THE COLONIAL LAWS VALIDITY ACT, 1865.

(28 & 29 Vic. c. 63.)

(Imperial.)

AS AMENDED BY

The Statute Law Revision Act, 1893 (56 & 57 Vic. c. 14).

An Act to remove Doubts as to the Validity of Colonial Laws.

[29th June, 1865.]

The short title was given to this Act by the Short Titles Act, 1896 (Imperial).

WHEREAS doubts have been entertained respecting the validity of divers laws enacted or purporting to have been enacted by the legislatures of certain of Her Majesty's colonies, and respecting the powers of such legislatures, and it is expedient that such doubts should be removed:

1. Definitions.—The term "colony" shall in this Act include all of Her Majesty's possessions abroad in which there shall exist a legislature, as herein-after defined, except the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the government of India:

The terms "legislature" and "colonial legislature" shall severally signify the authority other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony:

The term "representative legislature" shall signify any colonial legislature which shall comprise a legislative body of which one half are elected by inhabitants of the colony:

The term "colonial law" shall include laws made for any colony either by such legislature as aforesaid or by Her Majesty in Council:

An Act of Parliament or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:

The term "governor" shall mean the officer lawfully administering the government of any colony:

The term "letters patent" shall mean letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland.

2. Colonial laws, when void for repugnancy.—Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

As to the occasion of this Act, see note to s. 2 of the Statute of Westminster, 1931, title COMMONWEALTH AND STATES.

The rights of the Imperial Parliament to legislate for a colony are preserved. Under this section the local legislature may not enact anything repugnant to such Imperial legislation (*R.* v. *Marais, Ex parte Marais*, [1902] A.C. 51; *Naden* v. *R.*, [1926] A.C. 482). But this section does not apply to repugnancy to Imperial statutes which are law in a colony by virtue of the settlement and establishment of the colony by British settlers (*Vincent* v. *Ah Yeng* (1906), 8 W.A.L.R. 145).

This section does not render invalid a provision in a Queensland Act which is inconsistent with the Constitution Act of 1867, *ante*, but does not constitute an express amendment of that Act (*McCawley* v. *R.*, [1920] A.C. 691).

The powers given by the Commonwealth Constitution Act, 1900 (title COMMONWEALTH AND STATES), to the Commonwealth Parliament to legislate upon certain subjects, were held not to exclude the applicability of this section to legislation under such powers (*Union Steamship Co. of New Zealand Ltd.* v. *The Commonwealth* (1925), 36 C.L.R. 130). The section will, however, cease to apply to legislation of the Commonwealth in the event of the adoption by the Commonwealth of s. 2 of the Statute of Westminster, 1931 (*ibid.*, s. 10, title COMMONWEALTH AND STATES).

For decisions as to whether this section applies or not, see *A.-G. for Queensland* v. *A.-G. for the Commonwealth* (1915), 20 C.L.R. 148; 22 C.L.R. 322 (Commonwealth Land Tax Assessment Act not repugnant to Imperial Acts vesting control of Crown lands in State Parliaments); *Union Steamship Co. of New Zealand* v. *The Commonwealth, supra* (provisions in Commonwealth Navigation Act 1910 repugnant to provisions in Imperial Merchant Shipping Act, 1894); *Australasian Steam Navigation Co.* v. *Smith* (1885), 7 N.S.W.L.R. (L.) 207 (provisions of State Navigation Act repugnant to those of Imperial Merchant Shipping Act, 1873); *The Commonwealth* v. *Kreglinger Fernau Ltd.* (1926), 37 C.L.R. 393 (Commonwealth Act limiting appeal to High Court from State courts exercising federal jurisdiction, and the Judicial Committee Act, 1844, empowering Crown to provide for appeal from any colonial court); *In re Robert Barbour* (1891), 12 N.S.W.L.R. (L.) 90 (provision of N.S.W. Crown Lands Act, 1889, repugnant to Imperial legislation giving right of appeal to the Privy Council); *Rusden* v. *Weekes* (1861), Legge (N.S.W.) 1406 (question of repugnancy between New South Wales and Imperial Acts relating to Crown lands).

See also The Colonies (Evidence) Act, 1843 (Imperial), title EVIDENCE.

3. Colonial laws, when not void for repugnancy.—No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

See notes to s. 2, *ante*.

4. Colonial laws not void for inconsistency with instructions to Governors.—No colonial law passed with the concurrence of or assented to by the governor of any colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorizing such governor to concur in passing or to assent to laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent or last-mentioned instrument.

5. Colonial legislatures may establish, &c., courts of law. Representative legislatures may alter their constitutions.—Every colonial legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish courts of judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony.

As to confirmation of colonial laws previously passed, see also The Colonial Acts Confirmation Act, 1863 (Imperial), *ante*.

As to the power of the Crown to establish courts, see generally the English and Empire Digest, Vol. 11, p. 515; Vol. 16, p. 100.

As to the meaning of the words "manner and form", see *A.-G. for New South Wales* v. *Trethowan*, [1932] A.C. 526.

In *Taylor* v. *A.-G. for Queensland* (1917), 23 C.L.R. 457, this section was held to empower the Parliament of Queensland to pass The Parliamentary Bills Referendum Act of 1908 (not reprinted) which provided that where a bill passed by the lower House in two successive sessions had, in the same two sessions, been rejected by the upper House, it should become law on an affirmative vote of the electors followed by the assent of the Crown. In *McCawley* v. *The King*, [1920] A.C. 691, it was held to confer power on a colonial legislature to appoint a judge of the Supreme Court for a limited period, notwithstanding s. 15 of the Constitution Act of 1867, *ante*.

6. Certified copies of laws assented to or Bills reserved to be prima facie evidence that they are properly passed. Proclamation as to Her Majesty's disallowance or assent, published in colonial newspaper, to be prima facie evidence of disallowance or assent.—The certificate of the clerk or other proper officer of a legislative body in any colony to the effect that the document to which it is attached is a true copy of any colonial law assented to by the governor of such colony, or of any Bill reserved for the signification of Her Majesty's pleasure by the said governor, shall be primâ facie evidence that the document so certified is a true copy of such law or Bill, and, as the case may be, that such law has been duly and properly passed and assented to, or that such Bill has been duly and properly passed and presented to the governor; and any proclamation purporting to be published by authority

of the governor in any newspaper in the colony to which such law or Bill shall relate, and signifying Her Majesty's disallowance of any such colonial law, or Her Majesty's assent to any such reserved Bill as aforesaid shall be primâ facie evidence of such disallowance or assent.

See also the Evidence (Colonial Statutes) Act, 1907 (Imperial), title EVIDENCE.

[7. *Not applicable to Queensland.*]