Portland - Victoria
March 8, 1891

My dear Sir,

I thank you much for the copy of your Bill and printed
explanatory remarks to your Bill.

While you have been so kind as to
forward to me, I have been most
to me from Melbourne. They are full of
interest and of the highest interest to at
this time of supreme importance for
all Australian politicians. I must
express myself, however, to the particular
subject referred to in the latter part of
your observations to which you direct
my attention. I believe you are correct
in saying that you are the first to call
attention to it publicly. I do not
remember any writer or politician in
Victoria at least, who has mentioned
it made at the basis of an argument
connected with the nature of character of
our constitution.

I will say at once that I return to
Differ from the views you expressed on this question, that I should deem it on all points, theoretical & practical, to be a great mistake if the suggestion contained in your Bill founded on those views should be adopted by the Federal Convention. The form used in the Constitution of the Majority of these States, N.S. Wales, Victoria, Queensland, & South Aus-

tralia, by which the Queen is represented as one part of the Legislature, appears to me to recognize the chief & essential constitutional tie between Great Britain & the self-governing dependencies of Great Britain. With the exception of the appeal from our courts of law to the Queen in Council, it is indeed, the sole tie; and if both of those ties be removed, I do not know if any restraining or controlling power remaining to the Imperial Government that would justify it in continuing to acknowledge the responsibility under which it undoubtedly now lies to other independent States for acts of the legislature.
dependencies which would in law be justly held to be dependencies. The form adopted by the majority of the Australian Constitution, distinctly and accurately expresses the essential fundamental fact of our legal situation of dependence on the British Crown, of the limitation of our rights of legislation, and giving power to legislate. This is an all-sufficient reason for retaining that form as long as we are not prepared to assume the burden of independence.

I do not understand you, however, to hold that the power of disallowance of Australian Acts of Parliament should be taken away from the Crown, but you would represent that power as an executive function of the Imperial Government, not as a power exercised by the Crown as the result of the Federal and Provincial legislatures. But this view of it would appear to justify a method of procedure which would appear to justify a method which would lead to very dangerous interference by the Imperial Government with our legislation from its initial stage down to the time of presentation of Bills for the Royal Assent. We have had experience of such interference.
Free from Section Twenty-nine. Under the Governor as the Representative of The Crown, not as the Agent of the Imperial Ministers of The Crown, affects to perform. He becomes entitled in accordance with the declared general instructions authorized by the Imperial legislature, statutes to be given to him by Imperial Ministers. The Crown is advised by its Imperial Advisers in respect of Bills so referred to subject to or not from them on grounds of Imperial policy only. Which do not force either consideration until the colonial stage of legislation has been passed, and, in the words of the Royal Assent being withheld, have to be publicly alleged justified.

Your suggestion, if adopted, would establish a difference between the force of Federal legislation and the prevailing force of Provincial legislation. This difference would tend not only for the slower or shorter course of legislation until the
In regard to the legal status and power of the Federal and Provincial legislatures, our experiences in British has made our politicians acquainted with the enormous waste of time and political energy occasioned by controversy of this kind. Which is perpetual because the matter is disputeable (can never be determined by recognized authority.) It were better, in my opinion, that there should be a Federation for the present than that we should institute a Federal Constitution which would create new doubts. I am prepared to go further. I hazard the prediction that the Federal government will result in a serious lasting failure if it does not use the grand opportunity of removing the ignorance about to thrust upon us respecting the constitutional rights of power (including that of these rights power) of the several...
Australian Provinces. Of the superiority
of opinion in favor of retaining in the
Proposed Federal Constitution the English
usurpment of responsible government, notwith-
standing its acknowledged defects and disad-
vantages. Why should not that system
be adopted by subjects bonds? For its
entirety? Can any valid reason be
apposed against the expedience of enacting
-participating in an identical sense the
Means of Express Declaration provision
the true legal meaning of the Constitution Act
of all the Provinces of Australia, included
in the Federation? If this were done,
the people of each Province would soon
come to understand the real nature
not only of the Federal Constitution but
of their own. The Federal Constitution
The Provincial Constitution would
explain, support and another. The
subject matter of each would be
distinct. The distinction would be
well defined if, as is hoped, became probable
the Provincial would determine on
serving to the Federal Sovereign only such
enumerated powers as the various Provinces
may be willing to concede to it. There would
there is small danger of conflict of jurisdiction and diversity of practice. Both
the Dominion and Provinces would be
founded on the same constitutional principles,
namely, responsibility to Parliament and
Supreme Control of the executive Government,
and the exclusive control by the representative
body of the legislature of taxation, finance,
as regards legislation.

I write in haste, in quest of the sooner
indicate generally the grounds on which
my answer to your question rests.

Here can be no question to say that your
will all your schemes in the direction have
my heartly sympathy, but I must add for your
success in such very different work on
which you are engaged. I will add that
continued success will entirely depend, in my
opinion, upon the degree in which you shall
be able to master the clear words I apply to the
principle of the general exercise of power of
the provinces to the general exercise of power of
the Dominion. The principles which determine the relations
of the two Houses of the legislature, the legal
assertion of the legislative power of
England.

Sincerely yours,

[Signature]

[Signature]
March 8 1891

My dear Sir

I thank you much for the copy of your bill and the printed observations explanatory of your Bill which you have been so kind as to forward to me and which have been sent to me from Melbourne. They are full of matters of the highest interest and at this time of supreme importance for all Australian politicians. I must confine myself however, to the particular subject referred to in the latter part of your observations to which you direct my attention. I believe you are correct in saying that you are the first to call attention to it publicly - I do not remember any writer or politician in Victoria at least who has mentioned it made it the basis of an argument connected with the nature and character of our Constitution.

I will say at once that I venture to differ from the views you propound on this question, and that I should deem it on all grounds, theoretical & practical, to be a grave mistake if the suggestion embodied in your Bill founded on those views should be adopted by the Federal Convention - The form used in the Constitution of the majority of these colonies, NS Wales, Victoria, Queensland and Western Australia by which the Queen is represented as one part of the Legislature, appears to me to recognise the Chief and an essential Constitutional tie between Great Britain and the self governing dependencies of Great Britain. With the exception of the appeal from our courts of law to the Queen in Council it is indeed the sole tie, and if both of these ties be removed I do not know of any restraining or controlling power remaining to the Imperial Government that would justify it in continuing to acknowledge the responsibility under which it undoubtedly now lies to other independent States for acts of the legislatures of governments of dependencies which would in law and in fact have then ceased to be dependencies. The form adopted by the majority of the Australian Constitutions distinctly and accurately expressed the essential fundamental fact of our legal retention of dependence on the British Crown and of the limitation of our rights of legislation springing from that relation. This is an all sufficient reason for retaining this form so long as we are not prepared to assume the burden of independence.

I do not understand you, however, to wish that the power of disallowance of Australian Acts of Parliaments should be taken away from the Crown,
but you would represent the power as an executive function of the Imperial Government, and not as a power exercised by the Crown as one branch of the Federal and Provincial legislatures. But this view if it were adopted in legislation and acted upon would appear to justify and might lead to very dangerous interference by the Imperial Government with our legislation from its initial stage down to the time of reservation of Bills for the Royal assent.

We have had experience of such interference in Victoria - when protection legislation was first introduced in the Victorian legislation, Mr Cardwell, the Secretary of State for the colonies, wrote a series of despatches, threatening to the Governor and insulting to his ministers, to whom the Governor was instructed to show them, with the view of preventing the introduction of such measures. The action of the Secretary of State was illegal and unconstitutional, but it had a powerful effect at the time. If your suggestion was adopted, it might be argued with some force that as the act of the Crown in assenting to or dissenting from Bills was only an executive act, the imperial advisers of the Crown would be justified in instructing their agent the Governor to try to prevent the passing of bills which they might be induced by secret influence to condemn. The bare possibility of such influence being exercised would have the worst effects.

The legal character of this part of the Constitution of Victoria is easily understood. The ground of it is obvious to everyone who admits that Victoria is a dependency of the British Crown. Its operation has been, except at the period of our history I have referred to, free from friction and controversy. Under it the Governor as the Representative of the Crown and not as the agent of the Imperial Ministers of the Crown, assents to certain Bills. He reserves others in accordance with established general instructions authorised by the Imperial Constitution Statute to be given to him by the Imperial Ministers, and the Crown is advised by its Imperial Advisers in respect of Bills so reserved to assent to or dissent from them on grounds of imperial policy only which do not come under consideration until the colonial stage of legislation has been passed, and which, in the event of the Royal assent being withheld have to be publicly assigned and justified.

Your suggestion, if adopted would establish a difference between the form of Federal legislation and the prevailing form of Provincial legislation, and this difference would undoubtedly give rise sooner or later to controversy and speculation with regard to the legal status and powers of both the Federal and Provincial legislatures. Our experience in Victoria has made our politicians acquainted with the enormous waste of time and of political energy occasioned by controversy of this kind which is perpetual because the matter in dispute can never be
determined by recognised authority. It were better, in my opinion that there should be no federation for the present than that we should institute a Federal Constitution that would create new doubts and lead to new and better and ceaseless controversy. I am prepared to go further and to hazard the prediction that the Federal Convention will result in a grievous and lasting failure if it does not use the grand opportunity it possesses of removing the ignorance and doubts that now prevail respecting the Constitutional rights and powers (including the limits of those rights and powers) of the several Australian Provinces. If the preponderance of opinion be in favour of retaining in the proposed Federal Constitution the English system of responsible government, not withstanding its acknowledged defects and disadvantages, why should not that system be adopted by express words in its entirety? And would any valid reason be urged against the expediency of explaining and interpreting in an identical sense and by means of express declaratory provision the true legal meaning of other Constitution Acts of all the Provinces of Australia included in the Federation? If this were done the peoples of these Colonies would soon come to understand the real nature not only of the Federal Constitution but of their own. The Federal Constitution and the Provincial Constitutions would explain and support one another. The subject matter of each would be well defined if, as happily seems probable, the Convention should determine on giving to the Federal Government only such enumerated powers as the various Provinces may be willing to concede to it. There would then be small danger of conflict of jurisdictions or diversity of practice. Both the Dominion and the Provinces would be founded on the same constitutional principles, namely responsibility to Parliament, as regards Ministers or the Executive Government and the exclusive control by the representative body of the Legislature of taxation and finance as regards legislation.

I write in haste and cannot do more than indicate generally the grounds on which my answer to your question rests.

Allow me in conclusion to say that you and all your colleagues in the Convention have my warm sympathy and my best wishes for your success in the noble and very difficult work on which you are engaged. I will add that enduring success will entirely depend, in my opinion, upon the degree in which you shall be able to enact in clear words and apply to the Dominion and to the several Provinces of Australia the principles which determine the relations of the two Houses of the Legislature and the legal position and action of the Executive Government of England.

I am my dear Sir
Yours faithfully
Geo [George] Higinbotham

The Honourable A. Inglis Clark
Portland - Victoria
March 8, 1891

My dear Sir,

I thank you much for the copy of your Bill & the printed documents explaining of your Bill which you have been so kind as to forward to me, which have been sent to me from Melbourne. They are full of matters of the highest interest at this time of supreme importance for all Australian politicians. I must confide myself, however, to the particular subject referred to in the latter part of your observations to which you direct my attention. I believe you are correct in saying that you are the first to call attention to it publicly. I do not remember any writer or politician in Victoria at least who has mentioned it made at the basis of an argument connected with the nature of our Constitution.

I will say at once that I cannot, to
After form the views you professed on this question, I am disposed to think it must be settled on all points. Theoretical principles, to be a great mistake of the Constitution as it now stands, founded on these views. Should it be adopted by the Federal Convention—The same as in the Constitution of the Majority of their States—N.S.W., Victoria, Queensland, New South Wales, and New Zealand, by which the Queen is represented as one part of the Legislature, appears to me to recognize the Chiefs of the different Constitutional tie between Great Britain and her self-governing Dependencies of Great Britain. With the exception of the appeal from our Courts of law to the Queen in Council, it is indeed an old tie, and if that tie there this be removed, I do not know of any restraining or controlling power remaining to the Imperial Government that would justify it in continuing to acknowledge the responsibility under which it understands how ties to these independent States for acts of the legislatures.
dependencies which would in law or in fact have then ceased to be dependencies. The form adopted by the majority of the Australian (subalternant district) deaconsly expresses the essential fundamental fact of our legal relation of dependence on the British Crown, of the limitation of our rights of legislation by majesty, that relation. This is an all-sufficient reason for retaining this form so long as we are not prepared to assume the burden of independence.

I do not understand you however, to assert that the power of disallowance of Australian Acts of Parliament should be taken away from the Crown, but you would represent that power as an executive function of the Imperial Government, not as a power exercised by the Crown as one branch of the Federal or Provincial legislatures. But the idea of it being adopted in legislation enacted upon would appear to justify a course which led to very dangerous interference by the Imperial Government with our legislation from statistical stage down to the terms of reservation of hills for the Royal Visit.
The Victoria - When protective legislation was first introduced in the Victorian legislation, Mr. Cardwell, the Secretary of State in the Colonies, wrote a series of despatches threatening to the Governor relating to his Ministers to withdraw the Governor if such measures were adopted to the view of preventing the introduction of such measures. The action of the Secretary of State was illegal and unconstitutional, but it had a powerful effect at the time. If these suggestions were adopted, it might be argued that the town force that had the role of the Crown in resisting an insurrection fromWithin would only be effective if the Imperial advisers of the Crown would be justified in instructing their agent, the Governor, to try to prevent the feeling of public modes, which might be induced by secret influences to formulate. The bare possibility that the influence being exercised could have negative effects.

The legal, historical, and past of the constitution of Victoria is clearly understood. The ground is it is obvious to everyone who admits that Victoria is a dependency of the British Crown. Its operation has been, except at the period of the history when referred to,
Free from fractional controversy, under the Governor as the representative of the Crown, not as the agent of the Imperial Ministry, of the Crown, subject to the advice of the Ministers of the Crown. He becomes subject to the advice of the Ministers of the Crown in accordance with the constitution of the Imperial Ministry. The Governor is advised by the Imperial Ministers. The Governor is subject to the advice of the Imperial Ministers only, which do not force the Governor to act in accordance with the advice. The Imperial stage of legislation has been passed, which, in the event of the Royal assent being withheld, must be publicly alleged justified.

Your suggestion, if adopted, would establish a difference between the form of Federal legislation. The preceding form of Provincial legislation, this difference would undoubtedly give the Lower or Upper Legislative Council.
In regard to the legal status and powers of the Federal and Provincial Legislatures. Our experience in British has made over politicians accustomed to the formidable waste of time and laborious energy occasioned by controversy of this kind which is perpetual because the matter to which I refer can never be determined by recognized authority. It would be better, in my opinion, that there should be no federation for the present than that we should institute a Federal Constitution that would create new doubts and to give birth to endless controversy. I am prepared to go further. I hazard the prediction that the Federal Convention will result in a grievous wasting of time and that the grand opportunity of restoring the government should to that hour be seized respecting the constitutional rights to powers (including the limits of those rights) of the several
Australian Sovereignty. Of the proportionate
opinion he is free of returning to the
Proposed Federal Constitution. The English
Lection of Confederation Government, in which
it is to acknowledge defects I did not
accept, why should not that Lection
be adopted by ourselves under the same
Entirety? And can any valid reason be
urged against the Expediency of Explaining
Interpreting it in an identical sense. Nor
Means of express declaration Provision
the true legal Meaning of the Constitution Act.
Of all the Provinces of Australia included
in the Federation? If that were done,
the people of those Provinces would soon
come to understand the real nature
not only of the Federal Constitution but
of their own. The Federal Constitution is
The Provincial Constitution would
explain, support, one another. The
subject matter of each would be
distinct, and distinction would be
well defined if, at last. Hence, without
the Governor General determining on
lying to the Federal Government only those
Incorporated Powers to the various Provinces
may be added to precede to its. There fore.
New In small degrees of conflict of jurisdiction or diversity of practice. Both the Dominion and the Provinces would be founded on the same constitutional principles, namely, responsibility to Parliament, and Executive Monarchy on the Executive Government, and the Inclusion of the Executive Government, and the Inclusion of the Legislative Government of Taxation, Finance, as separate legislation.

I write in haste. I must to do more than indicate generally the grounds on which to answer to your question.

How can I in conclusion say to you and all your colleagues in the Executive branch? Your name dignifies my last words for your success in the noble and different work on which you are engaged. I will add that your own success will entirely depend, in my opinion, upon the degree in which you shall be able to extract the clear words of to the Dominion and to the several Provinces of Australia as the principles which determine the relations of the two Houses of the Legislatures, the legal construction of the functions of an Executive Government.

G. W. Hay, Clerk
Hon. Henry Ely
Mr. Hislop, Clerk

The Honorable
A. Halsey, Clerk