would only vote for amendments which left that principle intact. In

regard to an amendment put on the paper by Mr. Morcom he considered that its effect would be to leave us where we were. He would put to the delegates the question:—why were they there? They had freedom and self government, they were left to manage their own affairs as seemed best to themselves and why therefore should they desire any change? The reason was that they saw trouble ahead and feared that questions would arise which would prevent them working together, would divide them and lead to serious trouble. They were there to ensure peace and rest now and in the future for South Africa if possible. They had failed quite recently to come to an agreement between the Colonies on questions relating to Customs and Railways and they had to-day a number of people in the Transvaal demanding the exclusion of strangers from their markets. The existing boundaries in his opinion were entirely artificial and they should be swept away but under present conditions he believed that only a strong government in the Transvaal could prevent a customs war taking place to-day. His present position was that he held himself commissioned by the Transvaal people to come to that Convention and join a Union of South Africa. The Transvaal had great assets and great wealth but it asked for union all the same and was prepared to put all its assets in the

common pot for the people had confidence in the country and in a Parliament representing the whole country. No other form of government would in his opinion be satisfactory. The population was small and they had too few statesmen for both a Central Parliament and local Parliaments. The Transvaal would object to a number of Parliaments and what his people demanded was one flag, one people, one God. Then as to the argument of local interests and local demands for special consideration surely they would see that if each Colony kept its local interests for the local Parliament the position would be untenable in a very short period of time, for the local Parliaments would necessarily claim to decide what were local interests. They had heavy responsibilities there as men. They had been selected to come there and recommend to the people of South Africa that form of Constitution which in their opinion was in the best interests of the country. It was their place to lead the people and not to grope for possible indications of public opinion. They had now a great opportunity. They had great difficulties but they were not insuperable and they would yield to treatment. They all saw that the race difficulties were passing away and there was nothing in the future to daunt them. It was a great country and had room for many people and the day was coming when there would be a

large population in South Africa. Let South Africa unite and let it expand northwards from its firm base in the South. In the past there was one lesson which surely they had all learned; namely, that disunion was fatal to prosperity. He had heard with regret the views expressed by Mr. Morcom and the amendment which was to be moved on behalf of Natal. He hoped, however, that after further consideration Natal would see its way to join the Union. He did not underrate the gravity of the Native problem in South Africa but he was firmly convinced the one hope of a settlement satisfactory to both the European and the native population was a strong central government and a uniform native policy and native administration throughout South Africa. He had already mentioned the assets of the Transvaal and among those assets was the greatest industry in South Africa, the gold mining industry. When delegates spoke of local interests and their anxiety with regard to them under Union should not the Transvaal with greater justification feel nervous as to the fate of an industry upon which the greater part of the population of that Colony entirely relied. Yet he was there to say that the Gold Mining Industry as well as all the other assets of the Transvaal would be put into the common pot. The Transvaal was prepared to trust the people

of South Africa and to leave its future with confidence in the hands of a Parliament representing the whole of South Africa.

Mr. Browne speaking on behalf of the British people of the Orange River Colony would support union as opposed to federation and Sir Lewis Michell contributed to the discussion an interesting history of former divisions among the South African people. South Africa he believed was weary of dissension and strife and was awaiting with eager expectancy the result of their deliberations. Speaking as one of the representatives of Rhodesia he would express the hope that the great territory to the north would in the near future find itself in a position to join the Union which he believed would be formed.

Sir George Farrar accepted the responsibility of the position which he was then filling as one of the delegates of the Transvaal. He was opposed to the form of union known as federation because he believed it to be entirely unsuited to the needs of South Africa and they could not recommend for the acceptance of the people what they themselves did not believe in. The past with its mistakes and its suffering was behind them. They must look forward, go on, build anew and avoid the blunders which had led to disaster in the past. To the people of Natal

some of whom seemed to regard union with fear and anxiety and to apprehend calamity in welding all South Africa into one, he would say "Trust the people of South Africa." The past was gone and it was atoned for. The blood of British and Boer was commingled on the veld and together they lay buried on many a field of battle. What was the position in the Transvaal? There British and Boer had been brought together by the wise and tolerant action of General Botha and General Smuts and to-day they stood together asking to join in a union of South Africa. The education question, the language question were no longer difficulties, the problem had been solved on a principle of give and take and by mutual good understanding. Speaking for himself and for those whose views he knew he represented he declared that they had faith in the sincerity of Generals Botha and Smuts and only on such a basis of confidence could they hope to establish union. If South Africa was to fulfil its destiny unhampered by internal strife and dissension it must have a Sovereign Parliament and Government delegating powers of local Parliaments. He agreed with those who regarded the Native problem in South Africa as one which demanded the utmost care and most delicate handling and which required above all uniformity in adminis-

tration which was only possible under a united government. He was firmly convinced that if they failed in their efforts we should drift into civil war in the country.

Colonel Greene who occupied the position of Minister of Harbours and Railways in Natal and who, though a leading lawyer in the Colony, had served with distinction during the war rose to follow Sir George Farrar. He regretted in the first place that the respective Colonies were not equally represented in the Convention and could not but feel that his own Colony of Natal was not fairly represented. He admitted of course the defects of the federal system of union though he did not concur with those who had condemned that system as wholly bad. His own feeling after hearing the discussion was to support a clause in favour of a Sovereign central Parliament but he would only do that if the rights, powers and privileges of the local Parliaments were clearly defined and fully secured. He would not support any proposal which would turn the local Parliaments into glorified county councils and no such system in his opinion could succeed in South Africa. There must be local administration of local affairs. How for instance could the affairs of Natal be administered from Cape Town? With regard to the Canadian comparison he would remind them that union

in Canada was impossible owing to the differences in the Statute Law. His own position was that he was prepared to support the resolutions as interpreted by General Botha and he would deal later with the details of the amendments. There were some questions which had been touched upon without an appreciation of their full significance. Take for instance the Native question. In the Cape Colony there was equality between the white and black. Were they to have equality between white and black throughout South Africa? Only in Cape Colony had the natives the franchise and he wished it to be understood that under no circumstances could he support the native franchise. If they carried union and the Cape had its local Parliament then natives might vote for members of that Parliament but they could never be allowed to vote for members to a Central Parliament.

Colonel Greene showed some advance on the position taken up by Mr. Morcom but he had touched a thorny question and one that was destined to give rise to much future discussion. General de la Rey who spoke next spoke as always, in Dutch. His remarks were generally brief though pointed and on the question he merely desired to express his agreement with the other delegates from the Transvaal who had spoken. There need be no fear he thought that

the powers of the local Parliaments would be curtailed but the tendency of the central Government and central Parliament would be to delegate wider and wider powers. There must, however, be one supreme authority in the land and that authority must be the central Parliament.

Mr. Malan who was at the time filling the position of Minister of Agriculture in the Cape Government and was one of the leading members of the Afrikaner Bond, wished to give expression to the sympathy he felt for the smaller states which had a history of which their people might well be proud. He was one of those who did not wish to break up the past and who believed they would gain by keeping alive cherished memories and traditions. One feature of the present movement was that the note of union came from the New Colonies and that seemed to him a favourable augury. In any written Constitution it was of course necessary to create an authority which had the power to interpret the document which defined the rights and privileges of the various bodies called into existence. In his opinion South Africa was driven into unification by the logic of facts, by the native question, by their position with regard to their foreign relations and by their financial position. And even under unification

they must create a supreme authority to interpret their powers. It had been suggested that this power should be placed in the hands of the Supreme Court but if that were done a deadlock would become inevitable. Under federation there would be several governments and therefore several spending powers. How could South Africa face the cost of such a system? With regard to the name by which they should call their Union he was in favour of South Africa or United South Africa.

Sir Starr Jameson rose to address the Convention for the first time and by many his attitude on the point in debate was awaited with some anxiety since he was known to have expressed opinions in favour of federation as the nearest practicable form of union attainable for South Africa. He summarised the arguments brought before the Convention and said that in his own mind there had never been any doubt that were unification possible it would be to the highest good of South Africa. The only point with him was whether it were possible and he confessed after listening to the discussion that he had been converted from thinking the ideal impossible. He believed the difficulties could be surmounted by a determination on the part of the people to sink local feeling and prejudice and grasp the greater destiny which

awaited them. He had no fear of injury to any locality, no fear of neglect of any local interest and he believed that any South African Parliament would regard the whole country and the whole of the interests concerned as its duty.

Mr. Abraham Fischer rose again to admit that he was also among the converted to the possibility of achieving real unification and he would alter an amendment of which he had given notice accordingly. He had been convinced by the arguments and the tone of the discussion that the smaller states, one of which he represented, had nothing to fear from complete union. He was impressed by the arguments of General Botha and by his declaration that in entering the Union the Transvaal was entrusting the control of the Gold Mining Industry to South Africa and assuredly no Colony was called upon to show a greater mark of confidence. He would vote for unification.

Sir T. Hyslop the ex-Treasurer for Natal, and one of the Natal delegates, would have been glad of a clearer definition of unification. How was it proposed to bring it about? Take the franchise as an instance. In the Cape they had a salary and a property qualification and an education test. In Natal they had similar qualifications. In the Transvaal and Orange River Colony they had manhood suffrage for

whites. On what lines did they propose to unify? Would the Transvaal and Orange River Colony accept a qualification test or would the Cape and Natal be expected to grant manhood suffrage? What about the native franchise in the Cape? Were those natives to be struck off the rolls or were they to elect representatives to sit in Parliament to make laws for the white man in South Africa? Take also the Indian question. The Transvaal and Cape wished to exclude Asiatics and had passed special legislation with that object but these Indians were essential to the industries of Natal, and Natal could not afford to do without them. On the race and language questions also Natal was differently placed to the rest of South Africa and did not wish to be embroiled in the difficulties which had arisen elsewhere. He believed there would be more friction under an attempt at unification than with federation. As to the question of cost, the expense of local Government would be just as great in the one case as in the other and under Federation the various states would have to provide for their own administration and would check the cost. He was strongly in favour of a responsible govern-

ment in each Colony or State and that would have to be provided for in any settlement.

General Christian de Wet, whose name was a household word during the war, said that the war had taught the people of South Africa a lesson which they should remember for all time. It had made them think and in his mind there was no question that the whole people were in favour of unification as the only safeguard against future trouble.

Mr. Smythe the ex Prime Minister of Natal was in favour of Federation and no arguments which had been used had converted him. He saw no reason why they should not proceed very much on their present lines by creating a central Government to look after railways and customs and defence and such matters as were in common, leaving the other affairs to be managed by the local Parliaments. If a Central Parliament were to delegate local powers to the State Parliaments then it would have to be seen that such powers were full and ample and they must be secured by the Convention.

Sir Edgar Walton the ex-Treasurer of the Cape said he had always advocated unification as the only possible solution of the problem South Africa had to face. All of those who had spoken realised that without union in the country the rivalries between the States and the

commercial and industrial competition would bring about a bitter feeling which might at any moment end in an outbreak. To leave the several Colonies intact under separate and independent Parliaments under a Federation was not to remove that danger but to leave the position precisely where it was at present. The Natal delegates in advocating Federation had assumed that Customs Union and Railway Union would be continued and that in fact the management of Customs and Railways, together with Defence perhaps would constitute practically the whole duty of a central Parliament. Apparently they had forgotten the immediate cause of the meeting of this Convention. But a few months before the respective Colonies had sent delegates to Pretoria to endeavour to agree upon the terms for the renewal of the existing Customs and Railway agreements and the delegates had failed. They had to confess that the conflicting interests made it impossible for them to arrive at any understanding. The old agreements, therefore, had been renewed for a specific period of twelve months pending the meeting of this Convention and unless they came to some agreement in that room all the existing agreements would cease to exist in seven months time. The attempt to federate on these lines had already failed and he for one agreed that

Federation was no solution for their difficulties in South Africa. That was the main point and he was opposed for another reason for South Africa could not afford Federation. It could not afford to add another Parliament, another set of Ministers, another Governor with his staff to the already top heavy superstructure of government. The Convention might bring about Union or might fail, he believed it would succeed, but it would find no half way house. So strongly did some of them feel in this matter that they from the Cape Colony were here supporting their political opponents, the men in whom they had no confidence, and the men whom they had been denouncing on every platform. Why? Solely because they had felt that this was a national crisis, a crisis during which national interests were paramount and when political differences must stand aside. Possibly as an outcome of their work a new party might rise in South Africa, a party which would be entirely free from divisions on race lines and indeed he hoped they might find a new political era. With regard to the anxiety of Natal as to its local interests he had much sympathy with it as he had with a similar anxiety in his own part of the country. He was sure they would find in the Convention a desire to comply with any reasonable demand when they came to specify

the departments of public work which would be allocated to the local bodies of control.

Sir Percy Fitzpatrick wished only to add a few words. When they spoke of reserving certain things for the local bodies let them beware of tying things too tight and of inelastic arrangements. They must not mortgage the future but must be ready to trust the people taking care to see that the people were fully and fairly represented.

Were this a report instead of a mere sketch of the proceedings it would be possible to convey some idea of the spirit which animated the Convention and of the earnestness and conviction with which the delegates spoke. The discussion began on Tuesday October 13th and had concluded by Thursday evening and there came the question of considering the original resolution moved by Mr. Merriman together with the various amendments moved by Mr. Morcom, Mr. Browne, Colonel Greene and Mr. Fischer. It was felt that some of these covered the same ground and that the main point of difference was contained in Mr. Morcom's proposal. Mr. Merriman agreed to incorporate the suggestions of Messrs. Browne, Greene and Fischer, to alter his motion accordingly. The voting would then take place on the two sets of resolutions moved respectively by Mr. Merriman and Mr. Morcom and the Con-

vention would definitely have decided upon the main principle of the Constitution.

Mr. Merriman's original resolutions are printed on a previous page. His amended resolutions read as follows:—

- A. That it is desirable for the welfare and future progress of South Africa that the several British Colonies be united under one Government in a legislative union under the British Crown.
- B. That provision shall be made in the Constitution for the establishment of Provinces with powers of legislation and administration in local matters and in such others as may be specially reserved to be dealt with by each Province separately, the present self-governing Colonies being taken to be the Provinces of the Union.
- C. That provision be made for the admission into the Union as Provinces or Territories of all such parts of South Africa as are not included from its establishment.

Mr. Morcom's amendment was:—

- A. That it is desirable for the welfare and future progress of South Africa that the several British Colonies be united under one Government under the British Crown.

- B. That provision shall be made whereby the present self-governing Colonies shall as such become States of the Union so created.
- C. That provision be made for the admission into the Union as States of the Territories of all such parts of South Africa as are not included from its establishment.
- D. That the Union shall be styled the Dominion of South Africa.

The two principles were here clearly laid down and the vote of the Convention went in favour of Mr. Merriman's resolution. The Convention therefore adopted Unification as opposed to Federation and as no division was called for by Mr. Morcom it is evident that the supporters of Federation were in a small minority. It only remains to be said here that however forcibly the advocates of Federation had argued their case, and however strongly they felt, they loyally accepted the decision of the Convention as final and continued to render devoted service to the labour of drafting the Constitution.

CHAPTER IV.

THE LANGUAGE QUESTION AND
SOME PROGRESS.

THE Convention had not been in session for four days without becoming alive to the fact that if the language question had not been brought prominently to the fore in the discussions it was very much in evidence. Outside the Convention room there was much talk among the delegates on the subject and though other business appeared upon the paper it was known that the language question was a crux which must be dealt with and settled satisfactorily before any real progress could be hoped for. The writer recalls a conversation with Mr. Sauer during the voyage up to Durban to attend the Convention and in Mr. Sauer's opinion the language question was the first and most anxious and greatest difficulty. If that could be settled to the satisfaction of both British and Dutch in South Africa then, however laborious

might be the task of drafting a Constitution, we should succeed. All the members realised this fact and they knew that among the representatives of Dutch South Africans there was the strongest feeling with regard to it. All were agreed that under the conditions prevailing in South Africa both English and Dutch languages must be recognised and that there must be equal rights. It was one of the drawbacks to the situation and it is a drawback to any country to have two official languages, it adds both to the cost and to the difficulty of administration. The situation, however, was there and it had to be dealt with and the delegates had to solve the problem or know that their Constitution would not be accepted by South Africa. It may be well therefore first to deal with this question of the language before proceeding with the ordinary work of constitution drafting which went on day by day and to points of which reference will be made later.

General Hertzog had been regarded as the delegate who felt most strongly on this question and at the request of some of the delegates he put his ideas in the form of a resolution for circulation among delegates before it should formally appear on the paper. His resolution as then worded read:—"In order to effect a closer union of the Colonies represented at this

Convention and in order fully to attain the object of its establishment it is essential that both English and Dutch be recognised as the National and Official languages of the Union to be treated on a footing of equality and to possess and enjoy equal freedom, rights and privileges in all the various offices, functions and services of whatsoever kind or nature of or administered by or under the Union and that every appointment under the Union shall be made with a due regard to the equality of the two languages and to the right of every citizen of the Union to avail himself and to claim either language as the medium of communication between himself and any officer or servant of the Union; and that all the records, journals and proceedings of the Union Legislatures as likewise all Bills and Laws of the Union and all official notifications of general public importance or interest published in the *Gazette* or otherwise shall be issued and published in both the English and Dutch Language." The proposed resolution was duly discussed unofficially by various members of the Convention and though all were agreed on the general principle it was felt that the proposal as it stood was inadmissible since it involved "Compulsion" and that in any case something rather less involved should be adopted by the Convention. Confer-

ences were held both by the English and Dutch speaking representatives and on the following Monday, October 19th, General Hertzog moved an amended resolution in the following terms: "In order to effect a closer Union of the Colonies represented at this Convention and in order fully to attain the object of its establishment, it is essential that both English and Dutch be recognised as the official languages of the Union; to be treated on a footing of equality and to possess and enjoy equal freedom rights and privileges in all the various offices functions and services of whatsoever kind and nature of or administered by or under the Union; and that all the records, journals and proceedings of the Union Legislatures as likewise all Bills and Laws of the Union and all official notifications of general public importance or interest, published in the *Gazette* or otherwise shall be issued and published in both the English and Dutch Language."

The resolution it will be seen though abandoning compulsion and somewhat simplified was still of rather a compendious character and it lent itself to a variety of interpretations. The apprehension which was clearly behind the resolution occasioned some surprise among the delegates for in three of the Colonies the language

question had settled itself on a basis of common sense and mutual understanding. In the Cape both English and Dutch were spoken in Parliament and both languages were used in the Parliamentary papers, while the needs of the country districts were met by the appointment of bilingual officials where they were required. In the Transvaal similar arrangements prevailed and gave satisfaction while in Natal no grievance apparently existed. The question seemed, however, to have bulked largely in the Orange River Colony where the Dutch speaking South Africans were of course in a large majority and where Dutch had been practically the only language used in the country districts before the war. It was assumed that during the after war administration feeling had in some way become roused and that the delegates from that Colony felt it to be their duty to obtain in the Convention a settlement of such definiteness that future misunderstanding would be impossible. To this task therefore the Convention set itself. In moving his resolution General Hertzog said that he did not want a mere paper resolution, a mere expression of opinion, but a real and lasting settlement of the language question. What was intended and what he asked the Convention to do was to make equality effective and to make it compulsory throughout the public service of

the country. If they were to have Union in South Africa it must be a union of hearts, a union in which no section of the people felt themselves to be unfairly or unjustly treated, in which none nursed a legitimate grievance. If the principle of true equality were laid down in the Constitution then they could leave the administration to the Union Government. So far as South Africa was concerned the terms of his resolution laid down nothing that was new to the Cape, Transvaal or Orange River Colony. His position as a delegate from the Orange River Colony was that the principle of equality must be laid down clearly in the Constitution. He could not go back to his people and confess that the position regarding the language was worse under the Union than it had been. Delegates must remember that two thirds of the people of the Orange River Colony could not speak English and in the Colony they had already taken the necessary steps to protect the language rights of the people. The people could not be deprived of those rights and the Dutch people of South Africa would never accept a settlement which left the absolute equality of their language in doubt and so left them with a sense of humiliation. They felt strongly on this question and he shared that feeling. They had for a hundred years nursed

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this feeling with regard to their language and if they were to accept the Constitution the language clause must be clear beyond all possible doubt.

General Hertzog had spoken with deep earnestness and some feeling and the gravity of the question was obvious. He was immediately followed by ex-President Steyn who said he regarded the manner in which this question was approached as the test whether South Africa was ripe for union. They must unite the people as well as the Colonies or they would not bring unity to South Africa even though they might achieve political union. Take the position in South Africa. For a hundred years they had talked of union. The differences in race between the people were slight. They intermarried freely, they lived together in friendly social intercourse and worked together, but the end was that there were still two races in South Africa and the country was divided. This union of the races was the great problem before South African statesmen and he would say this, the late war brought in its train untold misery and ruin, it shattered families and left the land desolate but he would not regret the war if it only left the two races in South Africa united. The sacrifice was great but the end would be worth all the suffering and all the loss. He

believed to-day that real unity was possible and that they would succeed if only the Convention would take a broad view and establish and maintain equality. Union would always be impossible if one race felt that it was unfairly treated and laboured under a sense of inferiority and the people claim language equality as a right. They should remember the time was when Dutch was the official language of all South Africa and with that fact in their minds they could not ask the Dutch people in South Africa to accept a Constitution which placed the Dutch language in a position of inferiority. Even if that Convention agreed to that and they as delegates assented to it the people would not assent. In the circumstances and conditions prevailing in South Africa there was not only a right but it was wise statesmanship. He did not suppose they wanted to see no political divisions among the people of South Africa but if language equality were established the people would be divided upon different lines. He could not speak too earnestly on this question and no words he could use would be too strong to impress its importance upon the delegates. He would pray the Convention not to hand down this *hereditas damnosa* to their children for he believed that it was responsible for most of their troubles.

Sir Starr Jameson felt in common with all the delegates that they were called upon to handle a very thorny subject, one on which there was a good deal of feeling and perhaps much difference of opinion. He for one in face of the great issues before them was prepared to take the widest possible view and they must remember and call upon the people to remember that any sacrifices made would be made for the general good. In Cape Colony they had managed to arrive at a common understanding on this question and it did not bulk largely in their public life. Bilingualism was spreading and the difficulty did not really exist with them. He would acknowledge therefore that he did not realise the necessity of this hard and fast definition of equality. He however was quite prepared to agree to equality but was not prepared to agree to compulsion and he much appreciated the deletion of certain words by General Hertzog. He would further ask however that the resolution be amended by the removal of any trace of compulsion and he must take a stand on that principle. He would therefore ask General Hertzog to explain his views more fully on this point now and it would probably facilitate matters if a small committee were appointed to draw up a resolution.

General Hertzog expressed his willingness to meet Sir Starr Jameson and to clear the matter up would omit the words rendering it necessary for all officials to know both languages and insert words to the effect that "according to the needs of the several districts the Government shall provide for language."

Sir Starr Jameson fully accepted the explanation and thought a clearer definition advisable to leave no room for doubt.

Colonel Greene was sorry he had not seen the earlier drafts of General Hertzog's proposal. He was in thorough accord with the speeches which had been made and with the principles laid down but they would have to be extremely careful of the wording of the resolution for there was no question with regard to which the people were more sensitive.

Mr. Merriman declared himself a supporter of General Hertzog in this matter. It was entirely a question of sentiment and he quite agreed that the Dutch people of South Africa would be much influenced in their attitude towards any draft Constitution by the settlement arrived at with respect to language. Mr. Merriman then recapitulated the argument.

Mr. Fischer wished to associate himself with what had been said by his two fellow delegates from the Orange River Colony. There was he

thought no occasion to consider any amendment as General Hertzog's assurances were sufficient.

The discussion was then adjourned until next day and in the interim informal discussions took place between the various members. As a result a simpler and shorter form of words was agreed upon by representatives of the four Colonies, General Hertzog consenting to the omission of the word "the" before the words "official languages". Next day Sir George Farrar according to agreement moved the following amended resolution to take the place of that moved by General Hertzog:— "Both the English and Dutch languages shall be official languages of the Union and shall be treated on a footing of equality and shall possess and enjoy equal freedom rights and privileges; all records, journals and proceedings of the Union Parliament shall be kept in both languages, and all Bills, Acts and notices of general public importance or interest issued by the Union Government shall be in both languages." This closed the subject for the time being and the difficulty had been got over for the new resolution was adopted without division. The resolution as then passed was embodied in the Act of Union and is the law on the subject today. It is unnecessary to say that the passing of the clause was a great relief to the Convention for

it afforded evidence of the existence of mutual trust and confidence and left an assurance that any other difficulties which might present themselves would not at least be insuperable. How important this language clause was considered may be gathered from the additional fact that it was included among the measures that could only be altered by the Union Parliament by a majority of two thirds of both Houses of the Legislature sitting together. Echoes of it were heard again during the debate on education but it was held on both sides that an honourable understanding had been arrived at on the basis of "equality and no compulsion" and it was hoped to hear little more of the subject. The point was in evidence later when the clauses relating to the Civil Service were under consideration and Section 145 reads:— "The services of officers in the public service of any of the Colonies at the establishment of the Union shall not be dispensed with by reason of their want of knowledge of either the English or the Dutch language." The protection is of course given in the law and it was necessary to leave it to the Governments to observe with honour the compact arrived at. Some little discussion took place also over the question as to which Act would be signed by the Governor General when giving his sanction on behalf of the Crown to a

law passed by Parliament. The Acts would be printed in both languages and the Act signed would be the law of the land. In the event of different readings it was important to have the point settled and it was suggested that in the event of difference the English version should prevail. President Steyn thought such a provision unnecessary since the Governors General would sign the English copy which they could understand. He feared that if a provision as suggested were inserted in the Constitution it would be misunderstood by many people and might lead to opposition. The opinion of the President, Lord de Villiers, now the Chief Justice of the Union of South Africa was then asked. He considered that since South Africa was under the British Crown and since the final interpretation of some of its laws might rest with a British Court sitting in London it would be advisable for the Governor General to sign the English copy of the Act. He would have preferred to see a provision to that effect inserted in the Constitution but in view of what had been said would not press the point. This ruling was accepted by the Convention without demur or further discussion and unfortunately it was not embodied in the Constitution. The point is mentioned because it is understood that the Governor General, Viscount Gladstone, has

been signing English and Dutch copies of the various Acts indiscriminately, and according to legal members of Parliament who are familiar with both languages there are wide discrepancies in meaning between the two versions. If this is the case we may find a South African Court giving judgment on the version of a law before it in the Dutch language and the Privy Council on appeal upsetting that judgment because it follows the English version. It will be agreed we think that an unfortunate precedent has been set by putting aside the understanding which prevailed at the Convention and it is one which in all probability the Union Parliament will be called upon to deal with.

While the language question was under consideration the Convention appointed a small committee to draw up statistical information for the guidance of the Convention and a highly valuable book of figures was compiled. It is not possible to reproduce those figures here but a summary of them will serve as a record and will show upon what figures the Convention proceeded to deal with the various questions to which they related. They may also serve as a basis of comparison at some future date when South Africans are marking the progress which the country has made.

COMPARATIVE SUMMARY OF THE PRINCIPAL FINANCIAL AND OTHER STATISTICS OF THE SELF-GOVERNING COLONIES OF BRITISH SOUTH AFRICA.

Description.	Cape Colony.	Natal.	O.R.C.	Transvaal	Four Colonies
Population (Census 1904):					
White	579,741	97,109	142,679	297,277	1,116,806
Other	1,830,063	1,011,645	244,636	972,674	4,069,018
Total	2,409,804	1,108,754	387,315	1,269,951	5,175,824
*Net Debt 30 June, 1908:	£	£	£	£	£
Reproductive	39,406,037	17,899,818	6,435,923	18,008,896	81,750,674
Non-Reproductive	13,078,692	3,235,177	793,338	8,074,796	25,182,003
Total	52,484,729	21,134,995	7,229,261	26,083,692	106,932,677
*Net Debt per head of White Population:	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Reproductive	67 19 5	184 6 6½	45 2 2	60 11 7	73 4 0
Non-Reproductive	22 11 3	33 6 3½	5 11 2	27 3 3	22 10 11½
Total	90 10 8	217 12 10	50 13 4	87 14 10	95 14 11½
*Net Debt per head of Total Population:					
Reproductive	16 7 1	16 2 11	16 12 4	14 3 7	15 15 10½
Non-Reproductive	5 8 6	2 18 4	2 0 11	6 7 2	4 17 8½
Total	21 15 7	19 1 3	18 13 3	20 10 9	20 13 2½
Interest for One Year on Debt outstanding 30 June, 1908:	£	£	£	£	£
Reproductive	1,486,331	649,584	207,135	575,653	2,918,703
Non-Reproductive	418,973	107,762	39,715	315,521	881,971
Total	1,905,304	757,346	246,850	891,174	3,800,674
Interest per head of White Population on Debt outstanding:	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Reproductive	2 11 3	6 13 9½	1 9 0½	1 18 9	2 12 3½
Non-Reproductive	0 14 5	1 2 2½	0 5 6½	1 1 2	0 15 9½
Total	3 5 8	7 15 11½	1 14 7	2 19 11	3 8 0½
Interest per head of Total Population on Debt outstanding:					
Reproductive	0 12 4	0 11 9	0 10 8½	0 9 0	0 11 3½
Non-Reproductive	0 3 5	0 1 11½	0 2 0½	0 5 0	0 3 5
Total	0 15 9	0 13 8½	0 12 9	0 14 0	0 14 8½
Ordinary Revenue for 1908-9 (Revised Estimates):	£	£	£	£	£
Railways	2,850,000	1,939,000	†4,34	5,356	9,134,356
Harbours	...	143,000	...	...	143,000
Total Railways & Harbours	2,850,000	2,082,000	†4,34	5,356	9,277,356
Customs	1,450,000	480,000	300,000	1,448,300	3,678,300
Other General Revenue	3,222,639	978,075	474,740	3,183,612	7,869,066
Total General Revenue...	4,679,639	1,458,075	774,740	4,631,912	11,637,366
Grand Total Revenue ...	7,522,639	3,540,075	9,752,008	9,752,008	20,814,729

Description.	Cape Colony.	Natal	O-R.C	Transvaal	Four Colonies
Ordinary Revenue per head of White Population:	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Railways	4 18 3½	19 19 4½	9	17 6½	8 2 6½
Customs	2 10 0½	4 18 10½	2 2 0½	4 17 5½	3 5 10½
Other General Revenue ...	5 11 2	10 1 5	3 6 6½	10 14 2½	7 0 8½
Total, excluding Harbours	12 19 6	34 19 7½	22	3 3½	18 10 2
Ordinary Revenue per head of Total Population:	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Railways	1 3 7½	1 14 11½	2	12 5½	1 15 3½
Customs	0 12 0½	0 8 7½	0 15 5½	1 2 9½	0 14 2½
Other General Revenue ...	1 6 8½	0 17 7½	1 4 6½	2 10 1½	1 10 4½
Total excluding Harbours	3 2 5	3 1 3½	5	17 8½	3 19 10½
Ordinary Expenditure for 1908-09 (Revised Estimates):	£	£	£	£	£
General Government ...	506,182	153,295	103,941	333,966	1,097,384
Law, Order and Protection...	1,091,289	507,556	210,237	1,149,237	2,958,319
Education, Science, etc. ...	567,447	114,017	173,226	610,830	1,465,520
Public Health, Medical, Lepers, Lunatics, Hospitals and Poor Relief ...	265,273	61,683	43,391	175,237	545,573
Lands, Agriculture & Mines	277,223	78,963	67,343	487,136	910,665
Public Works	118,713	90,142	96,248	587,067	892,170
Posts, Telegraphs, and Telephones	736,739	173,328	119,038	408,294	1,437,399
Native Affairs Department...	109,263	19,049	2,692	100,587	231,591
Miscellaneous	85,960	62,209	19,129	73,665	240,963
Public Debt Charges ...	767,637	192,524	124,249	579,532	1,656,962
Total, excluding Railways and Harbours	4,525,745	1,452,766	959,494	4,498,541	11,436,546
Railways	3,244,000	1,924,569	13,62	4,357	8,792,926
Ports, Harbours & Navigation	119,552	251,228	...	...	270,780
Grand Total	7,789,297	3,628,563	9,08	2,392	20,500,252
Ordinary Expenditure per head of White Population:	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Total, excluding Railways and Harbours.	7 16 1½	14 19 2½	6 14 5½	15 2 7½	10 4 9½
Total, excluding Harbours only	13 8 0½	34 15 6½	20 1	2 10½	18 2 3½
Ordinary Expenditure per head of Total Population:	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Total, excluding Railways and Harbours.	1 17 6½	1 6 2½	2 9 6½	3 10 10½	2 4 2½
Totals, excluding Harbours only	3 4 5½	3 0 11	5	9 7½	3 18 2
Harbours: Net Loss, 1907-8	£	£	£	£	£
	81,021	107,215	...	...	188,236
Railways: Profit (+) or Loss (-) for 1907-8 after deduction of Working Expenses, Renewals, Betterment and Interest on borrowed capital, but not Interest on other capital:					
Main Lines	-58,401	+253,064	+214,242	+1398,129	+1807,034
Branch Lines	-299,639	-107,222	-15,409	+2,245	-420,025
Total	-358,040	+145,842	+198,833	+1400,374	+1387,009

Description.	Gape Colony.	Natal.	O.R.C.	Transvaal	Four Colonies.
Railways—Mileage.					
Main Lines	1,492	439 $\frac{5}{8}$	739	944	3,614 $\frac{5}{8}$
Branch Lines	1,767	536 $\frac{1}{2}$	161	632	3,096 $\frac{1}{2}$
Total	3,259	975$\frac{5}{8}$	900	1,576	6,710$\frac{5}{8}$
Total Net Consumption of Imported Merchandise** for the Year 1907.	£ 10,063,603	£ 2,716,327	£ 1,923,758	£ 9,763,715	£ 34,487,403
S. African Produce removed into each Colony during 1907.	1,976,417	939,178	1,117,710	3,570,653	...
Exports of South African Produce (including in-transit produce other than Gold and Diamonds in transit, Oversea and Other Colonies of the Union.)	15,858,656	3,331,996	3,306,105	30,406,480	...

*By net debt is meant the outstanding debt less the amount standing to credit of Sinking Fund and Consolidated Revenue Fund.

† Original Estimates.

‡ Lighthouses, etc., only. Harbours are managed by Boards.

** All goods other than those for Colonial Governments but excluding specie.

There was some discussion as to the title of the new Union and after considering various suggestions it was decided to adopt the name of South Africa though in the final consideration in London this was changed to the Union of South Africa as was originally suggested by Mr. Sauer. There was also a brief discussion on the title of the representative of the Crown as to whether he should be "Governor" only or "Governor General" and the vote went in favour of the higher rank. The question of the rights of Ministers was also discussed and while provision was made for Ministers to sit and speak in both Houses of the Legislature it was agreed that no Minister might hold office for more than three months unless he was a member

of one of the Houses of Parliament and might vote only in the House of which he was a member. A lively discussion followed on the number of Ministers required to carry on the Government. General Smuts who had drafted the resolutions providing for the Executive Government had named ten Ministers. So far the Colonies had possessed five but it was generally felt that the affairs of the Union would fully occupy the time of ten Ministers. Mr. Merriman moved to reduce the number to "seven". If they did their work he considered "seven" capable men ample and in a House of 121 members ten Ministers gave the Government far more power than was healthy. The larger number too would only increase the number of those dissatisfied at exclusion and he spoke with some authority as one who had recently had to form an administration. In his opinion the more Ministers there were the worse would be the work done. They had to consider the question of cost too and every Minister whether he did any work or not would want an office and a private secretary, a typewriter and messengers and probably a staff of people besides to make the world believe he was really doing something. Sir Percy Fitzpatrick strongly urged the view that the Cabinet should represent both races and all four Colonies and

that therefore at least ten portfolios should be provided. Mr. Jagger agreed very much with Mr. Merriman but thought the number of Ministers should be eight. Several members took part in the debate and it was clear that "ten" was the popular number. Mr. Merriman however called for a division and was supported by Messrs. Sauer, Jagger and Beck the remainder of the delegates voting for the motion as proposed by General Smuts. The Union may therefore have ten Ministers and no more and the appointment of a Minister without portfolio is a step which may be found inconvenient though it was taken by the first Administration. If it is within the law there seems to be no reason why there may not be fifty such Ministers as well as one. It will be seen that in the Act the seat of the Executive Government is fixed in Pretoria but the whole question of the selection of the Capital was so momentous and came so near wrecking the Convention that it must be treated in a later chapter. There was some discussion at this point as to the titles of the respective Houses of Parliament and "Senate" and "House of Assembly" were selected. General Smuts argued strongly in favour of "House of Commons" but was beaten on a division by eighteen to ten; while Mr. Fischer who proposed "House of Representa-

tives " was beaten by sixteen to thirteen. South Africa had grown accustomed to this title Legislative Assembly and to the affix M.L.A. to the names of the members of that body.

CHAPTER V.

THE FRANCHISE AND THE COLOURED
VOTE.

THE Convention had done a good week's work for it had come to a satisfactory conclusion on two of its more important points,—that of the form of Union and the Language Question. It had not, however, lost sight of the question of the franchise for the Union a subject upon which opinions differed widely and many members had brought it forward during the first debate. The general situation with reference to this matter has already been explained and the Convention had to deal with three outstanding facts in endeavouring to bring the Union Franchise into line. First there was the qualification test in the Cape and Natal; second the manhood suffrage for whites in the Transvaal and Free State, and third the coloured and native vote in the Cape. To have a Union with three different franchises seemed anomalous,

for a white voter in the Transvaal Province, if he chanced to move to another part of the Union, might find himself unable to comply with the test imposed there while on the other hand a coloured voter in the Cape if he moved to another part of the Union would find himself unable under any conditions to retain his rights as a voter. Mr. Merriman had brought the subject forward in a resolution dealing with the powers of the Union Parliament in which he said:—"It shall be competent for the Parliament of South Africa to make laws for the peace, order and good government of South Africa and to provide by means of taxation or otherwise for the same and to alter, repeal or amend all laws at the date of this Union existing or in force in any Colony forming part of such Union, *save and except any laws dealing with the Franchise or qualifications of Electors, existing at the date of such Union in any Colony forming part thereof, which laws shall not be altered except in the manner prescribed for altering the Constitution of the Union.*" Colonel Stanford moved to omit all the words in italics in this motion and to insert the following:—"All subjects of His Majesty resident in South Africa shall be entitled to franchise rights irrespective of race or colour upon such qualifications as may be determined by this Convention."

Mr. Lindsay moved that Mr. Merriman's resolution should read:—"The Parliament of South Africa shall have full power to make laws for the peace, order and good government of South Africa" and this being agreed to by the Convention Colonel Stanford moved his clause as a substantive motion. Mr. Merriman moved as an amendment, "All laws dealing with the Franchise and qualifications of electors at the date of the Union in any Colony shall remain in force until repealed or altered by the Parliament of South Africa, provided that no such repeal or alteration shall take place except such repeal or alteration shall be carried by a majority of not less than three fourths of the members of both Houses sitting and voting together." The discussion on these two proposals commenced on Tuesday October 20th and Mr. Merriman opened it by advocating that the whole franchise question should be left as it stands for the Union to deal with at a later date. It was useless he said to close one's eyes to existing facts. There were those no doubt who would be glad if they could get rid of every black man in South Africa, but the white men found the black man here and they must take their account with him. He, Mr. Merriman, was one of the Cape delegates and the Cape delegates had a special responsibility with regard

to the Native and Coloured people. They were trustees for these people and had to guard the rights which had been granted to them and had not been abused. His desire was to leave the Franchise as it stood in each Colony.

Colonel Stanford formally moved his resolution and gave a brief summary of Native Administration in South Africa. In his opinion the advance shown by the Natives during the past century had been extraordinarily encouraging. The Native had quickly grasped the advantage of civilisation and in the Transkei to-day the natives had what was virtually a native Parliament elected by themselves, consisting of native members, raising revenue by means of taxes on natives and carrying out much of the work of native administration. In his opinion this progress was due to a great extent to the grant of the franchise. The Natives saw the use of the franchise and took the full benefit of it. In case of grievances they brought them before their members. The outlet for a grievance existed and it was not left to simmer in the minds of the natives until it led to disorder and perhaps to rebellion. The experience of South Africa in this respect had been the experience of New Zealand and the experience of the United States. That experience proved that there was wisdom in providing a safety valve,

in allowing a free outlet for the expression of opinion. Experience in other parts of South Africa showed that any attempt at repression was dangerous. They must realise the fact that the natives were men and must treat them as men and slowly they would prove themselves good and worthy citizens ready and able to bear their full share of the burden of citizenship. They would take the same position and show the same progress throughout South Africa as he maintained they had done in the Cape Colony. The franchise in his opinion, and he spoke as one who had spent his life among the natives, the franchise was the crux of the whole Native question in South Africa and he trusted that this Convention would follow the precedent set by the United States of America and grant to the Native South Africans not only freedom but citizenship.

Sir Percy Fitzpatrick thought that the success of the Cape in dealing with the Native problem which all South Africa admitted was due rather to the excellence of its administration than to the Franchise or any other native law. They all knew however that the Cape had difficulties with the Imperial Government over this question and it was the Imperial Government which first granted the Franchise to the Natives of the Cape. The Imperial Government

however had not carried out the same principle elsewhere and did not for instance grant the Franchise to the Natives of India though some tentative steps towards representation were now being taken in India. In South Africa no Natives were electors beyond the borders of the Cape Colony and the doctrine laid down and very generally accepted was equal rights for all civilised men in British South Africa. Opinions might differ as to what constituted civilisation but few would contend that it consisted only of a surface education and of the signs of improvement such as those they readily welcomed among the Native peoples. Civilisation went a great deal further and meant a great deal more and the white man gave as security the traditions of his race of many centuries of civilisation. Let them define if they could the test of civilisation and let them create a permanent tribunal which should give the necessary certificate of civilisation and he for one would support such a system. -He did not ask for a perpetual bar to their Natives, not for any prohibition because only of colour, nor did those who thought and felt as he did. Let them accept that principle and let it be embodied in the Constitution and something definite would have been done and South Africa would have laid down a definite policy which its people could

understand. That was the course he advocated and he hoped the delegates would consider it. At the present time which one of them could answer the question : what is the policy of South Africa towards the Black man?

Sir Percy's pertinent suggestion may yet bear fruit but the Convention was hardly prepared to set itself to the task. Sir Frederick Moor, who spoke next, said that in his opinion the white and black races in South Africa could never be amalgamated. The history of the world proved that the black man was incapable of civilisation and the evidences were to be found throughout South Africa to-day. Almost every race in the world could point to its stages of civilisation but what traces of black civilisation could Africa produce though the native people had been brought into contact with civilisation for ages? What again was the experience of the United States of America? What was the opinion to-day of leading American statesmen and of the American people? It would be the same in South Africa if the same policy were adopted and the American Negro had gone back to the condition of his ancestors in the jungle. Sir Percy Fitzpatrick had spoken of a test of civilisation. What was a civilised man? Was he not a man who proved himself adaptable to a civilised community? The Natives were incap-

able of civilisation because they were incapable of sustained effort. He for one wanted a settlement of this question now and he felt he could speak for the Natal people. He was not prepared to leave the settlement to the Union Parliament. He would protect the native interests, he would secure them justice and freedom but he was absolutely opposed to placing them in a position to legislate for white men.

Mr. Abraham Fischer said that the situation in South Africa in respect to this native question seemed to him as a white man to appeal to the principle of self preservation. Like most of those present he had spent a lifetime in South Africa and had the same experience as they had of the native peoples of South Africa. He would ask those who knew them whether they could say the natives were fit for power? Are they fit to take part in the making of laws for South Africa? Much had been said from time to time of the Cape system and he had watched it very carefully and studied it anxiously and the decision he had arrived at was that the Cape Franchise for natives was not a success. The Cape administration had been admirable but the success of that administration was in no way due to the franchise. Many talked glibly of equal rights. If that principle were carried into effect what would become of all the laws for the spec-

ial protection of Natives? If it were carried into effect then the white man must be allowed free competition in the Native Territories and if they permitted that how long do they think they would have native landowners in those territories? A test of civilisation was spoken of; what is the test of civilisation? It is not Education. Not an industrial qualification. Not the improvement of property. Was it to be a liquor test? And if they granted equal rights were all prohibitions of the supply of liquor to natives to be withdrawn? In the native territories the natives have not the franchise and in those territories administered by the Imperial Government this right was not extended to them. Personally he would leave this question over to the Union Parliament. Only from that body could they obtain what they must have in South Africa, a uniform native policy. That policy must be broad, just and liberal, but it must not be a policy based on an imaginary civilisation which does not exist and is only a shallow imitation of civilisation. With regard to the test which had been spoken of he was prepared to consider it if an opportunity were given him, in the meantime he preferred to abide by the safe principle that self preservation was the first law of nature.

Sir Percy Fitzpatrick interjected that if this question were put to the people of South Africa one per cent. would be in favour of representative government for the natives and ninety-nine per cent. for the Indian system of administration.

Mr. Sauer next spoke and declared himself in favour of equal rights and he was one of those who believed that a great principle never yet shown to have failed in the history of the world would be a safe principle in South Africa to adopt at this great moment of her life. He could not accept Sir Frederick Moor's plan because he did not believe it would lead to peace, and permanent peace could never be founded upon injustice. If the delegates from the Cape advocated the Cape system it was because they spoke from experience and their experience was satisfactory. They had proved the principle right for they had tried it and found it to work. Granting the franchise to Natives in the Cape Colony when they had attained to a certain position and were able to pass the qualification test which their law imposed had conduced to good order in that Colony and had led the Native people to look to Parliament for the redress of any grievance they had. He was opposed to a differential Franchise, one for whites and another for blacks. If they were to have a con-

tented country the interests of all must be represented in the Parliament of the country and there must be political equality. Men talked of social equality. That was beside the question, it was not a matter that Parliament could decide for the people nor was there social equality among whites in any civilised country. That was one of the things people settled for themselves. With regard to education let there be mainly industrial education by all means and let the education tend to make men good citizens but why should they withhold the influence of literary education? He had heard something of a civilisation test. Would its advocates define what they meant by civilisation? By all means let them fix a standard, a qualification for the franchise but when they had fixed it let them bar none who can pass it. The great principle of justice was at stake in this discussion and there must be a just native policy or the white man would go under in South Africa. Justice could not be tampered with with impunity and justice to the natives would secure the position of the white man in South Africa for all time. In this country they had stood for the principle of self government because they knew that it was impossible to govern fairly unless the people themselves were represented in the government. We could not govern the natives fairly and

justly unless they were represented by their own elected representatives. He paid little heed to those who sometimes talked of a great native rising in South Africa and if the native beat the white man in this country it would be because he would beat him economically; he would beat him because he lived more simply and could work for lower wages. Had they considered too the danger of living among a numerically stronger class of people to whom they denied the rights and privileges of citizenship? Where was the people in the history of the world who had not sunk to the level of those they held in subjection? What was the experience of the Cape? They talked of the rule of other native people in other lands but he would venture to say without any fear of contradiction that in the Cape the Natives and Coloured people were more content than in any other portion of the British Empire. The Cape had proved the success of its principles and had the right to ask for the adoption of its policy by South Africa. In the Cape, he would remind them, the registered voters had not rebelled.

Mr. Sauer's earnest advocacy of the principles he had long upheld was not without effect on the Convention but it seemed too much to hope that opposing delegates would be con-

verted or that if they were the people behind them would accept so great a step in advance of the systems in force in other Colonies than the Cape. General Smuts rose as Mr. Sauer sat down and at once declared that much as he sympathised with Mr. Sauer's argument he feared that the enunciation of high principles would not lead them to the solution of the practical problem which they had to face. It was true that in the Cape they had experimented with the principle of giving the franchise to natives on the same conditions as to white men. Even in the Cape he believed opinions differed as to the effects of that experiment and it would be agreed that their experience in South Africa was limited. They could not hope, sitting there for a few weeks or months as the case might be to evolve a satisfactory solution of all the problems of South Africa and he thought that this was one of the problems they should leave for future solution. The Convention he feared would not be able to solve the two problems of Union and the Native Question. There were four solutions open to them:—

- I. To adopt the Cape Franchise for the whole of South Africa.
- II. To fix a civilisation test for all natives and persons of colour.

- III. To draw a hard and fast colour line throughout the Union.
- IV. To leave the position in the Cape as it now stands and allow the Union Parliament to settle the question at some future date.

With regard to the first proposal namely to adopt the Cape Franchise for the Union it was impossible for the people would not accept it and the Constitution would be rejected. With regard to the second the Cape would have great trouble with its coloured voters and its adoption might lead to the rejection of the Constitution by the Cape, while its fate would certainly be jeopardised in the Transvaal and Orange River Colony; the third he was not in favour of but he would recommend the fourth to their consideration.

Mr. Merriman spoke again making an earnest appeal to the delegates to accept once for all the principle of equal representation for the Union. He earnestly hoped they would not attempt to base their new structure upon insecure foundations and he yet trusted that after further consideration the opposition to Colonel Stanford's motion would be withdrawn.

At this stage the President, Lord de Villiers rose to speak and said there were certain aspects of this case which it would be well for them to have before them while coming to a

decision. He was recently in England and had the opportunity of discussing the objects of this Convention with leading men there. He found them all willing to give a free hand to South Africans to arrange matters in their own way but they excepted two questions, that of the Native Franchise and the control of the Protectorates. To both these points the greatest importance was attached and the Imperial Government regarded itself in a special sense as guardian and trustee for the Natives in South Africa. Now from the South African point of view it would obviously be advantageous that at the inception of Union the whole of the territories within their borders should come under the control of the Union Government, but the position was that if the settlement of the Franchise question was regarded as unsatisfactory by the Imperial Government then the Protectorates would not be handed over. It was desired also to fix such a standard of qualification for the franchise as would leave the door open for the natives to qualify for full rights of citizenship. He had taken the liberty of consulting Lord Selborne on this subject and Lord Selborne would give his views if he were asked to do so. His own opinion was that it would be wise to consult the Imperial Government before taking decisive action. And he would remind

them that their Constitution when passed and approved by South Africa must be passed and approved by the British Government and British Parliament which must pass an Imperial Act. The South African Colonies had no power to do that. Lord Selborne's suggestion was for the creation of an impartial board which should apply a test of civilisation to coloured applicants for the Franchise. The point had already been mentioned in the Convention and he thought it worthy of careful consideration. He saw no danger in the proposal since the members of the suggested board would be Europeans and if all applications for the Franchise had to be passed by such a board there would be no fear of being swamped by native voters. If however the majority of the delegates were of opinion that such a suggestion would jeopardise the Constitution then the Imperial Government would agree to leave the Cape Franchise as it was provided it could not be altered detrimentally to the Coloured voters by a majority of less than three fourths of the two Houses of Parliament sitting together while for an extension of the franchise to other parts of the Union only a bare majority should be sufficient.

A motion for the adjournment of the debate at this stage by Mr. Merriman was withdrawn.

Sir Frederick Moor said that the President's speech had opened new ground and in his opinion a small committee should be appointed to go into the whole subject and report.

General Hertzog could not shake himself free of the anxiety he felt in regard to this question and he saw great danger ahead if once the principle were adopted of giving votes to the natives. There would be constant pressure to lower the qualification standard and in the near future the native voter would swamp the European. He could not see his way to agree to any of the suggestions in that direction which had been made and would be unable to give them his support.

Mr. Malan earnestly hoped that the Convention would come to a settlement of this question now and not leave it over to remain a cause of dispute and division for ever after in South Africa. Let them at least try and come to a solution and not shelve the difficulty because of its troublesomeness. He would not and he did not think the Convention would deprive men of the rights they now enjoyed and which they had not abused. How are they to draw a line among men of colour? what was to be the colour line and were they to go into every man's ancestry and try to discover whether there was any trace of colour? Let them rather

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adopt the policy of providing a real test of civilisation and let them grant certificates of civilisation which would admit men to the full rights of citizenship. Much had been said of the Cape system but he would freely admit that the tests there applied were unsatisfactory. That however did not show that the principles were unsound but that the application of the principle required amendment.

Sir George Farrar saw danger ahead if special tests were applied to the Cape Colony and the door left open for the extension of the franchise. The Cape candidates would be pledged by their constituents to vote for the extension of the franchise; and the Transvaal candidates would be similarly pledged to vote against it. His own view was rather in favour of the suggestion contained in the report of the Native Affairs Commission for special representatives to be elected by natives only to attend to native wants in Parliament. He thought however that there was much to be said for Lord Selborne's proposal and it should not be dismissed hastily. A properly constituted board would give all the security required against any dangerous increase in the native vote and would put the question on a fixed basis and remove it from the list of controversial subjects where it constituted a very possible danger.

Sir Thomas Smartt added the weight of his evidence to that of other Cape delegates in favour of the extension of the Cape system throughout South Africa. He sincerely hoped the Convention would decide now to lay down a definite principle and had no fear of its being rejected by the people of South Africa. If they adopted a higher test than existed in the Cape, a test which he admitted to be low, together with a qualification for civilisation to be approved by an impartial board and equal rights for all they would have offered the country a permanent solution for its problem.

Mr. J. W. Jagger would point out that they had an equality of burdens so far as the natives were concerned for the natives paid special taxes and it was only fair there should be equality of privileges.

General Botha feared that there was no hope of a final solution of this thorny question being reached by the Convention now. South African opinion was too much divided on the subject and they could not force a solution on the public which was in advance of public opinion. Their first duty as a Convention was to draw up a Constitution for a united South Africa and Colonel Stanford's resolution if passed would he feared ruin the object which the Convention had in view. Their first duty was to bring

about the union of the white races in South Africa and after that it would be possible to deal with the native population. Let them not overload themselves with too heavy a burden, the first duty was difficult enough and would tax all their powers. They were told they must solve this Native Franchise question. How? By Colonel Stanford's resolution? He said No! for that resolution would be rejected by the people of South Africa. By a civilisation test? He said No again even if it were possible to invent such a test which he for one doubted. There was only one solution and that was in consulting the people and bringing the public of South Africa to common agreement. If a civilisation test were invented some would complain that it was too severe and some that it was too low. Let them agree to go slowly in this matter and not attempt to rush things, if they did they would court failure. He was convinced that the people of the country were not ready to adopt the principle of a civilisation test and they must get the people united before they took definite steps. In his opinion if vested interests were safeguarded that was as far as they could go but on one point there must be no manner of doubt,—they could only have Europeans in Parliament. The Cape Coloured men were in a different position to the same

class in other Colonies. They had been longer in touch with civilisation and were further advanced but even in the Cape they were made to see the instability of the native character and Mission Natives reverted to barbarism continually. He could only repeat that in his opinion an attempt at a final solution now could only have the effect of wrecking the object which the union had in view and he could not therefore vote for it. At the same time he would leave the Cape as it stood and not interfere with the Franchise now enjoyed by the Coloured people there. They had great difficulties to face in the Transvaal already before Union was accepted by the people and he could assure the delegates that if he had to tell the electors that they must accept the principle of the Native Franchise his position would become impossible. With respect to the letter which Lord Selborne had written to the President and in which he took the view that the settlement at Vereeniging contemplated the eventual grant of the franchise to the natives in the Transvaal he could only say he had never read the terms of the settlement in that sense and did not admit any such responsibility on the part of the Transvaal. He thought little good would be derived from further discussion at this stage. As to a civilisation test it was worth consideration in some form and if

moved later he might possibly support it. He would not however accept it as part of this resolution.

General de Wet said he was in thorough agreement with General Botha and he could give the Convention the assurance that if the Native Franchise were embodied in the Constitution not five per cent. of the electors of the Orange River Colony would support Union. Personally he was prepared to stand or fall by unification but he would fall heavily if the Native Franchise were included. There might be less opposition in the towns than in the country districts but in his opinion even in Bloemfontein not ten per cent of the electors would accept the principle. With regard to the Cape Coloured voters he was quite prepared to leave them their rights but he would safeguard those rights by requiring a majority of two thirds of the Union Parliament not three fourths as suggested by the President. Personally he had lived more or less among natives all his life and he could not say that he had seen much civilisation among them. Providence had drawn the line between black and white and we must make that clear to the natives not instil into their minds false ideas of equality. In his opinion that was the greatest kindness and the greatest justice we could do them. In the Cape

Colony they had followed a different principle and he considered that the native of the Cape Colony had been made unhappy by the attempt to put him on a platform to which he did not belong. He warned them to deal cautiously with this question for if he knew the feeling of the country they might wreck the whole Convention through it.

Sir Starr Jameson said that as a Cape delegate he personally held the views that had already been put forward by his colleagues but he agreed that their first duty was to bring about Union in South Africa and they must accept the statement of the Prime Minister of the Transvaal that if the Native Franchise were included in the Constitution the people of the Transvaal would refuse to accept it. They must if possible achieve union and must trust to time for the final solution of the problem.

General Burger entirely supported the attitude taken by General Botha and confirmed his judgment that the people of the Transvaal were not prepared at the present time to admit natives to the right of a vote. What time might bring forth he could not say. The views of the delegates had however been explained and he was in favour of a Committee to draft clauses embodying the opinion of the Convention.

Sir Percy Fitzpatrick agreed that a Committee was still necessary and he would formally move it. They must consider their own native policy and must also bear in mind the attitude of the Imperial Government and Imperial Parliament. Notwithstanding all that had been said he was yet in favour of adopting an ideal resolution and submitting it to the country. Another resolution was to give natives representation among themselves on Native Councils. It was he thought admitted that in the Cape the Native Franchise had been abused and that in the rivalry between parties natives had been placed on the register who had no right there and in any event evils of that kind should be remedied. The difficulties they had to meet were:—

A. The Cape Colony Franchise. B. The Franchise in the other Colonies, and C. The attitude of the Imperial Government.

Mr. Maasdorp thought it well for the Convention to understand fully the true position in the Cape Colony. The views expressed by the delegates from the Cape so far were not the views held by all the electors there and it was open to question whether they were the views of the majority. Among farmers in the Cape there was a strong feeling against the Franchise for Native and Coloured men and some years ago

the Cape raised the qualification with the special intention of preventing the spread of evil. Any proposal to extend the Franchise would meet with strong opposition. His study of this subject had led to the conclusion that the Natives were deteriorating and it was improper for them to be placed on the same level as the white man in respect to the vote. He would be quite prepared to give the Natives some separate form of representation and thought the suggestion of the Native Affairs Commission worthy of further consideration. So far as concerned the ultimate destiny of the white man in South Africa he felt no doubt that he would retain his position.

Mr. Morcom was strongly of opinion that this question should be settled now at this Convention. South Africa knew that the decision was in doubt and that various opinions prevailed and the people had the right to demand from the Convention a clear and definite recommendation. There was no Union Parliament in existence yet and it could have no vested right to deal with this or any other question and the Convention should settle it. With this in view he was in favour of the appointment of a small committee and would support that motion.

General de la Rey said that if the Cape feared the loss of the vested rights of its Native and

Coloured voters as apparently its delegates did the other Colonies feared the extension of the Cape system to them. They would have to bear the reproach that in the Cape the Native and Coloured man had more rights than elsewhere. His own view was that the Cape Policy had made a mistake and that a dangerous mistake, and might if they were not careful lead to trouble in South Africa. So far as the Cape was concerned, however, he would leave the vested rights alone in the elections for the local parliaments or Provincial Councils but would not allow them to vote for members for the Central Union Parliament. It was an essential thing that the white races should unite in South Africa and they must not allow this coloured question to prevent that Union.

Sir Lewis Michell said that Rhodesia had taken over the franchise law of the Cape but if one per cent. of the Natives of Rhodesia had a vote the white man would be swamped at the elections. He had listened attentively to the discussions and had heard nine different solutions proposed none of which were practicable and this convinced him of the futility of attempting to arrive at a final settlement at that Convention.

Mr. Malan speaking a second time said they must realise that there was a crisis in South

Africa to-day over this question and they could not shelve it. There was no union for South Africa without a settlement of this matter and it was useless to shut their eyes to the fact. It was blocking the way to Union and the position of the white races was threatened. In many of the Cape Constituencies this subject would be raised at the next elections and it would decide the result of many a contest. This Convention offered them a golden opportunity for coming to an agreement and if the white people were divided there was no Union for South Africa.

General Botha again rising said that if Mr. Malan's views were the views of the Convention then the question of Union was finished. He was opposed to the motion of which Sir Percy Fitzpatrick had given notice and would move an amendment. When the right time came he would be prepared to consider a colour Franchise under proper safeguards but the people of this country were conservative and would advance slowly.

Mr. Fischer said that if a Committee were appointed he would give special instructions as to its duty.

Mr. Merriman replied generally on the debate again urging the acceptance of a broad and liberal principle.

Sir Edgar Walton would support a Committee but would require three points to be made clear. First:—Adequate safeguards for the Cape Native and Coloured Voter. Second:—An open door for the Native and Coloured man throughout South Africa. Third:—A definition of civilisation.

At this stage Mr. Sauer moved the adjournment of the debate but the Convention was evidently determined to come to a vote and the motion was negatived. The various resolutions and amendments were put and that moved by General Botha was adopted. It read as follows:—"That the original motion and all the amendments thereon, together with the proposals by Mr. Merriman (in favour of a three fourths majority for alteration) by Mr. Jagger (for a bare majority), by General Smuts (for proportional representation), by Sir Meiring Beck (for a two thirds majority for alteration) be referred to a Committee with the instructions to prepare a draft of a resolution in reference thereto for submission to the Convention and that the Committee consist of two delegates nominated by each Prime Minister and one nominated by Sir William Milton." A Committee was then appointed consisting of Messrs. Sauer, Walton, Fitzpatrick, Smuts, Hertzog, Fischer, Smythe, Greene and Coghlan.

Although it was some days before this Committee reported, for though appointed on Oct. 22nd it did not report until November 2nd, it will be more convenient to deal with the subsequent stages of the discussion in this chapter picking up the threads of the Convention work later. As the Convention itself sat morning and afternoon delegates serving on Committees had to find time in the evenings for Committee work and had at the same time to keep pace with the general work of the day. The Committee then had before it the following proposals:—

Original Motion. Col. Stanford:

All subjects of His Majesty resident in South Africa shall be entitled to franchise rights irrespective of race or colour upon such qualifications as may be determined by this Convention.

Amendments. Sir Percy Fitzpatrick:

That the debate on this motion be adjourned and the matter referred to a committee consisting of two delegates from each Colony, to be appointed by their respective Prime Ministers, and one from Rhodesia, to be appointed by Sir William Milton. That the reference to the Committee be to consider whether the native and coloured population of South Africa should be directly represented in the legislatures of the Union, if so, in what manner and on what conditions the right of representation should be conferred and exercised: if not, what constitu-

tional provision should be made for enabling the Union Government to ascertain the wishes and consult the interests of the native and coloured population.

General Botha:

That the original motion and all the amendments thereon together with the proposals by Mr. Merriman, Mr. Jagger, General Smuts and Dr. Beck, be referred to a Committee with an instruction to prepare the draft of a resolution in reference thereto for submission to the Convention, and that the Committee consist of the delegates nominated by each Prime Minister and one nominated by Sir William Milton.

Colonel Greene. To add:

Only persons of European descent shall be eligible for election as members of either House of Parliament.

Proposals. Mr. Merriman:

All laws dealing with the franchise and qualification of electors at the date of the Union in any Colony shall remain in force until repealed or altered by the Parliament of South Africa provided that no such repeal or alteration shall take place except such repeal or alteration shall be carried by a majority of not less than three-fourths of the Members of both Houses sitting and voting together.

Mr. Jagger:

To omit all the words after "except" and substitute "with the consent of a majority in both Houses of Parliament of the representatives of such Colony."

General Smuts:

The various electoral laws of the Colonies shall, until altered by the Parliament, continue to apply *mutatis mutandis* to electors for the House of Assembly in the corresponding Provinces, subject to the application of the principle of proportional representation. The qualifications of voters in the Provinces shall similarly be identical with those existing in the Colonies at the establishment of the Union, save in regard to the following matters:

- (a) Naturalisation in any one Colony shall entitle the person naturalised to be registered as a voter in that of any other Province.
- (b) Residence in South Africa for three years previous to registration shall be necessary.

Dr. Beck (as an amendment):

*Paragraph 11:—*In line 5, after “representation” to insert “provided that in so far as these laws apply to native electors in the Cape Colony, there shall be no such alteration, except in the manner prescribed for altering the Constitution of the Union.”

In addition it had a suggestion emanating from the High Commissioner which read as follows:—

**SUGGESTION FOR NATIVE FRANCHISE
IN SOUTH AFRICA.**

Have a civilisation qualification in all the provinces, roughly as follows:

- (1) Monogamy;

- (2) Speaking a European language;
- (3) Either owning property of a certain value or as an alternative having worked for a certain number of years all the year round; and
- (4) Habitually wearing clothes and living in a house as distinct from a hut.

No European or Non-European to have a vote without this qualification.

Every Non-European who has reached the age of 31 or who proves the possession of the civilisation qualification before an impartial tribunal to be given a vote equal in value to $1/10$ th the vote of a European. The son of every Non-European who has been given a vote, provided he himself has reached the age of 30 and possesses the civilisation qualification to receive a vote equal in value to $1/9$ th the vote of a European. The grandson of every Non-European who has been given a vote provided he himself has reached the age of 29 and possesses the civilisation qualification to receive a vote equal in value to $1/8$ th the vote of a European. And so on until in the 10th generation the Non-European is entitled at the age of 21 to a vote of full value.

A Non-European voter judged by an impartial tribunal to have reverted to native habits, to lose his vote and his son to start fresh in the progress towards a full vote.

The son of a European father and Non-European mother possessing the civilisation qualification to receive at the age of 26 a vote equal in value to $1/5$ th the vote of a European, his son to receive at the age of 25 a vote equal in value to $1/4$ th the vote of a European, and so on.

The Committee it will be seen had ample material for a discussion which might have occupied it for several weeks. It was asked to make up the mind of the Convention for it after hearing a discussion which presented every possible point of view from that of the negro-phile to that of the negro-phobe. Its deliberations were not materially aided by the pages of resolutions and amendments which it was supposed in some way to embody in a report which it was hoped would be passed with unanimity. The interesting suggestion which came through the High Commissioner, though it did not probably originate with Lord Selborne, was sent by him not as a solution but as suggesting possible lines for a solution. It was certainly an original idea to give the native and coloured man one tenth of a vote, the fraction to be increased in value as the Natives had advanced in civilisation until the tenth generation possessed the full vote. In its essence the system is not greatly different from that which obtains in certain parts of Europe where property of a certain value entitles the holder to several votes as compared to the single vote enjoyed by the average citizen. The Committee, however, plainly had to accomplish certain definite objects; In the first place it had to protect the existing rights in the Cape

Colony; that is to say it had not only to preserve the right of voting to those who then enjoyed it but had to preserve the right for coming generations of Native and Coloured men who might qualify. In short, it had to maintain the principle that so far as the Cape Colony was concerned there should be no colour bar to the full rights of citizenship and nothing less would satisfy the Cape delegates. If possible also the Committee had to suggest a civilisation test for application to the rest of South Africa which the Convention and the country would accept as opening the door to deserving natives and coloured men to acquire the right of voting throughout the Union. The result of prolonged sittings and of continual reference to Lord de Villiers, who gave the Committee most valuable aid, was the following report:—

1. The various Franchise Laws of the original Colonies constituting the Union shall, until altered by the Parliament, continue to apply *mutatis mutandis* to electors to the House of Assembly in the corresponding Provinces; provided that no act of Parliament shall at any time:
 - A. Withhold the franchise from any persons by reason of their colour or race in any Province wherein franchise laws at the time the Union Constitution takes effect admit of their inclusion.

- B. Deprive any registered voters in any Province if and as long as duly qualified to be on the voters' lists by any law in force at the date of the establishment of the Union, of the right to remain on such lists.
- C. Deprive any persons so qualified at any time but not registered as voters at the time of the establishment of the Union of the right to be so registered.

Nothing herein stated shall prevent the Parliament of the Union by a general law from altering the qualifications of voters throughout the Union.

- II. Only persons of European descent shall be eligible as members of either House of Parliament.
- III. Until Parliament otherwise provides, but subject to the Constitution, the laws in force at the establishment of the Union in each Colony entering the Union as an original Province relating to the election for the Legislative Assembly for such Colony, including the registration of voters, the oaths or declarations to be taken by voters, returning officers, their powers and duties, the proceedings at elections, the trial of controverted elections and the proceedings incident thereto, the vacating of

seats of members and the issue and execution of new writs in case of a seat being vacated otherwise than by dissolution, shall *mutatis mutandis* apply to the elections in the Province of Members of the House of Assembly.

IV. Naturalisation of persons of European descent in any one Colony shall avail as naturalisation throughout the Union.

This report was presented to the Convention by Mr. Fischer who had acted as Chairman of the Committee and its adoption was moved. It was clear however that exception would be taken to some of its provisions and sundry criticisms were forthcoming and eventually the discussion was adjourned until the following day. Robbed of its legal phraseology the report proposed to safeguard the rights of the native and coloured people of the Cape Colony for all time. It deprived them of the right they possessed in the Cape of entering Parliament and it left the question of the extension of the franchise to other Provinces to the wisdom of the Union Parliament. On the resumption of the debate Mr. Sauer moved a small amendment making it clear that the franchise qualifications in the Cape should not be altered unless by a general law applicable to the whole Union. Mr. Hull, whether on behalf of the Transvaal minis-

ters or not he did not say, moved a resolution which virtually set aside the report. His motion read:—

- I. "The Parliament may by any general franchise law applying throughout the Union, but not otherwise, prescribe the qualifications which shall be necessary to entitle persons to vote for the election of members of the House of Assembly.
- II. Until such general law shall be passed the qualifications as existing in the several Colonies at the establishment of the Union shall be qualifications necessary to entitle persons in the respective Provinces to vote for the election of members of the House of Assembly.
- III. No person who prior to the passing of any such general law shall be registered as a voter in any Province shall be removed from the register by reason of his not possessing the qualifications prescribed by such law, or by reason of any disqualification based on race or colour."

The effect of this resolution if carried would have been that while coloured voters on the register at the date of Union would retain their rights even if a colour bar were adopted by the Union Parliament yet the law might prevent any future registration of such persons in the

Cape Province. It was in effect a rejection of the Cape demand that the principle in force in the Cape should remain intact. The third and fourth paragraphs of the report were adopted and after some discussion during which the conflicting views were again stated by various members the debate was again adjourned until next day. General Smuts moved that the amendments be referred back to the Committee with instructions to bring up a report on the following day and this was agreed to. On the next day Wednesday, November 4th, Mr. Fischer brought up a report making no alteration in the first resolution but recommending the following in place of the second resolution:

1. The Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote for the election of members of the House of Assembly, but no such law shall disqualify any persons in the province of the Cape of Good Hope by reason of their race or colour only, unless such law be passed by a majority of two thirds of the members of each House of Parliament.
2. Until such a law be passed the qualifications as existing in the several Colonies at the establishment of the Union shall be the qualifications necessary to entitle persons

in the respective Provinces to vote for the election of members of the House of Assembly.

3. No person who prior to the passing of any such law shall be registered as a voter in any Province shall be removed from the register by reason only of any disqualification based on race or colour.

Mr. Smythe of Natal put the points of the rights of the Cape coloured men by moving the deletion of all the words after "Assembly" in the first clause. There was some short discussion and on a division this amendment was defeated by 24 votes against 6, the five Natal delegates and General de la Rey making up the minority. General Botha then moved that the majority of two thirds should be obtained with both Houses of Parliament sitting together as one House and this was agreed to. The various resolutions were then put including the motion providing that:—"Only persons of European descent shall be eligible as members of either House of Parliament" and this brought the debate to an end. The result was a compromise. The Cape had to give up the right of coloured men to sit in Parliament and though the delegates knew there would be protests against this sacrifice still it had to be borne in mind that the right had never been exercised and that Union

would certainly never have been reached had the point been insisted on. As for the "open door" it is in the power of Parliament to extend the Cape Coloured Franchise to other portions of the Union when it wishes to do so. On the other hand the other Colonies conceded the point that the Cape Coloured Voter could vote for members of the Union Parliament, and that the rights of coloured men in the Cape should be safeguarded for all time by the clause providing for a two thirds majority. It will probably be conceded that both sides went as far as was reasonably possible in order to arrive at an agreement and obtain union and further it was understood that the compromise arrived at would be accepted by the Imperial Government and Imperial Parliament.

Before leaving this question it may be well to add to the record that a determined effort was made in the Cape Parliament by Mr. W. P. Schreiner and others to obtain support for a motion sending these clauses back to the Convention for reconsideration and that these efforts failed. Mr. Schreiner, however, subsequently accompanied a deputation of representative Native and Coloured men to London to urge upon the Imperial Government the amendment of the South Africa Act in this respect and that this effort also met with no success.

The agreement arrived at by the Convention was embodied in the Constitution and there is no reason to fear that it will be disturbed unless some action on the part of the Natives of South Africa brings about a reconstruction of the Native policy of the Union. The settlement secured to Cape natives and coloured men the right to sit in the Cape Provincial Council and at the first elections held a native, Dr. Rubusana, was returned as member for Tembuland.

CHAPTER VI.

PARLIAMENT AND THE REPRESENTATION OF THE PROVINCES.

THE discussion on the constitution of the Union Parliament and the representation of the various Provinces of the Union had been proceeding while the fate of the Coloured Franchise hung in the balance. General Smuts had tabled a series of resolutions of which the following will be a sufficient summary.

1. A Senate of 36 members, 9 from each Province.
2. One third of the Senators to be nominated by the Governor General in Council.
3. Senators to be elected for 6 years, one Senator from each group to retire every other year.
4. Senators age to be 30 with immovable property to the value of £500:—over liabilities.
5. Senators to elect a President from the Senate.

6. House of Assembly to consist of thrice the number of the Senate.
7. Members to be allotted to the various Provinces in proportion to the numbers of registered white voters.
8. The principle of one vote one value to obtain as far as possible.
9. Each electoral area to return three members to be elected on the principles of proportional representation.
10. Life of House of Assembly to be five years.
11. Existing electoral laws to apply until amended by a Union Act.
12. Qualifications for Assembly, (A) to be qualified to be a voter and (B) residence of three years in the Union.
13. All laws to remain in force until repealed or altered by the Union Parliament.
14. Money Bills to originate in the Assembly the Senate to have no power to amend.
15. On the Senate refusing for two years in succession to pass a measure passed by the Assembly a joint sitting of the two Houses may be summoned.

It is hardly necessary to follow the debate in detail on these proposals. The discussion was of a conversational character until some points of special importance came to the front and those can be dealt with. There was for instance

a discussion as to representation of the several Colonies in the Senate and it was felt by the Cape delegates that they were acting more generously than the interests of the Cape warranted, more generously than probably the electors of the Cape would approve, in agreeing to put the representation of the Cape in the Senate on a par with that of the two smaller colonies. The justification was of course that the smaller Colonies feared complete absorption and unless some concession in representation were made it was said that it would be extremely difficult to get union carried in Natal and the Orange River Colony. In the beginning it was urged that if equal representation were given to the States it would be an evidence of good faith on the part of the larger Colonies and moreover the arrangement was of a temporary character for at a later date the Union Parliament would certainly have to provide for a Senate on a basis of equal representation. The Senate like the House of Assembly would have to represent fairly the people of the country. The end of the discussions was the provision now found in the Constitution, though it was not reached without difficulty. It was considered for instance that to allow the Government to nominate one third of the Senate was to give too great a power and the

members were increased to 40, the Government nominating 8, or one fifth. All had talked of sacrifices and this was one of the sacrifices which the Cape was called upon to make not as was shown later to the entire content of the Cape people. It was however a necessary sacrifice and it was hoped that as the local feeling and prejudice disappeared the reasons for special provisions of this kind would no longer exist. The Cape and the Transvaal delegates hoped also, no doubt, that their readiness to make sacrifices in regard to the Senate would secure them at least fair representation in the Assembly. Sir Thomas Smartt made a suggestion that the Senate should be selected from a panel composed of Executive Councilors, retired Judges or Heads of Departments or of persons who had been members of the House of Assembly for ten years. Though not pressed the suggestion may come up for consideration when the Union Parliament is called upon to deal with the Constitution of the Senate.

The President, Lord de Villiers, moved the resolution which in an amended form was eventually adopted and said that the Convention having decided to include a Senate in the Parliament he was strongly in favour of a partial nomination of Senators. The Senate would

have two special duties. In the first place it would act as a House of Review and in the second it had a particular responsibility for the protection of Native interests and should include men specially selected for that purpose since in three of the Provinces the Natives would be unrepresented. He was in favour of the equal representation of the Provinces in the Senate at any rate temporarily though the Senators need not reside in the Provinces they represented. With the exception of the nominated men however the Senators should be selected by the Provinces.

The discussion as to the manner of election of the first Senators was prolonged and sometimes heated and as the official minutes show there were several pages of resolutions, amendments and suggestions and finally a committee was appointed to put into form some resolution which it was hoped would embody the views of the majority of the delegates. This step was fortunately successful and the decision was arrived at as noted.

Having settled the question of the representation of the several Provinces in the Senate, the number of Senators to be nominated by the Governor General and the number to be elected it remained to consider the qualifications of Senators and the period for which they should

be elected. Both points were of the utmost importance if the Senate were to realise the hopes of the delegates, for it was hoped to create a body which would represent the nation as distinct from any political party, a body as free as possible from party passion or even party influence which would take a calm view and act the part of an impartial judge undisturbed by the turmoil of party strife. If the Senate were to reach that ideal its members must be men of mature age and no member could be less than thirty years of age. He must have lived for at least five years in the Union, and some members would have made the period even longer, and he must be a man of some substance and the registered owner of unencumbered property to the value of £500. The view indicated was by no means unanimously held and there were those who regarded the creation of a second chamber unnecessary, a costly institution which would in no case be of any service to the State and might prove an intolerable nuisance. Those who held that view were also in favour of a Senate of political partizans the majority of whom could probably be depended on to support the Government of the day. The other view however prevailed and the Senators were, in the first instance at any rate, not to be elected by the voters. They were to be selected men and

it was hoped that the various Parliaments which would in the first place be called upon to select Senators would choose only those specially qualified for the task. That was the intention though when the selection came to be made there was very much the same scramble which occurs at a general election. Many men who had a liking for Parliament were attracted by the position of Senator with the prospect of a long undisturbed tenure of office and the question of qualification was made subsidiary to political influence. Nor were the Government appointments entirely free from the same criticism. The fact was that the very protection given to the Senators made the position more sought after. It will be seen from the official minutes that agreement was not reached in the Convention until after a long struggle the details of which however it would be merely tedious to record. It was only after long discussion and several references to Committee that it was agreed that the official life of the Senator nominated by the Governor General should be ten years, irrespective of all chances of dissolution and the like. There is every reasonable possibility therefore that those Senators will bring an independent judgment to bear upon the questions submitted to them.

The Senators selected by the several Parliaments were in much the same position. They were to hold office for ten years but in case of a vacancy a successor would be selected by the Provincial Council of the Province to which the late Senator belonged and such new Senator would only hold the seat until the completion of the period for which the person in whose stead he is elected would have held the seat. The Senate was felt to be experimental but the arrangement was entrenched for ten years so that the experiment may have a full and fair trial. At the end of that period Parliament may reconstitute the Senate but in the event of its doing so provision is made in the Constitution for continuing the present system with the exception that in case of the dissolution of the Senate the nominated Senators retain their seats and the elected Senators must seek re-election by the Provincial Councils.

The Convention had thus disposed of the first three of General Smuts' fifteen resolutions. The other provisions with respect to the Senate were drafted without much difficulty and the Convention proceeded to deal with the more difficult question of the representation of the various Provinces in the House of Assembly.

General Smuts had proposed that representatives be allotted to each Province on the basis

of the number of registered white voters in each. The question naturally excited the greatest possible interest in the Convention for it was felt that the people of South Africa, though they might with difficulty be persuaded to accept such representation for the Senate, would certainly demand representation on a fairer basis in the House of Assembly and would in all probability reject any proposal which placed a voter in one part of the Union at a disadvantage as compared with voters in other parts. A Committee was formed to discuss the details of the question and the delegates formed sub-committees among themselves in which the various proposals were worked out and the results of the various systems shown. It was common to find delegates in small batches with sheets of intricate calculations before them explaining to each other the effects of the adoption of this principle or that. With regard to accepting the white voters basis as was urged by the Transvaal delegates, it was admitted that this was greatly in favour of the Transvaal where white manhood suffrage prevailed and greatly to the disadvantage of the Cape and Natal where a fairly high qualification test was demanded. The actual comparison of white voters to the white population was as follows according to the figures then available.

	White Population	Voters
Cape	569,000	129,000
Transvaal	288,000	106,000
O.R. Colony	142,000	35,000
Natal	92,000	23,000

The proportion of the white population therefore to each voter was:—Cape 4.4, Transvaal 2.7, Orange River Colony 4, Natal 4.

The argument was freely used that as the Transvaal would make great sacrifices on entering Union some quid pro quo of this kind was fair and reasonable but the effect of the Transvaal proposals would have been a House of Assembly composed as follows:—

Cape	52 Members
Transvaal	43 Members
Orange River Colony	15 Members
Natal	10 Members

Total	120

It is fair to say here in passing that while all of the delegates felt the responsibility upon them of laying good foundations and of establishing principles which would stand the test of time it was impossible for them to overlook the influence upon public opinion of the effect upon the representation of a Province by the application of any principle. The real agreement on this question was arrived at outside

the Convention proper and by exchange of views over the dining table or in the smoking room. In the meantime however it is well to record a summary at least of the discussion itself.

Mr. Merriman speaking to the resolution No. 7 moved by General Smuts in favour of what was known as the Voters' Basis declared it to be unsound and not in accordance with the practice followed elsewhere. It opened the door to fraud and to the influence of wealth. He disagreed not only with the suggestion that the Voters' roll should be taken as the basis of representation but also to the proposal that the votes of residents in the country should be of equal value to votes of residents in the towns. The people of the towns did not take the same interest in the affairs of the country as the more stable population on the land. They were a shifting population, people who were here to-day and gone to-morrow. They were always for expenditure and for piling up the debt of a country. On the other hand the people on the land must stay and must pay. Let them, even in South Africa, see the amount of the loans raised on the vote of the towns. Let them look again at the percentage of the towns' votes which were recorded at an election and compare it with the percentage of the vote in the country districts. The only sound basis of representa-

tion in his opinion was population. There was no chance there of swindling by a political party, no chance for the swindling politician with money to swell a register by putting on bogus names as it had been done in the past. He would amend the proposal by General Smuts by leaving out the reference to white voters and inserting "proportion of European population" Further he would have the lists rectified every five or ten years.

Sir Percy Fitzpatrick followed and said he agreed that the Voters' Basis had not been adopted elsewhere but the reason for that was that the conditions were different to those which prevailed in South Africa. Take the conditions of the Transvaal. In addition to their older population they had many thousands of young men connected with the Mining Industry. It was unfair to measure them against the children in the other Colonies who went to swell the totals of the white population. How was the taxation of the country borne, was it not paid mainly by the industrial and the urban population? Mr. Merriman had made a point of the percentage of people who voted at a general election. He also had been at some pains to make this comparison and he found that the town percentage was 68 per cent. as against a country percentage of 72 per cent.

No very great difference. With regard to the population basis, what population was meant? (Mr. Merriman "European.") They had it is true manhood suffrage in the Transvaal. He had never been in favour of that principle and was still opposed to it. It was a system which exposed them to the dangers of socialism. The safe course to adopt was to create a reasonable test or qualification and to lay it down that only men who proved themselves worthy should share the privileges as they shared the burdens of citizenship. They had great difficulties to contend with in the Transvaal in respect to this Union and would have trouble in persuading their people to accept it. No one could say that the Transvaal delegates had been unreasonable and they had given way on many points on which they felt strongly. This point of the Voters' Basis was one in which they could not give way and they must stand by it.

Ex President Steyn said that it seemed to him beyond dispute that the principle of the Voters' Basis was unsound. It was founded on a shifting foundation and more especially was this the case where as in many parts of South Africa they had a floating population. Under the circumstances also it must be admitted that it was unfair to the Cape Colony and all of them must look to the views of the

people they represented. What of the women also? It was true they had no votes but surely they could not pretend that they could be overlooked entirely in arriving at a decision on such a question as this. In his opinion the true basis of representation should be those who live permanently on the land.

Sir Edgar Walton would support the principle of the Voters' Basis if the franchise were the same throughout South Africa. As however, the franchise differed in the four Colonies how was it possible to take the Voters' Lists as a basis for representation? The Coloured population of the Cape and the Coloured voters were expressly excluded in the resolution moved by General Smuts or so far as the Cape was concerned it might have been possible to take the registered voters. That might be done later but it could only be done when they had uniform franchise. If, however, they had put aside the existing Voters' Rolls they must find some principle to work on and it might be found in taking as a basis the male population.

Mr. Sauer's objections to the Voters' Basis were firstly, that it was not accepted elsewhere and that it was unfair. General Smuts he thought had changed his views on this question and his resolution neglected to take any account of the homes of his people. The proposal, how-

ever, was unfair because the Cape had not manhood suffrage and if the resolution were carried in its present form he was afraid it would make the Constitution more difficult to carry through in the Cape Colony.

Sir George Farrar advocated the Voters' Basis and asked upon what other foundation they could build the constitution. The electors were the rulers of the country, the taxpayers who bore the burdens of the country. They were the country and must be represented accordingly to their numbers. It was feared that they were only a floating population, but the men on the Voters' Lists were residents and formed no part of the floating population. He attached the greatest importance to this principle and trusted it would be adopted.

Mr. Jagger favoured the Voters' Basis also and argued that no other basis was so fair and none would give us a better Parliament.

General de la Rey disagreed with General Smuts on this point. He wanted a Parliament representing the people on the land and he would therefore vote for a population basis.

Lord de Villiers said he would venture to put it to the delegates that the allocation of members to be fair must be on the basis of the number of electors. He had heard arguments based on the difference between town and coun-

try but whether the voter lived in a town or in the country he was entitled to his full voting right. The division of members between the Provinces might be on a basis of population but in the Provinces themselves it must be on the basis of the Voters' Rolls. In the Cape the Coloured vote was a disturbing factor but that was capable of adjustment. He wished to say that he very much regretted that Mr. Merriman had introduced party squabbles into his argument on this question. It was a great mistake and if he were replied to in the same spirit the work of the Convention might be ruined. He would point out that a tremendous disproportion already existed in the representation in the Senate and the arrangement they had come to already put one Natal Voter upon a parity with six Cape Voters. He had every possible sympathy with the principle of sacrifice to obtain Union and various delegates had laid emphasis upon the sacrifice being made by their respective Colonies but he would ask them to consider for a moment how much the Cape was giving up and whether the people of the Cape would be prepared to endorse the action of their delegates. Mr. Schreiner had said that the Cape could stand out of Union without loss and there were, he feared those who sympathised with that view. He might be told that were the

Voters' Basis accepted the Cape would have a majority in Parliament. Suppose that were true the local feeling now existing would disappear and the main question for them to consider was which was right. In any case the Cape would be much divided and the best and only policy for the Convention to follow was to do what was right and to let the results look after themselves.

Mr. Fischer followed in a short speech in which he said he had failed to understand why the Voters' Basis was superior to the Population Basis either for the Provinces or for the representation in the Union Parliament.

It will be seen from this sample of the discussion in the Convention that progress was rather retarded than otherwise by making speeches and for the one side or the other to force their views, even if they had a majority in the Convention, would very probably wreck the whole work. In fact, in this as in other questions some basis of agreement had to be arrived at and the delegates went back to private meetings and talks round the dinner tables and often in an atmosphere of tobacco smoke far into the small hours. The Committee appointed to consider and report on this question consisted of Mr. Sauer, Sir Starr Jameson, Colonel Greene, Sir T. Hyslop, General Smuts,

Sir George Farrar, General Hertzog and Mr. Browne. They were appointed in Durban on October 28th and the next day reported as follows:—

- I. The House of Assembly shall be composed of members directly chosen by the voters of the Union and subject to the provisions hereinafter mentioned the said members shall be 121 in number.
- II. For the period hereinafter mentioned the members of the House of Assembly shall be allotted to the several Provinces in the following proportions:—

Cape	51
Natal	17
Transvaal	36
Orange River Colony	17
- III. Until the number of members of the House of Assembly has been increased as hereinafter provided to 150 the representation of no original Province in the House of Assembly shall be less than that specified in the foregoing resolution.
- IV. In 1911 and every five years thereafter, a census of the white population of the Union shall be taken for the purpose of the Constitution. Immediately after the completion of each such census a readjustment of members of the House of Assembly among

the Provinces shall take place in the following manner:—The total number of white male adults of the Union at the last Census before such readjustment shall be divided by the number of members of the House of Assembly to give the quota. Every Province whose total number of white male adults has increased since the last census so that it exceeds the quota multiplied by the number of members representing it in the House of Assembly and has a surplus above the number of white male adults at the last preceding census equal to at least the quota or any multiple thereof shall be entitled to an additional member or additional number of members, equal to such multiple in respect of any such increase. No such additional member or members shall however be elected before the first general election following such readjustment. As soon as the number of members of the House of Assembly reaches the total of 150, no further increase of representation shall be given to any Province unless Parliament otherwise provides.

The discussion on the first three paragraphs was brief and they were passed. The fourth paragraph as will be seen read rather like an abstruse mathematical problem and the dis-

cussion promised to be lengthy. On the motion of Mr. Malan Officers on active service in the Imperial Military and Naval Forces were excluded from the franchise and on Mr. Merri- man's motion the discussion was adjourned for a day. Several amendments were moved but it was felt apparently that if the somewhat involved wording of the clause were further involved by additional sentences there was some danger of its conveying an erroneous impression to the average reader. It was therefore left alone with Mr. Malan's addition and a verbal alteration shown above.

It will be seen that the compromise in this case had been of a two-fold nature. In the first place the Transvaal had been met by accepting its Voters' Basis, since all white male adults in that Colony were entitled to be voters. In the other Colonies the adult white male population was taken as the basis. When this was worked out however it was found to produce the following results in members:—

Cape	55½
Transvaal	39½
Orange River Colony	13½
Natal	11½
Total	120

The Orange River Colony and Natal delegates at once exclaimed that there would be no prospect whatever of getting the people of their respective Colonies to accept Union if they were to be limited to this representation in the Union Parliament. Again something like an impasse occurred, for the Cape and Transvaal delegates foresaw perfectly the difficulty they would have if fair representation were not provided in those areas. It was suggested that the Cape should give up $3\frac{1}{2}$ members to Natal bringing the Cape down to 52 and Natal up to 15, while the Transvaal would sacrifice $3\frac{1}{2}$ to the Orange River Colony making the figures read:—

Cape	52
Transvaal	36
Orange River Colony	17
Natal	15

These figures however produced a renewed protest from Natal for its people so the delegates were told would never consent to be put into a worse footing than the Orange River Colony. Something more had to be done and after much searching of heart and very unwillingly the Cape allowed itself to be deprived of still another member and as the Natal delegates held firm to equal representation with the Orange River Colony the total number of members had to be increased to 121 and the division

was therefore completed in the manner already reported. It was truly a curious struggle and the results were much criticised in the Cape when the figures were published. It was part of the price paid for Union however and if Natal secured fifty per cent more representation than it was entitled to still there is no question that without this inducement it would have been difficult to carry the Constitution in that Colony and in the long run the inequality will disappear. The question was not however finally disposed of for on January 30th General Smuts moved to reopen the discussion and to add a new clause to the Section giving the definite figures of European male adults upon which future calculations were to be based. These were agreed to and appear in the Constitution as follows:—

Cape of Good Hope	167,546
Natal	34,784
Transvaal	106,493
Orange Free State	41,014

A final discussion took place in Bloemfontein over the representation of the smaller Colonies and Sir Thomas Hyslop moved an amendment providing that under no circumstances should the number of members now allocated to the several Colonies be reduced. After a brief discussion this amendment was carried on the first

day of the Bloemfontein meeting, and without a division, though it obviously struck at the root of the principle of fair representation in the Union Parliament. On the following day General Smuts called attention to this fact and moved that the matter be re-opened. Sir Thomas Hyslop objected but after discussion this objection was withdrawn and General Smuts then moved:—"That the amendment to Section 32 (the number of the Section in the draft act) adopted yesterday on the motion of Sir Thomas Hyslop be negatived." After a somewhat heated debate this was put to a division and lost by 16 votes to 14 and it seemed as if another blot would appear in the draft. It was agreed however that the matter should stand over and some earnest talk took place between the members with the result that on the following Monday a motion by General Smuts to restore the omitted words was agreed to without a division.

The Convention had now disposed of General Smuts' resolutions as far as clause 8 for in the resolution just passed the principle of one vote one value was adopted as applied to the Provinces and eventually it would come into operation throughout the Union if Parliament so decided. The Basis of representation had been fixed for each Province

and the question of a uniform franchise for South Africa had been shelved. Over the ninth resolution providing for voting on the principle of Proportional Representation and creating constituencies of three members there was much debate. The advocates of Proportional Representation in England had secured the support of a number of gentlemen in South Africa and had made a convert among others of General Smuts. The literature on the subject was supplied beforehand to the delegates and many of them applied themselves with great assiduity to a study of the question. Elaborate calculations were worked out the results of which were often more diverting than helpful and the question was referred finally to the same Committee. In its second report presented on November 3rd the Committee dealt with this point in its fifth paragraph as follows:—
“The members of the House of Assembly shall be elected according to the principle of proportional representation with the single transferable vote” and as a corollary to this the third paragraph provided for constituencies of three or more members. The discussion took place on these two clauses on the following day and Mr. Merriman occasioned some amusement by asking a delegate to explain the principle upon which they were asked to vote. It must be ad-

mitted that however clear the working of the principle may have been in the minds of the delegates it seemed to be an exceptionally difficult point to explain. Mr. Merriman regarded the proposal as one of those "jim jams" which were rather a pest than otherwise and the Convention, it must be confessed rather hesitatingly, accepted the proposal. It may be as well to state here that the South African public received the suggestion coldly and that those who attempted to explain the principle in public failed to carry conviction to their hearers. It was felt also that in the Cape Colony for instance constituencies of three members would mean areas of 9000 Voters and that these would be unduly large in a country the greater portion of which was but sparsely populated. Proportional representation in fact was not popular and at the final meeting of the Convention in Bloemfontein in May 1909 it went overboard giving place to the system of single member constituencies. It is clearly a principle in the working of which the public require to be educated and it may be remarked in passing that the attempt to work it in the Cape Parliament for the election of Senators quite failed in its object, a result which was undoubtedly due to a faulty understanding of its main principle.

The Committee also had to deal with the allocation of members in the Provinces themselves and here again there was a wide difference of opinion. Mr. Merriman and some others were strong advocates of a system which would give greater representation to the country districts. It was impossible they held to put sparsely populated areas on the same footing with respect to representation as the densely populated towns. It was a dispute which came across party interests and the feeling of the Bond, Het Volk and Unie was in opposition to that of the Progressives. The advocates of sparsity were put to it to define and when one speaker ventured the definition of one voter per square mile he was promptly informed that this was almost precisely the existing proportion in the whole of the Cape Colony. The Committee however made the following recommendations:—

- I. Immediately on the passing of the Constitution Act a Commission shall be appointed by the Government of each Colony, consisting of a judge of the Supreme Court of such Colony and two other members. Such Commission shall thereupon proceed to divide the respective Colonies into electoral areas for the first election to be held under the said Act.

- II. The whole number of voters in each Province as nearly as can be ascertained shall be divided by the number of members of the House of Assembly to be elected therein for the purpose of ascertaining the Provincial quota. In making any distribution of Provinces into electoral areas the Commissioners shall give due consideration to:—

Community or diversity of interests

Means of communication

Physical features

Existing electoral boundaries

Sparsity or Density of Population

and subject thereto the quota of voters shall be the basis for distribution, and the Commissioners may adopt a margin of allowance to be used whenever necessary but in no case shall such quota be departed from to a greater extent than 15 per cent more or 15 per cent less.

- III. Refers to proportional representation and has already been dealt with.
- IV. In every fourth year after the establishment of the Union the Governor General in Council shall appoint one or more commissions each of which to be presided over by a Judge of the Supreme or High Court of a Province, to carry out any redistribu-

tion which may have become necessary as between the different electoral divisions in each Province, and to provide for re-adjustment of any additional members to which such Province may have become entitled under the provisions of the Constitution. In carrying out such redistribution and re-adjustment the Commissioners shall proceed on the same principle as in the original distribution and re-adjustment.

V. Deals with proportional representation.

During the discussion on these proposals several amendments were moved by various members but there was little difference of opinion as to the principles and the report embodied the results not only of discussion in the Committee but of discussions among the delegates in private. The final agreement was felt to be fair and reasonable and to lay down principles which the whole country could safely adopt. Amendments to the first resolution, moved by Sir George Farrar and Sir Percy Fitzpatrick were accepted and this then read as follows:—

- I. “ Between the time of the passing of the Constitution Act and the taking effect of the Union a joint Commission consisting of four Judges of the Supreme or High Courts of the constituent Colonies to be agreed

upon by the Governments of the Colonies shall be appointed by the Governor in Council of each Colony for the purpose of the first delimitation thereof. The Commission may appoint officers in any Province to assist them in obtaining any necessary information and may also appoint persons to sit with the Commission or with individual members of it as assessors for the purpose of enquiring into questions arising in any Province. But all delimitations of electoral divisions shall be made by the Commission and signed by them or any three of them."

Amendments of a similar character were moved in the fourth resolution which was then made to read:—

IV. "As soon as may be after every quinquennial census the Governor General in Council shall appoint a Commission consisting of three judges of any of the Superior Courts of the Union to carry out any redistribution which may have become necessary as between the different electoral divisions in each Province and to provide for readjustment of any additional members to which such Province may have become entitled under the Provisions of the Constitution. In carrying out such

redistribution and readjustment the Commissioners shall have the same powers and proceed upon the same principles as in the original delimitation and readjustment. but the signature of two only shall be sufficient."

The agreement so arrived at settled the vexed questions of representation for the House of Assembly and the decision to appoint Judges to carry out the work of delimitation would it was hoped ensure impartiality and obviate any suspicion of jerrymandering. It was also felt to be important to lay down a permanent principle and to provide for its automatic working. Under it the people of South Africa will have fair representation in their House of Assembly unless some Government violates the Constitution.

It was of course too much to hope that this would prove the end of a very difficult matter and the Cape and Free State Parliaments promptly asked for a definition of sparsity and density and an application of the 15 per cent. allowance which happened to suit the political party in a majority in each Parliament. Mr. Sauer was presumed to be in charge of this part of the Cape amendments when the Convention met at Bloemfontein for the purpose of final review but his position as associated with the

Bond Party was similar to that of Mr. Fischer as associated with the Unie, the corresponding party in the Orange Free State. It was accordingly Mr. Fischer who took the first step, no doubt in consultation with Mr. Sauer, to define more clearly the meaning of sparsity and density and to lay down instructions for the guidance of the Commissioners as to how the 15 per cent. allowance should be made. Mr. Fischer's resolution read as follows:—

“In carrying out the provisions of Section 39 and of this Section the Commission shall regard areas containing one registered voter or less to the square mile as extremely sparsely populated; and areas containing ten registered voters or over to the square mile as extremely densely populated. In extremely sparsely populated areas the full fifteen per cent. shall be deducted from the quota and the multiple of the quota referred to in sub-section (II) of this section shall be I. In extremely densely populated areas the full fifteen per cent. shall be added to the quota. The Commission shall in regard to areas not being either extremely densely or extremely sparsely populated deal with the same as far as practicable on a sliding scale of departure from the quota within the limit of percentage as above fixed.”

It would be difficult to say whether the clause created the more consternation or amusement but it would certainly never be allowed to pass in the form proposed and there was much angry discussion in private meetings of the delegates. The proposal was generally supposed to emanate from the Cape Town branch of the Bond for by accident some Progressive delegates found themselves supplied with some elaborate calculations showing the effect in the Cape Colony of the application of the resolution. It was shown that out of the 46 Constituencies in the Cape no fewer than 27 had less than one voter to the square mile. All these were to be brought under the specially advantageous treatment of the 15 per cent. while the towns were all to be mulcted of the same percentage. Taking the result generally it was declared to be that the Bond would get the advantage of sparsity and the Progressive the disadvantage of density and the figures so innocently supplied by the Bond Party managers were quoted with effect by Mr. Jagger at the Convention much to the annoyance of Mr. Merriman who had presumably intended that their circulation should be strictly limited to members of his own party. It soon became clear that unless the Convention was to be split up into party factions other means than open discussion in the Convention

must be found for arriving at a settlement of this point. If a draft Constitution were to be put forth for the benefit of a particular political party there would be no Union in South Africa. Mr. Fischer, however, recapitulated the arguments in favour of special consideration for the sparsely populated areas and for several hours the respective merits of the farmer and townsman were discussed and no decision was arrived at when the Convention adjourned for the day. On the following day the President moved that subject to the five conditions the electoral divisions of each Province should contain an equal number of voters. The five conditions it may be remembered were:—

- A. Community or diversity of interests.
- B. Means of Communication.
- C. Physical features.
- D. Existing electoral Boundaries.
- E. Sparsity or density of population.

The immediate crux was the definition of the words sparsity and density. As the draft Constitution read the interpretation of these words was left to the Commission of Judges but both the Cape and Orange River Colony Parliaments required a definition in the Constitution itself. Discussion on the point in the Convention was clearly useless and adjournments were made from day to day to ascertain what could be done

by private talk and negotiation. At the meeting on Friday May 7th, General Botha moved:—
“That sections 39 and 40 (those referring to electoral divisions) and all other provisions in connection therewith be referred to a Committee consisting of two delegates appointed by the Prime Minister of each Colony and one from Rhodesia, the President to be the chairman.” This was agreed to and the following Committee appointed: — Messrs. Sauer, Jameson, Moor, Greene, Smuts, Farrar, Steyn, Fischer, and Coglan. The Convention adjourned to allow this Committee to sit and in the afternoon the following report was presented:—

“Your Committee have the honour to report that in their opinion the amendments proposed by the President to Sections 39 and 40 should be adopted.’

“Your Committee are further of opinion that the following amendment should be made in Section 64, by adding after the words ‘His Majesty’s pleasure’ the words “all Bills repealing or amending this Section or any of the provisions of Chapter IV. under the heading ‘House of Assembly’ shall be so reserved.” The effect of this report was to ensure the approval of the Imperial Authorities before any change could be made in the principle now affirmed. It also incidentally created single member constit-

uencies throughout the Union and did away with proportional representation in elections for the House of Assembly. On this report being read Mr. Fischer gracefully withdrew his amendment and the report was agreed to without division. The Convention, in fact, declined to give any definition of the words sparsity and density but preferred to leave the interpretation to the discretion of the Judges themselves.

The Convention had thus arrived at an agreement on General Smuts' resolutions up to number 9. With regard to number 10 there was no difference of opinion and the life of the House of Assembly was fixed at 5 years. Number 11 providing that the existing electoral laws in the various Provinces should remain in force until amended by a Union Act was also discussed and there was much discussion over clause 12 which dealt with the qualification for members of the House of Assembly. The South African practice had differed slightly but generally any man qualified to be a voter was also qualified to sit in Parliament. General Smuts had moved that in addition to this qualification there should be a residential qualification of three years. Mr. Jagger had moved a series of amendments which proposed disqualifications and General Hertzog had moved in the words "of European descent." That point had already been discussed and Mr.

Jagger's points were held over for future deliberation. The main discussion took place over the residential qualification and the feeling was in favour of extending the period. The general opinion was that no man was fit to sit as a member of Parliament until he had resided for at least five years in the country and on the motion of Mr. Lindsay this was eventually agreed upon. The qualifications therefore were fixed as follows:—

- I. Qualified to be registered for the election of members of the House of Assembly in one of the Electoral Divisions of the Union.
- II. Resident within any Province of the Union for not less than five years.
- III. British subject of European descent.

With respect to General Smuts' proposal 13 that all laws should remain in force until repealed or altered by the Union Parliament, it was an obviously necessary provision and occasioned only a trivial discussion as to drafting. There was, however, a good deal of debate over the question of the powers of the Senate in respect to Money Bills. In the Cape Colony a political crisis had been brought about by the refusal of the Upper House to pass the Estimates for the year and much public inconvenience had resulted. Though Mr. Merriman and his political friends had benefited by that crisis he now

took the line that the powers of the Senate should be strictly limited in regard to Money Bills and various amendments were moved from time to time by delegates who had interested themselves in finance. After considerable debate it was resolved that the power of raising revenue and voting expenditure should rest with the House of Assembly alone and that no amendments should be made by the Senate. It was impossible however to prevent the Senate from refusing to pass a Money Bill and the provision was therefore made that in such a case a joint meeting of the two Houses should immediately take place. The arrangement may not be ideal but it obviates a deadlock between the two Houses and in the event of the Government of the day being in only a small majority in the Assembly will render an appeal to the country necessary before the proposed taxation or expenditure could come into effect. With regard to legislation other than Money Bills the Assembly must pass a measure two years in succession against the Senate before a joint meeting of the two Houses can be summoned. The principle was also adopted that all proposals relating to money should originate in the Assembly and that any measures imposing taxation or appropriating revenue shall emanate from the Government. A somewhat curious

provision was passed which will be found in Section 20 of the Act of Union, empowering the Governor General in Council to dissolve both Houses or the House of Assembly alone, provided that if the Senate be dissolved the nominated members remain unaffected. Opposition was offered by Sir Edgar Walton, Mr. Merri-man, Mr. Jagger, Sir Meiring Beck and others and a division was taken but the proposal was passed by a large majority. Additions were moved by Sir T. Hyslop, General Hertzog and Sir T. Smartt, the last being agreed to namely: "Provided further that should any dissolution of the Senate take place within a period of ten years after the establishment of the Union the elected Senators shall be chosen by the Provinces in such manner as the Parliament may provide." This provision however was amended subsequently by fixing the period of the first Senate for ten years and thereafter leaving it to Parliament to amend the Constitutional provision if it deemed fit.

There still remained two points namely the disqualification of members of Parliament and the annual meeting of Parliament and these were only reached when the Convention held its second Session in Cape Town. The disqualifications appear in Section 53 of the Act of Union and though they naturally occasioned much

discussion and several divisions there is nothing of special note to record regarding them. An agreement was not arrived at however until the clause had been sent to a Committee consisting of Messrs. Sauer, Morcom, Hull and Hertzog. Mr. Jagger's motion in favour of annual meetings of Parliament was agreed to without division and the next point in connection with the Parliament was that of the payment of members.

Here again the practice had been different in the various Colonies. In the Cape those members who resided in the Cape Peninsula received one guinea a day for each day's attendance at Parliament and their remuneration for a Session therefore probably amounted to some sixty guineas a year. Country members however were differently treated and received one guinea a day for each day's absence from their homes and in addition a subsistence allowance of fifteen shillings a day. Neither town nor country members could be paid however for more than 90 days and as the average Session was accordingly about 90 days the pay of the Country member amounted to about £160 a year, a sum which was considered ample. In Natal the payments to members were also small but in the two new Colonies a higher scale had been adopted and members received £300 a year.

There was much discussion over the point and various proposals were made, the Cape and Natal delegates being in favour of the lower scale of pay. Mr. Hull moved that the pay be £300 a year, a sum which was considered too high by some delegates and too low by some of the others. Eventually Mr. Hull's proposal was agreed to without a division though it was opposed by a number of members. This however was not quite the end of the payment question for it was found that in some quarters the allowance was held to be inadequate and at the Bloemfontein meeting of the Convention General Smuts moved to increase the amount to £500 a year. This was strongly opposed and after discussion General Botha moved that the amount should be £400:— and this was carried on a division by 19 votes against 11, the latter consisting of ten of the Cape delegates and Mr. Fischer. Colonel Greene moved that no allowance be made to any member residing within fifty miles of the legislature but this was rejected; the penalty for absence from Parliament was to be £3 3s. 0d. a day instead of £2 2s. 0d. A penalty was also provided in case of any person knowing that he was disqualified sitting or voting in the House of Assembly and what may be termed the formal regulations for Parliament were passed after the necessary discus-

sion. There was some debate over a proposal made by Mr. Jagger to the effect that no Parliamentary allowance should be made to Ministers of the Crown, the President of the Senate or the Speaker of the House of Assembly. All these persons it was pointed out would be in receipt of salaries from the public purse and should not in addition receive allowances as members of Parliament. There was some opposition to the motion but on a division it was carried by 20 votes against 9.

CHAPTER VII.



THE JUDICIARY.

THE Convention had done nearly a month's arduous work in Durban under climatic conditions which were not altogether favourable. Few of the delegates were young men and some of them had passed middle age and all of them began to feel the strain. The hot summer was setting in and it had to be granted that substantial progress had been made and a fair foundation laid for the Constitution which was to be drafted and the feeling was in favour of an adjournment. Invitations came from all the Governments for the next Session and for some time the Convention hesitated between Cape Town and Johannesburg, finally deciding upon Cape Town. The convention therefore adjourned on Thursday November 5th and decided to meet again in Cape Town on Monday November 23rd. Three days before adjourning, on November 2nd, the President laid before the Convention

his proposals for the Administration of Justice. For most of the delegates the question was one of great difficulty and few of them had the requisite knowledge or experience of the subject. Happily in the President it had one who was admittedly the first lawyer in South Africa, one in whose recommendations the country could and would place the completest confidence. There were points however with regard to which differences of opinion were possible and so far, the President informed the Convention, he had not felt himself at liberty to consult his brother judges in South Africa. His proposals will be found in full in the official minutes and it will be sufficient here to summarise the sections of which there were twelve.

1. Provided for a Supreme Court of the Union consisting of a Chief Justice, two ordinary Judges, the Chief Justices of the several Colonies and the President of the Eastern Districts Court. This meant a Bench of seven Judges.
2. The Chief Justice and two ordinary judges to hold office during good behaviour and their salaries not to be diminished.
3. The Supreme Court to have jurisdiction over various matters.
4. No appeal allowed to the King in Council from the Supreme Court except by special

leave. Parliament to have power to limit matters on which appeal may be made.

5. No appeal may be made to the Supreme Court for a less amount than £250 :— except with the special leave of the Court.
6. The Judges of the Supreme Court may make rules for the conduct of its proceedings and regulations of appeals.
7. The Supreme Court to sit at _____ or elsewhere.
8. In original cases three judges to form a quorum and in appeal cases five Judges to form a quorum. Judges not to sit in appeal on their own judgments.
9. The Governor General in Council to appoint a registrar.
10. All advocates and attorneys of the Provincial Courts to be entitled to practice in the Supreme Court.
11. Administration of Justice to be in the hands of the Minister of Justice who shall do the work of Attorneys General except public prosecutions which shall be done by Attorneys General appointed to the Provinces by the Governor General.
12. All Judges now in office to be officers of the Union and all existing rights to be preserved.

On November 4th, on the introduction of these resolutions by the President there was a brief discussion after which General Smuts proposed that the proposals be referred to a Committee. This was lost and a motion carried that the debate be adjourned until the Convention met in Cape Town. The following day, however, the question was reopened and the following Committee appointed to consider the resolutions:—Lord de Villiers, Messrs. Merri-man, Sauer, Greene, Morcom, Smuts, Lindsay, Fischer, Hertzog, Coghlan. Before the discussion on the subject was resumed in Cape Town, Sir Frederick Moor had moved a resolution, during the debate on the Provincial Council powers to include:—“The administration of Justice in the Province, including the Constitution, maintenance and organisation of Provincial Courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.” This resolution was negatived and the principle thus fixed that the Administration of Justice was to be a matter of Union and not Provincial concern. For two weeks indeed the Convention had been engaged almost entirely on the clauses concerned with the Provincial Councils and their powers and it was not until December 8th, that the President brought forward the report of the Committee on the

administration of Justice. The recommendations may be summarised as follows :—

1. The Supreme Court to consist of the Chief Justice, Judges of Appeal, Chief Justices and Judges of Supreme Courts of the Provinces.
2. The Appeal Court shall consist of the Chief Justice, two ordinary Judges of Appeal and two additional Judges of Appeal to be appointed temporarily.
3. Temporary appointments to be made.
4. The Supreme Courts of the Provinces to become Divisions of the Supreme Court and to have the same powers.
5. Judges to be appointed during good behaviour and their salaries not to be diminished.
6. Vacancies need not be filled up.
7. All appeals to be made to the Appellate Division.
8. Appeals previously made to the Privy Council to be made to the Appellate Division.
9. Leave to appeal must be obtained.
10. Appeal to the Privy Council only to be made after leave obtained.
11. Appeal Court to have power to make rules.
12. Supreme Court to make rules.
13. Place of sitting.

14. Five Judges to form quorum in appeals from Bench of two or more Judges, and three to form quorum in appeals from one Judge.
15. Process of Appeal Court to run throughout Union.
16. Writ and process of Provincial Courts to run through Union.
17. Provincial Courts may order the transfer of cases to other Provincial Courts.
18. Governor to appoint Registrar and other officers.
19. Advocates and attorneys to practice in Appeal Courts.
20. Minister of Justice to take place of Attorneys General except in public prosecutions which to be performed by the Attorney General of each Province.

It was understood that the recommendations had received the approval of the Judges of the several Colonies and on consideration and after amendments of a trivial character the report was adopted. The question of the right of appeal occasioned some difference of opinion but it was not until the decision of the Convention became known that any discontent was evidenced. It then became clear that in the Eastern Districts of the Cape particularly there was strong opposition to the provisions made

since they resulted in placing that Court in a lower position than it had yet occupied. This was, however, rectified while the redrafting work was in progress as will appear from Clause 98 of the Act. The seat of the Appeal Court was a question which had to be held over for it was part of that very delicate question of the Capital of the Union which was still overhanging the Convention and later was to threaten to wreck its labours. When an agreement was arrived at on the question of the Capital it was decided that Bloemfontein should have the honour of housing the Court of Appeal with the proviso, however, that the Court might sit elsewhere at the convenience of Suitors. So far as the main body of the delegates were concerned their object in dealing with this part of their labours was to avoid any unnecessary increase of expense in the administration of justice and at the same time to provide adequate courts in each centre so as to avoid the cost of conveying witnesses to a distant court. The Constitution as finally framed seems to have given general satisfaction in this respect and as conditions change in South Africa it will be possible to amend the provisions where necessary.

CHAPTER VIII.

LOCAL SELF GOVERNMENT.

THERE was no difference of opinion in the Convention on the main principle that the people of the country should manage their own affairs in local matters, but while the principle itself was generally accepted there was great divergence of view upon details. It was difficult indeed, as has been pointed out, to frame any uniform system in South Africa, for not only had the systems of the four Colonies differed materially but the conditions of the country were dissimilar. In the Cape local self government had already been adopted and had made great progress. There were Divisional Councils for the country districts, Town Councils for the Towns and Village Management Boards for the smaller settlements. All these bodies had wide powers, carried out what public works they required, had powers to collect rates in the areas they controlled and

could borrow money. They were institutions to which the public had grown accustomed, which worked smoothly and which not only relieved Parliament of much detail work but which also relieved the Government of much administrative work and threw a large part of the burden of administration upon the shoulders best able to bear it, those of the elected local authorities. In Natal some little advance had been made and so far as the towns were concerned the provisions for local self government were ample. In the Transvaal and Orange River Colony however while the larger towns were allowed to make provision for their own wants by means of Councils there was no general principle adopted and in all three Colonies no attempt had been made to establish District or Divisional Councils. The management of the affairs of the districts was in the hands of the Government officials and in the Transvaal and Orange River Colony there had sprung up a class of men known as Field Cornets who though not entirely in the Government service were in receipt of salaries from the public purse in return for which they held themselves more or less at the disposal of the Government and assisted materially in the work of administration. Immediate co-ordination therefore was difficult. It was impossible for the Cape

to take a step backwards and to throw over its system of self government in order to come into line with the rest of South Africa and it would have been equally impossible to impose the Cape system upon the rest of South Africa by a stroke of the pen and without some preparation. It was necessary to devise some plan which would meet the situation and that of the Provincial Councils seemed best adapted to the purpose. The Cape it might be argued required no such body. It could have got on with its existing corporations and might have secured for them adequate power under a general Act passed by the Union Parliament. The Provincial Council was undoubtedly required however for the management of the other Colonies and moreover it offered some little compensation to Natal for the loss of its Parliament. It might be claimed by Natal delegates that Natal had its Parliament after all, though under another name, and it was hoped that by eventually splitting up the Provinces into smaller areas we should arrive at some general system on the model adopted by the Cape.

Having fixed upon the principle of a Sovereign central Parliament, with power of control over any other body in the State, it was only necessary to create the machinery for administration and to indicate the matters which at

the opening of Union the various Provincial Councils should deal with. As for the number of members it was decided that they should be the same as the number returned by the respective Provinces to the House of Assembly, but in the case of Provinces of less than 25 members the number should be 25. Any person qualified to vote was also qualified to be a member and the electors were the same as those for the House of Assembly. The Councils were to sit for three years and were to elect a chairman from among their own members while the same liberty of speech was safeguarded in the Councils as in Parliament.

As for the powers of the Councils the Natal delegates were specially anxious that these should be as large as possible and on October 22nd while the Convention was still in Durban Sir Frederick Moor had given notice of a series of resolutions. These were not reached on that day and did not indeed come up until November 3rd when after some discussion the debate was adjourned until after the recess. Mr. Morcom and Sir Frederick Moor's proposals may be summarised as follows:—

1. The "Legislature of any Province" may amend the Constitution of the Province except as regards the Governor.
2. Raise taxation for Provincial purposes.

3. Borrow money.
4. Fix the pay and conditions of officers of Provincial service.
5. Control public lands, timber etc. and expropriate lands.
6. Control gaols and hospitals.
7. Control Municipal Institutions.
8. Control all licences.
9. Control supply of intoxicating liquors.
10. Control local works and undertakings.
11. Incorporation of local companies.
12. Property and civil rights.
13. Administration of Justice in the Province.
14. Local Police.
15. Imposition of fines or penalties.
16. Registration of titles to land.
17. Mining and Forestry.
18. Generally all matters of private or local nature.
19. Native Affairs.
20. Land reserved for Natives.

The question of Education came on later and must be treated in its place but it will be seen that it was desired to delegate, by the Constitution Act, very considerable powers to the Provincial authorities. During the discussion which took place two days before the adjournment of the Convention at Durban it was evident that the subject had not up to then

been thought out by the delegates and an understanding was arrived at between some of them to work out the details during the recess so that notes could be compared on reassembling. The notes were handed to Mr. Merriman during the recess who after deliberation moved the following resolutions on November 26th. The resolutions may be partly summarised as follows:—

1. In each Province there shall be a Chief Executive Officer appointed by the Governor General in Council who shall be styled the administrator of the Province. He shall hold office during the pleasure of the Governor General but any administrator appointed after the commencement of the first Session of Parliament shall not be removable within five years from his appointment except for cause assigned, which shall be communicated by message to both Houses of Parliament within one week thereafter if Parliament is then sitting and if not then within one week after the commencement of Parliament.
2. The salaries of the administrators to be fixed by Parliament.
3. There shall be a Provincial Council for each Province consisting of the same number of members as are elected for each Province for the House of Assembly.

4. The members of the Provincial Council shall be elected by the same voters and the same constituencies as Members of the House of Assembly and on the same system of proportional representation.
5. Persons qualified as voters to be qualified as members.
6. Provincial Councils to sit for three years and not subject to dissolution except by effluxion of time.
7. The Administrator to summon and prorogue Councils which however must meet once each year.
8. Councils to make their own rules subject to the approval of the Governor General in Council.
9. Freedom of speech to be secured.
10. Each Council to elect by proportional representation from among its members an executive Committee of not less than three or more than five as many be prescribed by the Governor. This Committee to hold office until its successor is appointed and to receive such remuneration as the Council with the approval of the Governor General may determine.
11. In case of a difference of opinion in the Executive Committee the Administrator to have both a deliberative and a casting vote.

12. The capitals of the Provinces to be Cape Town, Pietermaritzburg, Pretoria and Bloemfontein.
13. The Councils to have legislative and administrative powers in regard to such matters as may be delegated by the Union Parliament and, unless and until Parliament otherwise provides, with regard to the following:—
 - A. Direct taxation for Provincial purposes.
 - B. Borrowing money with the Consent of the Governor General and on the sole credit of the Province.
 - C. Hospitals, Asylums, charities, eleemosynary institutions.
 - D. Municipalities, Divisional Councils and other local institutions.
 - E. Roads, Outspans, Ponts and Bridges other than Bridges between Provinces.
 - F. Markets and Pounds.
 - G. Local works other than Railways, Harbours and works extending beyond the Province.
 - H. Imposition of fines and penalties.
 - I. Agricultural societies and road fencing.
 - J. Bush and grass fires, eradication of weeds and registration of brands.
14. A. Education, other than higher and technical education.

B. Public Health, Animal Diseases, Fish and Game Preservation, Weights and Measures, Irrigation.

15. Councils may recommend legislation to the Union Parliament.
16. Councils to have power on the request of Parliament to take evidence with regard to Private Bills.
17. Councils to have power to employ officers subject to any general law as to conditions etc.
18. Councils only to pass expenditure on the recommendation of the Administrator.
19. Ordinances not to have force until approved by the Governor General in Council.
20. Until provided by Parliament there shall be paid to each Administrator by the Union Treasury an amount equal to the sums previously spent by the respective Colonies upon the services allocated to the Provincial Councils and such additional sums as Parliament decides.
21. Such sums to be paid as the Governor General may direct.
22. Administrators may sit and speak in the Councils but may not vote.
23. Administrators to have the same powers as Governors or Ministers in those matters entrusted to them.

It will be seen that Mr. Merriman's proposals were alternative to those put forward by Sir Frederick Moor for they not only covered the same ground but in many cases went much further. Sir Frederick Moor's proposals had priority, however, and Mr. Merriman's thirteenth clause corresponded with the first proposed by the Natal Prime Minister and the Convention proceeded at once to deal with the powers which should be delegated to the Councils. In many cases the discussion followed these lines and after detailing the powers the Convention went on to provide the machinery for administration. It was clear that there was great difference of opinion, the debates were frequently prolonged and the difference was not merely as to points of detail but was radical. The Natal delegates having failed to carry federation did not abandon the idea but aimed at obtaining practical federation under a nominal union. The object of the Natal delegates was to magnify the importance, powers and dignity of the Provincial Councils, to place in their hands as much legislative and administrative authority as possible and to protect them against any interference from the Union Parliament or Union Government. The Natal idea was by no means without support in South Africa and the Cape Town Branch of the Afri-

kander Bond attacked the draft Constitution on this point when it was published. The principle had been settled by the vote during the early days of the Convention but the federal idea though defeated was to show itself throughout the discussions in many forms. Provincial Councils were accepted but their powers must be enlarged, their position protected and they must be independent of the Sovereign Parliament. Old ground was therefore covered frequently during the debates and it would be tedious to repeat the old arguments in these pages. It will, however, be useful to touch those points which broke up new ground without following the debates where they were confined to questions of drafting.

With regard to the raising of revenue by the Councils it was felt safe to entrust them with this power since the members would certainly not agree to taxation which was not of an imperative character since every three years they would have to justify themselves to the people they had taxed. With regard to the borrowing powers however, it was felt by some that greater safeguards should be provided. It was urged that though the Act might say that the loans raised were on the sole credit of the Province yet in point of fact the credit of the Union would be at

stake since it would not be possible for the Union to allow any Province to default. In any case it was demanded that a compulsory sinking fund should be provided for in the Act and the Section was not passed without a division. Both the amendments mentioned were defeated, however, and the section was passed with the addition only of the words "in accordance with regulations to be framed by Parliament." With respect to the Natal proposal to delegate the control of public lands it was pointed out that as all debts would be taken over by the Union, all assets would also have to be placed under control of the central Government and that the Natal proposal, if adopted, would withhold a most important asset. The Natal delegates, however, divided on the point and were themselves the only supporters so that the proposal was rejected by 23 votes against 5. The same fate awaited the Natal proposal to place licensing power and licensing revenue in the hands of the Provincial Councils and here again it was pointed out that State revenue was at stake. The Natal delegates divided also on their motion to hand over the control of the sale and supply of intoxicating liquors to the Councils. Here again it was pointed out that the liquor legislation of the Union must necessarily be uniform and this motion was also de-

feated. The object of the Natal resolutions was obviously to increase the powers of the Councils and to remove from the Union Parliament the power to deal with matters common to the whole Union. The three motions to delegate to the Provincial Councils the control of land companies, property and civil rights and administration of Justice were allowed to be defeated without divisions, the question of the control of the police, however, was divided upon and the Natal vote was reduced to 4, Mr. Morcom unfortunately having been called away by family bereavement. The clause conveying power to the Provincial Councils to impose fines and penalties was agreed to, but the control of registration of titles to land and also the control of Mining and Forestry were disallowed, as were the two proposals to place Native Affairs and Native Lands in the hands of the Provincial Councils.

This disposed of the Natal proposals and there remained those put forward by Mr. Meriman which had not been anticipated by the Natal Prime Minister. These were now proceeded with and it was decided to exclude Agricultural Societies and Fencing, Fires, Brands and the eradication of weeds from Provincial Councils. There was an earnest discussion over the next resolution fixing the status and defining

the powers of the Provincial Administrators and two views obtained in the Convention. On the one side it was contended that what was required was a working head of the Provincial Council, an official who with the aid of his Executive Committee would carry on the work of the Province and act as the head of a Government Department without any of the costly trappings or dignity usually associated with a Governor, who is the direct representative of the Crown. Such an official, moreover, was to be appointed by the Government and was to carry out their instructions as well as those of the Provincial Councils. He was to be the connecting link between the Government and the Councils and would be responsible for conducting the communications between the two. On the other hand there was a section which desired to create in the Administrator an official as nearly approaching a Governor as possible, a person who would be regarded as the head of the Province and who would regard his Executive Committee as a Cabinet on whom the real work and responsibility would devolve. After the discussion had served to ventilate the views of the delegates a committee was appointed to draft the necessary clauses taking as a basis those printed above.

The Committee brought in its report which may be summarised as follows:—

1. Adopting Mr. Merriman's first clause with the addition that residents in the various Provinces should as far as practicable be preferred as Administrators.
2. Mr. Merriman's clause adopted with the proviso that the salary of the Administrator could not be reduced.
3. to 18. Follow in the main the line laid down in Mr. Merriman's resolutions.
19. Provision for auditing.
20. to 22. Follow the lines of Mr. Merriman's resolutions.

The report, however, differed in two important respects from Mr. Merriman's scheme. In the first place it postponed the provision for finance until the finance committee had reported and in the second it made provision for dividing the existing Provinces into smaller divisions.

On receipt of the report General Botha moved that the Convention suspend its formal sittings to enable members informally to discuss the report and this course was adopted. It was late in the afternoon before business was resumed and the first two propositions were then held over. With regard to Section 3 dealing with the number of Provincial Councillors General Smuts carried an amendment making

the minimum membership 25. Mr. Merriman moved a new section authorising Provincial Councillors to fix their own remuneration with the approval of the Government but Mr. Sauer, having in mind, no doubt, the easy views already expressed on the subject of the pay of members of Parliament, advocated leaving the decision to the Government and this was agreed to. Much time was spent in the Convention on Clause 10 dealing with the creation of an Executive Committee, and here again the two views to which we have called attention clashed. There is also another point which deserves mention here. It was the wish of the Convention to prevent if possible, possible party divisions in the Provincial Councils. South Africa's experiences of party politics have not been of the happiest and the inevitable mixing up of the race question with party politics made it desirable if possible to exclude that element from the Provincial Council deliberations. It was hoped to accomplish this by means of the election of the Executive Committee by Proportional representation. In any case a Committee so selected would consist of representatives of both parties and neither the one nor the other could dominate the Council. The provision referred to was therefore made in clause 10 and

was subsequently embodied in the Constitution. It is an original provision and it will be interesting to see how it works in South Africa. If successful it may possibly be developed later. Having progressed so far the Convention reverted to Sections 1 and 2 which were adopted. General Smuts occasioned some discussion by proposing to remove from the Councils the power to appoint officials but the objection was withdrawn and power delegated subject of course to the provisions of any Union Act.

The question of the size of the Executive Committees gave a considerable amount of trouble and it was at first suggested that the number of members might vary with the conditions of the respective Provinces. The result of the debates, however, was that the number should be uniform and that there should be four members of an Executive Committee, a provision which seems to promise satisfactory working.

The next point reached was that of Education and the discussions which had been taking place for weeks past were now brought to a final head. It should here be said that since the friendly settlement of the language question there was much less anxiety with respect to education though there was a strong feeling of distrust on the part of many people in Natal

and a dread of what might occur if the whole system of education were to pass under the control of a majority in the Union Parliament who held possibly extreme views and views diametrically opposed to those of Natal. The Free State delegates also showed this feeling and dreaded any interference with the education policy which their ministers were contemplating. While there was no hint of the differences which afterwards arose and while there was an entirely friendly understanding that education should in any case be lifted out of party politics and be administered on the basis already arrived at on the language question, yet both Natal and the Free State strongly desired that education should be controlled by the Provincial Councils, at least up to a certain point and for a certain time. It was hoped that consent to these suggestions would remove the cause of education from painful controversy and that the recognition of an honourable and friendly understanding in the Convention would result in the progress of education in South Africa. This result has been secured except in the Orange River Colony, now the Free State, but it is beyond the province of this book to follow the course of that controversy beyond saying that it came as a painful surprise to the members of the Convention. They at least

hoped that in the Free State the settlement would have been as happy as in the rest of South Africa. So far as the Convention was concerned, however, there is no doubt that the intentions of the members were excellent and that in agreeing to leave primary education in the hands of the Provincial Councils they acted as they believed in the best interests of South Africa. Until 1915 the present arrangement must continue and after that date Parliament must decide what arrangements shall be made. The main thing to record as a fact which could not find its way in any shape in the minutes was the understanding between delegates both English and Dutch that Education should not be allowed to become contentious, that it should be regarded rather as a sacred duty and a thing apart from political passion. Possibly it may yet be restored to the shrine where the Convention sought to place it and whence it must be admitted, it has been torn by ruthless hands.

The drafting of the various clauses occupied several days and discussion on details was often prolonged, there were, however, no further debates on questions of principle or of first importance. It remains to be recorded that during the discussions on the question of the names or titles of the various Provinces it was pointed out how difficult it was to fit in the name

of Orange River Colony. Orange River Province seemed incongruous and Oranje, Orangia and Orange were suggested. A remark was thrown out during the discussion by one of the English members that the Province had been known for two generations by the title of "Free State" as short for Orange Free State and that there was no good reason why the name should not be revived. Some talk followed and on January 29th, during the drafting discussions Sir Starr Jameson formally moved that the title be Orange Free State and this was adopted unanimously by the Convention.

The financing of the Provinces was no doubt temporarily a matter of difficulty for while in the Cape much of the work placed upon the Councils was paid for out of rates collected by local authorities no such provision existed elsewhere in the Union and the same services were provided for out of the general revenue. It was realised therefore, that if payments from the Union Treasury were made to the various Provinces on the basis of existing expenditure from the respective Treasuries the Cape would be unfairly treated, but on the other hand it would have been very difficult to arrive at any exact estimate without a prolonged enquiry. The Convention therefore assented to the principle of existing payments as a temporary measure

and until a full investigation had been made, and provided that as soon as Union was accomplished a Commission should be appointed to arrive at a fair basis of distribution. In order to insure absolute impartiality in the decisions of such a commission it was arranged that one of the members should be a trained official from England. It was of course obvious that such a distribution should be made since all the main sources of Revenue had been secured to the Union Government. Whether the financial arrangements would work without further amendment was always held to be doubtful for the delegates had no experience to guide them and already some little hitch has occurred with regard to the estimates of expenditure. According to the provisions of the Constitution these have to be prepared by the Executive Committees and submitted to the Government and after approval they are voted in parliament and sent to the Provincial Councils for discussion. Obviously the Provincial Councils must pass the estimates before they are sent to the Union Parliament or that House may find itself voting expenditure of which the Provincial Councils may disapprove and thus providing the Government of the day with larger funds than it needs.

Another discussion which may be of great interest at a later date was that which took

place in connection with the proposal that:—
“The Parliament of the Union may on the petition of the Provincial Council of any Province alter or amend the boundaries of any such Province or may divide such Province into two or more Provinces.” Within the Cape Colony there has long been an agitation in favour of separation between East and West, an agitation which has been strongly supported in the East and as strongly opposed in Cape Town, which was supposed to reap some advantage from the residence there of a large number of officials required for the administration. This agitation broke out immediately after the Draft Constitution was published and the feeling in the East is perhaps stronger now than it was formerly. It was felt that under Provincial Government it was unreasonable to ask the East to transact all its public business at so distant a centre as Cape Town and an effort was made in the Convention by Sir Edgar Walton to obtain recognition for the claims of the East for separate existence. It was soon found, however, that the whole of the Cape Town influence in the Convention, and it was considerable, would be used to the utmost to prevent any such division of the Cape. If any such resolution were carried Cape Town would, it was said, use all its influence against Union and the

interests of the East must be sacrificed to secure the vote of Cape Town. Delegates from the East were told that they had secured an open door in the resolution as it stood but it was feared that the opening would not be wide enough to admit of reform and Sir Edgar Walton moved to provide that at the request of fifteen members of a Provincial Council the Parliament might take action in the direction of subdivision. Cape Town delegates opposed and the motion was lost. Those who are interested in carrying the reform must now therefore either get a majority of the Provincial Council in favour of division or must await the time when Parliament will take action on its own initiative. Time is no doubt on the side of reform for the present large provinces are unquestionably too unwieldy for satisfactory local self-government and there is no reason why the Union should not be divided into a larger number of Provinces of a convenient size.

CHAPTER IX.

FINANCE RAILWAYS AND TRADE.

HAVING traced so far the efforts of the Convention to construct a workable machine for the administration of the country under Union it is unnecessary perhaps to say that financial questions obtruded themselves at many stages of the progress. In this work the plan has been followed of dividing the work into departments and of keeping the matters concerned with each department separate. In the Convention that plan was not possible and on the same day the delegates would be called upon to pass from questions relating to the Union Parliament to consider Provincial administration or the Judiciary or Finance. It will, however, give a clearer idea of the work of the Convention as a whole if the plan is adhered to of collecting in one chapter all the matters and discussions relating to one department of government though resolutions forming the

basis of the discussions themselves may be found scattered throughout the whole volume of the official minutes.

One Committee as has already been mentioned had been appointed to collect the necessary available information on questions of finance and railways and its returns were supplied to the delegates. It soon became evident, however, that still another Committee was required to consider and report upon the necessary financial arrangements if endless discussions were to be avoided. On December 7th General Smuts moved:—

“That a Committee be appointed to make recommendations in regard to Finance and Trade for the consideration of the Convention, the Committee to consist of two members from each delegation to be nominated by the Prime Ministers and one from Rhodesia.” This was agreed to and the Committee nominated was as follows:—Messrs. Merriman, Jagger, Hyslop, Greene, Hull, Farrar, Fischer, Browne and Michell. It was some time before they reported and the situation they had to deal with was one of extreme difficulty. The financial position of the respective Colonies was the subject of frequent comment in the press and throughout South Africa. It had taken the Cape eight years to recover from the financial effects of

the war and the effort was not yet entirely successful. The war had left the country with a swollen expenditure and many thousands of men in the public service who were no longer required and for whom there was no outside employment. The main resources of the Colony were in its agriculture and following upon the devastation of the war, when the whole land had been to some extent a battlefield, there were prolonged periods of drought. The revenues of the Colony shrunk by millions in spite of additional taxation and there were successive years of deficits in the yearly accounts. In a final effort to equalise revenue and expenditure the Cape had suspended its sinking fund, made a special levy upon the Civil Servants by means of a reduction of their salaries and in addition to other taxes had imposed an income tax upon all persons in the receipt of an income of £50:— and over. These final efforts were not in progress while the Convention was sitting and the position of the Cape for the year 1908-9 was that it would certainly have to face a heavy deficit. Natal was in but little better plight while the two Northern Colonies were kept in a flourishing condition owing to the large profits made by their railways. In the Transvaal there was no special taxation and the revenue was derived mainly from Customs dues, Railway

profits, Native taxation and the profits tax on Gold Mining Companies. These revenues left a large surplus and the Transvaal was in an extremely flourishing financial position. Indeed it was later found that in spite of exceptional expenditure the Transvaal had handed over several millions of unexpended balances into the Union Coffers. The problem for the time was difficult, for taxation in the four Colonies differed materially. After Union it was certain that in no portion of the country would the people consent to pay higher taxes than in any other portion, while even if such uneven taxation were continued it was doubtful whether the Union could make both ends meet. On the other hand it was felt to be impossible to go to the people of the Transvaal and suggest that notwithstanding the fact that their existing taxation yielded a revenue far larger than was required for the needs of the country and left them with huge surpluses they should pay still higher taxes for the privilege of coming into South African Union. Any such suggestion would certainly be bitterly resented and might cause the rejection of the proposals by the Transvaal and in fact it was felt by the Convention that it would be impossible for them to attempt a solution of the problem at that time or to make any definite proposal whatever. If

the Union were adopted the problem must eventually be solved by the Union Parliament and possibly conditions might so much improve in the Cape Colony that the comparison between that Colony and the Transvaal might not remain so much to the disadvantage of the older State. In drafting the Constitution therefore it was considered advisable to leave the question of taxation alone and so far was this principle carried that there is no reference even to the usual clause that taxation throughout the Union shall be equal. Possibly the fact that a similar clause had given rise to much inconvenience in the United States may have influenced the delegates but it is interesting to note that the omission occasioned no subsequent trouble to those responsible for obtaining the sanction of the electors to the proposed Constitution.

It is necessary to understand also another factor which exercised considerable influence in the drafting of the clauses in this chapter of the Constitution. It had been the practice in South Africa since the introduction of railways to take any surplus in the Railway account into the general revenue. On some occasions in the Cape Colony those surpluses had been considerable and though on other occasions there had been a shortage yet on the whole the rail-

ways had been a source of income to the Treasury. There had of course been protests against the use of the Railways as a taxing department but on the other hand the country at large had constructed the Railways and the whole country was responsible for the railway debt and those who used the lines were saved enormous sums in the cost of transport. They benefited materially even if the Railways did make profits and it was agreed that they had really no ground for complaint. In the Cape Parliament year after year protests had been raised on behalf of Kimberley and other consuming centres distant from the Coast and it was urged that the inland dweller was paying an unfairly large share of the taxation through his railway rates the profits from which went to relieve the burdens of the dwellers on the coast. This was one aspect and there was still another. It was pointed out that in a new country it was in the interests of development to construct lines of railways to open up promising districts though there was no immediate prospect of such lines paying working expenses and interest. That policy met with general approval but the cost of such a policy should, it was argued, be borne by the general taxpayer of the country and not thrown upon the inland dwellers. It was pointed out that by including

the working costs and interest charges of these developing railways in the general railways account a deficiency was created which made it necessary to maintain a high level of rates on the paying main lines so that inland consumers were doubly taxed. The arguments had never been fairly met and were overruled by the exigencies of the several Treasuries and by the indisposition of Governments to run the risk of incurring unpopularity by imposing direct taxation as a substitute for railway profits.

The position in the Cape Colony had grown more difficult since the Customs Union had come into operation. Prior to that agreement the Governments of the day had met any financial pressure by an increase in customs duties, an easy method of taxation which offered many temptations to a Treasurer. Under the Customs Union, however, this course was impossible as the consent of the respective administrations had to be gained to any proposed increase. The various Cape Governments therefore had resisted the endeavour to separate the Railway accounts and these remained a part of the financial administration of the country. The same policy had been pursued in Natal where railway profits also went in the ordinary course into the Treasury and were used for the purpose of general administration. In the Transvaal

prior to the war the same system had been followed so far as the Government was interested but the Railways had been under the control mainly of a Company. In the Free State, before the war, the main line of railway had been built and for some time operated by the Cape and though a change was made later no steps had been taken to separate the Railways from the general administration.

After the war the railway systems of the Transvaal and Orange River Colony were amalgamated under one management and controlled by a Railway Committee upon which both Colonies were represented. Though the management of the Railways was thus outside the control of either Government yet the profits were divided and went into the respective Treasuries of the two Colonies and were used for general purposes. And these profits formed a large proportion of the general revenue. Lord Milner was then at the head of the Crown Colony administration and strongly resisted any attempt to separate the accounts and to adopt the principle of running the railways at cost. He replied to all protests on the part of the public by saying that both Colonies required large revenues for development and that in both cases it would be difficult and costly to raise the revenue by means of direct taxation.

He was not prepared to sacrifice the revenue derived from the railways and appealed to the people to leave the existing system alone. The burden of the railway rates he argued was fairly divided among the people of the two Colonies and it was in fact a convenient method of raising money, a method they would be unwise to abandon. At the time of the Convention therefore, the system of using the Railways as revenue producers was general throughout South Africa and the several Governments took the risk of the railways showing a deficiency.

The situation under Union, however, was obviously different. If the Union Government took over the Railways, as was contemplated under the proposed constitution, the inland Colonies and dwellers would be called upon to pay this special burden of the Union taxation. The Transvaal and the Orange River Colony would be the main contributors and their contributions would go to relieve the taxpayers in a great portion of the Cape and Natal. However long they might have been prepared to submit to a railway tariff leaving huge profits so long as those profits were devoted to the service of the northern Colonies they were not prepared to see them dissipated in the General service of the Union. The inland Colonies too were supported in their contention by the inland con-

sumers of the Cape and Natal and the view which they advocated was strongly represented in the Convention.

The other side did not lack advocates and it was pointed out that the Railways were a common asset and common responsibility. If they failed to pay their way the general public was called upon to make good the deficiency and it was impossible to divide the Railways from the General administrative accounts of the country. The Railways belonged to the country and must come under the control of the Government which the country had for the time put in charge of its affairs. If there was a loss on the Railways for any year the Government would have to provide it and if on the other hand there was a profit on the Railways and a shrinkage in the general revenue then the Government would use the Railway profit to make good that shrinkage. In the interest of the country that, it was said, was the natural and the proper course and the course which would necessarily be followed whatever conditions were laid down in the Constitution; there would also be no danger of excessive rates.

The ultimate control would be in the hands of Parliament and as those who had experience of Parliamentary working would know the influence of Parliament was always in the direc-

tion of reducing railway rates. Parliament could in fact be relied upon to deal sharply with any Government which showed excessive profits upon railway working.

Another argument used on behalf of the inland consumer was that the Railways should be employed as a means for developing the country, and one speaker went so far as to urge that the railway rates should be such as to pay working expenses only and that the interest charges should fall upon the general taxpayer. From the point of view of development the true interests of the country would best be promoted by the lowest possible railway rates and all material used in development should be carried at such rates as to afford the utmost encouragement to those engaged in development enterprise.

This is a brief sketch of the first problem which the Committee was called upon to deal with and it was clear that the majority of the delegates were with the inland consumer. Many discussions took place in the Convention and it remained to draft clauses which would give effect to the principles which the Convention would certainly adopt. It may here be added that in addition to its other duties the Finance Committee was instructed to consider the salary of the Governor General and the amount

of compensation to be paid to existing capitals which lost their status under Union. A motion moved by Mr. Sauer that the Committee should also deal with the subject of salaries to be paid to Ministers was not agreed to and subsequent controversy on the point proves the decision to have been unfortunate.

The first report of the Finance Committee was brought up on Thursday December 17th and may be summarised as follows. The detailed report will be found in the Official Minutes and the report as amended and adopted by the Convention will of course be found in the Constitution Act.

1. All revenues to vest in the Union Government. The Government to form two funds:—

A. A Railway and Harbour Fund.

B. Consolidated Revenue Fund.

2. A Commission to be appointed to consider what payments shall be made to the Provincial Administrations. Pending enquiry there shall be paid an amount equivalent to that previously spent by the Provinces on primary education and such other sums as the Government considers necessary.
3. The Consolidated Revenue Fund to be first charged with costs of collecting revenue.
4. Interest on Debt and Sinking Funds to be a second charge.

5. Revenue Fund to be appropriated by Parliament.
6. For two months after the first meeting of Parliament the Government to have power to appropriate revenues.
7. All assets of all Colonies to be property of Union.
8. All lands etc. to vest in the Government.
9. All Mines and Minerals and rights in the same to vest in the Government.
10. Union to take over all debts of several Colonies.
11. All Ports, Harbours, Lighthouses and Railways belonging to the respective Colonies to vest in the Union.
12. A Railway and Harbour Commission to be appointed consisting of a Minister as Chairman and three others.
13. Railways and Harbours to be administered on "business principles" with due regard by cheap transport to agricultural and industrial development. The total earnings not to exceed working expenses and interest. A Fund to be created for maintaining uniformity of rates. This clause to take effect within four years after Union.
14. Parliament to provide the loss on any Railways built without the approval of the Commission.

15. Parliament to provide the loss on any service ordered without the approval of the Commission.
16. The Governor General to receive £10,000 a year.

This report was handed to delegates and was discussed privately but did not come up for consideration until January 14th when the Committee handed in an amended report. The amendment was an addition to section 12 safeguarding the positions of the Railway Commissioners for five years. A new clause 15 was introduced providing that all existing Railway and Harbour balances should be under the sole control of the Commissioners. A new clause 19 was also added to amplify the provisions already made for creating a Provincial Revenue Fund in each Province.

New Clause 20. Provision for Auditor General.

New Clause 21. Compensation to Capitals for 30 years and thereafter as Parliament may determine of 2 per cent on the Municipal Debts on January 31st 1909.

The discussion on the various clauses lasted several days, many were referred back to the Committee for reconsideration and even after clauses had been passed they were reverted to and the debate reopened. It was useless of course in such a matter to attempt to stand by

any set rule of debate and if delegates discovered points in which amendment was necessary the Convention invariably allowed the discussion to be reopened and the members had constantly before them the fact that the consent of the people of South Africa had to be won for the Draft Constitution. It was necessary not only to decide points at issue by a majority of the delegates but to be sure that the minority would accept the decision and not be forced into the position of opponents to the draft when complete. To follow the discussion as it took place in the Convention itself would only be confusing to the reader and it will convey a clearer idea if a record is made of the points raised on the several clauses in order as they now appear in the Constitution Act itself. These clauses are numbered 117 to 133 and with regard to the first, providing for the separation of accounts, there was little debate after the principle was accepted that the Railways and Harbours should be set apart from the general administrative work of Government. With respect to Clause 118 relating to Provincial funds there was some difference of opinion. It was generally agreed that to settle the basis of a contribution to the several Provinces from the general revenues of the country an impartial commission was required but as it was recognised that this Com-

mission might take some time over its deliberations it was felt by some of the Cape delegates that consideration should in the meantime be given to the higher taxation paid by the Cape both by taxes imposed by the Government and in rates for education and for local works. The point was raised and a motion was moved to this effect by Mr. van Heerden. The view of the majority of the delegates however was against the proposal. It was pointed out that it would be misunderstood in the other Colonies if special treatment were meted out to the Cape and moreover the financial situation in the Cape was such that even with its heavier taxation there was every probability of a deficit in the Cape accounts for the year. By clause 119 the interest on public debt was made a first charge upon the revenues of the Union and not a second charge as was originally proposed by the Finance Committee. If any discrimination were to be shown in the Constitution it was felt that it should be in favour of the creditors who held Bonds as security for the money they had lent, but the clause was regarded merely as a formal recognition of the rights of Bondholders. On this subject correspondence took place subsequently with the Imperial Government and the London Treasury Officials pointed out that as the British Government had guaranteed

the Transvaal Loans these should have a prior claim on the revenues of the Union. To this request the Convention sent the following reply through the High Commissioner:—"The Convention authorise me to say that when the financial clauses in the Draft Constitution were framed it was clear intention completely to safeguard the rights of Stockholders of various Colonial loans including the preferences enjoyed by the various Stockholders and if the wording of the clauses does not convey this intention there is no objection to making it quite clear. It is impossible to accept suggestion of Imperial Treasury that the guaranteed loans should have priority on general revenue and assets of Union. Holders of non-guaranteed stock will naturally object to preference of guaranteed stock being extended to whole of Union revenue and assets to the prejudice of their securities. The Convention consider objections raised by Treasury can be met by redrafting clauses as follows:—"The debt charges were then given priority and all rights of bondholders secured. The telegram however continued:—"It is not intended to keep separate accounts of the transferred revenue and assets nor can stockholders claim this unless Union makes default in carrying out the obligations imposed by the laws under which loans

were raised. As under the above amendments the rights and securities of all stockholders remain unimpaired it seems unnecessary to discuss the question of the relative assets and liabilities of the Colonies to be united." The points at issue will be made clear by this telegram. It was impossible for the Union to do more than faithfully observe the conditions under which the various loans were borrowed and special security could not have been given to any particular bondholders without an infringement of the rights of others.

Some discussion took place on the provisions in clause 121 to the effect "that the balances of any funds raised at the establishment of the Union by law for any special purpose in any of the Colonies shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided." The object of the clause was to safeguard any public works which had been sanctioned by any Parliament in any Colony and for which the money had actually been raised. It was urged that if the balance of any such fund was paid over to the Union Government it would be within the power of the Union Parliament to divert it from its original purpose and use it in some other portion of the Union. The clause was therefore considered fair but it was thought necessary to

accompany it by an honourable understanding between the several Governments that no fresh financial obligations should be incurred by any Colony between the date of the publication of the Act and the establishment of Union. The several Governments therefore prepared a list of what were considered urgent works which it was understood should be proceeded with and it was agreed that the amounts set down should not be exceeded. To prevent any issue of new loans the Transvaal Government undertook to lend half a million each to the Orange River Colony and to Natal for their immediate necessities and the Convention was cognisant of the agreement which lay behind this clause in the Constitution though no record of it appears in the draft of that document. Some difference of opinion occurred subsequently as to the meaning of the agreement and complaints were made that it had not been entirely observed. These however belong to the political history of the country after Union was accomplished and the reports of the discussions will be found in the Parliamentary Hansard and elsewhere. It is only necessary here to record the fact that an agreement to this effect accompanied the passing of the Section safeguarding the loan expenditure of the respective Colonies so far as actual cash balances were available.

The Harbour and Railway Board provided in Section 126 was naturally the cause of extended discussion both in Committee and in the Convention itself. The Board was felt to be an experiment in South Africa and it was pointed out that elsewhere that experiment had not been entirely successful. Since however the principle had been adopted to separate the Railway accounts from the general revenue and expenditure accounts it was felt to be essential that some authority apart from and independent of the Government should be created which would be empowered to carry the principle into effect. What was in the minds of delegates was probably a kind of "Trust" which should be responsible to Parliament and not to the Government and the Commissioners were therefore secured in the tenure of their offices for a period of five years and their salaries protected. The Commissioners were indeed to some extent subject to the authority of the Government but their conduct it was hoped would be guided by the Constitution and power was given them to prevent the Government from overstepping the provisions of the Act. Whether the plan adopted will prove to be successful remains to be seen and the experiment must stand the test of time.

The next clause 127 which attempts to define the powers and duties of the Board was the

cause of almost endless discussion, of many divisions and of much redrafting until finally it was sent to a special drafting Committee with the instruction that its meaning should be made clear. The Section provides that Railways and Harbours should be administered on "business principles" and much play was made with the phrase and its possible interpretation; the meaning however it was hoped would be made clear by the context and business principles were at any rate not to mean management with the object of winning political support. Further discussion took place over the instruction that the Railways should be so managed as to lead to the "settlement of an agricultural and industrial population in the 'inland' portions of the Union" and the special mention of 'inland' was objected to. The point however was carried. The working of Railways at cost was a principle which has already been referred to and it can only be added that the whole system was by many of the delegates regarded as experimental, the experiment having four years of trial. At the same time it was understood clearly that the principle advocated by the Northern delegates had been accepted definitely and that so far as the Convention was concerned the decision was final.

Section 128 which provided for the creation of a fund for maintaining uniformity of railway rates may seem to belong rather to railways under Company management than to State Railways. Those acquainted with the working of public accounts are aware that "funds" of this kind are as a rule invested in the Government Stocks of the country concerned and are therefore rather in the nature of credits in the public ledger. Such investment is sound enough for it is obviously disadvantageous for a country to go into the market to borrow money while it has at the same time money for investment. The natural investment in such a case is the Stock of the country itself. It was urged however that the creation of such a fund would enable the Railway Department to avoid the violent fluctuations of rates which are so disturbing to trade and would cover any temporary loss which might be occasioned by the granting of low rates to develop any particular area or industry. Under the Public Debt Commissioners Act passed in 1911 this fund will be handed over to the Commissioners for investment upon conditions which will make it available for Railway purposes when required. The same Act covers the balances mentioned in the next Section, 129. These Railway balances are under the sole control of the Board but are invested by the Public

Debt Commissioners under arrangement with the Railway Board.

Quite another branch of State Railway management was dealt with in the next two Sections, 130 and 131. One of the dangers which attend State owned Railways is the influence of Parliament, a fact which is thoroughly well recognised by those who have been associated with the system. It is found that almost every member of Parliament, to whatever party he may belong, will find his constituency interested in some scheme of railway construction. He will go to Parliament with a mandate to use what influence he has to induce the Government to accept the views of his constituency and in such matters a Government will find itself subjected to pressure not only from its opponents but from its friends and often from friends and opponents combined. The effect of the influence of Parliament upon a Government therefore is to lead the responsible minister to prepare such a scheme of railway building as he can carry and further to lead him to weigh the probable effect of his proposals upon the supporters of the Government. It leads in fact to the building of what are called political railways, of which South Africa can offer not a few examples and it leads to the selection of routes which have little to recommend them save the political

influence they gather. The Section referred to was an effort on the part of the Convention to avoid the evils which were freely admitted by all the delegates to exist and it was felt necessary to create some impartial authority which should stand between Parliament and the Government and protect the Union from illjudged expenditure upon railways which were not warranted by the conditions of the country. In the Constitution therefore authority is given to the Railway Board to examine into all proposals for railway construction and it rests with the Board either to recommend or refuse to recommend any such expenditure to Parliament. In the event of a recommendation being given Parliament may grant or refuse to grant the necessary authority but in the event of the Board withholding its consent then Parliament can only construct the line under certain conditions. The Board will prepare an estimate of the loss on the working of such a line and of the interest charges and this estimate must be examined by the Auditor General. This loss must then be voted by Parliament and must be defrayed from the general revenue and the Treasury must provide for it in its estimates of expenditure. Parliament must in fact relieve the Board of all responsibility and the Government must provide for the loss by im-

posing the necessary taxation. The working of this experiment will be watched with some interest and if the Board has the courage to exercise the powers which the Constitution gives it, the result cannot fail to be beneficial.

It is not, however, only in capital expenditure on railway construction that the influence of Parliament is dangerous. There is equal danger in the constant demand of Parliament for lower railway rates, passenger fares and the rest. Members will ask for lower rates for the articles produced by their constituents and frequently a combination of members from both sides of the House will voice a demand which it is extremely difficult for any Government to resist but which may have a disastrous effect upon the Railway revenue. It was sought, therefore to protect the Railway Department against inroads of this kind by a similar provision to that explained above. In the event of Parliament by means of resolution forcing the Department to act in opposition to the recommendations of the Board then again the Government is called upon to provide and the Parliament to vote the money required to make good the loss which the action of Parliament has brought about. In fact, some sort of a bulwark has been erected and it remains to be seen whether it will stand the wear and tear of Parliamentary life.

The clause providing for an Auditor General led to much discussion over details and there were differences of view between the Transvaal delegates and the Cape delegates who advocated opposing opinions. The whole subject was, however, dealt with in the Audit Act passed during the first Session of Parliament and the Convention satisfied itself with making temporary provision.

The final clause of the Chapter on Finance and Railways gave rise as can easily be imagined to many days discussion, to many amendments and many references backwards and forwards to the Committee. Little has been said here of the question of the choice of a capital for the Union and the subject must have its chapter, it was that question, however, which prompted the suggestion that existing capitals should be compensated if they lost their status by missing election. It was felt that delegates would be more free to give an impartial opinion if they knew in any case their own capital if not chosen would be compensated to some extent for material loss. The money grant too would soften the blow to prestige. It was undoubtedly felt also that the existing capitals that were passed over would suffer financially since they would no longer be seats of government and centres where large numbers of public officials

must necessarily be congregated. Many of these officials would certainly have to be removed to the Union Capital, their houses would be empty and the town revenue would suffer by the loss of their contribution to the local rates. Trade would also suffer, property would fall in value and great inconvenience might be caused unless something were done to make good the loss which a change would certainly bring about. Various suggestions were made as to the nature of the compensation, its period and other conditions and finally though the principle of compensation was accepted by the Convention the details were left to be considered after the site of the capital itself had been fixed. When this was done it was agreed that in the case of Maritzburg and Bloemfontein a grant of 2 per cent on the total town debts as existing on the 31st January 1909, should be made for a period not exceeding 25 years. With regard to Cape Town and Pretoria opinions differed but it was eventually decided that the Financial Relations Commission should make an investigation into any loss sustained by them owing to the change and that if loss were proved a sum not exceeding 1 per cent. of the town debts should be granted for a period not exceeding 25 years. As a further limit to the period of the grant the Government was empowered to make

enquiry after 10 years as to whether the grants should be withdrawn or reduced. In any case half the grant was to be used for the purpose of reducing the debts of the towns.

Another financial provision of importance was made with respect to any Native Territories administered by the Union and these appear in Sections 12 and 13 of the schedule to the Act. It was provided that all customs duties upon goods consumed in the territories should be paid into the Union and that for the purposes of administration the Treasury should pay out annually a sum equal to the average of the customs received to the three previous years. In the event of a deficit in the accounts of any Territory the surplus of any other Territory may be used, and any subsequent surplus shall first be applied to extinguishing such deficit.

A railway point of great importance to the Union also falls to be dealt with under this chapter, namely that of the relations between the Transvaal and Delagoa Bay. These relations dated from the pre war days when the Transvaal Republic was endeavouring to provide itself with a seaport outside the range of British influence. Partly owing to that fact, partly to the fact that by many people in the Transvaal Delagoa Bay was regarded

as the natural port of the country and partly in return for permission to recruit native labour for the Gold Mines in Portuguese Territory, the Transvaal Republic had entered into a treaty with Portugal securing to the Portuguese port and railway a large portion of the Transvaal trade and securing to the Transvaal a supply of native labour. The agreement had always excited violent opposition in South Africa for it was felt that the Transvaal trade was being improperly diverted from the ports which had hitherto served it and the grievance was being ventilated continually in the Parliaments, on platforms and in the press. After the war when Lord Milner assumed control of the civil administration it was hoped that the Portuguese Treaty would be brought to an end. Lord Milner, however, found himself in a difficult position. He was extremely anxious to get the mining industry of the Transvaal restarted so that the financial drain on the Imperial Exchequer might be relieved and the thousands of persons who were unemployed be put in a position to earn their bread. The controllers of the Mining Industry were equally anxious to restart work but they urged upon Lord Milner that without a guaranteed supply of native labour they could not go on. It was under this pressure that Lord Milner consented

to revive the agreement with Portugal as a temporary measure and when the Convention met the agreement was still in force. A step further, however, had been taken and negotiations had been completed for a ten years treaty with Portugal on the old lines. This treaty had not been signed and General Botha said it would not be signed until the Convention had had an opportunity of considering it and the respective Colonial Governments had agreed to it. General Botha's position, however, was that the Treaty was necessary to the mining industry. The Transvaal, he reminded the Convention, had recently commenced to repatriate the Chinese labourers and within a short time the mines would be dependent entirely upon native labour and he could not consent to jeopardise the mining industry, nor could South Africa. At present it was the mainstay of the country and though later agricultural activity would place South Africa in a stronger industrial position the immediate necessity demanded that the supply should be maintained at all costs. He regarded the treaty with Portugal as essential and he put it to the Convention to assent to it. This view was endorsed by the other Transvaal delegates and it was known to be the view not only of the mining industry but of the commercial men in the Transvaal. It was, how-

ever, a difficult pill to swallow that a treaty should be entered into for ten years alienating a part of the trade of South Africa from British ports to a foreign port. The whole matter was therefore, referred to the Committee on Finance and Railways and after prolonged discussion this Committee reported on January 28th as follows:—"Your Committee having had under consideration the 'Modus Vivendi' between the the Transvaal and the Portuguese territory of Mozambique, the draft agreement in modification thereof and the division of the balance of the traffic between the coastal colonies, and not having arrived at a decision thereon, decided to refer the matter to the Prime Ministers of the several Colonies represented at the Convention." The Prime Ministers arrived at an understanding which was embodied in an agreement which was not mentioned in the first draft of the Constitution in which the clause read "All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve upon the Union at its establishment." The clause therefore, sanctioned the agreement between the Transvaal and Portugal and this became binding on the Union as a part of its Constitution.

The subsidiary agreement of which mention is made above divided the Transvaal traffic as

follows:—Delagoa Bay 50 per cent., Natal 30 per cent. and the Cape ports 20 per cent. There was great division of opinion, and on behalf of the Cape ports Sir Edgar Walton made a strong protest both then and later when it was desired by Natal to embody the subsidiary agreement in the Constitution. The Convention spent several hours over this question and it was one which has since been the occasion of endless difficulty and trouble. It is an agreement which cannot continue, but unfortunately it is so inter-mixed with political considerations and with the voting power of certain localities that its final adjustment seems to be as far off as ever. The proposal at any rate that this agreement should be embodied in the Constitution was not carried and instead a few words were drafted by the President in which the agreement was formally recognised and as far as practicable was to be carried out.

As relating to this chapter also it is necessary to record that a discussion took place on the question of the Ocean Mail Contract and on the Ocean freights generally. The tone of the discussion was opposed to the deferred rebate system then in force in the South African Shipping Trade and in favour of an open freight market, while strong resentment was expressed at the proposed increase of ocean freight on

South African mealies. The question having been referred to the Finance Committee the following report was brought up at Bloemfontein on May 11th:—"Your Committee having considered the question of oversea freights and the Ocean Mail Contract are of opinion that in reference to the threatened increase of the export rate for maize the Agents General should be instructed to suspend all negotiations on the Mail Contract until the Constitutional deputation reaches London, and that the Conference Lines be informed that if the maize rate is raised in the meantime such action will be considered as unfriendly by all the South African Governments." This report was adopted and so far as the Convention was concerned the matter ended there. It was hoped that on the visit of the Prime Ministers and others to London some satisfactory understanding might be arrived at. It will be seen that the views expressed during the Convention found more formal expression later in the Act of Parliament passed by the Botha Government in 1911 in which the system of deferred rebate was dealt with in special clauses of the Post Office Act.

With trade generally the Convention was little concerned. "Trade will look after itself if you let it alone" seemed to be the feeling of those members experienced in commercial mat-

ters and trade at any rate needed no special protection in the Constitution. On the meeting of the Convention in Bloemfontein however Sir Frederick Moor gave notice to move a new clause:— "Subject to the continuance of all laws in force at the establishment of the Union until repealed or amended by Parliament there shall be absolute free trade throughout the Union." This proposal was referred to the Finance Committee which suggested a clause securing freedom of trade and maintaining the laws relating to Customs and Excise until altered by the Union Parliament. There was some brief discussion, some members regarding the clause as unnecessary since freedom of trade throughout the Union might be taken for granted and existing laws were dealt with in another section. The amended Section was however agreed to and appears as 136 in the Constitution Act. Sir Frederick Moor also gave notice of a resolution in favour of counteracting customs duties in the case of bounty fed articles but the motion was not put and the matter must in the ordinary course come before the Union Parliament.

The final discussion of the Convention created some amusement and arose out of a resolution moved by General Smuts to this effect:— "That the question of the exercise of further

expenditure on capital account and on borrowing powers by the several Colonies be left to the Prime Ministers." The proposal was hotly resented by Mr. Fischer who said that as Prime Minister of the Orange River Colony he was responsible to his Parliament and could not possibly undertake to be influenced in his duties by the opinions of the Ministers of other Colonies nor could he agree even to consult them. Sir Frederick Moor held the same view and General Smuts dropped the proposal with a suggestion of burnt fingers.

CHAPTER X.



THE DIVIDED CAPITAL.

IT IS not too much to say that if the other questions which have already been dealt with loomed largely in the eyes of both the delegates and the General Public that of the selection of a capital for the Union was felt to be one which might decide the votes of a large and possibly an essential section of the South African Electorate. On the question of Union or Federation, the language question, the representation in Parliament of the different Colonies, and the Native Vote, strong opinions would be held and without a settlement of these the Union would at any rate have been incomplete. Putting aside the language question a partial union might have been brought about if either of the two had led to disagreement. With regard to the question of the capital however it was known that both the Cape and the Transvaal regarded their claims as predom-

inant and it was feared that the disappointed Colony might refuse to join the Union, a refusal which would have been fatal to the cause of union in South Africa. The arguments used on both sides found expression in the public press at the time and they were vigorously upheld both in the Transvaal and in the Cape. On behalf of the Cape claim to have Capetown as the Capital it was urged that the Cape was the mother Colony in South Africa and Capetown the first white settlement with which were associated the earliest historical incidents of the country. It was from Capetown that the pioneers had gone who had settled and colonised South Africa and carried civilisation to the Zambesi and beyond. In Capetown were to be found the original records of South African history and it was to Capetown that South Africans looked as their chief city. Capetown too claimed to be the centre of learning and of culture and it was to Capetown that the well-to-do South African most frequently resorted as a residence for his closing years. Capetown was the centre of Government of the greatest of the Colonies and possessed at hand the machinery for administration and it was in Capetown that the first Parliament had sat. The natural beauties of the Cape Peninsula were urged as an additional reason for the choice as capital

and it was truly said that if Capetown was chosen the Union would possess a capital city which might rank in natural beauty with that of the first cities in the world. With Cecil Rhodes it had always been a strong point that Capetown should be the first and capital city of South Africa and with that idea in his mind he had made the magnificent bequest of his house at Groote Schuur as the residence for the Union Prime Minister while the estate itself was also given to the people. Another point in favour of Capetown was the fact that it was the nearest South African port to Europe and the natural port of call for all vessels passing the Cape. In fact Capetown put up an exceedingly strong case and, so it was urged in the Convention, it had as compared with Pretoria the additional advantage that it was remote from the influence of a mining centre such as that of the Rand and would not be liable to the possible corruption which might otherwise infect the Government of the country. Its officials would not be brought into close and continual contact with men of great wealth and with a style and plane of life which was impossible to men with the moderate incomes which a Government can only pay to its officials. The argument was also used that the cost of administration in Capetown would be far less than in Pretoria, living

would be cheaper, salaries would consequently be lower, the cost of buildings for public purposes would be less and from the point of view of economy the argument was all in favour of Capetown.

The Transvaal case however was put with equal force. The Transvaal was making enormous sacrifices in order to bring about Union. It was the only Colony in South Africa whose finances were in a flourishing condition and the people of the Transvaal knew that on entering the Union they would take upon their shoulders the financial burdens of the country. They would be relieving the Cape taxpayer and would probably have to bear heavier burdens of taxation themselves. Were the people of the Transvaal to give up everything and to get nothing in exchange? In addition to the great financial sacrifice they were making were they also to part with the capital and with all control over the enormous assets they handed over? What sort of a figure, it was asked, would the Transvaal delegates cut if they went to their people with such a proposal, if they went back to them naked and stripped and had to confess that all had been handed over to the Cape? And what kind of a response were they to look for if they asked their people to accept Union upon such terms? The Cape it was said

was doing very well out of the Union. It was getting rid of a financial burden which its people were beginning to find intolerable and was putting it on the shoulders of the Transvaal. Let the Cape be content with that advantage and not seek by asking too much to ruin all. In answer to the argument that the Cape was the historical capital of the country it was urged that the natural capital had moved. It had been attracted to the North by the mineral development and by the advantages which the north offered to men of brains and energy. Already the best men in South Africa had gone to the north for it was only there that they reaped the full return for their talents and enterprise. The intelligence and enterprise of the country were already centred on the Rand and it would be an enormous advantage to the country if its capital were placed in the keener intellectual atmosphere of the Transvaal. The people of the Transvaal in fact felt that the capital of the country should be situated in that Colony and it was feared that they might not accept Union under any other condition. They felt as one of their delegates put it in homely phrase that the nearer they were to the fire the warmer they would be and they believed that under the circumstances they were entitled to the privilege of being near the capital.

Since the opening days of the Convention the subject had been in the minds of delegates and they seldom met in private without discussing it, sometimes warmly enough.

“Did the Transvaal think it could buy South Africa or frighten people by shaking its money bags in their faces?”

“Did the Cape realise its position and know that it could not pay its sinking fund and was going deeper into debt every year?”

“Did the Cape know that unless Union was carried it would be in a far worse position than it was to-day?”

And so on ad infinitum. The argument in private was reduced in plain terms to the statement that if Capetown were not made the capital the Cape would not join and if the capital were outside the Transvaal the Transvaal would not come in. Nor was Bloemfontein out of calculation. “My position” said Mr. Fischer in the Convention “as representing the Free State is simple enough and I will state it frankly, it is that while the big dogs are quarrelling over the bone the little dog may slip in and capture it and that Bloemfontein may be chosen as the capital.” And Mr. Fischer grew eloquent on the natural advantages of Bloemfontein and on its central position so easily reached by all. Natal was out of the running,

Maritzburg was not central, it was not easy to reach and it was understood that the Natal vote in the Convention would go for Pretoria though the Natal delegates did not commit themselves. The counting of heads began early in the sittings. The Cape had twelve votes. The Transvaal had eight and with the Natal five could reckon on thirteen all told. The Free State therefore held the balance of power and the Free State had very natural ambitions for Bloemfontein. Compromise did not seem easy and private consultations led to no satisfactory result. On December 8th General Botha gave notice in the Convention:—"That it is desirable for the Convention to settle the Capital of the Union and that the discussion of that matter be proceeded with as soon as the proposals in regard to the Judicature have been disposed of." The notice was reached on the following day and General Botha pointed out that it was unwise to leave the question longer in abeyance. It was occupying the minds of the delegates to the exclusion of the work in hand and it should be settled and got rid of. He hoped it would be settled in such a way as not to make the acceptance of the Constitution difficult. Mr. Merriman hoped so too and ventilated his views as to the demoralising influence of Johannesburg. There was a sharp little debate during which

Mr. Merriman was replied to by Transvaal delegates and the motion was carried. Mr. Fischer then moved:—"That a Committee consisting of the President and one member from each Colony, to be nominated by the respective Prime Ministers, be appointed to report as to the procedure to be followed by the Convention in deciding as to the capital of the Union and that the report of the Committee be considered after the resolutions on which the Constitution is to be based shall have been settled." To this resolution Sir Percy Fitzpatrick moved an amendment to leave out the postponing sentence at the end of the resolution. Mr. Fischer however argued that the Convention had been called to draft a Constitution and not to decide such details as the site of a capital. This however important it might be to South Africa and however much interested some of the delegates and people outside might be in the final decision was a detail and it might even be left to the Union Parliament to decide. General Botha however insisted that it was essential that the Convention should fix the site and he was opposed to any delay. He wished it fixed at the earliest possible date and he had strong reasons for urging the point on the Convention. The Cape delegates replied that they saw no harm in the delay and after all the basis of the

Constitution was the essential thing. Sir Percy Fitzpatrick called for a division and was supported by all the Natal delegates and by the Transvaal delegates with the exception of General Smuts so that the amendment was defeated by 18 votes against 12. The debate was then adjourned until the following day and on its resumption there was a change of feeling. The Transvaal delegates had urged their view privately and given reasons for pressing for a settlement at the earliest date. Private meetings among the delegates were already taking place and a Committee room had been assigned to each Colony for the use of its delegates. In these Committee rooms the Capital question formed the subject of grave debate at frequent meetings and since the Transvaal delegates pressed their point it was agreed that no opposition would be offered to the withdrawal of the words objected to by Sir Percy Fitzpatrick's amendment. On the meeting of the Convention therefore next morning Mr. Fischer withdrew the words as to the delay in the consideration of the report of the Committee and the resolution was carried. The Committee appointed was:—The President and Messrs. Sauer, Hyslop, Botha and Hertzog.

The members of this Committee reported from day to day to their fellow delegates so that

all were kept advised of the progress or non-progress, and various plans, some of them curious and eccentric enough, were suggested for voting on the question. Here it may be stated that though all the Cape delegates were prepared to vote for Capetown as the Union Capital some of them did not regard the question as of vital importance. It was true that if Capetown were not selected there would be opposition from the Cape Peninsula when the Constitution came to be considered but on the other hand if a more central and convenient site than Capetown were selected the great mass of the people of the Cape Colony would not regard that choice as a serious blot on the Constitution. From the point of view of centrality and convenience both Capetown and Pretoria were equally out of the question.

After frequent deliberations extending over a week the Committee brought up its first report, a document which fairly represented the feeling of the Convention on the subject. The report stated that:—"The Committee have experienced very considerable difficulty in arriving at a decision, and as one of their members has now left for recess they consider that it would not be advisable to vote upon the Capital before the adjournment. The Committee therefore recommend that they should be

authorised during the recess to continue their labours and to report immediately after the adjournment. In the meanwhile they would suggest that the Prime Ministers should during the interval seek to come to some arrangement between themselves as to the site of the Capital or, failing such arrangement, as to the mode in which the decision thereon should be arrived at."

This report could not be said to hold out much hope and the President confessed that he feared the Committee would be unable to come to any decision which the Convention would accept. He would however on his own behalf throw out a suggestion which if adopted might lead to a solution and if agreed to he would move as an unopposed motion:—"That the Capital of the Union shall be at such place as an impartial Commission of three men not being residents in South Africa appointed by His Majesty the King shall after full examination of the claims of the different Colonies and of the merits of the different Colonies, fix and determine." General de la Rey objected to this being taken as an unopposed motion and it was then agreed that the consideration of the report should stand over until after the Christmas recess.

On Friday December 18th the Convention adjourned until Monday January 11th and two

days later Colonel Greene gave notice to move a further resolution to the effect that:—"Should the existing Capital of any Province be selected as the Capital of the Union, the Provincial Capital shall be located in some other part of the Province." This notice remained on the table and on January 18th the Committee having had frequent meetings again reported. It may be mentioned that though the Prime Ministers had met they had arrived at no understanding save that mutual agreement seemed to be out of the question. The second report of the Committee reads curiously as follows:—"It was proposed by General Hertzog that the method of voting for the Union Capital should be" and then follows the suggestion. First that the Convention should first decide in which Colony the Capital should be. The Colony should be selected by ballot, each member of the Convention having one vote. At the first vote the Colony having the smallest number of votes would fall out and a second vote be taken and so on till but one remained. It would however be open to any Colony to challenge the vote so given and thereupon a fresh vote between the two Colonies only should be taken.

The report continued:—"General Botha proposed that the procedure should be as follows:—" and General Botha's suggestion is

given. It followed closely on that of General Hertzog save that it provided for a decision by a vote of the Convention in case of equality between the votes obtained by any two of the Colonies and it did away with the final vote proposed by General Hertzog.

The report of the Committee concluded:—
“Two votes were given for General Hertzog’s proposal and two for General Botha’s and in view of this equality it was decided that, rather than call upon the Chairman to give his casting vote, it should be left to the Convention itself to decide between the two proposals or if need be to propose some other mode of procedure.” It may be said that these proposals had already been discussed among the delegates privately in their Committee Rooms and that considerable objection was taken to both of them. Some days passed without any further discussion in the Convention and without any decision or agreement being arrived at outside. There was talk of settling the dispute between Capetown and Pretoria by selecting a more central spot and the claims of Bloemfontein seemed to grow in importance and the hopes of the Free State delegates more rosy. Kroonstad was mentioned as a centre with a good water supply. Parys on the Vaal River was commended for its beauty, Potchefstroom, Mafeking, Fourteen

Streams and other places were mentioned and it was remembered that the Mayor of Queens-town had addressed the Convention pointing out the advantages of that centre. The tangle was growing more tangled and the Convention was already at work revising and redrafting the Constitution. Its main labours were complete. On January 21st however Colonel Greene moved:—"That the report of the Committee on the Union Capital be considered tomorrow" and this was agreed to. It was the afternoon before the motion was reached and ex President Steyn rose to move that:—"The decision as to the future Capital of South Africa shall be left to the Union Parliament." Mr. Steyn said that so far as he could gather they were as far off an agreement as ever for none of the claimants were prepared to withdraw their claims. The question was introducing into their deliberations an undesirable feeling and was endangering the results of their work. The proper body after all to decide this question for South Africa was the Parliament of South Africa and in his opinion it was not a subject which should be dealt with in the Constitution.

General Botha objected to the motion on the point of order since it rescinded a resolution previously carried. The President supported

the objection and pointed out that on December 9th the Convention had passed a resolution to the effect:—"That it is desirable for the Convention to settle the Capital of the Union." Further delay was suggested and negatived and General Hertzog then moved that his plan be adopted and General Botha made a similar motion with regard to his proposal. After discussion the debate was again adjourned and was resumed on the following morning and occupied the whole day without however bringing the delegates any nearer to an agreement but rather the reverse. Another adjournment took place to January 25th but the subject was not reached until January 26th late in the afternoon when after a brief discussion General Botha withdrew his proposals and the debate was again adjourned. On the resumption of the debate next day General Hertzog also withdrew his proposals so that the Convention had nothing before it but the confession of its Committee that it could make no acceptable suggestion and the bare resolution that it was desirable that a decision should be arrived at. On General de la Rey's motion the subject was then postponed for two days and it really seemed as though the only possible settlement would be to select neither Cape Town nor Pretoria and General Botha asked the delegates

seriously to consider Parys though if the capital were not in the Transvaal he despaired of obtaining the support of the Transvaal people to the Constitution. When the subject was reached on Friday January 29th a further adjournment was necessary.

The few days adjournment had given time for reflection. It was clear that neither Cape Town nor Pretoria could hope to win the whole prize and it was a natural solution, worthy of consideration at least, to see if they could not arrange to divide it and how. The caucus meetings of the delegates threshed out the pros and cons. The plan was not new, capitals had been divided before and in the Transvaal in the early days a similar arrangement had been come to. It might be inconvenient but it was better than having no union and it was better for Cape Town or Pretoria to have half the capital than to have Union and no share of the capital at all. If then a division was to be made how should it be made and the caucus of each Province went to work to weigh advantages. Was it better to get the Parliament which would certainly sit for half the year or to ask for the seat of administration which would mean the residence of hundreds of officials? On this point fortunately there was but little difference of opinion. The majority of the Cape delegates were for getting

the Parliament since it was felt that Cape Town would be a preferable place to Pretoria for members of Parliament and it was after all the nobler part. The seat of the Parliament would be in the eyes of most South Africans the real capital of the country and from the Cape Town point of view the advent of the members of Parliament with their families would constitute a Cape Town season and bring other visitors to swell the population, fill the houses and buy in the shops. The Transvaal caucus seemed also to have little difficulty in selecting the administrative work for Pretoria. In any case Pretoria would not have been popular as a meeting place for Parliament and there would have been danger of an adverse vote when the Union Parliament was called upon to spend its first Session in the Northern Capital if indeed it could have been housed at all. The gulf therefore was thus happily bridged and as soon as the news became known there was an obvious feeling of relief in the Convention. The hopes of the Free State delegates were no doubt dashed and for a time their chances had seemed more than good. Still they could console themselves with the reflection that they could hardly have hoped under the circumstances for a vote in their favour at the Convention, whatever might have been their prospects had the decision.

been left to the Union Parliament. On Saturday afternoon January 30th Mr. Merriman moved:—"The seat of the Executive Government of the Union shall be at Pretoria and the sittings of the Legislature shall be at Cape Town." To this General Botha moved as an amendment:—"Pretoria shall be the capital and the seat of Government of the Union; the Sessions of Parliament shall, however, be held in Cape Town." The dispute had now got down to the phraseology and General Botha sought for comfort from the use of the blessed word capital. Cape Town, however, had not yet abandoned all hope and in the person of Mr. Jagger made a final effort, more perhaps as a despairing struggle than with any expectation of securing any support in the Convention. Mr. Jagger moved that the Capital should be either one of the existing capitals as the electors of the Union might decide and that in the meantime Parliament should meet at Cape Town. It may perhaps have been well for Cape Town that Mr. Jagger's proposal met with little support. The discussion was again adjourned until Monday February 1st when General Botha expressed his willingness to withdraw the offending word "Capital." Some further confusion was then caused by Mr. Hull moving that the Union Capital should be at some place on the Vaal

River as Parliament should decide and that in the meantime the seat of Government be in Pretoria and Parliament sit in Cape Town. Mr. Hyslop moved Maritzburg as the Capital and his remarks were hardly treated as seriously as he spoke them, while Mr. Sauer professed his willingness to support Mr. Hull if he left out his reference to the Vaal River. It is to be feared that the Convention was growing flippant and Mr. Hull withdrew his proposal while the debate was again adjourned until the following day, the last but one on which the Convention was to sit in Cape Town. On February 2nd, happily peace reigned again. The Transvaal and Cape delegates realised that verbal triumphs were unworthy of the occasion and the whole of the motions and amendments were withdrawn with the exception of that moved by Mr. Hyslop in favour of Maritzburg. This was negatived without a division and two new clauses were introduced. The Section 8 in the Act was made to read:—"Save as in Section 23 excepted Pretoria shall be the seat of Government of the Union" while Section 23 read:—"Cape Town shall be the seat of the Legislature of the Union." Colonel Greene's proposal that the Provincial Capitals should be elsewhere than in either Cape Town or Pretoria was put and defeated and the great fight over

the Capital was over so far as the Convention was concerned. It was practically the last act of the Convention and on the following day the members were at work attaching their signatures to the English and Dutch copies of the Draft Constitution.

It has been often said that the arrangement arrived at with respect to the capital cannot stand and that the Union Parliament before long will be compelled to alter it. It would be profitless to discuss such possibilities but it only remains to be said that so far as the Convention was concerned the agreement was regarded as an honourable and binding understanding to be honourably observed by all concerned. If the plan will not work then the Union Parliament will no doubt take steps to alter it, but it must at least be given a fair and honest trial and possibly if the plan is altered neither Cape Town nor Pretoria will be selected as the Capital of South Africa.

CHAPTER XI.

THE PUBLIC SERVICE.

THERE was one section of South Africans awaiting the outcome of the Convention with deep interest and that was the Civil Service. The Section is numerous in South Africa since the State owns the railways and harbours and these are responsible for the employment of large numbers of men. There were many problems connected with the public servants on entering union and some of them it was hopeless to attempt to settle at the Convention; what however, it was imperative the Convention should do was to lay down some general principles to be embodied in the Constitution. In the first place it was necessary to assure all public servants of the protection of their rights as they existed at the date of Union. There must be no interference with those rights to the disadvantage of the civil servants. That was comparatively easy but what was not easy was to bring

about some equality in the treatment of officials throughout the Union. The position indeed was extremely awkward. The Cape for many years had been the training school for the Civil Service of South Africa. The public service of the Transvaal had been largely recruited from the Cape and this had been specially the case since the war. During Lord Milner's administration he took many hundreds of men for all branches of the service and he paid them at rates calculated to tempt them from the more moderate incomes obtainable at the Cape. All these men were therefore receiving higher pay than they would have done had they remained in the Cape and under any circumstances it would have been difficult to bring about a parity between their positions and emoluments and those of their former colleagues.

That was not all. Dark depression settled upon the Cape after the war and the public servants suffered in sympathy with the rest of the community. Not only were increases of pay stopped but promotion was at a deadlock and the Service was reduced heavily in all its branches. Allowances previously made to married men were withdrawn and every resource of economy was practised in regard to the service. Elsewhere in South Africa this had not been the case. Men had received regular

increases of pay annually, promotion had been steady and the position of the men in the service had improved. There was no longer any comparison between the two services in point of pay and in a large number of cases men who had left junior positions in the Cape to take service in the Transvaal were receiving far higher pay than the seniors they had left behind. From the Union Service point of view they were still juniors and the position was altogether anomalous. The pay of men could not be reduced and if in the interests of any Department it became necessary to move a clerk from the Transvaal to Cape Town he would be in receipt of higher pay than the seniors in the same office. Clearly that position could not be rectified at once and it would take many years to co-ordinate the Union Public Service and put it on a satisfactory footing.

Though informal discussions had taken place from time to time in the Convention no definite step was taken until December 10th when a Committee was appointed to deal with the Civil Service and other points. The Committee consisted of Messrs. Merriman, Jameson, Morcom, Smythe, Smuts, Fitzpatrick, Steyn, Hertzog and Michell. On December 14th the Committee brought up its report on the Civil Service as follows:—

- I. "All officers of the Public Service of the several Colonies shall at the establishment of the Union become officers of the Union. As soon as possible after the passing of the Act of Union the Governor General in Council shall appoint a Civil Service Commission, consisting of not more than three persons, to make recommendations for such reorganisation and readjustment of the departments of the Public Service existing in the several Colonies as may be necessary. They shall also make recommendations in regard to the transfer to each Province of such officers as may be necessary for the proper fulfilment of the service assigned to it.
- II. After the establishment of the Union and subject to the provisions to be made by Parliament in that behalf there shall be a permanent Civil Service Commission, the members of which shall be appointed from time to time by the Governor General in Council, to carry out all laws and regulations governing the appointment, retirement and superannuation of public officers, and in particular to make recommendations for the appointment of persons to public offices and for the retirement of public officers consequent upon abolition of office or reorganisation of departments.

- III. Any officer of the Public Service of the several Colonies who is not retained in the service of the Union or of a Province shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Union had not been established.
- IV. Any officer of the Public Service who is retained in the Service of the Union or of a Province shall preserve all his existing and accruing rights and shall be entitled to retire from office at the time and on the pension or retiring allowance which would have been permitted to him by law in like circumstances if the Union had not been established.
- V. The services of no such officer shall be dispensed with by reason solely of his want of knowledge of either the English or the Dutch language.

On the motion of Mr. Steyn it was agreed that the report should be considered on the following day—and a lengthy discussion followed. The object of the delegates was not only to protect the Civil Servants of the Union but also to protect the public and the public purse. It was realised that in carrying out an operation of such magnitude as the establishment of Union in South Africa would necessarily be, it was

essential to take every possible precaution against irregular and improper appointments and to prevent favouritism in dealing with the public service. The report, therefore recommended that as soon as possible after the passing of the Act of Union a Commission should be appointed to make recommendations for reorganisation and readjustment in the service and for the transfer of officials to the Provinces. The resolution No. 1. was passed with the omission of the words limiting the number of Commissioners to three. The object of the Committee apparently was to have a Commission appointed prior to Union so that any incoming Government should have certain recommendations laid before it on taking office. The Convention, however, amended the reading of the Section and in point of fact the Commission was not appointed until some time after the Government had taken over the Union and after many appointments had been made. All Governments are subject to the criticism that in the appointments they make they are influenced by considerations other than the good of the public service. No Government probably escapes such influence however it may be resisted. Political friends and supporters press claims for employment and ministers are continually compelled to give offence unless

protected by a stringent Civil Service Act. In the Cape such an act was in existence but no protection yet existed for the Union and there would be a wide and open field for every kind of irregularity. The other clauses were passed with slight amendments and were further amended during the redrafting of the various resolutions. As they stand of course they are just of so much service as the Government of the day cares to make of them and the country would be prepared to place a liberal construction upon the acts of Ministers suddenly called upon to create the machinery for the Union administration. Appointments would have to be made promptly and work would have to be arranged for and if the Commissioner's recommendation were not ready Ministers would have to act without it. In point of fact the provision has proved of little value in controlling the Government in respect of its appointments many of which have been much criticised and the only true solution of the problem must be found in an act of Parliament which will lay down definite rules for the guidance of the Government in making its appointments to the Public Service. The creation of such a service must be the work of time in South Africa though the country has the advantage of being able to draw upon the excellent services in existence in

the several Colonies. The Cape especially had a service of which it could reasonably be proud. It had attracted to its ranks men of character and education and had of itself built up traditions which make for efficiency and honesty in public life. The service had grown to be a factor in the Government of the country and the opinion of leading civil servants was sought by all Governments in framing a policy or embarking upon new legislation. Much of the legislation indeed emanated from the Civil Service itself and as a whole it commanded the respect of the country. Though large powers were necessarily entrusted to these officials they were seldom abused and the traditions of the Service itself were a safeguard to the public. If the public service of the Union is built up on the lines of the Cape Service it will be a fortunate thing for South Africa and though much may depend upon the action of the first Government of the Union yet the character of the service will depend upon the Act which may be passed by Parliament. This is not the place to deal with criticisms which have already been levelled against the Government for appointments they have made and for reorganisation carried out without any recommendation from the Commission. Those are matters which must be threshed out in Parliament when

Ministers will have the opportunity of justifying their action. So far as the Convention was concerned it protected the rights of those in the Service of the several Colonies at the time of Union and laid down what it considered a safe line for the Government to follow until Parliament had time to deal comprehensively with the whole question. It provided moreover for a permanent public service commission intended to relieve the Government of the day of much onerous responsibility and left Parliament a free hand to define the powers and the duties of such a commission. The Convention could not do more and it will remain for Parliament to take the necessary steps. It is to be hoped that such provision will be made as will attract young South Africans of talent and character and that after entering the ranks of the public service these men will be assured of fair treatment and of that promotion which may be won in other walks of life by ability, energy and devotion to duty. The smooth running of the machine of administration depends so largely on the men who have to work it that Parliament will be wise in taking such measures as that the best men will be attracted to the service and remain in it.

CHAPTER XII.

NATIVE AFFAIRS AND NATIVE
TERRITORIES.

WHILE the Convention had settled the principle that Native Affairs should pertain to the Union Government and not to the Provinces it had not during the first two months of its sittings devoted much time to the general question of Native administration. The discussion on the subject of Native Franchise had served to ventilate the views entertained by many of the delegates but those views were related rather to general principles than to essential details. It had been recognised that there must be one native policy throughout the Union and a co-ordination of the laws relating to Natives. Knowing the people with whom they had to deal the delegates realised that under Union it was impossible that there should be one set of laws, rules and regulations applying to Natives in the Cape Colony, another in

Natal, another in the Transvaal and yet another in the Free State. Whatever the broad lines in Native Policy might be they must be national and not provincial. The Native subject in the Union must be under the same law wherever he dwelt in the Union. So far as the franchise was concerned the Convention had failed to carry that principle into effect and the fact was admittedly unfortunate. No such distinction was possible in the principles to be followed in adopting a Native policy for South Africa and it was essential that the Convention should lay down in the draft Constitution the main principles by which South Africa should be bound in the future. There was another and very important aspect of this question. The Imperial Government held a special and peculiar position in regard to the Natives of South Africa. Native Territories had been annexed to the British Empire, sometimes after conquest and sometimes at the request of the Natives themselves, and these people held themselves to be under the direct rule of the King. In some cases they had been brought within the borders of the various Colonies but even then they were taken over under conditions. It was necessary therefore in considering the question of Native policy and Native administration to remember that the assent of the Imperial

Government would only be given if the special trust it held with regard to the Natives were duly safeguarded. There was also another point. There were Native Territories which were still administered directly by the Imperial Government through Imperial Officers and these were in some cases actually within the borders of the Union. It was certainly desirable that these Territories should be included in the Union for administrative purposes and it was hardly probable that they would be so included unless the Natives themselves who lived in those Territories desired to be taken in to the new Government. If the Natives objected the Imperial Government could hardly use compulsion to bring them in nor could it withdraw the Imperial protection except with the consent of the Natives themselves. This fact indeed was made clear to the Convention at an early period of its sittings and it brought home to the delegates the fact that if these Native Territories were to be included as was desired then the Native peoples must find in the Constitution such provision for their protection and for their interests that they would be induced of their own free will to be included in the new State about to be created. Possibly the adoption of the Cape system and Cape Native policy would have had this effect, but that question was

definitely settled and the Convention was brought to the consideration of the wider question by Colonel Stanford.

On December 8th Colonel Stanford moved as follows:—

“Until Parliament shall otherwise decide, the general control and administration of Native affairs throughout South Africa shall vest in the Governor General in Council who shall also exercise all special powers in regard to Native administration hitherto vested in Governors of States and corresponding with or substituted for the prerogatives of paramount chief over and in respect of any independent tribe. Included among the special powers referred to in this Section shall be deemed and taken to be:—

“The Powers as Supreme Chief of the Governor of Natal.

“The powers of the Governor of the Transvaal in succession to the State President as Paramount Chief over all Chiefs and Natives under law No. 4 of 1885.

“The Powers of the Governor of the Cape Colony in regard to the proclamation of Laws in the Transkeian Territories declared by Act 29 of 1897.

“The Powers of control by the Governor of the Cape Colony over the Glen Grey District

Council, the Transkeian Territories General and District Councils and similar Native bodies.

“And all such similar and special powers in regard to Native Administration as shall fall within the true intent and meaning of the Section.

“Provided that the Governor General in Council may delegate to any Provincial Council or to the Administrator such powers as he may deem advisable for the local administration of Native affairs within such Province, and provided further that the powers now exercised by Divisional and Municipal Councils and by Village Management Boards over the Natives within their areas shall continue undisturbed.”

Colonel Stanford gave his reasons for moving his resolution and though he did not press for an immediate decision he wished to place before the Convention the points which he considered it essential for it to deal with after consideration. It was necessary he held for the Constitution to contain some such clauses as he had moved and to make it clear to the Native Peoples that their well being had been cared for and provision made for their protection and good government under the law. The proposals were received favourably by the delegates and after a brief discussion the adjournment of the

debate was moved by General Smuts. On December 10th General Smuts moved that the question of taking over the Protectorates and Native affairs generally including the motion by Colonel Stanford be referred to a Committee consisting of the President, the four Prime Ministers, Sir Lewis Michell and Colonel Stanford. A week later this Committee to which in the meantime other matters had been delegated brought up its report as follows:—

“Firstly in regard to the Protectorates they recommend the adoption of the following resolutions with the understanding that they should be provisional and be subject to modification after the views of His Majesty’s Government thereon have been definitely ascertained.”

“The Protectorates. It shall be lawful for His Majesty, with the advice of the Privy Council, on addresses from the Houses of the Union Parliament, to transfer the Government of any territory under the protectorate of His Majesty, inhabited wholly or in part by Natives, to the Union, and upon such transfer it shall be lawful for the Governor General in Council to undertake the Government of such territory upon terms and conditions embodied in the Schedule of this Act.”

The Schedule may be summarised briefly for it will be found practically intact as the

Schedule to the Constitution Act. It gave to the Governor General in Council legislative powers with regard to the territories provided that all laws should be subsequently submitted and subject to the approval of Parliament.

The Prime Minister was made executive officer to be assisted by a Native Commission of not fewer than three members.

The Commissioners were to hold office for ten years and to be paid a fixed salary and the Prime Minister was to be bound to seek the advice of the Commission before legislating.

If the Prime Minister and the Commission should differ the decision of the Governor General should be final.

Resident Commissioners were to be appointed for each district and in addition to other duties were to prepare estimates of revenue and expenditure by which after approval of the Commission they should be bound.

The Sections relating to finance have already been dealt with in the Chapter on Finance and Railways.

No land was to be alienated from Natives in Basutoland, Swaziland or the Native Reserves of Bechuanaland.

Sale of liquor to Natives to be prohibited.

Pitsos to be maintained where they existed.

No special imposts on the produce of the territories to be levied.

The King to have power to disallow any law.

The discussion on the report afforded evidence of considerable difference of opinion as to the principle embodied in the several sections. It was urged by some members that the power of the Parliament and Government of South Africa was unduly limited and that of the Imperial Government unduly large and that friction would inevitably occur in the administration of the Territories. The Prime Minister of the Union was subject to the Parliament of the Union in all public concerns and in these resolutions it was provided that the Prime Minister might be over-ridden and set aside by the Governor General who under responsible Government was bound to act on the advice of the Prime Minister. In fact under the proposed resolutions the power was taken out of the hands of the Union Parliament and was placed in the hands of Imperial Officials. The people of South Africa it was contended would never tolerate such a condition of affairs under which the opinion of all South Africa might be ignored and set aside. It was however explained that the resolutions as submitted had already been the subject of discussion with the Imperial authorities and that they went as far as these authorities under present circumstances were prepared to go. It was further explained that

there was no probability of any immediate transfer of the territories to the Union and that when the time for that transfer arrived it would be possible to reconsider if necessary the conditions under which the Union would consent to take over the territories. At present these were under direct Imperial management and the Union Government therefore had no responsibility with respect to them. The Natal delegates as may be seen from the division lists strongly dissented from portions of the report and registered their votes against them. Amendments of any kind were apparently considered to be dangerous and Sir Thomas Smartt's proposal in respect to the alienation of land that the words should be added:—"Save for public purposes and in payment of full and adequate compensation" was negatived, though it is obvious that if land were needed for public purposes, such for instance as railways or defence, such alienation would be necessary. The general clause moved by Colonel Stanford was then amended to read as follows:—

"The control and administration of Native Affairs throughout South Africa shall vest in the Governor General in Council who shall also exercise all special powers in regard to Native administration hitherto vested in Governors of

States and corresponding with or substituted for the prerogatives of paramount chief over and in respect of any independent native tribe."

If the intention was so to word this portion of the Constitution as to save possible argument and discussion with the authorities in London it may be said to have been successful. Unfortunately the London authorities could not influence the decision of the Natives and if those who desired to include the territories in the Union at its inception hoped by means of these resolutions to induce the Native Chiefs and people to voluntarily accept the Union and come into it with their people then they must have been disappointed in the result. The wording of resolutions does not greatly interest Native Chiefs as yet and they wish apparently to see how the Union progresses and to understand clearly what coming into it means before they take that important step. The natives may later find it advantageous to come into the Union and when that time arrives it will be possible to consider whether the provisions of the Schedule are the most suitable. In the meantime they must be regarded as representing the views held in London at the time rather than those which prevailed in the Convention. They were the only terms which the London authorities were prepared to grant in view of

the country goes on these views may change and the refusal to accept the Cape Franchise for the whole of South Africa. As the development of a more practicable basis be arrived at. The result of the efforts of the delegates was that the Union took over such native territories only as had already been incorporated into the respective Colonies and that the remainder continued to be administered by the Imperial authorities. The natives themselves were undoubtedly in favour of such an arrangement and the probability is that it will remain in force for a considerable period of time, unless indeed the peace of South Africa should be disturbed by the Natives themselves and a re-settlement of the question become necessary. That is no doubt a point of view which is fully realised by the Native Chiefs in the several territories.

CHAPTER XIII.

MISCELLANEOUS.

THE previous chapters have dealt with the main points discussed by the Convention and it is hoped that they have conveyed some idea of the work done and of the steps by which the ultimate conclusions were arrived at. Of the rest of the work it is not necessary to say much but no record of the Convention would be complete which did not touch on other points raised.

The question of Women's Franchise was discussed on several occasions. It was introduced early in the sittings by a petition in favour of Women's Franchise from Natal and presented by Sir Frederick Moor. This contained 1415 signatures and was followed later by three petitions from the Cape also in favour and signed respectively by 658, 1479 and 181 persons. The petitions in favour were signed therefore by 3733 persons but they were over-

whelmed to some extent by a petition against the innovation signed by no fewer than 7200 women of South Africa. It would seem therefore that the majority of the women were opposed to the granting of the franchise. On December 14th Sir Frederick Moor gave notice to move:—

“That provision be made in the Constitution for extending the franchise to women of European descent.” The mover broke little new ground in his remarks and the debate which ensued followed very much the accustomed lines. The motion had a strong opponent in Mr. Merriam and in some of the fathers of the people present but it was not without supporters and its advocates put up so good a fight that the debate had to be adjourned. On its resumption next day General Smuts moved as an amendment:—“That it be an instruction to any drafting Committee that may be appointed to make it clear that Parliament shall have the power by a bare majority to confer the franchise on women of European descent.” General Smuts considered that the question was one which should be decided by the representatives of the people in Parliament and should not be imposed upon the country by the Convention. It was understood that he himself was favourable to the proposal. Colonel Stanford, how-

ever, pointed out that in the Cape there was no colour bar in the franchise and that the Convention had already recognised that principle so far as the Cape was concerned. The principle must therefore in common justice stand good if women received the vote and he moved as an amendment to the Clause proposed by General Smuts:— To omit the words “of European descent.” A sharp debate followed and as may be imagined Colonel Stanford’s amendment opened up new and alarming vistas to some of those present. As the Convention was then on the eve of adjourning for the Christmas recess the debate was again adjourned until January 11th. When the Convention returned to the subject Sir Frederick withdrew his motion in favour of that proposed by General Smuts who was urged to abandon his bantling and so save the time of the Convention. There was nothing it was pointed out to prevent the Union Parliament giving votes to women if it chose to do so and it was unnecessary to grant permission in the Constitution. There was objection raised to the withdrawal, however, and on the motion of Sir Percy Fitzpatrick the debate was adjourned until after the Drafting Committee had reported. On the following day the advocates of Female Suffrage were brought to see the wisdom of leaving the question to Parliament and the motion was withdrawn.

A resolution passed on the first day of the sitting of the Convention has been much in the mind of the present writer while at work on these records. It was moved by Mr. Merriman and read as follows:—"That after this date the proceedings of this Convention shall be absolutely secret; that no record of any speeches be made, but that records of all resolutions, proposals and amendments and of any divisions thereon be kept." The resolution was carried after a short debate and it was the feeling of the delegates that greater freedom of debate would be secured were no report of the speeches taken. These pages were written from notes taken during the sittings to enable the writer the better to take part in the debates and as has already been explained they cannot claim to be of the character of newspaper reports. The question whether they should be published at the present time could only have been answered in the negative but for the unanimous decision to publish the official minutes. These by themselves are so useless that the decision must be accepted as a justification for supplying the public with ampler records. And this may be said in addition that the reputation of no member of the Convention will suffer from anything which appears in these pages and there was no incident and no speech which could in any way reflect otherwise than creditably upon the delegates.

A point of some little importance too was the order of precedence for the Colonies. The officials had some difficulty in deciding this always difficult question and if the order had been fixed according to the numerical representation of the Colonies the Transvaal would have followed immediately after the Cape. Natal, however, raised the point that as next in seniority to the Cape the Natal delegates were entitled to the second place and as this claim was not disputed by the Transvaal the question was amicably settled on that basis, the Transvaal being content with third place.

A point too which has given rise to some discussion later is the omission from the preamble to the Constitution of the usual invocation for the blessing of Almighty God in the great step which South Africa was about to take. As will be seen from the official minutes Colonel Greene of Natal moved to insert in the preamble the words, "relying on the blessing of Almighty God" and he was supported in his motion by many of the delegates. It was found during the discussion, however, that there was some difference of opinion and Colonel Greene did not wish to demand a division. The words were therefore not included though had a vote been taken there is little doubt that Colonel Greene's amendment would have been carried.

The question of the power of the Union Parliament to amend the Constitution cropped up repeatedly during the debates and there were the two considerations before the delegates which must always influence those responsible for drafting Constitutions. There is the point which is always in the minds of the draughtsmen that if a Constitution is to be continually subject to revision there is no stability in the State or its laws and some therefore were for erecting in the Constitution itself special barriers against alteration similar to those found in other Constitutions. On the other hand it was pointed out that the greatest inconvenience had arisen in the United States because of the difficulties of obtaining amendments to the Constitution which the changed conditions of the country demanded and any attempt to follow such an example was strongly opposed. The delegates it was urged had no right to tie the hands of posterity in such a vital matter as the Constitution under which they should live and the wise course would be to make the Constitution itself elastic so that it might adapt itself easily to the wants of the country. As for instability it was necessary to leave that to the common sense of the people. No Parliament would readily consent to an alteration of the Constitution unless there was an urgent demand

to change and the instincts of the South African people were towards conservatism. The latter view prevailed with the delegates but it was felt that there were matters in regard to which public confidence would be assured if the principles adopted by the Convention were entrenched in the Constitution and were not liable to be altered by a simple majority in Parliament. The Cape delegates claimed that the agreement with regard to the franchise for Native and Coloured men in the Cape should be one of those matters and the claim was allowed. It was also claimed that the language settlement should be similarly entrenched and that was also agreed to, while the Natal delegates claimed the same protection for the section securing exceptional representation to the smaller Colonies for ten years and again the Convention agreed. The entrenching clause 152 of the Constitution Act was a wise provision and it undoubtedly had the desired effect in minimising the opposition to the Constitution in certain quarters, certainly with regard to the Cape Natives and Coloured people and certainly in Natal. The language question it was felt was in little danger of disturbance but its inclusion was at any rate harmless. The Section provides that amendment with respect to the matters mentioned can only be made with the

consent of two thirds of the members of both Houses of Parliament sitting together. The provision is not for a two thirds majority of those present at such a sitting but the majority must consist of two thirds of the total number of both Houses, that is to say out of the 161 members of Parliament 108 members must vote for an amendment before it can have legal effect. The resolution was drafted in the first instance by a Committee of which President Steyn was chairman and was objected to by Mr. Morcom (one of the Committee) who favoured amendment by an absolute majority of both Houses. On the discussion of the resolution Mr. Fischer supported Mr. Morcom but was in favour of a resolution passed by both Houses. The Cape delegates insisted upon the entrenching of the Native Franchise clauses and after further debate the resolution was referred back to the Committee and shortly before the Christmas recess a further report was brought up again containing the provision for a two thirds majority but suggesting the entrenching of the whole Constitution under the clause. When the Convention re-assembled on January 11th, General Smuts moved that the order for the consideration of this report be discharged and that was agreed to as it was considered that the task might be performed by the Drafting Com-

mittee. On the reappearance of the clause on January 21st Sir Thomas Hyslop again moved for a bare majority instead of two thirds and after a debate it was again referred back to the Committee but on its being brought up again in its present form it was agreed to without division.

The labour of drafting was considerable and not a little trying to many members. So far the Convention had before it a number of resolutions embodying the views of the majority but even these resolutions were not final. When the drafting commenced and delegates saw before them their resolutions set out in some semblance to an Act of Parliament amendments of all kinds occurred to them, frequently amendments which amounted to a rescinding of the previous resolution. Mr. Fischer brought this question up on January 12th on the reassembling of the Convention and moved that a majority of two thirds should be required for reopening any subject already dealt with by resolution. This motion, however, was defeated and it was therefore open to any delegate to move for the alteration of any resolution. This was frequently done and the patience of delegates was tried. It was felt by all, however, that the magnitude of the task was such that patience must be inexhaustible and that the completed work must

not in any case betray signs of haste. If a delegate had new views to put before the Convention in regard to any resolution the opportunity must be given him and every view must be considered. Delegates therefore who failed to carry their points were always sure of a patient hearing and always satisfied that they had been denied no opportunity. The drafting work indeed was so arduous that the Committee had to be changed from time to time to grant relief to overworked delegates and when thirty gentlemen have to be satisfied with the drafting of a clause it can readily be understood that there was much discussion, much drafting and redrafting and much accumulation of drafts on all the points liable to difference of opinion. Finally when the delegates had completed their work the aid of expert legal draughtsmen was called in and the final polishing touches given with here and there a little heartburning over the elimination of a well turned phrase, the sacrifice of which its parent watched with a sigh. The Constitution as it stands, however, undoubtedly owes much to the time spent on its drafting and to the unwearied patience of the delegates. For those actually engaged in the work there was plenty of occupation but for those who had to wait day after day for the results of the labours of the Committees the tax

on the patience must have been severe and it must be admitted that some of the discussions were rather of the hair splitting order.

The final stages were reached at last and on Wednesday February 3rd, the Draft Constitution was signed by the delegates. It had previously been agreed that a precis of the proposed Act should be prepared for the public and a Committee was appointed for this purpose. The precis is here given in preference to the whole Draft Act and it will be found of interest in comparison with the Constitution adopted.

PRECIS OF THE DRAFT CONSTITUTION.

[The draft constitution proposes to establish a United Government of the Cape Colony, Natal, Transvaal and Orange River Colony, or of any two or more of them, the name of the Union to be South Africa. The supreme authority will be vested in one Parliament, and there shall be one Governor-General. The several Colonies joining the Union are to form Provinces and will be managed by Provincial Councils in respect of local affairs.

It is provided that the Executive Government shall consist of a Governor-General and a number of responsible Ministers not exceeding ten, and while Pretoria is to be the seat of the Gov-

ernment of the Union, the Parliament will sit in Cape Town. It is provided that Parliament shall consist of a Senate of 40 members and a House of Assembly of 121 members. Of the 40 Senators the Governor General nominates eight, one-half of whom will be selected for their knowledge of native affairs, and each Province will elect eight. The first Senators will be elected by the existing Parliaments in each Colony, and they will hold their seats for ten years. Thereafter Senators will be elected by the members of the Provincial Councils and the members for each Province in the House of Assembly unless the Union Parliament decides otherwise. Senators must be thirty years of age, qualified to be voters, have five years' residence in the Union, be British subjects of European descent, and be the owners of unincumbered immovable property to the value of £500. The 121 members of the House of Assembly are divided as follows among the several Colonies:

Cape of Good Hope	51
Natal	17
Transvaal	36
Orange River Colony	17

The number of members may be increased to 150 as the population increases. The basis of representation is the European male adult, and it is proposed to establish what is called

a "quota" by dividing the total number of European male adults in the Union, as shown by the Census of 1904, by the 121 members. A fresh Census is to be taken in 1911, and every five years subsequently, and each Province is entitled to one additional member for such "quota" of increase under certain conditions. The actual quota for the Union is 2,891. There may be no decrease in the members allotted to each Province for ten years, or until the total of 150 members is reached, whichever is the longer period. Provision is made for the readjustment of these figures in the event of any Colony not joining the Union.

The principle of the right of duly qualified coloured and native people to vote in the Cape Colony is protected. Laws relating to the franchise and elections remain in force in the several Provinces, subject to this Act. The allotment of representatives in the various Provinces will be carried out by a Commission of Judges, and constituencies shall, as far as possible, consist of three members and shall be according to the number of voters. In carrying out this duty the Commission is allowed a discretionary power within fifteen per cent. The Commission will also deal with subsequent increases of members. A member of the House of Assembly must be qualified to be a voter, have

resided for five years in the Union, and be a British subject of European descent. In the event of the refusal of the Senate to pass a Money Bill which has been passed by the House of Assembly, a joint sitting of both Houses may at once be held and a vote taken. If the Senate, however, refuses to pass a Bill other than a Money Bill, then a joint sitting may only be held in the next succeeding session.

The Provincial Government will be carried out by an Administrator appointed by the Governor General in Council, an Executive Committee not exceeding five in number elected by the Provincial Council, and a Provincial Council consisting of the same number of members as the House of Assembly, to be elected by the same electors. In the case of Natal and the Orange River Colony, however, the Provincial Council shall consist of 25 members. The Provincial Council shall sit for three years, and may not be dissolved earlier. The Provincial Councils will deal with the matters detailed in the draft constitution.

It is proposed to constitute a Supreme Court of South Africa, consisting of a Chief Justice, the ordinary Judges of Appeal, and the Chief Justices and other Judges of the several divisions of the Supreme Court of South Africa in the Provinces. The Appeal Court will con-

sist of the Chief Justice, two ordinary Judges of Appeal, and two temporary additional Judges of Appeal. The Supreme Courts of the several Colonies shall become provincial divisions of the Supreme Court of South Africa, and the Eastern Districts' Court, the High Court of Griqualand, and High Court of Witwatersrand, and the several Circuit Courts shall become local divisions of the Supreme Court. All appeals from any superior Court in the Union may be made only to the Appeal Court of South Africa, and appeal to the Privy Council may only be made after leave obtained from the Privy Council. The Appellate Division of the Supreme Court shall sit in Bloemfontein or other places for the convenience of suitors.

With respect to finance, railways, etc., all assets of the various Colonies shall be transferred to the Union Government, and all debts shall be valid as against the Union Government. A Commission consisting of one person from each Province, presided over by an Imperial officer, shall be appointed to deal with the financial relations of the Provinces, and the Central Government, and in the meantime there shall be paid to the Provincial Councils from the Central Exchequer an annual sum equivalent to the estimates for education other than higher education for the year 1908 - 09, and such further

sums as the Governor-General in Council may deem necessary.

The control and management of all State railways, ports and harbours shall be vested in a Board of not more than three Commissioners and a Minister. The railways and harbours shall be managed on business principles, and shall keep separate accounts and have the management on their own funds. Due regard shall be had for agricultural and industrial development, but Parliament shall make special provision for new works which may be constructed against the advice of the Board.

All elections dealt with in the Constitution are to be conducted on the principle of proportional representation, each voter having one transferable vote.

All laws in the several Colonies continue in force until amended by the Union Parliament.

Both the English and the Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality and possess and enjoy equal freedom, rights and privileges.

All persons of European descent who have been naturalised in any of the Colonies shall be deemed to be naturalised within the Union.

All officers of the public service of the various Colonies become officers of the Union, and retain

all rights and privileges now possessed by them. The management of the public service shall be under a public service commission to be appointed, and the service of no officer shall be dispensed with on account of his want of knowledge of either the English or Dutch language.

Parliament may alter the boundaries of Provinces or divide them on the petition of the Provinces concerned.

Parliament may amend the Constitution as it may deem fit, but the sections relating to the coloured and native franchise in the Cape Colony, the representations of Provinces in Parliament, and the equal rights of the English and Dutch languages can only be amended by a two-thirds majority.

Provision is made for the inclusion of new Provinces, and also for native territories and protectorates in the Union, and for the terms and conditions upon which this inclusion shall be carried out.

The Constitution will have to be passed as an Act of the Imperial Parliament on the petition of the several Colonial Parliaments, and in reference to the procedure to be followed for the adoption of the Constitution the Convention recommends its submission to special sessions of the several Parliaments to be held on the 30th March next.]

The next step was to submit the Draft to the several Parliaments and moreover to await the verdict of the Public which would have nearly two months in which to consider the proposals before the Parliament met on March 31st. It may be said here that on the whole the verdict was astonishingly favourable. Here and there indeed a warning note was heard. The Cape Town Branch of the Afrikaner Bond for instance issued a damaging criticism on certain of the proposals and it was feared that the influence of Mr. Hofmeyr might be enlisted by the opponents to Union. The Bond Branch regretted that Unification and not Federation was proposed and strongly objected to the unequal representation provided for in the Draft Act. It was pointed out that while in the Cape 3285 voters returned one member, Natal had a member for 2046 votes, the Free State for 2412 and the Transvaal for 2958, an arrangement which was declared to be the "more offensive" when it was found that such State was equally represented in the Senate irrespective of population. In the second place objection was taken to the subjection of the Provincial Councils to Parliament and even to the Governor-General in Council. With regard to amendments in the Constitution it was held that the provision of a two thirds majority should be

extended further and that the colour franchise should only be amended with the consent of the majority of the Cape members of Parliament, while Parliament should be open to men of Colour. Objection was also taken to the Railway and Harbour Board, to the Finance Commission, to the proposals for dividing Constituencies, to proportional representation, to the recognition of existing treaties, to the possible subdivision of the Provinces. On the other hand the Branch demanded that the language clauses should be made to apply to the Provincial Councils, that the Parliament should institute a thorough enquiry into the possible evils resulting from the location of the administration in Pretoria and finally that the will of the people should be ascertained by means of a referendum or some other means. This document was signed by Mr. J. H. Hofmeyr and other leading members of the Bond and it was useless to disguise the fact that it might bode trouble in the Cape Parliament. In addition to this the leaders of the Native and Coloured people in some cases showed a determination to resist the clause which shut them out from the Union Parliament and made no provision for the representation of the Coloured man in the other three Provinces of the Union.

In the Transvaal there was criticism and much dissatisfaction with the arrangement as to the Capital which it was held should have gone altogether to Pretoria, while in the Free State the broad view was taken that if certain sacrifices were made the Union of South Africa justified them. In Natal too the opposition was far less than was expected. If Natal was to be merged in Union it was recognised that it had been generously treated in the matter of representation and moreover if Union were formed that Natal could not afford to remain out of it. Its interests were so intertwined with those of the rest of South Africa that to be excluded from a Union would be a severe blow to the Commercial and Agricultural interests of the country and the prospect of the possibility of losing the Transvaal traffic for the Natal Railways was one which no reasonable Natal man could contemplate without grave foreboding.

If the Cape Town Branch of the Bond was inclined to be querulous it soon became clear that throughout the rest of the Cape Colony there was a general feeling that the Act should be accepted. The representation was objected to as unfair but it was recognised that the smaller Colonies should reasonably wish to feel secure during the early years of Union. The

Portuguese Treaty was much resented as unfair to the Union but the Transvaal was presumed to know its own business in making that Treaty a condition to its entering Union. As for the arrangement with respect to the Capital it was not liked and it was feared it might not work but at the same time it was acquiesced in as one of those compromises unavoidable when agreements of the kind were to be entered into. Public meetings all over the Cape Colony approved of the Draft as a whole but changes were demanded and it seemed certain that proportional representation would have to go. Those delegates who endeavoured to explain it to the public confessed their failure and so far as the Cape was concerned it was obvious that the electors were not educated up to proportional representation. It was indeed, as the Capetown Branch of the Bond declared, an experiment and party managers took alarm. Might it not be an invention of the enemy? For the rest however everyone hoped for the best and Mr. Hofmeyr was too thoroughly in sympathy with closer union in South Africa to allow this opportunity to be lost, though he himself would have drawn up the Constitution otherwise.

In the Cape Parliament, when it met, it was clear that Union would carry the day. There was opposition and considerable speechifying

but the House was prepared to accept the Convention as a whole with the proviso that certain amendments should be obtained if possible. It accepted the principle of Union as opposed to Federation. It took the unequal representation with a wry face, but it took it. It took the divided Capital with doubt and it took the exclusion of the Native and Coloured man from a seat in Parliament though with protests from Mr. W. P. Schreiner and some of his friends which were to be heard afterwards in London. It also took proportional representation though with an understanding that it should apply only to the towns and not to the country a proviso which had a party flavour about it since the townsmen were mostly on one side of the House. The actual amendments suggested by the Cape Parliament were that in all sparsely populated areas there should be single member constituencies thus doing away with proportional representation in all the country districts. The House then demanded that there should be a clear definition of "sparsity" and "density" and further a clear instruction to the commissioners as to what areas were to get 15 per cent. more representation and what areas 15 per cent. less. The Provincial Council Constituencies were all to be for single members. In addition there were to be slight amendments in the clause

relating to the Senate, the Veto and the Judicature while the principle of equality of language was to be extended. There was little in fact of an alarming character.

In Natal there was a somewhat longer sitting. The Natal Parliament asked for provisions protecting their trading rights notwithstanding any treaty with Portugal, for a perpetual advantage in the representation, for a free trade clause, for a clause prohibiting the sale of liquor to natives, an inclusion of the division of traffic agreement and some smaller amendments. The Transvaal Parliament proposed no amendments but since the other States each had their list the Transvaal Government kept in fashion by tabling a number of amendments which if not formal were at any rate not of an embarrassing character. The Orange River Colony followed the Cape in asking for a clearer definition of sparsity and density and for the allocation of the districts entitled to 15 per cent. additional representation. Its other amendments were more or less formal. The delegates therefore reassembled at Bloemfontein on May 3rd with the expectation of accomplishing their task quickly, and indeed they had finished by May 11th. The various points dealt with are recorded in the chapters devoted to those points and need not be referred to again. It only remained

now for the respective Parliaments to give the seals of their approval to the amendments and to appoint the necessary number of delegates to visit London to explain any points requiring explanation to the British Government. In Natal the Government considered itself pledged to submit the Constitution to the direct vote of the electorate and this was done with a most satisfactory result. South Africa had accepted the Constitution and there was no doubt as to the decision of the Imperial Parliament. In less than nine months of actual work South Africa had accomplished a thing which had taken other Colonies years to achieve and had accomplished it by a hearty and thorough co-operation of the South African people. Union was assured and it remained for the people of South Africa themselves to fulfil the destiny that lay open before them. They had the foundations for a nation, whether they have also the material from which nations are built time has yet to show.

Some surprise has been expressed from time to time at the omissions from the Constitution, at the extent of the powers it left to the Union Parliament and at the fact that so many necessary changes in the machinery of government were left unprovided for. It can only be said that the omissions were intentional and that it

was felt that the proper authority to create a new machinery or make essential changes in the old was a Parliament representing the people. It was desired too that the necessary changes should be gradual and that the current of life among the people should be as little interfered with as possible, that in fact the public of South Africa should gradually accommodate themselves to the new conditions with the minimum of disturbance or confusion and it must be admitted that this object has been achieved. Under wise Government the country will gradually build up its new administration and will have, as all people must have, the government it deserves and determines upon.

REPORT ON SIR EDGAR WALTON'S
PROPOSED CONVENTION PUBLICATION.

(By MR. G. R. HOFMEYR,
Clerk to the House of Assembly.)

Sir Edgar Walton's honesty and integrity are household words with political friends and foes alike. Therefore, the reason for the suggestion that someone should certify to the impartiality of Sir Edgar's record would seem to be to secure a whipping boy in case of an adverse verdict. Perchance, it was also felt that some political bias may quite unconsciously have crept in or that points may strike a non-political observer, which from the nearness of the author, and the multiplicity of detail under review, may have escaped due treatment, and thus fallen out of correct perspective.

This call to certify has fallen upon me and seldom have I undertaken a duty with greater diffidence: In the first place, it would be impertinence if I were to profess to be able to criticise the merits of Sir Edgar's work and, in the second place, though several of the speeches delivered during the sittings of the Convention are fresh in my mind, I cannot pretend at this

distance of time, with no notes available for reference, to test in detail the accuracy of the opinions and views with which members of the Convention are credited on the various questions which came before them.

While I feel all this, there is the extenuating circumstance that, as I had made a somewhat exhaustive study of the history of Closer Union movements in other countries with the view of assisting in the collection of information that might be useful to the Convention, I had taken perhaps a keener interest in the efforts of that body in their endeavours to arrive at a practical solution of their problem than my ordinary duties as one of the Secretaries would have demanded; and for that reason perhaps the proceedings of that great gathering of South African statesmen have left on my mind a deeper and more lasting impression than would probably otherwise have been the case.

This fact, coupled with the circumstance that the Convention proceeded in the first instance to deal, in turn, with broad outstanding questions of principle—a factor which Sir Edgar has prominently kept in view in the excellent arrangement and sequence of his work—enables me to test in a general way the record and the views ascribed to delegates.

As cannot but be taken for granted by every public man, I may say at once that the record as far as it discloses the attitude of the delegates on the various questions they had to deal with, is, on the whole, a true and faithful statement of fact. One or two minor particulars I refer to later. Whether the delegates would care to see the convictions thus freely expressed by them, under cover of the resolution that no record of speeches would be kept, reduced to cold print, and whether it is wise statesmanship to publish opinions expressed, particularly on some of the questions which are of a delicate nature and which still press for solution, are aspects of this work beyond my province. Still, although this is so, I hope I am right in calling attention also to such aspects of Sir Edgar's work as to which in my opinion the expediency of publication is doubtful, so that they may be reconsidered and, if necessary, amended.

I propose to deal in this main report only with the few of the broader points that have occurred to me. The smaller points, the majority of which may be regarded as proofreaders' observations, are detailed in Annexure "A" hereto.

I have said that the record, as far as the opinions therein attributed to delegates are concerned, is a true and accurate statement of

fact, but that there were one or two particulars I wished to refer to later. These are the insertions in writing:—

- (a) on pages 99, 100, 105 and 108, in reference to the element of compulsion in the language question;
- (b) on page 109, touching the question as to which version (English or Dutch) should be followed by the Courts in the interpretation of the laws; and
- (c) on page 114, emphasising the view that the Cabinet should represent both races.

These amplifications suggest the possibility that, in revising his work, Sir Edgar may have been unwittingly influenced by recent prominent discussions of these points, but a reference to his original notes will enable Sir Edgar to remove all possible doubt.

Speaking of the work as a whole, I am forced to the conclusion that the chief complaint, if indeed there be complaint, will be that the record, purporting to be as it does a full summary of the views expressed by delegates, is far from full enough. Considerable portions of chapters, and sometimes whole chapters, covering some of the most important branches of the work of the Convention, contain only a brief record of the proceedings and of speeches collectively summarised. And where here and

there individual speeches are recorded, the record conveys but a poor idea of the actual speeches delivered. Take the first, perhaps the most important debate on the form of Union. Sir Edgar admits (page 57) that the record constitutes but a bare outline of a truly great speech by Mr. Merriman. Then came a speech delivered by General Smuts and listened to throughout with wrapt attention. In addition to the chief points noted by Sir Edgar, or in amplification of them, I still remember how General Smuts pleaded for a Union that would make an economic policy for the whole of South Africa possible and for a steady and careful development of the interior. In emphasising the difficulty of the native question he pleaded for a Union that would ensure a uniform policy and reminded the Convention that it was not the negro question in America that led to civil war, but that it was the division of the whites; he pointed out that the question was even more complicated in South Africa where not only four self-governing Colonies were concerned but where the Imperial aspect had to be reckoned with and that a policy of drift would spell chaos and ruin. He pleaded for one Parliament where the best brains would be represented and urged the Convention to copy the model of the British Constitution with one great central legislative

and executive authority, pressing the view that, as Federation would mean a rigid and inflexible constitution, it would defeat the attainment of a supreme national authority, so essential a mouthpiece of the national will. General Smuts further urged the formation of one nation, as a true spirit of South African National patriotism would prove the best solvent for our difficulties.

President Steyn, Sir George Farrar, Mr. Sauer, General Schalk Burger, Sir Starr Jameson, Mr. Fischer, Sir Frederick Moor, Colonel Greene, Sir Thomas Hyslop and others struck a very high tone in giving expression to the views they held on this question and those who had been previously known to me spoke on this occasion as I have never heard them speak either before or since. Mr. Malan devoted a considerable portion of his speech to the statement of the case for federation which depicted considerable anxiety on the faces of those who believed in unification. His was a grand speech and I well remember the great relief to many when, as it were with a supreme effort, he threw in his lot with those who pleaded for a legislative Union. Then there was the speech delivered by Sir Percy Fitzpatrick who pleaded for a broad view and implored his fellow delegates not to allow the fly on the window-pane, as he put it,

from obscuring the great issues involved. In pleading for one nation in the truest sense of the word, Sir Percy related in touching language an interview he had had many years before with the late General Joubert, when the latter had said to him "Daar is nie plek in Zuid Afrika ver twee base" (There is not room in South Africa for two masters). Last but not least Sir Edgar has done scant justice to himself, not only in this debate but also throughout the volume. From the cold and short record of his speech it is impossible to get even a glimpse of the animation and depth of feeling with which he himself spoke on the occasion referred to.

These are a few cases I have selected as instances of the extreme brevity of the record. It may also be mentioned with regard to the reference on page 308 to a proposal by Colonel Greene to amend the Preamble of the Constitution by the usual invocation for the blessing of Almighty God, that at the Bloemfontein session Mr. Malan pleaded for a similar amendment. But as the feeling of the Convention was against re-opening this question Mr. Malan did not move a formal resolution. Some discussion, however, followed and the matter was allowed to drop, no record being made in the Minutes. This took place at an evening sitting and the occurrence is fixed in my mind by the fact that

almost immediately after the discussion the electric light failed and the Convention was for some little time in total darkness.

The views attributed to the late Messrs. Rhodes and Hofmevr in Chapter III, on the respective merits of Federation and Unification, were not urged upon the Convention and should, therefore, it seems to me, be either eliminated altogether or transposed to Chapter I.

The native question is a very delicate one and its solution has not yet begun in earnest. It may be open to doubt whether some of the delegates would have spoken as they did had they known their views would be made public, and it may, therefore, be both politic and fair to submit speeches recorded in Chapter V to delegates before publication. I am the more inclined to urge this precaution in view of the fact that Lord de Villiers, who is the only delegate who has read this manuscript, has amended expressions of opinion attributed to him on page 50 on the question of the best form of Union and on page 109 on the subject of the version of the laws which the Governor-General should sign. Whatever reasons may have prompted these amendments, the fact that they are considered necessary leaves the strong presumption that other delegates, had they the opportunity, may similarly wish to tone down the record of

their speeches, an aspect which applies with greater force perhaps to a delicate and most difficult question such as the native problem. (The alterations suggested by Lord de Villiers have been carried out.—*Author.*)

It is definitely stated at the commencement of each Act in the volume containing the Statutes of the first session of the Union Parliament which of the versions has been signed by the Governor-General. The reference to this matter therefore, on page 109 will require amendment. In this connection the "understanding" as to the signing of the Acts referred to by Sir Edgar on page 110 as having been set aside, I am not able to verify. It is not stated by whom it was set aside and the Governor-General, I believe, signs Acts entirely in his own discretion and without reference to anyone.

It is doubtful whether expressions of opinion on matters which happened subsequent to the Convention find a proper place in a volume which purports to be purely a record of Convention proceedings. I refer to the reference on the election of Senators and to the reflection on the Governor-General-in-Council in his selection of the nominated Senator (page 164); to the reference to the failure of proportional representation in the election of Senators (page 182), and to the reference to the failure of the Orange

River Colony to fulfil the expectations of the members of the Convention in the matter of Education (page 223). Objection might also be taken to the suggestion that certain delegates have allowed purely party considerations to dominate their actions in the Convention (pages 189, 190).

I do not agree that the official minutes as published are useless (page 307) though, undoubtedly, Sir Edgar's work, as far as it goes, will be of real service in assisting readers to grasp the history of the questions dealt with by the Convention more readily and his book, therefore, will be the more popular volume with the man in the street.

I should like to refer, in conclusion, to one or two other omissions in this work which have occurred to me. In the first place, this volume seems to be the appropriate place where as full a reference as possible should be made to the important and trying work performed by the delegates on the various committees, some of whose names perhaps scarcely figure in the main discussions. Secondly, it seems to me that this book will be quite incomplete unless a general tribute is paid to the members of the Convention, not perhaps so much for creating what has been termed "the Convention spirit" as for the real patriotism shown by them in

achieving this unique feat of a legislative union for South Africa. As one who enjoyed the inestimable privilege of attending all the sittings of that historic body of men I feel impelled to refer to this matter at the risk of the criticism that it is quite beyond the scope of my duty. But, feeble as is this effort, I make it in the hope that Sir Edgar may still find time to write a short chapter summarising the work of the delegates on the plane of personal merit which will stand out in relief the more in the light of a contrast of the history of similar movements and attainments in other parts of the world with what our delegates have been able to achieve in South Africa in so short a space of time.

That Sir Edgar has done himself but scant justice in a matter of this kind will come as no surprise to those who enjoy the pleasure of his acquaintance, but the restraint could be relaxed in an appropriate tribute to delegates in general.

Speaking as an onlooker, I say most emphatically that the names of those thirty-four South Africans (for I include the late Mr. Morcom) should be inscribed in letters of gold in the roll of our history. One is forced to the conviction that it is their just due that there should be placed on permanent record in this volume, if only to enable the public to realise their deep

obligations to the delegates, an expression of appreciation of the manner in which they have accomplished the wonderful—perhaps unique—fact of producing unanimously that masterpiece of statesmanship the Draft Act of Union. If a work of this character is published at all and particularly by a prominent member of the Convention it seems most fitting that the veil should be drawn aside in order to afford the public just one peep at what can really be described as a grand picture: thirty-three South Africans facing what was with good reason regarded as an almost impossible problem, but each one of them, though filled with anxiety, yet imbued with the true spirit of a South African national patriotism, determined to conquer all obstacles and to reach the goal. During the sittings of that Assembly my mind was carried to a note I had made of an attempt to define national patriotism, viz:—

“Always born out of great trials. It is there that the different elements which are to form a nation learn more of each other and realise the necessity for mutual respect, help and co-operation. The greatest obstacle to the cementing of different elements into a solid nation is the conviction in the mind of one or other strong section that another strong section cherish differ-

ent aspirations. Wild talk is often responsible for this distrust and it can only be cured by manly and outspoken utterances by leaders of all parties. It is a false patriotism which does not welcome into the bosom of a common nation every good citizen, whatever his race or creed, and it becomes positively dangerous to the stability of good order and government when the exclusion is based solely upon divergence of political view."

What was the position when the Convention met? Had the four Colonies which then sought to unite passed through severe trials? Had there been a strong section or strong sections who honestly believed that another strong section or other strong sections cherished different aspirations? Had there been irresponsible talk which fanned the flames of racial and other differences and fed the seeds of distrust? Had there not been some display of misguided patriotism which made the chance of Union only a remote possibility? The realisation of the magnitude of conditions such as these was clearly depicted in the anxiety in every face. Of all, the distrust seemed the greatest obstacle, but there was at once evidence of a determination to cure it by manly and outspoken utterances. Though I had often had the

privilege of listening to many of the delegates in Parliament, I found they had become complete strangers to me in the Convention. Whether it was due to the fact that they were unfettered by a sense of possible public or press criticism I do not know, but certainly it was due to disinterested and patriotic devotion that men rose and spoke from the bottom of their hearts rising to moving heights of eloquence and carrying conviction. To me it was a revelation. I had never heard such speeches and probably never shall again.

The questions which had to be solved, it soon became apparent, were almost impossible of solution owing to the great divergence of view; but all had come with open minds and willing hearts and while local authority, interests and traditions were dear to all, the question which was constantly kept prominently in the forefront of the discussions was: what will be the best for South Africa as a whole? I repeat, the way in which the delegates rose to the occasion was a revelation to me. I never realised before that we had such material in South Africa, but I suppose it was the greatness of the issues which revealed the qualities of those whose privilege it was to solve the great problem. What grander patriotism than that the men who had devoted so much thought and study to

the subject in hand, some of whom could quote in detail the experience of other countries and suggest their application with necessary modifications to our conditions, should decide to efface all evidence of their individual share in this great work by deciding to keep no record of speeches for the sole purpose of placing themselves beyond the possibility of a thought of self or party? And yet this decision and the patriotism which prompted it would have involved an incalculable loss had not such transgressors of the Convention law as Sir Edgar Walton come to the rescue and saved something. Had Sir Edgar preserved in their entirety those noble and inspiring utterances for us we should pale into shame were we to do or say anything which could in the smallest degree militate against the upbuilding of the structure, the foundation of which has been laid in stones of wholehearted devotion. Shall we have a form of Union which will perpetuate our Provincial edifice—good and bad—and repeat the mistakes of other countries or shall we surrender what we all hold dear for the good of our common country? That was the question. A supreme effort was necessary; it was made and a *legislative union* was the outcome.

It would be invidious to single out individual delegates since all, according to their opportun-

ities, rendered full and noble service, while to adequately describe the parts played by some of the delegates would be indeed a difficult task. As an illustration, let us take the President, Lord de Villiers. It is fully acknowledged that the way in which he piloted the Convention over calm and rough seas alike won the most profound admiration of all and yet an attempt to clothe this bare statement of fact with appropriate language would only detract from it. This is equally true in greater or lesser degree of all the delegates. While some rivetted attention on the greatness of the issues involved and pleaded eloquently and long for a broad view thereby inspiring confidence and courage, others saw to it that no important details were lost sight of. Some again, by painstaking and close study of the question of closer union elsewhere and here, placed before the Convention information which proved of inestimable value and assistance, while others through a long and ripe experience of the conduct of public affairs exercised a softening influence when debate became heated and relations strained and by wonderful tact and patience often saved the situation by bringing the delegates back again to a calm, statesmanlike and practical consideration of the issues before them. In this way, one could multiply from the recollection impres-

sions of deeds which can truly be named as heroic, but of which an adequate description will never be written. It would also seem appropriate to record in the suggested appreciation a tribute to the delegates for the great services rendered by them in getting the Draft Act accepted by the people, as well as to the representatives who proceeded to London to confer with the British Government and to facilitate the passage of the Act through the British Parliament, in connection with which latter service the sudden death of the late Hon. Jan Hendrik Hofmeyr will always be remembered with pain and regret.

Some of the speeches must live always in our memory; but only those who listened to the speeches in the Convention Chamber and who were behind the scenes in regard to the work of the delegates can realise what it cost some, if not all, of the members who shared a full sense all the time of the trust imposed by a particular Colony, to take the long view and the long step.

This manuscript was put into my hands at a time when the work of the approaching session was already coming in fast and I have, therefore, scarcely been able to give the matter the full consideration which its importance deserves. I wish to emphasise also how fully I realise the difficulty of the task entrusted to me,

especially when regarded from the point of view of the position I occupy and I still hope that it may be possible to submit the work rather to the scrutiny of a small committee of delegates. It is, however, a matter of great relief to me to know that the formal certificate authorising publication will be given by Lord de Villiers, the President of the Convention.

(Sgd.) GYS. R. HOFMEYR.

Clerk of the House.

Assembly Chambers,
Cape Town.

SOUTH AFRICA ACT OF UNION.

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SOUTH AFRICA ACT, 1909.

—

CHAPTER 9.

—

AN ACT TO CONSTITUTE
THE UNION OF SOUTH AFRICA.

[20th September, 1909.]

—

Whereas it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland:

And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union:

And whereas it is expedient to make provision for the establishment of provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration:

And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows.

APPENDIX

PART I.

Preliminary.

1. This Act may be cited as the South Africa Act, 1909.
2. In this Act, unless it is otherwise expressed or implied, the words "the Union" shall be taken to mean the Union of South Africa as constituted under this Act, and the words "Houses of Parliament," "House of Parliament," or "Parliament," shall be taken to mean the Parliament of the Union.
3. The provisions of this Act referring to the King shall extend to His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland.

PART II.

The Union.

4. It shall be lawful for the King, with the advice of the Privy Council, to declare by proclamation that, on and after a date therein appointed, not being later than one year after the passing of this Act, the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony, hereinafter called the Colonies, shall be united in a legislative union under one Government under the name of the Union of South Africa. On and after the day appointed by such proclamation the Government and Parliament of the Union shall have full power and authority within the limits of the Colonies, but the King may at any time after the proclamation appoint a Governor-General for the Union.
5. The provisions of this Act shall, unless it is otherwise expressed or implied, take effect on and after the day so appointed.
6. The Colonies mentioned in section *four* shall become original provinces of the Union under the names of Cape of Good Hope, Natal, Transvaal, and Orange Free State, as the case may be. The original provinces shall have the same limits as the respective Colonies at the establishment of the Union.
7. Upon any Colony entering the Union, the Colonial Boundaries Act, 1895, and every other Act applying to any of the Colonies as being self-governing Colonies or Colonies with responsible government, shall cease to apply to that Colony, but as from the date when this Act takes effect every such Act of Parliament shall apply to the Union.

PART III.

Executive Government.

8. The Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a Governor-General as his representative.
9. The Governor-General shall be appointed by the King, and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty may be pleased to assign to him.

10. There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.

11. The provisions of this Act relating to the Governor-General extend and apply to the Governor-General for the time being or such person as the King may appoint to administer the government of the Union. The King may authorize the Governor-General to appoint any person to be his deputy within the Union during his temporary absence, and in that capacity to exercise for and on behalf of the Governor-General during such absence all such powers and authorities vested in the Governor-General as the Governor-General may assign to him, subject to any limitations expressed or directions given by the King; but the appointment of such deputy shall not affect the exercise by the Governor-General himself of any power or function.

12. There shall be an Executive Council to advise the Governor-General in the government of the Union, and the members of the council shall be chosen and summoned by the Governor-General and sworn as executive councillors, and shall hold office during his pleasure.

13. The provisions of this Act referring to the Governor-General-in-Council shall be construed as referring to the Governor-General acting with the advice of the Executive Council.

14. The Governor-General may appoint officers not exceeding ten in number to administer such departments of State of the Union as the Governor-General-in-Council may establish; such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Executive Council and shall be the King's Ministers of State for the Union. After the first general election of members of the House of Assembly, as herein-after provided, no minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament.

15. The appointment and removal of all officers of the public service of the Union shall be vested in the Governor-General-in-Council, unless the appointment is delegated by the Governor-General-in-Council or by this Act or by a law of Parliament to some other authority.

16. All powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in the Governor or in the Governor-in-Council, or in any authority of the Colony, shall, as far as the same continue in existence and are capable of being exercised after the establishment of the Union, be vested in the Governor-General or in the Governor-General-in-Council, or in the authority exercising similar powers under the Union, as the case may be, except such powers and functions as are by this Act or may by a law of Parliament be vested in some other authority.

17. The command-in-chief of the naval and military forces within the Union is vested in the King or in the Governor-General as his representative.

18. Save as in section *twenty-three* excepted, Pretoria shall be the seat of Government of the Union.

PART IV.

Parliament.

19. The legislative power of the Union shall be vested in the Parliament of the Union, herein called Parliament, which shall consist of the King, a Senate, and a House of Assembly.

20. The Governor-General may appoint such times for holding the sessions of Parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue Parliament, and may in like manner dissolve the Senate and the House of Assembly simultaneously, or the House of Assembly alone: provided that the Senate shall not be dissolved within a period of ten years after the establishment of the Union, and provided further that the dissolution of the Senate shall not affect any senators nominated by the Governor-General-in-Council.

21. Parliament shall be summoned to meet not later than six months after the establishment of the Union.

22. There shall be a session of Parliament once at least in every year, so that a period of twelve months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next session.

23. Capetown shall be the seat of the Legislature of the Union.

Senate.

24. For ten years after the establishment of the Union the constitution of the Senate shall, in respect of the original provinces, be as follows:—

- (i) Eight senators shall be nominated by the Governor-General-in-Council, and for each original province eight senators shall be elected in the manner hereinafter provided:
- (ii) The senators to be nominated by the Governor-General-in-Council shall hold their seats for ten years. One-half of their number shall be selected on the ground mainly of their thorough acquaintance by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa. If the seat of a senator so nominated shall become vacant, the Governor-General-in-Council shall nominate another person to be a senator, who shall hold his seat for ten years.
- (iii) After the passing of this Act, and before the day appointed for the establishment of the Union, the Governor of each of the Colonies shall summon a special sitting of both Houses of the Legislature, and the two Houses sitting together as one body and presided over by the Speaker of the Legislative Assembly shall elect eight persons to be senators for the province. Such senators shall hold their seats for ten years. If the seat of a senator so elected shall become vacant, the provincial council of the province for which such senator has been elected shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat.

25. Parliament may provide for the manner in which the Senate shall be constituted after the expiration of ten years, and unless and until such provision shall have been made—

- (1) the provisions of the last preceding section with regard to nominated senators shall continue to have effect;
- (ii) eight senators for each province shall be elected by the members of the provincial council of such province together with the members of the House of Assembly elected for such province. Such senators shall hold their seats for ten years unless the Senate be sooner dissolved. If the seat of an elected senator shall become vacant, the members of the provincial council of the province, together with the members of the House of Assembly elected for such province, shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat. The Governor-General-in-Council shall make regulations for the joint election of senators prescribed in this section.

26. The qualifications of a senator shall be as follows:—
He must—

- (a) be not less than thirty years of age;
- (b) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;
- (c) have resided for five years within the limits of the Union as existing at the time when he is elected or nominated as the case may be;
- (d) be a British subject of European descent;
- (e) in the case of an elected senator, be the registered owner of immovable property within the Union of the value of not less than five hundred pounds over and above any special mortgages thereon.

For the purposes of this section, residence in, and property situated within, a Colony before its incorporation in the Union shall be treated as residence in and property situated within the Union.

27. The Senate shall, before proceeding to the dispatch of any other business, choose a senator to be the President of the Senate, and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President. The President shall cease to hold office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office by writing under his hand addressed to the Governor-General.

28. Prior to or during any absence of the President the Senate may choose a senator to perform his duties in his absence.

29. A senator may, by writing under his hand addressed to the Governor-General, resign his seat, which thereupon shall become vacant. The Governor-General shall as soon as practicable cause steps to be taken to have the vacancy filled.

30. The presence of at least twelve senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

31. All questions in the Senate shall be determined by a majority of votes of senators present other than the President or the presiding senator, who shall, however, have and exercise a casting vote in the case of an equality of votes.

House of Assembly.

32. The House of Assembly shall be composed of members directly chosen by the voters of the Union in electoral divisions delimited as hereinafter provided.

33. The number of members to be elected in the original provinces at the first election and until the number is altered in accordance with the provisions of this Act shall be as follows:—

Cape of Good Hope	Fifty-one.
Natal	Seventeen.
Transvaal	Thirty-six.
Orange Free State	Seventeen.

These numbers may be increased as provided in the next succeeding section, but shall not, in the case of any original province, be diminished until the total number of members of the House of Assembly in respect of the provinces herein provided for reaches one hundred and fifty, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period.

34. The number of members to be elected in each province, as provided in section *thirty-three*, shall be increased from time to time as may be necessary in accordance with the following provisions:—

- (i) The quota of the Union shall be obtained by dividing the total number of European male adults in the Union, as ascertained at the census of nineteen hundred and four, by the total number of members of the House of Assembly as constituted at the establishment of the Union:
- (ii) In nineteen hundred and eleven, and every five years thereafter, a census of the European population of the Union shall be taken for the purposes of this Act:
- (iii) After any such census the number of European male adults in each province shall be compared with the number of European male adults as ascertained at the census of nineteen hundred and four, and, in the case of any province where an increase is shown, as compared with the census of nineteen hundred and four, equal to the quota of the Union or any multiple thereof, the number of members allotted to such province in the last preceding section shall be increased by an additional member or an additional number of members equal to such multiple, as the case may be:
- (iv) Notwithstanding anything herein contained, no additional member shall be allotted to any province until the total number of European male adults in such province exceeds the quota of the Union multiplied by the number of members allotted to such province for the time being, and thereupon additional members shall be allotted to such province in respect only of such excess:
- (v) As soon as the number of members of the House of Assembly to be elected in the original provinces in accordance with the preceding sub-sections reaches the total of one hundred and fifty, such total shall not be further increased unless and until Parliament otherwise provides; and subject to the provisions of the last preceding section the distribution

of members among the provinces shall be such that the proportion between the number of members to be elected at any time in each province and the number of European male adults in such province, as ascertained at the last preceding census, shall as far as possible be identical throughout the Union:

- (vi) "Male adults" in this Act shall be taken to mean males of twenty-one years of age or upwards not being members of His Majesty's regular forces on full pay:
- (vii) For the purposes of this Act the number of European male adults, as ascertained at the census of nineteen hundred and four, shall be taken to be—

For the Cape of Good Hope	167,546
For Natal	34,784
For the Transvaal	106,493
For the Orange Free State	41,014

35. (1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person in the province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the province of the Cape of Good Hope by reason of his race or colour only, unless the Bill be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

(2) No person who at the passing of any such law is registered as a voter in any province shall be removed from the register by reason only of any disqualification based on race or colour.

36. Subject to the provisions of the last preceding section, the qualifications of parliamentary voters, as existing in the several Colonies at the establishment of the Union, shall be the qualifications necessary to entitle persons in the corresponding provinces to vote for the election of members of the House of Assembly: Provided that no member of His Majesty's regular forces on full pay shall be entitled to be registered as a voter.

37. (1) Subject to the provisions of this Act, the laws in force in the Colonies at the establishment of the Union relating to elections for the more numerous Houses of Parliament in such Colonies respectively, the registration of voters, the oaths or declarations to be taken by voters, returning officers, the powers and duties of such officers, the proceedings in connection with elections, election expenses, corrupt and illegal practices, the hearing of election petitions and the proceedings incident thereto, the vacating of seats of members, and the proceedings necessary for filling such vacancies, shall, *mutatis mutandis*, apply to the elections in the respective provinces of members of the House of Assembly.

(2) Notwithstanding anything to the contrary in any of the said laws contained, at any general election of members of the House of Assembly, all polls shall be taken on one and the same

day in all the electoral divisions throughout the Union, such day to be appointed by the Governor-General-in-Council.

38. Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor-in-Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the Commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor-in-Council of such Colony. In case of the death, resignation, or other disability of any of the Commissioners before the establishment of the Union, the Governor-in-Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to fill the vacancy. After the establishment of the Union the expenses of the Commission shall be defrayed by the Governor-General-in-Council, and any vacancies shall be filled by him.

39. The commission shall divide each province into electoral divisions, each returning one member.

40. (1) For the purpose of such division as is in the last preceding section mentioned, the quota of each province shall be obtained by dividing the total number of voters in the province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein.

(2) Each province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of sub-section (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the province.

(3) The Commissioners shall give due consideration to—

- (a) community or diversity of interest;
- (b) means of communication;
- (c) physical features;
- (d) existing electoral boundaries;
- (e) sparsity or density of population;

in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

41. As soon as may be after every quinquennial census, the Governor-General-in-Council shall appoint a commission consisting of three judges of the Supreme Court of South Africa to carry

out any re-division which may have become necessary as between the different electoral divisions in each province, and to provide for the allocation of the number of members to which such province may have become entitled under the provisions of this Act. In carrying out such re-division and allocation the commission shall have the same powers and proceed upon the same principles as are by this Act provided in regard to the original division.

42. (1) The joint commission constituted under section *thirty-eight*, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor-General-in-Council—

- (a) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division;
- (b) a map or maps showing the electoral divisions into which the provinces have been divided;
- (c) such further particulars as they consider necessary.

(2) The Governor-General-in-Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.

(3) The Governor-General-in-Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a re-division, the electoral divisions as named and defined shall be the electoral divisions of the Union in the provinces.

(4) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

43. Any alteration in the number of members of the House of Assembly to be elected in the several provinces, and any re-division of the provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the re-division or of any allocation consequent upon such alteration, and not earlier.

44. The qualifications of a member of the House of Assembly shall be as follows:—

He must—

- (a) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces;
- (b) have resided for five years within the limits of the Union as existing at the time when he is elected;
- (c) be a British subject of European descent.

For the purposes of this section, residence in a Colony before its incorporation in the Union shall be treated as residence in the Union.

45. Every House of Assembly shall continue for five years from the first meeting thereof, and no longer, but may be sooner dissolved by the Governor-General.

46. The House of Assembly shall, before proceeding to the dispatch of any other business, choose a member to be the Speaker of the House, and, as often as the office of Speaker becomes vacant, the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing under his hand addressed to the Governor-General.

47. Prior to or during the absence of the Speaker, the House of Assembly may choose a member to perform his duties in his absence.

48. A member may, by writing under his hand addressed to the Speaker, or, if there is no Speaker, or if the Speaker is absent from the Union, to the Governor-General, resign his seat, which shall thereupon become vacant.

49. The presence of at least thirty members of the House of Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers.

50. All questions in the House of Assembly shall be determined by a majority of votes of members present other than the Speaker or the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

Both Houses of Parliament.

51. Every senator and every member of the House of Assembly shall, before taking his seat, make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the following form:—

Oath.

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law. So help me God.

Affirmation.

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty [*here insert the name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being*] His [*or Her*] heirs and successors according to law.

52. A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House: Provided that every Minister of State who is a member of either House of Parliament shall have the right to sit and speak in the Senate and the House of Assembly, but shall vote only in the House of which he is a member.

53. No person shall be capable of being chosen or of sitting as a senator or as a member of the House of Assembly who

(a) has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of not less than twelve months, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election; or

- (b) is an unrehabilitated insolvent; or
- (c) is of unsound mind, and has been so declared by a competent court; or
- (d) holds any office of profit under the Crown within the Union: Provided that the following persons shall not be deemed to hold an office of profit under the Crown for the purposes of this sub-section:

- (1) a Minister of State for the Union;
- (2) a person in receipt of a pension from the Crown;
- (3) an officer or member of His Majesty's naval or military forces on retired or half-pay, or an officer or member of the naval or military forces of the Union whose services are not wholly employed by the Union.

- 54. If a senator or member of the House of Assembly
 - (a) becomes subject to any of the disabilities mentioned in the last preceding section; or
 - (b) ceases to be qualified as required by law; or
 - (c) fails for a whole ordinary session to attend without the special leave of the Senate or the House of Assembly, as the case may be;

his seat shall thereupon become vacant.

55. If any person who is by law incapable of sitting as a senator or member of the House of Assembly shall, while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified, sit or vote as a member of the Senate or the House of Assembly, he shall be liable to a penalty of one hundred pounds for each day on which he shall so sit or vote, to be recovered on behalf of the Treasury of the Union by action in any Superior Court of the Union.

56. Each senator and each member of the House of Assembly shall, under such rules as shall be framed by Parliament, receive an allowance of four hundred pounds a year, to be reckoned from the date on which he takes his seat: Provided that for every day of the session on which he is absent there shall be deducted from such allowance the sum of three pounds: Provided further that no such allowance shall be paid to a Minister receiving a salary under the Crown or to the President of the Senate or the Speaker of the House of Assembly. A day of the session shall mean in respect of a member any day during a session on which the House of which he is a member or any committee of which he is a member meets.

57. The powers, privileges, and immunities of the Senate and of the House of Assembly and of the members and committees of each House shall, subject to the provisions of this Act, be such as are declared by Parliament, and until declared shall be those of the House of Assembly of the Cape of Good Hope and of its members and committees at the establishment of the Union.

58. Each House of Parliament may make rules and orders with respect to the order and conduct of its business and proceedings. Until such rules and orders shall have been made the rules and orders of the Legislative Council and House of Assembly of the Cape of Good Hope at the establishment of the Union shall *mutatis mutandis* apply to the Senate and House of Assembly respectively. If a joint sitting of both Houses of Parliament is required under the provisions of this Act, it shall be convened

by the Governor-General by message to both Houses. At any such joint sitting the Speaker of the House of Assembly shall preside and the rules of the House of Assembly shall, as far as practicable, apply.

Powers of Parliament.

59. Parliament shall have full power to make laws for the peace, order, and good government of the Union.

60. (1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

(3) The Senate may not amend any Bills so as to increase any proposed charges or burden on the people.

61. Any Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

62. The House of Assembly shall not originate or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the session in which such vote, resolution, address, or Bill is proposed.

63. If the House of Assembly passes any Bill and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the Bill with or without any amendments which have been made or agreed to by the Senate and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, the Governor-General may during that session convene a joint sitting of the members of the Senate and House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the Bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the Bill with the amendments, if any, is affirmed by a majority of the members of the Senate and House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any Bill dealing with the appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such Bill.

64. When a Bill is presented to the Governor-General for the King's Assent, he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King,

that he assents in the King's name, or that he withholds assent, or that he reserves the Bill for the signification of the King's pleasure. All Bills repealing or amending this section or any of the provisions of Chapter IV under the heading "House of Assembly," and all Bills abolishing provincial councils or abridging the powers conferred on provincial councils under section *eighty-five*, otherwise than in accordance with the provisions of that section, shall be so reserved. The Governor-General may return to the House in which it originated any Bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

65. The King may disallow any law within one year after it has been assented to by the Governor-General, and such disallowance, on being made known by the Governor-General by speech or message to each of the Houses of Parliament or by proclamation, shall annul the law from the day when the disallowance is so made known.

66. A Bill reserved for the King's pleasure shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General for the King's Assent, the Governor-General makes known by speech or message to each of the Houses of Parliament or by proclamation that it has received the King's Assent.

67. As soon as may be after any law shall have been assented to in the King's name by the Governor-General, or having been reserved for the King's pleasure shall have received his assent, the Clerk of the House of Assembly shall cause two fair copies of such law, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies thus deposited that signed by the Governor-General shall prevail.

PART V.

The Provinces.

Administrators.

68. (1) In each province there shall be a chief executive officer appointed by the Governor-General-in-Council, who shall be styled the administrator of the province, and in whose name all executive acts relating to provincial affairs therein shall be done.

(2) In the appointment of the administrator of any province, the Governor-General-in-Council shall, as far as practicable, give preference to persons resident in such province.

(3) Such administrator shall hold office for a term of five years and shall not be removed before the expiration thereof except by the Governor-General-in-Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(4) The Governor-General-in-Council may from time to time appoint a deputy-administrator to execute the office and functions of the administrator during his absence, illness, or other inability.

69. The salaries of the administrators shall be fixed and provided by Parliament, and shall not be reduced during their respective terms of office.

Provincial Councils.

70. (1) There shall be a provincial council in each province consisting of the same number of members as are elected in the province for the House of Assembly: Provided that, in any province whose representatives in the House of Assembly shall be less than twenty-five in number, the provincial council shall consist of twenty-five members.

(2) Any person qualified to vote for the election of members of the provincial council shall be qualified to be a member of such council.

71. (1) The members of the provincial council shall be elected by the persons qualified to vote for the election of members of the House of Assembly in the province voting in the same electoral divisions as are delimited for the election of members of the House of Assembly: Provided that, in any province in which less than twenty-five members are elected to the House of Assembly, the delimitation of the electoral divisions, and any necessary re-allocation of members or adjustment of electoral divisions, shall be effected by the same commission and on the same principals as are prescribed in regard to the electoral divisions for the House of Assembly.

(2) Any alteration in the number of members of the provincial council, and any re-division of the province into electoral divisions, shall come into operation at the next general election for such council held after the completion of such re-division, or of any allocation consequent upon such alteration, and not earlier.

(3) The election shall take place at such times as the administrator shall by proclamation direct, and the provisions of section *thirty-seven* applicable to the election of members of the House of Assembly shall *mutatis mutandis* apply to such elections.

72. The provisions of sections *fifty-three*, *fifty-four*, and *fifty-five*, relative to members of the House of Assembly, shall *mutatis mutandis* apply to members of the provincial councils: Provided that any member of a provincial council who shall become a member of either House of Parliament shall thereupon cease to be a member of such provincial council.

73. Each provincial council shall continue for three years from the date of its first meeting, and shall not be subject to dissolution save by effluxion of time.

74. The administrator of each province shall by proclamation fix such times for holding the sessions of the provincial council as he may think fit, and may from time to time prorogue such council: Provided that there shall be a session of every provincial council once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the council in one session and its first sitting in the next session.

75. The provincial council shall elect from among its members a chairman, and may make rules for the conduct of its proceedings. Such rules shall be transmitted by the administrator to the Governor-General, and shall have full force and effect unless and until the Governor-General-in-Council shall express his disapproval thereof in writing addressed to the administrator.

76. The members of the provincial council shall receive such allowances as shall be determined by the Governor-General-in-Council.

77. There shall be freedom of speech in the provincial council, and no member shall be liable to any action or proceeding in any court by reason of his speech or vote in such council.

Executive Committees.

78. (1) Each provincial council shall at its first meeting after any general election elect from among its members, or otherwise, four persons to form with the administrator, who shall be chairman, an executive committee for the province. The members of the executive committee other than the administrator shall hold office until the election of their successors in the same manner.

(2) Such members shall receive such remuneration as the provincial council, with the approval of the Governor-General-in-Council, shall determine.

(3) A member of the provincial council shall not be disqualified from sitting as a member by reason of his having been elected as a member of the executive committee.

(4) Any casual vacancy arising in the executive committee shall be filled by election by the provincial council if then in session, or, if the council is not in session, by a person appointed by the executive committee to hold office temporarily pending an election by the council.

79. The administrator and any other member of the executive committee of a province, not being a member of the provincial council, shall have the right to take part in the proceedings of the council, but shall not have the right to vote.

80. The executive committee shall on behalf of the provincial council carry on the administration of provincial affairs. Until the first election of members to serve on the executive committee, such administration shall be carried on by the administrator. Whenever there are not sufficient members of the executive committee to form a quorum according to the rules of the committee, the administrator shall, as soon as practicable, convene a meeting of the provincial council for the purpose of electing

members to fill the vacancies, and until such election the administrator shall carry on the administration of provincial affairs.

81. Subject to the provisions of this Act, all powers, authorities, and functions which at the establishment of the Union are in any of the Colonies vested in or exercised by the Governor or the Governor-in-Council, or any Minister of the Colony, shall after such establishment be vested in the executive committee of the province so far as such powers, authorities, and functions relate to matters in respect of which the provincial council is competent to make ordinances.

82. Questions arising in the executive committee shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the administrator shall have also a casting vote. Subject to the approval of the Governor-General-in-Council, the executive committee may make rules for the conduct of its proceedings.

83. Subject to the provisions of any law passed by Parliament regulating the conditions of appointment, tenure of office, retirement and superannuation of public offices, the executive committee shall have power to appoint such officers as may be necessary, in addition to officers assigned to the province by the Governor-General-in-Council under the provisions of this Act, to carry out the services entrusted to them and to make and enforce regulations for the organisation and discipline of such officers.

84. In regard to all matters in respect of which no powers are reserved or delegated to the provincial council, the administrator shall act on behalf of the Governor-General-in-Council when required to do so, and in such matters the administrator may act without reference to the other members of the executive committee.

Powers of Provincial Councils.

85. Subject to the provisions of this Act and the assent of the Governor-General-in-Council as hereinafter provided, the provincial council may make ordinances in relation to matters coming within the following classes of subjects (that is to say):—

- (i) Direct taxation within the province in order to raise a revenue for provincial purposes:
- (ii) The borrowing of money on the sole credit of the province with the consent of the Governor-General-in-Council and in accordance with regulations to be framed by Parliament:
- (iii) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides:
- (iv) Agriculture to the extent and subject to the conditions to be defined by Parliament:
- (v) The establishment, maintenance, and management of hospitals and charitable institutions:
- (vi) Municipal institutions, divisional councils, and other local institutions of a similar nature:
- (vii) Local works and undertakings within the province, other than railways and harbours and other than such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial council or otherwise:

- (viii) Roads, outspans, ponts, and bridges, other than bridges connecting two provinces:
- (ix) Markets and pounds;
- (x) Fish and game preservation;
- (xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section:
- (xii) Generally all matters which, in the opinion of the Governor-General-in-Council, are of a merely local or private nature in the province:
- (xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial council.

86. Any ordinance made by a provincial council shall have effect in and for the province as long and as far only as it is not repugnant to any Act of Parliament.

87. A provincial council may recommend to Parliament the passing of any law relating to any matter in respect of which such council is not competent to make ordinances.

88. In regard to any matter which requires to be dealt with by means of a private Act of Parliament, the provincial council of the province to which the matter relates may, subject to such procedure as shall be laid down by Parliament, take evidence by means of a Select Committee or otherwise for and against the passing of such law, and, upon receipt of a report from such council, together with the evidence upon which it is founded, Parliament may pass such Act without further evidence being taken in support thereof.

89. A provincial revenue fund shall be formed in every province, into which shall be paid all revenues raised by or accruing to the provincial council and all moneys paid over by the Governor-General-in-Council to the provincial council. Such fund shall be appropriated by the provincial council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General-in-Council for particular purposes, then for such purposes but no such ordinance shall be passed by the provincial council unless the administrator shall have first recommended to the council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the administrator: Provided that, until the expiration of one month after the first meeting of the provincial council, the administrator may expend such moneys as may be necessary for the services of the province.

90. When a proposed ordinance has been passed by a provincial council it shall be presented by the administrator to the Governor-General-in-Council for his assent. The Governor-General-in-Council shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General-in-

Council, he makes known by proclamation that it has received his assent.

91. An ordinance assented to by the Governor-General-in-Council and promulgated by the administrator shall, subject to the provisions of this Act, have the force of law within the province. The administrator shall cause two fair copies of every such ordinance, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa: and such copies shall be conclusive evidence as to the provisions of such ordinance, and, in case of conflict between the two copies thus deposited, that signed by the Governor-General shall prevail.

Miscellaneous.

92. (1) In each province there shall be an auditor of accounts to be appointed by the Governor-General-in-Council.

(2) No such auditor shall be removed from office except by the Governor-General-in-Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, and, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(3) Each such auditor shall receive out of the Consolidated Revenue Fund such salary as the Governor-General-in-Council, with the approval of Parliament, shall determine.

(4) Each such auditor shall examine and audit the accounts of the province to which he is assigned subject to such regulations and orders as may be framed by the Governor-General-in-Council and approved by Parliament, and no warrant signed by the administrator authorising the issuing of money shall have effect unless countersigned by such auditor.

93. Notwithstanding anything in this Act contained, all powers, authorities, and functions lawfully exercised at the establishment of Union by divisional or municipal councils, or any other duly constituted local authority, shall be and remain in force until varied or withdrawn by Parliament or by a provincial council having power in that behalf.

94. The seats of provincial government shall be—

For the Cape of Good Hope — Cape Town.

For Natal — Pietermaritzburg.

For the Transvaal — Pretoria.

For the Orange Free State — Bloemfontein.

PART VI.

The Supreme Court of South Africa.

95. There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the ordinary judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the provinces.

96. There shall be an Appellate Division of the Supreme Court of South Africa, consisting of the Chief Justice of South Africa,

two ordinary judges of appeal, and two additional judges of appeal. Such additional judges of appeal shall be assigned by the Governor-General-in-Council to the Appellate Division from any of the provincial or local divisions of the Supreme Court of South Africa, but shall continue to perform their duties as judges of their respective divisions when their attendance is not required in the Appellate Division.

97. The Governor-General-in-Council may, during the absence, illness, or other incapacity of the Chief Justice of South Africa, or of any ordinary or additional judge of appeal, appoint any other judge of the Supreme Court of South Africa to act temporarily as such chief justice, ordinary judge of appeal, or additional judge of appeal, as the case may be.

98. (1) The several supreme courts of the Cape of Good Hope, Natal, and the Transvaal, and the High Court of the Orange River Colony shall, on the establishment of the Union, become provincial divisions of the Supreme Court of South Africa within their respective provinces, and shall each be presided over by a judge-president.

(2) The court of the eastern districts of the Cape of Good Hope, the High Court of Griqualand, the High Court of Witwatersrand, and the several circuit courts, shall become local divisions of the Supreme Court of South Africa within the respective areas of their jurisdiction as existing at the establishment of the Union.

(3) The said provincial and local divisions, referred to in this Act as superior courts, shall, in addition to any original jurisdiction exercised by the corresponding courts of the Colonies at the establishment of the Union, have jurisdiction in all matters—

- (a) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party;

- (b) in which the validity of any provincial ordinance shall come into question.

(4) Unless and until Parliament shall otherwise provide, the said superior courts shall *mutatis mutandis* have the same jurisdiction in matters affecting the validity of elections of members of the House of Assembly and provincial councils as the corresponding courts of the Colonies have at the establishment of the Union in regard to parliamentary elections in such Colonies respectively.

99. All judges of the supreme courts of the Colonies, including the High Court of the Orange River Colony, holding office at the establishment of the Union shall on such establishment become judges of the Supreme Court of South Africa, assigned to the divisions of the Supreme Court in the respective provinces, and shall retain all such rights in regard to salaries and pensions as they may possess at the establishment of the Union. The Chief Justices of the Colonies holding office at the establishment of the Union shall on such establishment become the Judges-President of the divisions of the Supreme Court in the respective provinces, but shall so long as they hold that office retain the title of Chief Justice of their respective provinces.

100. The Chief Justice of South Africa, the ordinary judges of appeal, and all other judges of the Supreme Court of South Africa to be appointed after the establishment of the Union, shall

be appointed by the Governor-General-in-Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

101. The Chief Justice of South Africa and other judges of the Supreme Court of South Africa shall not be removed from office except by the Governor-General-in-Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

102. Upon any vacancy occurring in any division of the Supreme Court of South Africa, other than the Appellate Division, the Governor-General-in-Council may, in case he shall consider that the number of judges of such court may with advantage to the public interests be reduced, postpone filling the vacancy until Parliament shall have determined whether such reduction shall take place.

103. In every civil case in which, according to the law in force at the establishment of the Union, an appeal might have been made to the Supreme Court of any of the Colonies from a superior court in any of the Colonies, or from the High Court of Southern Rhodesia, the appeal shall be made only to the Appellate Division, except in cases of orders or judgments given by a single judge, upon applications by way of motion or petition or on summons for provisional sentence or judgments as to costs only, which by law are left to the discretion of the court. The appeal from any such orders or judgments, as well as any appeal in criminal cases from any such superior court, or the special reference by any such court of any point of law in a criminal case, shall be made to the provincial division corresponding to the court which before the establishment of the Union would have had jurisdiction in the matter. There shall be no further appeal against any judgment given on appeal by such provincial division except to the Appellate Division, and then only if the Appellate Division shall have given special leave to appeal.

104. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from the Supreme Court of any of the Colonies or from the High Court of the Orange River Colony to the King-in-Council, the appeal shall be made only to the Appellate Division: Provided that the right of appeal in any civil suit shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in such suit.

105. In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a superior court in any of the Colonies, the appeal shall be made to the corresponding division of the Supreme Court of South Africa; but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if the Appellant Division shall have given special leave to appeal.

106. There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King-in-Council, but nothing herein contained shall be construed to impair any right which the King-in-Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King-

in-Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but Bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure: Provided that nothing in this section shall affect any right of appeal to His Majesty-in-Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of the Colonial Courts of Admiralty Act, 1890.

107. The Chief Justice of South Africa and the ordinary judges of appeal may, subject to the approval of the Governor-General-in-Council, make rules for the conduct of the proceedings of the Appellate Division and prescribing the time and manner of making appeals thereto. Until such rules shall have been promulgated, the rules in force in the Supreme Court of the Cape of Good Hope at the establishment of the Union shall *mutatis mutandis* apply.

108. The Chief Justice and other judges of the Supreme Court of South Africa may, subject to the approval of the Governor-General-in-Council, frame rules for the conduct of the proceedings of the several provincial and local divisions. Until such rules shall have been promulgated, the rules in force at the establishment of the Union in the respective courts which become divisions of the Supreme Court of South Africa shall continue to apply therein.

109. The Appellate Division shall sit in Bloemfontein, but may from time to time for the convenience of suitors hold its sittings at other places within the Union.

110. On the hearing of appeals from a court consisting of two or more judges, five judges of the Appellate Division shall form a quorum, but, on the hearing of appeals from a single judge, three judges of the Appellate Division shall form a quorum. No judge shall take part in the hearing of any appeal against the judgment given in a case heard before him.

111. The process of the Appellate Division shall run throughout the Union, and all its judgments or orders shall have full force and effect in every province, and shall be executed in like manner as if they were original judgments or orders of the provincial division of the Supreme Court of South Africa in such province.

112. The registrar of every provincial division of the Supreme Court of South Africa, if thereto requested by any party in whose favour any judgment or order has been given or made by any other division, shall, upon the deposit with him of an authenticated copy of such judgment or order and on proof that the same remains unsatisfied, issue a writ or other process for the execution of such judgment or order, and thereupon such writ or other process shall be executed in like manner as if it had been originally issued from the division of which he is registrar.

113. Any provincial or local division of the Supreme Court of South Africa to which it may be made to appear that any civil suit pending therein may be more conveniently or fitly heard or determined in another division may order the same to be removed to such other division, and thereupon such last-mentioned division may proceed with such suit in like manner as if it had been originally commenced therein.

114. The Governor-General-in-Council may appoint a registrar of the Appellate Division and such other officers thereof as shall be required for the proper dispatch of the business thereof.

115. (1) The laws regulating the admission of advocates and attorneys to practise before any superior court of any of the Colonies shall *mutatis mutandis* apply to the admission of advocates and attorneys to practise in the corresponding division of the Supreme Court of South Africa.

(2) All advocates and attorneys entitled at the establishment of the Union to practice in any superior court of any of the Colonies shall be entitled to practice as such in the corresponding division of the Supreme Court of South Africa.

(3) All advocates and attorneys entitled to practice before any provincial division of the Supreme Court of South Africa shall be entitled to practise before the Appellate Division.

116. All suits, civil or criminal, pending in any superior court of any of the Colonies at the establishment of the Union shall stand removed to the corresponding division of the Supreme Court of South Africa, which shall have jurisdiction to hear and determine the same and all judgments and orders of any superior court of any of the Colonies given or made before the establishment of the Union shall have the same force and effect as if they had been given or made by the corresponding division of the Supreme Court of South Africa. All appeals to the King-in-Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act had not been passed.

PART VII.

Finance and Railways.

117. All revenues, from whatever source arising, over which the several Colonies have at the establishment of the Union power of appropriation, shall vest in the Governor-General-in-Council. There shall be formed a Railway and Harbour Fund, into which shall be paid all revenues raised or received by the Governor-General-in-Council from the administration of the railways, ports, and harbours, and such fund shall be appropriated by Parliament to the purposes of the railways, ports, and harbours in the manner prescribed by this Act. There shall also be formed a Consolidated Revenue Fund, into which shall be paid all other revenues raised or received by the Governor-General-in-Council, and such fund shall be appropriated by Parliament for the purposes of the Union in the manner prescribed by this Act, and subject to the charges imposed thereby.

118. The Governor-General-in-Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to institute an inquiry into the financial relations which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province—

- (a) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908-9, as voted by the Legislature of the corresponding colony during the year nineteen hundred and eight;
- (b) such further sums as the Governor-General-in-Council may consider necessary for the due performance of the services and duties assigned to the provinces respectively.

Until such inquiry shall be completed and Parliament shall have made other provision, the executive committees in the several provinces shall annually submit estimates of their expenditure for the approval of the Governor-General-in-Council, and no expenditure shall be incurred by any executive committee which is not provided for in such approved estimates.

119. The annual interest of the public debts of the Colonies and any sinking funds constituted by law at the establishment of the Union shall form a first charge on the Consolidated Revenue Fund.

120. No money shall be withdrawn from the consolidated Revenue Fund or the Railway and Harbour Fund except under appropriation made by law. But, until the expiration of two months after the first meeting of Parliament, the Governor-General-in-Council may draw therefrom and expend such moneys as may be necessary for the public service, and for railway and harbour administration respectively.

121. All stocks, cash, bankers' balances, and securities for money belonging to each of the Colonies at the establishment of the Union shall be the property of the Union: Provided that the balances of any funds raised at the establishment of the Union by law for any special purposes in any of the Colonies shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided.

122. Crown lands, public works, and all property throughout the Union, movable or immovable, and all rights of whatever description belonging to the several Colonies at the establishment of the Union, shall vest in the Governor-General-in-Council subject to any debt or liability specifically charged thereon.

123. All rights in and to mines and minerals, and all rights in connection with the searching for, working for, or disposing of, minerals or precious stones, which at the establishment of the Union are vested in the Government of any of the Colonies, shall on such establishment vest in the Governor-General-in-Council.

124. The Union shall assume all debts and liabilities of the Colonies existing at its establishment, subject, notwithstanding any other provision contained in this Act, to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund, and other charges conferred on the creditors of any of the Colonies, and may, subject to such conditions and rights, convert, renew, or consolidate such debts.

125. All ports, harbours, and railways belonging to the several Colonies at the establishment of the Union shall from the date thereof vest in the Governor-General-in-Council. No railway for

the conveyance of public traffic, and no port, harbour, or similar work, shall be constructed without the sanction of Parliament.

126. Subject to the authority of the Governor-General-in-Council, the control and management of the railways, ports, and harbours of the Union shall be exercised through a board consisting of not more than three commissioners, who shall be appointed by the Governor-General-in-Council, and a minister of State, who shall be chairman. Each commissioner shall hold office for a period of five years, but may be re-appointed. He shall not be removed before the expiration of his period of appointment, except by the Governor-General-in-Council for cause assigned, which shall be communicated by message to both Houses of Parliament, within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session. The salaries of the commissioners shall be fixed by Parliament and shall not be reduced during their respective terms of office.

127. The railways, ports, and harbours of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union. So far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital not being capital contributed out of railway or harbour revenue, and not including any sums payable out of the Consolidated Revenue Fund in accordance with the provisions of sections *one hundred and thirty and one hundred and thirty-one*. The amount of interest due on such capital invested shall be paid over from the Railway and Harbour Fund into the Consolidated Revenue Fund. The Governor-General-in-Council shall give effect to the provisions of this section as soon as and at such time as the necessary administrative and financial arrangements can be made, but in any case shall give full effect to them before the expiration of four years from the establishment of the Union. During such period, if the revenues accruing to the Consolidated Revenue Fund are insufficient to provide for the general service of the Union, and if the earnings accruing to the Railway and Harbour Fund are in excess of the outlays specified herein, Parliament may by law appropriate such excess or any part thereof towards the general expenditure of the Union, and all sums so appropriated shall be paid over to the Consolidated Revenue Fund.

128. Notwithstanding anything to the contrary in the last preceding section, the Board may establish a fund out of railway and harbour revenue to be used for maintaining, as far as may be uniformity of rates notwithstanding fluctuations in traffic.

129. All balances standing to the credit of any fund established in any of the Colonies for railway or harbour purposes at the establishment of the Union shall be under the sole control and management of the Board, and shall be deemed to have been appropriated by Parliament for the respective purposes for which they have been provided.

130. Every proposal for the construction of any port or harbour works or of any line of railway, before being submitted to Parliament, shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of railway should or should not be constructed. If any such works or line shall be constructed contrary to the advice of the Board, and if the Board is of opinion that the revenue derived from the operation of such works or line will be insufficient to meet the costs of working and maintenance, and of interest on the capital invested therein, it shall frame an estimate of the annual loss which, in its opinion, will result from such operation. Such estimate shall be examined by the Controller and Auditor-General, and when approved by him the amount thereof shall be paid over annually from the Consolidated Revenue Fund to the Railway and Harbour Fund: Provided that, if in any year the actual loss incurred, as calculated by the Board and certified by the Controller and Auditor-General, is less than the estimate framed by the Board, the amount paid over in respect of that year shall be reduced accordingly so as not to exceed the actual loss incurred. In calculating the loss arising from the operation of any such work or line, the Board shall have regard to the value of any contributions of traffic to other parts of the system which may be due to the operation of such work or line.

131. If the Board shall be required by the Governor-General-in-Council or under any Act of Parliament or resolution of both Houses of Parliament to provide any services or facilities either gratuitously or at a rate of charge which is insufficient to meet the costs involved in the provision of such services or facilities, the Board shall at the end of each financial year present to Parliament an account approved by the Controller and Auditor-General, showing, as nearly as can be ascertained, the amount of the loss incurred by reason of the provision of such services, and facilities, and such amount shall be paid out of the Consolidated Revenue Fund to the Railway and Harbour Fund.

132. The Governor-General-in-Council shall appoint a Controller and Auditor-General who shall hold office during good behaviour: Provided that he shall be removed by the Governor-General-in-Council on an address praying for such removal presented to the Governor-General by both Houses of Parliament: Provided further that when Parliament is not in session the Governor-General-in-Council may suspend such officer on the ground of incompetence or misbehaviour; and, when and so often as such suspension shall take place, a full statement of the circumstances shall be laid before both Houses of Parliament within fourteen days after the commencement of its next session; and, if an address shall at any time during the session of Parliament be presented to the Governor-General by both Houses praying for the restoration to office of such officer, he shall be restored accordingly; and if no such address be presented the Governor-General shall confirm such suspension and shall declare the office of Controller and Auditor-General to be, and it shall thereupon become, vacant. Until Parliament shall otherwise provide, the Controller and Auditor-General shall exercise such powers and functions and undertake such duties as may be assigned to him by the Governor-General in Council by regulations framed in that behalf.

133. In order to compensate Pietermaritzburg and Bloemfontein for any loss sustained by them in the form of diminution of prosperity or decreased rateable value by reason of their ceasing to be seats of government of their respective Colonies, there shall be paid from the Consolidated Revenue Fund for a period not exceeding twenty-five years to the municipal councils of such towns a grant of two per centum per annum on their municipal debts, as existing on the thirty-first day of January nineteen hundred and nine, and as ascertained by the Controller and Auditor-General. The Commission appointed under section *one hundred and eighteen* shall, after due inquiry, report to the Governor-General-in-Council what compensation should be paid to the municipal councils of Cape Town and Pretoria for the losses, if any, similarly sustained by them. Such compensation shall be paid out of the Consolidated Revenue Fund for a period not exceeding twenty-five years, and shall not exceed one per centum per annum on the respective municipal debts of such towns as existing on the thirty-first January nineteen hundred and nine, and as ascertained by the Controller and Auditor-General. For the purposes of this section Cape Town shall be deemed to include the municipalities of Cape Town, Green Point, and Sea Point, Woodstock, Mowbray, and Rondebosch, Claremont and Wynberg, and any grant made to Cape Town shall be payable to the councils of such municipalities in proportion to their respective debts. One half of any such grants shall be applied to the redemption of the municipal debts of such towns respectively. At any time after the tenth annual grant has been paid to any of such towns the Governor-General-in-Council, with the approval of Parliament, may after due inquiry withdraw or reduce the grant to such town.

PART VIII.

General.

134. The election of senators and of members of the executive committees of the provincial councils as provided in this Act shall, whenever such election is contested, be according to the principle of proportional representation, each voter having one transferable vote. The Governor-General-in-Council, or, in the case of the first election of the Senate, the Governor-in-Council of each of the Colonies, shall frame regulations prescribing the method of voting and of transferring and counting votes and the duties of returning officers in connexion therewith, and such regulations or any amendments thereof after being duly promulgated shall have full force and effect unless and until Parliament shall otherwise provide.

135. Subject to the provisions of this Act, all laws in force in the several Colonies at the establishment of the Union shall continue in force in the respective provinces until repealed or

amended by Parliament, or by the provincial councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several Colonies at the establishment of the Union shall continue as if the Union had not been established.

136. There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of custom and of excise leviable under the laws existing in any of the Colonies at the establishment of the Union shall remain in force.

137. Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

138. All persons who have been naturalised in any of the Colonies shall be deemed to be naturalized throughout the Union.

139. The administration of justice throughout the Union shall be under the control of the Minister of State, in whom shall be vested all powers, authorities, and functions which shall at the establishment of the Union be vested in the Attorney-General of the Colonies, save and except all powers, authorities, and functions relating to the prosecution of crimes and offences, which shall in each province be vested in an officer to be appointed by the Governor-General-in-Council, and styled the Attorney-General of the province, who shall also discharge such other duties as may be assigned to him by the Governor-General-in-Council: Provided that in the province of the Cape of Good Hope the Solicitor-General for the Eastern Districts and the Crown Prosecutor for Griqualand West shall respectively continue to exercise the powers and duties by law vested in them at the time of the establishment of the Union.

140. Subject to the provisions of the next succeeding section, all officers of the public service of the Colonies shall at the establishment of the Union become officers of the Union.

141. (1) As soon as possible after the establishment of the Union, the Governor-General-in-Council shall appoint a public service commission to make recommendations for such reorganisation and readjustment of the departments of the public service as may be necessary. The commission shall also make recommendations in regard to the assignment of officers to the several provinces.

(2) The Governor-General-in-Council may after such commission has reported assign from time to time to each province such officers as may be necessary for the proper discharge of the services reserved or delegated to it, and such officers on being so assigned shall become officers of the province. Pending the assignment of such officers, the Governor-General-in-Council may place at the disposal of the provinces the services of such officers of the Union as may be necessary.

(3) The provisions of this section shall not apply to any service or department under the control of the Railway and Harbour Board, or to any person holding office under the Board.

142. After the establishment of the Union the Governor-General-in-Council shall appoint a permanent public service commission with such powers and duties relating to the appointment, discipline, retirement, and superannuation of public officers as Parliament shall determine.

143. Any officer of the public service of any of the Colonies at the establishment of the Union who is not retained in the service of the Union or assigned to that of a province shall be entitled to receive such pension, gratuity, or other compensation as he would have received in like circumstances if the Union had not been established.

144. Any officer of the public service of any of the Colonies at the establishment of the Union who is retained in the service of the Union or assigned to that of a province shall retain all his existing and accruing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Union had not been established.

145. The services of officers in the public service of any of the Colonies at the establishment of the Union shall not be dispensed with by reason of their want of knowledge of either the English or Dutch language.

146. Any permanent officer of the Legislature of any of the Colonies who is not retained in the service of the Union, or assigned to that of any province, and for whom no provision shall have been made by such Legislature, shall be entitled to such pension, gratuity, or compensation as Parliament may determine.

147. The control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General-in-Council, who shall exercise all special powers in regard to native administration hitherto vested in the Governors of the Colonies or exercised by them as supreme chiefs, and any lands vested in the Governor or Governor and Executive Council of any Colony for the purpose of reserves for native locations shall vest in the Governor-General-in-Council, who shall exercise all special powers in relation to such reserves as may hitherto have been exercisable by any such Governor or Governor and Executive Council, and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the Colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament.

148. (1) All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve upon the Union at its establishment.

(2) The provisions of the railway agreement between the Governments of the Transvaal, the Cape of Good Hope, and Natal, dated the second of February, nineteen hundred and nine, shall as far as practicable, be given effect to by the Government of the Union.

PART IX.

New Provinces and Territories.

149. Parliament may alter the boundaries of any province, divide a province into two or more provinces, or form a new province out of provinces within the Union, on the petition of the provincial council of every province whose boundaries are affected thereby.

150. The King, with the advice of the Privy Council, may on addresses from the Houses of Parliament of the Union admit into the Union the territories administered by the British South Africa Company on such terms and conditions as to representation and otherwise in each case as are expressed in the addresses and approved by the King, and the provisions of any Order-in-Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

151. The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General-in-Council may undertake the government of such territory upon the terms and conditions embodied in the schedule to this Act.

PART X.

Amendment of Act.

152. Parliament may by law repeal or alter any of the provisions of this Act: Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered: And provided further that no repeal or alteration of the provisions contained in this section, or in sections *thirty-three* and *thirty-four* (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of ten years has elapsed after the establishment of the Union, whichever is the longer period), or in sections *thirty-five* and *one hundred and thirty-seven*, shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

SCHEDULE.

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General-in-Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor-General-in-Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General-in-Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the commission shall be appointed by the Governor-General-in-Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General-in-Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General-in-Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another Minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman shall preside at all meetings of the commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the commission shall consist of four or more members, three of them shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate

on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General-in-Council, whose decision in the matter shall be final.

10. When the recommendations of the commission have not been accepted by the Governor-General-in-Council, or action not in accordance with their advice has been taken by the Governor-General-in-Council, the Prime Minister, if thereto requested by the commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General-in-Council shall transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor-General-in-Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor-General-in-Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General-in-Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall

be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General-in-Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland Protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General-in-Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of administration of the territory bears to the total customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor-General-in-Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General-in-Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King-in-Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General-in-Council, be laid before both Houses of Parliament.

25. All Bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.
