"It is certainly very desirable that a Judge should not take any part in politics."

SIR SAMUEL ROMILLY.

"The reason for suspending in Judges the privilege of active citizens is obvious enough: it is to guard their probity and reputation for probity from a most fertile source of danger."

JEREMY BENTHAM.

THE COMMONWEALTH BILL.

To the Editor.

Sir—I beg to hand you for publication the first of a series of observations upon recent developments in connection with this measure.

I am, Sir, &c.,

J. H. SYMON.

Selborne Chambers, June 13.

OBSERVATIONS.—No. I.

1. Parliament meets to-morrow. It seems scarcely worth while. A new power has come actively into politics. Two Chief Justices—Sir Samuel Griffith and Sir Samuel Way—arrogate to themselves the right of taking a hand, and a strong hand. Hitherto they have done so more or less secretly. Now they come into the open. If they can do so by "Observations" and letters to the Press, there is no reason why they should not come within the walls of Parliament and mount the platform or the "stump." Political interference with the judiciary is bad. Is judicial interference in politics any better? The business of the Judges is to hold themselves aloof from the controversy and passion of public questions. Their business is to administer the law as they find it, and to try and do justice. Is it for them to legislate, or dictate what legislation shall be, or assume to interpret a draft Bill, and instruct Parliament, whether local or British, how or in what form it shall be passed? They may just as well claim to criticise and denounce every Bill introduced into the South Australian Parliament whilst passing through it as to do so with the Commonwealth Bill endorsed by the referendum of the people of Australia, and now before the House of Commons. Is our Parliament to have any say in this matter? If it is, how is it to deal with these written but unspoken speeches and "observations" issuing from the shadow of the ermine? Is this sad departure from the best traditions both of politics and the Bench to pass without protest? If it is, then the day is not far distant when the people of this country will bitterly regret having silently permitted their Judges to enter the political arena, and aspire to lead public opinion upon issues of vehement debate both in England and Australia.

2. It is to these two Judges, let it be remembered, that Australia chiefly owes the difficulties which have beset the passage of the unamended Commonwealth Bill through the Imperial Parliament, and almost doomed to failure the mission of the delegates. It is my firm conviction that but for their unconstitutional interposition—but for their persistent strategy by sap and mine—the Federal Union of Australia would by this time have been an accomplished fact. Journal after journal—politician after politician—in England declared that in the last resort Australia would get what she wanted, and what her people by direct vote at the ballot-box had declared to be their Federal Charter. But "behind the arras" in the Colonial Office were these two Australian Judges, who strove against their own country having what she wanted. They succeeded. They prevailed in having amending hands from outside laid upon the people's work. Why cannot they rest satisfied with the mischief already laid to their charge? Why, because the amendment is not to their liking? It does not mutilate the Bill enough. It conserves to Australia an essential element of self-government—the right to interpret the Constitution which it is conceded she has the ability to frame; but this appears to be hateful to the restrictive notions of these Judges. And so through the more recent machinations of Sir Samuel Griffith, assisted by Sir Samuel Way, Australia seems likely to be brought face to face with a humiliation without parallel. If the governing men of these colonies yield to the malign influence of these gentlemen they will humiliate their country, they will humiliate the delegates, and they will cover themselves with ridicule in the eyes of every intelligent politician in England. More than three weeks ago the compromise was approved. It will be asked—Do these Australians ever know their own minds?

3. Let us see. Sir Samuel Way's secret pamphlet was designed and used, amongst other things, to instigate and encourage the Imperial authorities to amend the Commonwealth Bill—not in the covering clauses only, but generally—and so to undo the federal enterprise of the people. With much wealth of argument, relevant and irrelevant, he pressed this upon all and sundry the recipients of this historical pamphlet. He was the strenuous advocate of British amendment against the seal of the referendum. Not only so, but he actually went out of his way—no doubt from the kindest motives—to frame the new clause which he wished put into the Bill, when, as he hoped, the clause put in by the Convention—representing the Australian democracy—was knocked out. He said—"For section 74 the following clause should be substituted." Mark—"should be!" Fairly dictatorial that, without consulting people, Parliament, or Convention—on his own sole *ipse dixit*. His own words apply beautifully. On his "authority alone it is proposed to insert in the Bill novel, burthensome, and unwise provisions, which have never been before the Conventions,

the Parliaments, or the people." Well, clause 74 was eliminated; but Sir Samuel Way's volunteered clause was not inserted. *Hinc illae lachrymae.* Mr. Chamberlain thought he could make a better amendment of his own through the covering clauses. But what, then, became the duty of the delegates? Thanks to a knot of militant anti-Federalists, and to the defeated minority on the Privy Council question represented by Sir Samuel Way and others, amendment was resolved on by the British Government. Amendment was inevitable. Surely it was the duty of the delegates, as faithful servants and ambassadors of the Australian people, to mitigate the mischief and secure that amendment in such a form as to do least violence to the whole scheme of the Bill, and to our complete national self-government. They did their duty. In effect, they said to Mr. Chamberlain—"If you insist upon amendment, make it harmonize as much as possible with the Bill as approved by the Australian people." For this, Sir Samuel Way censures them and their work in no measured language. He does them gross and wanton injustice. Every man who loves fairplay should resent these unfounded strictures upon absent men. If they were here probably the strictures would have been absent.

4. I regret to say Sir Samuel Way's "Observations on the proposed new clause" entirely misrepresent the position. They should have been headed with Carlyle's memorable sentence—"Ho! every one that wants to be persuaded of the thing which is not true, come hither." For example, he says—"The proposed new clause has behind it four delegates, certainly distinguished statesmen, but they count as four men only." Is that true? Is it not a fact that, in taking the new clause as the best that could be got, the delegates acted with the concurrence and approval of the Premiers and Governments of their respective colonies? Had not the clause, therefore, every Government concerned behind it? Had it not also Sir Samuel Way's friends of the Colonial Office behind it? Was not Mr. Chamberlain at least its joint author? He is not the man we take him to be if he had not the lion's share in it. It is, in fact, Mr. Chamberlain's amendment—the outcome of Sir Samuel Way's unconstitutional interference, but reduced to its least objectionable form in the interests of Australia by the resolute and persistent efforts of the delegates. And yet Sir Samuel Way thinks it fair to say —"On their authority alone it is proposed to insert in the Bill novel, burthensome, and unwise provisions, which have never been before the Conventions, the Parliaments, or the people." Is not this delicious, even if true, which I have shown it is not? What about Sir Samuel's own clause, which he "proposed to insert in the Bill?" What about his clandestine crusade to strike out clause 74? Was that with the approval of "the Conventions, the Parliaments, and the people?" Apply Sir Samuel Way's own language in these later "Observations" to his own earlier performances, and Sheridan's "School for Scandal" pales in amusing interest by comparison.

5. "There is," says Sir Samuel Way, "no constitutional authority for introducing the proposed new clause into the Bill." There ought to be at least as much, one would think, as for introducing Sir Samuel's own patent clause, or for striking out clause 74. One is surely as much an amendment as the other. But the truth is, Sir Samuel applies quite a different rule to amendments emanating from himself and to those approved by the accredited representatives of Australia. What in him is meritorious in them is "flat blasphemy." But with amazing inconsistency he goes on to say—"The only body which can lawfully alter the Bill now is the Imperial Parliament." Is not that the body which is going to introduce this new clause? I deny the constitutional right of the Imperial Parliament to alter that Bill; but Sir Samuel Way told the British authorities they had the right, and, unfortunately, they decided to do it, and are going to put in this clause. It is comforting to have Sir Samuel's assurance they "lawfully" may.

6. He goes on to say:—"The new clause is, therefore, unauthorized, and ought not to be admitted into the Bill to constitute the Australian Commonwealth without the consent of the people or their Parliamentary representatives." I say "Amen" to that, so far as regards "the consent of the people." But how does Sir Samuel Way reconcile that with his earlier decree that "the only body which can lawfully alter the Bill now is the Imperial Parliament?" These two don't seem to fit or dovetail. And how about his proposal to strike out clause 74 and admit "into the Bill" his own pet amendment, "burthensome and unwise," without the consent of either people or Parliament? Explanation seems needed. Under all these circumstances, is Sir Samuel Way a safe guide to any one with the best interests of Australian nationality at heart?

7. He further says—"There has been a remarkable reticence in giving publicity to the exact provisions of the new clause." Against whom does he charge that? There was even a more "remarkable reticence in giving publicity" to the celebrated pamphlet which has had a good deal to do with bringing the new clause into existence at all. Is it intended to be another reflection upon the delegates, or what? This insinuation of a desire for secrecy is unworthy of the Chief Justice, and he should say straight out for whom it is meant. But what has this sneer about "reticence" got to do with the matter? The delegates went loyally for the Bill without amendment. They fought for and secured it substantially in every respect but this. Mr. Chamberlain forced amendment upon them. They chose the new clause as the least of the evils, instead of either Mr. Chamberlain's or Sir Samuel Way's, which are undoubtedly worse. Are we not to be grateful to them for minimising the disaster?

8. Paragraph 6 of the "Observations"—to use its own words — "shocks one" as a reckless travesty of the provisions of the new clause as set forth in paragraph 4. I challenge every word of it, except the quotation from "Blackstone," that "nothing is to be more avoided in a free Constitution than uniting the provinces of a Judge and a Minister of State." But that noble statement has no shadow of application to the new clause, or to any conceivable thing that can happen under it. To suggest that it has would be unscrupulous in any one but a high judicial functionary. I have often thought that in principle it condemns the union of the judicial office and that of Acting Governor, as it certainly does judicial interference in political affairs. But the new clause absolutely precludes the possibility of "uniting the provinces of Judge and Minister of State." Sir Samuel Way is either mistaken himself, or seeking to mislead others, when he suggests the possibility under the new clause of any Executive or political interference with the course of justice. As the delegates have cabled, "political interference is impossible." The Judiciary is not, and cannot be, subordinated to the Executive in any way or shape under this clause. Its object is to make the decision of the High Court of Australia final in all constitutional disputes. It does that. But it permits, as may be done at this moment, a reference under certain conditions to another tribunal—for the present the Privy Council. It is worse than inaccurate to speak of it as allowing the Executive Government "to interfere in private litigation." It does nothing of the kind. I hope to return to the subject.

OBSERVATIONS.—No. II.

1. No wonder the federal delegates express "surprise and indignation." (Vide Friday's cables.) They may well say "a grave breach of faith will be committed" if any Australian Government attempts to go back on Mr. Chamberlain's revised amendment embodied in the new clause. It will be a breach of faith with Mr. Chamberlain, and treachery to the delegates. The saddest reflection of all is that this campaign of treachery and ill-faith takes its origin and draws its inspiration mainly from occupants of the judgment-seat. For their credit's sake, and the future of Australian justice, let us hope their unfortunate schemes may miscarry.

2. On May 21—more than three weeks ago—Mr. Chamberlain announced to the House of Commons, amid prolonged cheering from all quarters, his revised amendment—the new clause 74. He declared it to be "satisfactory." He acknowledged that the delegates—excluding Mr. Dickson, the backslider—"had exhibited the utmost consideration during the negotiation, and this conciliatory spirit resulted in a unanimous agreement which left Australia free to adopt her own course of action where her own interests were concerned. At the same time the agreement gave the Imperial Government all that they had ever asked for, with the enormous advantage that it was equally satisfactory to the delegates, who had written thanking him for so far accepting the Bill without alteration." That seemed an excellent testimonial. Yet this new clause of which Mr. Chamberlain spoke so highly, as ample for Imperial interests and adequate to the needs of Australia, is the very same which Sir Samuel Way has the hardihood to describe as "a blot on the Constitution of the Commonwealth," as transgressing "two principles lying at the very foundations of justice;" as disregarding "the distinction between executive and judicial functions recognised in all civilized States;" and with other vituperative comment. What must Mr. Chamberlain and the English law officers think of that indictment? Can they really have been parties to anything so wholly vicious and bad? Sir Samuel says so, and he is now our political Mentor. He professes to lay bare their hideous shortcomings—their criminal folly; for surely it would be criminal to present to the acceptance of the Commons of England a clause violating "principles lying at the very foundations of justice." According to him the Secretary of State and his advisers have acted like barbarians, disregarding principles "recognised in all civilized States." But can we believe Sir Samuel Way? Is not all this tirade of his against the clause but "a tale of little meaning, though the words be strong?" Is it not simply an ill-regulated outburst of heedless and disordered rhetoric? Is it not at least an even chance that Mr. Chamberlain and his advisers are right, and Sir Samuel Way wrong? Are not their eulogies of the clause to be trusted rather than his anathemas? Sir Samuel Way first moved heaven and earth—in the dark—to induce Mr. Chamberlain to amend the Bill, and then, when he does it, turns and rends him for doing it according to his own judgment of what is best, but not exactly as Sir Samuel wishes. This seems rather hard upon poor Mr. Chamberlain.

3. The same newspaper of May 23 contains an interview with the Premier, Mr. Holder, in which, after stating with substantial accuracy the effect of the new clause, he is asked—

"Has this agreement been arrived at with the sanction of the Australian Governments?"

"Yes," said Mr. Holder, "and it amounts to a substantial triumph for the delegates. We may now expect the Bill to be passed immediately."

Yet in face of all this Sir Samuel Way labours to discredit the delegates by saying that "on their authority alone it is proposed to insert" this clause—the record and expression of Australia's triumph—in the Bill, and that it "has behind it four delegates . . . four men only." Was there ever anything more disingenuous?

4. All I have quoted happened more than three weeks ago. During that time, it is plain to the dullest observer, a conspiracy has been on foot to undo the work which Mr. Chamberlain pronounced good, which the Premiers and Governments of Australia pronounced good—"a substantial triumph"—and which every honest Australian not blinded by prejudice or warped by sinister designs, regards with satisfaction. Short of the unaltered Bill it is the best obtainable. And who are they who have embarked in the patriotic enterprise of its destruction? The same old lot—the anti-federalists and the defeated Privy Council minority. Mr. Chamberlain's new clause and the delegates are impartially reviled by the identical party who all along have been opposing the unamended Bill, advocating amendment, occasioning delay, and doing mischief. Their persistence is admirable. Their tactics are abominable. Formerly Sir Samuel Way advocated amendment to get his own atrocious clause in. Now he declaims against amendment, "without the authority of Parliament and a second referendum," to keep the new clause out. What does it mean? It means that these two Chief Justices and their coterie prefer to delay the Bill and prolong strife rather than lose their own ends. What a humiliation for Australia to back out now! How can we honourably do it? The congratulations of Imperial statesmen and the Imperial Parliament upon the course being cleared still ring in our ears. What a humiliation for the delegates! Think of the position in which we have placed them. What ridicule will be poured on our Governments, who a month ago sang paeans of triumph, and now, at the bidding of two Chief Justices who are trying to control the political strings and dominate the Executive, propose to join in a funeral dirge. Are our governing politicians to dance only to the piping of their Judges? But there is no danger if the Premiers will only remember, to slightly paraphrase Sir Samuel Way, that "the proposed new clause has against it two Chief Justices, certainly distinguished Judges, but they count as two men only," and partisan politicians at that.

5. By what warrant does Sir Samuel Way, of all men, decry this new clause on the ground that it has never been before "the Parliament?" When was he installed the Champion of Parliament? Is he not the same Chief Justice Way who counselled Lord Lamington to tell the Secretary of State to insist on amending the Commonwealth Bill in defiance of the referendum, and "without reference to the local Houses of Parliament?" Did not Lord Lamington in April last telegraph that to Mr. Chamberlain? Let Sir Samuel Way explain his share in that pretty piece of business. And let us not forget he is the same gentleman who now proclaims that the new clause "ought not to be admitted . . . without the consent of the people or their Parliamentary representatives." Is not this the very hypocrisy of politics?

6. This is not all. Do you think Sir Samuel Way wants the unamended Bill? Not a bit of it! He wants Mr. Chamberlain's amendment—which that statesman himself gave up, which the chosen representatives of Australia disapproved, which Premiers and Governments have disapproved, and in place of which all of them decided the new clause was, at least, an improvement. "If the clause be rejected," he goes on to say, "and Mr. Chamberlain's amendment left unaltered, the passing of the Bill need not be delayed a single day." What about the Parliament? Where does it come in now? Has that amendment ever been before "the Parliaments" or had "the consent of the people or their Parliamentary representatives?" What becomes of Sir Samuel's burning solicitude for the rights of people and Parliament? It is all a sham. These patriotic Judges are, after all, the commonest partisans. But, then, "the passing of the Bill need not be delayed for a single day." That is the key to the situation. Who has delayed it hitherto? Sir Samuel Way and his allies. They are playing the same game now. That is their policy—to object and delay *per fas et nefas* in the hope that they may tire out the federal party who are eager for the passage of the Bill. By these ignoble means they hope to achieve their own ends. Already they have—in the dark—successfully obstructed the proudest work of the Australian people. We prefer the unamended Bill with all its faults. My friend Mr. Glynn asked a question in the House on Thursday with that object; but the enemies of the Bill in its integrity as adopted by the people have, I fear, made that impossible. Mr. Chamberlain cannot reverse his policy and face the House of Commons, but he loyally adheres to the revised clause 74. We have only to do the same—to uphold our delegates, to resist our political Judges and teach them their proper place, and "the passing of the Bill will not be delayed a single day."

7. In the third paragraph of his "Observations" Sir Samuel Way holds up the delegates to public condemnation for wilfully disregarding their instructions—for acting "without instructions from Australia, and on their own authority" foisting upon the people whose ambassadors they are a provision which he afterwards stigmatizes as "a blot on the Constitution of the Commonwealth." No baser charge could emanate from the most virulent political opponent. What Mr. Barton, Mr. Deakin, Mr. Kingston, and Sir Philip Fysh will say to this I know not; but this I know—that these men have earned not the reproaches, but the lasting gratitude, of every Australian. Sir Samuel Way's third paragraph I declare to be unjustifiable and unjust—indeed, a melancholy perversion. The delegates having, he says, asserted "they had no power to consent to alterations in the Bill," he goes on—"Nevertheless, just before the second reading four out of the six delegates, without instructions from Australia, and on their own authority, entered into the compromise under which a new clause was to be substituted for clause 74."

By his "nevertheless" he wishes the public to believe that the delegates consented to an alteration of the Bill. Is there a shred of truth in that? It is notorious that Mr. Chamberlain, moved by concealed foes of our own household, altered the Bill in spite of the delegates. They were powerless to prevent it. But, while protesting against any alteration, they prevailed with Mr. Chamberlain to minimise its mischief, and he gave the new clause. Sir Samuel Way speaks of "six" delegates, to make it appear the four were a bare majority. Is that fair? Is it true there were six delegates? Of course not. Mr. Parker, of Western Australia, was not a delegate. His colony had not accepted the Bill. He was there to oppose the Bill, and advocate for his colony free-handed amendment, which the delegates successfully resisted. Of them there were five, but one of them was possessed of Sir Samuel Griffith, and became an outsider. "Without instructions from Australia, and on their own authority!" Does any one after what I have shown see even a glimmer of truth in that?

8. The gentleman who lost "the number of his mess" as delegate represented Queensland, whose present political voice is Sir Samuel Griffith. That gentleman long ago told us the Imperial Parliament may amend and Australia must submit. On that ground he foolishly encouraged Sir John Forrest to persist with his amendments, by representing that in England they would all be quietly inserted. Now he wants to frighten the other colonies by saying the opposite, and that Queensland can decline to come in. She can do nothing of the kind. As Mr. Holder said in the House yesterday, the unconditional passage of the Bill in England and the issue of the Queen's proclamation will settle all that. It is only thrown out as a bogey in the hope that it may enable Queensland to dominate the rest of the federating colonies, and Sir Samuel Griffith to rule the situation. Western Australia tried that and failed. So will Queensland.

Selborne Chambers, June 15.

OBSERVATIONS.—No. III.

1. Really one doubts whether Sir Samuel Way does most injustice to the delegates or to himself in his "Observations." Both occasion public pain. The difference is one is self-inflicted, the other wantonly inflicted, either from imperfect knowledge or perverted zeal. Your cabled news this morning sets one more point at rest. It now appears the introduction of the Federal "Executive" into the revised clause 74 was not the work of the delegates at all. The condition requiring "consent of the Executive" to any reference of a constitutional dispute to the Privy Council "was inserted at the express wish of the Imperial Law Officers." Their purpose is plain. Your columns, I think, stated it at the time. It is to safeguard Imperial interests whilst conceding without limitation the right demanded by Australia. Moreover, it pays us the enormous compliment of trusting the Australian Federal Executive with the protection of outside Imperial interests affected by any decision of the High Court, and leaving it to them to say whether a reference to the Privy Council is necessary or proper. Mr. Chamberlain and his law officers evidently do not believe in the hardened wickedness which Sir Samuel Way would ascribe to the Federal Executive. Besides, does it not concede to these clamorous objectors an opportunity—qualified only in the best interests of good, efficient government—of entertaining the Privy Council with constitutional disputes of pure local concern, which they could not have enjoyed under the original clause 74? They should be grateful for small mercies. But we shall return to this. It is enough at present to say that, had the delegates been—indeed solely—responsible for inserting "with the consent of the Executive," they would deserve congratulation and not reproach for preserving to Australia substantially the unamended Bill, and the right we have fought for—namely, that of finally and in the last resort interpreting our own Constitution and our own laws free from outside interference. At any rate, as it now appears, these words whose import has been so greatly misrepresented were, like amendment itself, forced upon the delegates "who would have preferred the absolute prohibition" of the unamended Bill. It would, therefore, be only fair that Sir Samuel Way should publicly proclaim their acquittal of wilfully and "on their authority alone" introducing what, in a curious flight of fancy, he calls "a blot on the Constitution of the Commonwealth." It is the very fact that the new clause varies so little from the original one—and that little in favour of Australia—that occasions this unseemly and unbridled opposition.

2. But let us go step by step with these marvellous "Observations" of Sir Samuel Way. The blunders and errors of statement are fearful and wonderful. He says "when the Bill reached England Mr. Chamberlain stated it would be laid aside unless clause 74 were amended." The Bill reached England about July last year. I deny that Mr. Chamberlain then made any such statement, or at any other time said or threatened that the Bill would be "laid aside." I ask Sir Samuel Way to tell us when and where Mr. Chamberlain used such an expression. The anti-federal party and other assailants of the people's vote and the integrity of the federal charter have said so for him. Again and again they tried to frighten us by predicting that the Bill would be laid aside if we did not humbly swallow whatever amendments Mr. Chamberlain might bid us. For this there was no warrant. Moreover, it was not until early this year—not, I think, until after the delegates reached England—that

any definite intimation was given publicly or officially of the desire to amend clause 74. That considerable secret intrigue had before then been brought to bear upon Mr. Chamberlain to induce him to do so is fairly certain. The poison of the confidential pamphlet had possibly begun to work. What private interchange of views may have taken place between the Colonial Office and their aiders and abettors here in the work of amendment we don't yet fully know. But even then there was no need for Mr. Chamberlain to talk about throwing the Federal Constitution of Australia into his wastepaper basket. Nor did he. Why should he threaten to do so when Sir Samuel Way and his friends told him he could amend without the consent of either the people or Parliaments of Australia? To have uttered such a threat would have been an idle and unnecessary affront to this country. He said he was going to amend—with the delegates' consent if he could get it—failing that, with the Premiers' if he could get it; but in any case to amend. He had the power—the vis major of the Imperial Parliament: he knew that; and, whilst resisting amendment, we must take for the time being what we could get.

3. Then Sir Samuel proceeds—"The Colonial Premiers intimated that they preferred the Bill being amended to its being laid aside." That is quite incorrect. The Colonial Premiers never said anything of the kind. The idea of the Bill being "laid aside" was never before them, and on the evidence of their reply to Mr. Chamberlain never entered their heads. How could it? Mr. Chamberlain might wound Australia by amending. He would not insult her or precipitate danger by rejection. It is unthinkable. The Premiers inferred from the despatches, mistakenly I humbly believe, two alternatives—amendment or delay, which they called postponement of consideration. They never said they "preferred amendment." But in most careful and cautious phrase they said delay would be "much more objectionable to Australians generally than the former." And they were right. For all that, they meant the delegates to oppose amendment, and, if it came, to see that it was in the shape least hurtful and most easily remedied later on. This and no more they have done.

4. Having attributed to the Premiers the erroneous statement that "they preferred the Bill being amended," Sir Samuel Way goes on to add—"Accordingly the Bill was introduced" with Mr. Chamberlain's amendments. Is not that a tricky—I am sorry there is no other appropriate word—suggestion that Mr. Chamberlain had the Premier's authority for amendment? Is it not a fact that both delegates and Premiers disclaimed such a construction when placed upon their words by some English newspaper. The controversial methods of the new element in politics do not commend themselves.

5. The result, any way, is the new clause. Let us extricate it from the misrepresentation, vituperation, and obscurity with which it has been overlaid by its enemies, who are also the enemies of the Bill as accepted by the people. I accept the version set out in Sir Samuel Way's fourth paragraph. He says the language is "obscure." I deny it. He does not attempt to show it. He is content to play "follow my leader" to Sir Samuel Griffith, and accepts what he flatteringly calls the latter's "trenchant criticism." And even if the language were "obscure" he admits "the object aimed at is clear enough." As the usual purpose of language—at any rate, in an Act of Parliament—is to make the object "clear," it seems hypercritical to designate language "obscure" which makes the object "clear enough." I agree the object is clear. Sir Samuel Way does not state it reliably or with precision. He mixes up bits of it with his own preposterous inferences, with diatribes against imaginary executive interference "in private litigation," and with inexcusable inaccuracies in regard to the provisions of the Bill as it left the Convention.

6. I will state the object. Clause 74 retained and maintained the right of appeal to the Privy Council in all private litigation from the Federal High Court. It made the decision of that Court final upon every question involving the interpretation of the Constitution of the Commonwealth or of a State, and prohibited appeal. This, because it was considered by the Convention, endorsed by the people, essential to our enlarged national self-government. But if any such question went beyond purely local Australian concerns—trenched upon Imperial interests—then an appeal lay because, whilst we wished to govern ourselves, we did not claim to govern other parts of the Empire or people owing no allegiance to United Australia. Now the new or revised clause 74, which has frightened these unprogressive Chief Justices out of their accustomed propriety, is intended to do—and in my opinion does—exactly the same thing. Without those words about Executive consent—put in, remember, by the English law officers—it is identical in substance and meaning with the old clause 74, excluding the old protection of Imperial interests for which the reference or appeal with Executive consent was substituted.

7. In the first place it gives finality to the constitutional decisions of the High Court. Is not that what we have been struggling to secure by the Bill without amendment? These constitutional questions may arise in litigation either between State and Commonwealth, State and State, or a citizen and the Commonwealth. And, "howsoever arising"—to borrow the words of the new clause—the old clause 74 made the decision of the Australian High Court final. The new clause does neither more nor less, the only difference being that the old clause absolutely precluded possibility of any further consideration of the problem, whilst the new clause admits the possibility of a reference to the Privy Council. But the old clause safeguarded the interest of other parts of the Empire, if affected by the decision, by unrestricted appeal without any consent. The new clause does this in the manner desired by Mr. Chamberlain by permitting a reference of the judgment of the High Court to the Privy Council with the consent of the Executive Government. Surely Australians cannot object to that expression of implicit confidence in the integrity of their Government. If the Imperial Government are satisfied we should be proud to be thought worthy of this trust.

8. Again, it is the power which the Imperial Government insists upon entrusting to united Australia which permits to the citizen—in constitutional litigation—the possibility of a reference to the Privy Council of a constitutional question which clause 74 did not give him. So the words of the Imperial law officers make him that much better off—if it be so considered—than under the unamended Bill. But the opponents of the unamended Bill are still discontented! The Executive Government has to consent. And why not? If the Imperial Government submit themselves to that consent, why not the citizen when he is getting something he had not before? But, you must remember, the High Court is final. When it decides a constitutional dispute there is an end. Therefore, this reference with consent is no part of the litigation—it is *ex gratia*. And who but the Executive should give or withhold consent? The whole scheme of federal self-government and the finality of the High Court would be a farce if it were otherwise. There is no interference with the Judiciary in any shape or form. The situation does not arise till the High Court has pronounced judgment; and it is astonishing that a concession beyond the old clause 74 should be made a ground of vehement objection to the new.

9. The Premier, Mr. Holder, said in the House that his latest communication with Mr. Kingston went back to the unamended Bill. I for one would rejoice to have that, if it were possible, because it rests on the broad, firm ground of the referendum. I am as strong for the Bill without amendment as ever. But it is not, I fear, possible. We might as well cry for the moon. And to renew the hopeless fight for it is simply to imperil Mr. Chamberlain's revised clause 74, and play into the hands of its enemies, who are also the enemies of the old clause 74—that is, the unamended Bill. I therefore earnestly appeal to Mr. Holder not to be led astray. He appears to have been influenced by opinion that "the compromise was open to so many irreconcilable interpretations." Was there ever an important clause in any Statute of which much the same might not be said? Was not the same or worse said of the original clause 74 in the unamended Bill? And whence do these disturbing opinions come? Is it not from the same tainted source which fomented amendment and fanned the whole trouble? The new clause, I have shown, is in substance identical with the old—although, for myself, I prefer the scheme and the draughtsmanship of the new to the old. Why, then, should Mr. Holder go back on his approval of it some weeks ago? I entreat him not to do so, but to accept the guidance and opinions of the delegates rather than those of the enemies of the unamended Bill—and of clause 74, both new and old.

Selborne Chambers, June 16.

OBSERVATIONS.—No. IV.

1. This closes the present chapter. To-day's cables tell us that Mr. Chamberlain and his law officers have withdrawn the provision they inserted in new clause 74 for "the consent of the Executive Government" to any reference of a constitutional question to the Privy Council, and have substituted the consent of the Federal High Court. This our opponents may claim as at least a partial victory. If they do I shall not grudge it to them. We can be magnanimous in defeat. It leaves untouched the great principle we have been contending for—namely, the right of Australia to finally settle her own constitutional disputes and difficulties; and confides absolutely in Australia, through her High Court, the decision as to whether the Privy Council shall in any case be invoked. No outside interference with our own self-government is therefore possible, unless at our own invitation or by direction of the Federal High Court. I should have preferred the unamended Bill because of the referendum. The new modification is open to criticism if one desired to be critical; but in substance, if not in form, we get the Bill without amendment. And so, with that "sweet reasonableness" by which I have throughout been guided, I am content.

2. I respectfully recommend the same contentment to all desiring the early accomplishment of federation. I hope the Bill with this modified clause 74—as no better can be had—will speedily receive the seal of Imperial enactment. The issues have been momentous—the greatest political issues ever known in Australia. The contest has been hot and vehement, as all political conflict between earnest men must be. Now, I hope, all parties and all sides will unite in welcoming the advent of the Bill as it now is, and in preparing to launch the New Australian Nation under the Constitution substantially as framed and adopted by the Australian people.

Selborne Chambers, June 18, 1900.

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