THE
ANNOTATED CONSTITUTION
OF THE
AUSTRALIAN COMMONWEALTH

BY
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IN THE AUTHORITY OF ONE OF THE REPRESENTATIVES
OF THE NATION IN THE NATIONAL AUSTRALIAN CONVENTION OF 1900
AND
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51. (viii) Astronomical and meteorological* observation.

However, Mr. Shaw pointed out that the majority of realizing such a plan, but the sub-clause was agreed to. (Conv. Jnl., Addl., pp. 2754.)

171. "Astronomical, &c."

"Astronomy is of course a branch of the natural sciences, and we should have it understood throughout Australia with regard to these matters. I am not so far behind the scientific men in the Northern hemisphere and Europe in the matter of observation. Mr. Fawcett has pointed out that one of our best astronomers, who was not a scientific man, had observations in Tasmania. These were on Mount Wellington, but there are many places of opinion among the best men of Tasmania at present upon our own Sydney Observatory. Why should the Sydney Observatory be the best men in Australia and elsewhere, whereas we have astronomers at Mount Wellington? I think they could be taken up. If there is another Astronomical and Meteorological College, why should it be the ground for begging the present Sydney and other Observatories?"

With regard to the meteorological observations, I am very important that they should be under Federal management. Take the case of the United Kingdom. We have an observatory at Edinburgh, and another at the chief place of Scotland, and another at the chief place of England, both admirably managed institutions which we do not hear at all coming before Parliament. The same is the case with the Washington observatory in the United States, the Berlin observatory, the Melbourne observatory in Australia, which should seek before Federal observatories, as I know, not be objected to, and that should I think there are several, and I wish that in Convocation they would add to the climate as it stands." (186)

51. (ix) Quarantine*

Historical Note.—"Quarantine and the establishment of marine hospitals" is specified in sec. 394 of the British, New South Wales, and New South Wales Acts with the Act of 1860 of the Australian Parliament. In 1897, the Australian Parliament passed an Act regulating the establishment of marine hospitals, but it was not until 1899 that the Australian Parliament passed an Act providing for the establishment of marine hospitals in Australia.
51. (ix.) Quarantine.

51. (viii.) Astronomical and meteorological observations:

In the meantime, the subject of quarantine has been the subject of discussion and debate in the United States. The United States Constitution does not expressly confer on Congress jurisdiction to deal with quarantine. Laws relating to quarantine may, although not so intended, operate as a regulation of trade and commerce. Congress, like the Federal Parliament, has the exclusive power to regulate inter-state and foreign commerce. Hence it follows, that though some quarantine regulations necessarily involve an interference with and restraint of the movements of commerce, and of those engaged in it, the power of the States to deal with quarantine, although not taken from them and handed over to Congress, is strictly speaking very limited. In practice, however, the States pass quarantine regulations until Congress shall have interposed by independent legislation over the subject, or shall have forbidden State laws in relation thereto. So far Congress has not passed laws inconsistent with State quarantine laws; on the contrary it has adopted some of the State laws bearing on the subject. (Morgan's Steamship Co. v. Louisiana, 118 U.S. 455.)

Quarantine under the Commonwealth.—The Federal Parliament has received a clearer and fuller grant of power relating to quarantine than Congress. It is given to Congress by implication; it is conveyed directly to the Federal Parliament. Out of that express grant amplifications and developments may flow which could not have been evolved from an implication. The Federal Parliament may deal with quarantine without reference to the interests of trade and commerce, but as an independent question having regard to the sanitary condition and welfare of the Commonwealth as a whole. It will be able to provide for the isolation, segregation, remedial and preventive treatment of animals and plants and their diseases wherever found within the Commonwealth. It would be able, if deemed desirable, to grapple with such problems as the tick plague or a phylloxera pest, in stamping out which the whole of Australia is interested. Such a power would only be exercised in cases of universal interest and of far-reaching importance, and for the purpose of reinforcing and not superseding the ordinary sanitary laws, institutions and authorities in operation within the respective States.

Canadian Cases.—By the Canadian Constitution, sec. 91, sub-sec. 11, the Dominion Parliament has exclusive jurisdiction over quarantine and the establishment and maintenance of marine hospitals. In Ringfret. v. Pope, 12 Quebec L.R., p. 303, it was held that the preservation of the public health within the Province was a matter of merely local or provincial concern, and that the provincial legislature had exclusive jurisdiction. The provincial legislature could deal with matters of local or provincial concern, and the Dominion Parliament had no right to interfere. In 1869 a Bill providing for vaccination was not proceeded with in the Dominion Parliament, as it was
31. (x) Fisheries in Australian waters beyond territorial limits.

Kennedy, K., op. cit., p. 1855-74. 

Powers of the Parliament. 

Section 51. (x) Fisheries. 


describes fisheries as "cases to which the laws of Canada do not extend."

This definition is significant because it recognizes the distinct nature of fisheries as a subject matter, separate from land and mineral rights.

The Canadian Parliament's jurisdiction over fisheries is further reinforced by the principle of self-sufficiency, which suggests that the federal government has the primary responsibility for managing fisheries for the betterment of the collective interest.

This section is crucial for understanding the sovereignty of Canada over its fisheries, even in areas that lie beyond its territorial limits. It underscores the government's role in ensuring the sustainable and equitable use of these resources, which are vital for both the economy and the cultural identity of the Canadian people.
The Governor of a colony, though having the title of Commander-in-Chief, is not invested with the command of the navy. His principal task is to take the immediate command of all the postal and telegraphic services of each State. In the event of a request being made by his Government, he is required to communicate with the Governor of the Commonwealth. The telegrams of each State should be retained, as the existing postal union was sufficient. On Dr. Quick's motion, "telephones" were added. (Conv. Deb., Melb., pp. 1201-2.)

Verbal amendments were made on reconsideration. (Conv. Proceedings, Melb., p. 231.)

HISTORICAL NOTE.

§ 292. "Departments . . Transferred." By the operation of the Constitution, and without the necessity of any other formal act, the departments of Customs and Excise in each State will become transferred to the Commonwealth simultaneously with the establishment of the Commonwealth, on the date or dates to be proclaimed by the Governor-General. The day named in the Governor-General's proclamation (clause 4) will be the day on which the Commonwealth shall become a party to and assume the obligations of any convention with which it may come into existence. The departments of the Public Service in each State enumerated in this section will become transferred to the Commonwealth on the date or dates to be proclaimed by the Governor-General.

In addition to the departments enumerated in this section, there are other departments which will become transferred to the Commonwealth without the necessity of formal legislation, namely, the departments of the Executive Government of the Commonwealth which are not included in the above-mentioned sections. These departments will be transferred on the day named in the Governor-General's proclamation.

In Committee, Mr. Wrixon asked whether sub-departments attached to the Customs department (e.g., Immigration Office, or various Customs Offices) would be included. Mr. Barton thought that only current obligations were meant. Mr. Walker thought that the Customs and Excise Department was the only one which need be taken over at the establishment. Sir Samuel Griffith was clear that they would not. Mr. Baker raised the question whether telephones would be included in "Posts and Telegraphs." Mr. Douglas thought that the State from which they were transferred would be relieved of the annual expenditure in respect of the department and the property used in connection therewith, and will be compensated for the value of such property. Another result will be that the State will be deprived of the revenue received in connection with the department.

The following table, based on a return presented to the Convention at the Melbourne session (Conv. Proceedings, Melb., p. 231) shows:—

<table>
<thead>
<tr>
<th>Department</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs and Excise (less cost of border officers)</td>
<td>£107,528</td>
</tr>
<tr>
<td>Posts, telegraphs, and telephones</td>
<td>£8,996</td>
</tr>
<tr>
<td>Naval and military defence</td>
<td>£7,893</td>
</tr>
<tr>
<td>Quarantine</td>
<td>£7,280</td>
</tr>
<tr>
<td>Meteorological observations</td>
<td>£4,391</td>
</tr>
<tr>
<td>Immigration Office</td>
<td>£4,000</td>
</tr>
<tr>
<td>uez and Statistics</td>
<td>£3,906</td>
</tr>
<tr>
<td>Currency and Coinage</td>
<td>£3,286</td>
</tr>
<tr>
<td>Bankruptcy and Insolvency</td>
<td>£2,300</td>
</tr>
<tr>
<td>Copyrights, Patents, and Trade Marks</td>
<td>£1,295</td>
</tr>
</tbody>
</table>

The above table shows the total amounts of which each State will be relieved in respect of the above mentioned services, together with the interest at 3 per cent, on the value of property used in connection therewith, and the annual revenue of which each State will be deprived in connection with such services. The figures are those of 1890 or 1895-6.
come within the constitutional prohibitions. [Darrow v. Dickey, 92 U.S. 363.] It has been held that a tax on every bank is a tax on banks, not on the names of certain bankers, and a tax on the banks by the name of entering the banks. (Stollman v. Port Washington, 11 Wall. 271.) The constitutionality of the same charge, for which a charge may be sustained by the Federal Court, to ascertain whether it affects them to a duty on banking. [St. Louis v. Telegraph Co., 129 U.S. 403.]

QUALIFICATIONS—Until the usual over the various departments of government is assumed is the Federal Government, the States will continue to maintain the financial institutions and to enforce the guarantees laws. Such laws may require persons engaged in commerce to submit to military conscriptions, and, if necessary, to remain under the jurisdiction of the respective government for statutory periods. They may impose a charge on such vessels for violating the laws of navigation. In Tennessee v. Brown et al., 144 Mass. 512, it was decided that the State might, by its officers, demand all vessels using a port and compel the owner to pay the cost of supervision. An ordinance of St. Louis provides that any vessel coming from Lake Michigan, having had at least more than a specified number of passengers during the voyage, should result in quarantine for not less than 15 months and not more than 30 days. It was held that this was a valid police and quarantine law. [St. Louis v. Navy, 18 Illinois, 360.]

The question whether varies, qualifications, and other such rules, fees and charges, prescribed by a State, are within the exceptions for revenue raised, or are mere abstractions to commerce, must be determined according to the facts and circumstances in each case. Such exceptions must be fair, reasonable and uniform, and must not amount to a restraint of the commerce. Charges which in the opinion of the Federal Court are nominal or insignifying may be declared unconstitutional, as impairing relations of the said之间的商业关系.

FINANCE AND TRADE.—Omitted over game and fisheries within the limits of a State is reserved to the States. In the enforcement of its game laws, a State could prohibit all trade in the use of game within its limits, without reference to the place where the animal was captured. [Agent v. People, 24 Ill. 195.] As to whether a State could prohibit the transportation of animals, the same is more of authority. [St. Louis v. St. Louis, 144 U.S. 465.] A State has the power to prohibit the use of fish and game, at a time when they could not, under the law, be caught within the limits of the State, has been held to be a violation of the right of personal liberty. [Brown v. State, 119 Ind. 514.] The power given by the State could not be enforced with reference alone to fish or game caught in the State. [Pratt v. State, 119 Ind. 514.]

RECENT DECISION.—It has been already stated that, in the construction of the Constitution, freedom from interstate trade and commerce is secured by two constitutional provisions: (1) under the express limitation of the States to matters of commerce, and (2) by the reservation from the States of the power to impose duties of customs and excise upon the same. In discussing the latter cases, we have been considering the probable effect of the constitutional limitation on subjects commercial securities between the States. It remains to consider how far the immunity of interstate trade and commerce from State regulation is secured through the exclusive control of trade being vested in the Federal Government. This depends upon the meaning to be assigned to "commerce." In our view to see, in the various cases which have been referred to, the first and original meaning of the word "commerce" is that in which it is contended to mean the manufacture and production of commodities in a State; while in another sense it has been extended to mean all subjects of trade, and additional subjects—such as those of manufacture, manufacture, commerce, trade, and commerce—offering to carry out and be considered as of the limited conception of the term; and that view be correct the States of the Commonwealth will retain almost the same powers of taxation as those of the American experiment. 

FINANCE AND TRADE—155
A railroad company whose charter of incorporation does not exempt it from State control may be required by State regulation to convey when called upon, and to change no more than a reasonable temperature, which may be limited by statute. (Winona, R.W., & Co. v. Illinois, 14 U.S. 104; 16 L. Ed. 25.)

A statute of Illinois, routing that any railroad company within that State which charges for transporting passengers or freight of the same class, on the cars or in the boxes, shall pay or charge a tax for the same, is repugnant to the commerce clause. (Illinois, 127 U.S. 324; 8 L. Ed. 78.)

A law of Iowa, which requires a person engaged in peddling goods, wares, and merchandise for sale, in the street or on the highway, to have a license for such business within the State, is in conflict with the commerce clause. (Kimmish v. Chicago Burlington & Quincy R. R. Co., 146 U.S. 604; 13 L. Ed. 106.)

A law of Iowa, which provides that a person having in his possession within the State any cattle or hogs not grown or manufactured in the State, who sells the same in the State, shall be liable for any damage which may arise from spreading the disease known as "Texas cattle fever," is not in conflict with the commerce clause. (Railroad Co. v. Wisconsin, 114 U.S. 587; 5 L. Ed. 223.)

A law of Wisconsin, which prohibits the importation of California violets or violets not grown or manufactured in the State, is repugnant to the commerce clause. (Railroad Co. v. Illinois, 142 U.S. 231; 11 L. Ed. 354.)

A statute of Minnesota, enforcing a quarantine law, which requires the inspection of all products of other States brought into the State for sale, is in conflict with the commerce clause. (Railroad Co. v. Wisconsin, 114 U.S. 587; 5 L. Ed. 223.)

A law of Iowa, which provides that a railroad company within the State shall pay a tax for the use of the railroad within the State, is in conflict with the commerce clause. (Winona, R.W., & Co. v. Illinois, 14 U.S. 104; 16 L. Ed. 25.)

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