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SOUTH AUSTRALIA

ONE HUNDRED AND SECOND REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

RELATING TO THE INHERITED IMPERIAL LAW AND TO STATUTES PREVIOUSLY COVERED BY THE COLONIAL LAWS VALIDITY ACT 1865

1986

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The Members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., *Chairman.*

THE HONOURABLE MR. JUSTICE WHITE, *Deputy Chairman.*

THE HONOURABLE MR. JUSTICE LEGOE, *Deputy Chairman*

M. F. GRAY, Q.C., S.-G.

P. R. MORGAN

D. F. WICKS.

A. L. C. LIGERTWOOD.

G. F. HISKEY, S.M.

The Secretary of the Committee is Mrs Betty Curzons, c/o Supreme Court, Victoria Square, Adelaide 5000.

ONE HUNDRED AND SECOND REPORT OF THE LAW REFORM COMMITTEE OF SOUTH AUSTRALIA RELATING TO THE INHERITED IMPERIAL LAW AND TO STATUTES PREVIOUSLY COVERED BY THE COLONIAL LAWS VALIDITY ACT 1865

To:

The Honourable C. J. Sumner M.L.C.
Attorney-General for South Australia

Sir,

This is the last of the Reports relating to the inherited Imperial Law. It could not be dealt with until Her Majesty had proclaimed the Australia Act 1986 of the Commonwealth Parliament. It is now possible for the legislature of South Australia to deal with statutes with which previously they could not deal, because of the operation of the Colonial Laws Validity Act 1865 (28 & 29 Victoria c.63), and we proceed to deal with them seriatim. This report does not deal with any statutes relating to the former colonies which have been repealed by a later Imperial Act relating to the colonies nor to any Act, which although it refers or relates to Colonies in general or South Australia in particular, deals only with matters taking place or to be dealt with in the United Kingdom.

Statute 11 Hen.VII c.1 (1495)

This Chapter deals with treason and is still in force. It is dealt with in the Fifty-Ninth and Seventy-Eighth Reports of this Committee. It enacts, in effect that service to a King de facto is not treason. The statute applies to Act "within this Land or without". Accordingly it is arguable that the Colonial Laws Validity Act applies to this Statute and we so advised you in the Seventy-Eighth Report. We think that the principle of the statute should remain part of the law but that the statute itself should be repealed and its content put in the Criminal Law Consolidation Act.

Statute 5 & 6 Edw.VI c.11 (1552)

Section V of that Statute refers to persons rebelliously detaining castles, fortresses and similar fortifications "within this Realm, or in any other the King's Dominions or Marches". Section VI provides generally in relation to the commission of treasons "Out of the Limits of this Realm in any outward Parts".

Accordingly, these sections are arguably caught by the Colonial Laws Validity Act. We said in the Fifty-Ninth Report of this Committee that this statute ought to be put into a general statute on the Criminal Law and we confirm that advice.

Statute 1 Eliz.I c.2 (1558)

This is the Act of Uniformity and applies to "other the Queen's Dominions". We have no established Church in South Australia. We made recommendations with regard to it in the Seventy-Ninth Report of the Committee and we reaffirm them now.

Statute 1 Car.I c.1 (1625)

This is one of the Lord's Day Acts which are dealt with in the Ninety-Second Report of this Committee. The statute however refers to unlawful meetings on the Lord's Day "within this Realm of England or any Dominions thereof" and the statute is therefore caught by the Colonial Laws Validity Act. We recommended in the Ninety-Second Report that this Act should simply be repealed and we reaffirm that advice.

Statute 12 Car.II c.14 (1660)

This is an Act for a perpetual anniversary thanksgiving on the 29th May of each year, generally known as Oak Apple Day, the day on which the King escaped from Cromwell's forces in 1651. The statute provides "that every Person and Persons inhabiting within this Kingdom, and the Dominions thereunto belonging" shall resort to a church or chapel for thanksgiving on that day. We dealt with this Statute in the Sixty-Fifth Report of this Committee and recommended its repeal and we reaffirm that recommendation.

Statute 11 Will.III c.7 (1699)

This is a comprehensive statute relating to piracy. It provides for jurisdiction in piracy to be exercised "in any of His Majesty's Islands, Plantations, Colonies, Dominions, Forts, or Factories". Accordingly, the Colonial Laws Validity Act applies to it. There is much in the Statute both in the conferring of jurisdiction on the court and in the substantive law of piracy which needs to be retained and should be found in a Criminal Law Consolidation Act. Once that has been achieved then the statute can be repealed. The statute is referred to in passing in the Fifty-Ninth Report of this Committee, but no recommendation is there made with regard to the final disposition of the statute as far as our statute books are concerned. We refer again to the fact that section 18 of the statute was repealed before 1836 by *9 Geo.IV c.31 s.1* so it is only the balance of the statute which needs to be dealt with by legislation in this State.

Statute 11 Will.III c.12 (1700)

This statute provides that Governors of colonies are punishable in England for a crime committed by them in a colony. On the face of the statue it applies "within his Majesty's Dominions beyond the Seas". The statute is referred to in passing in the Fifty-Ninth Report of this Committee. Governors of Australian States in this day and age are Australian citizens and *Statute 11 Will.III c.12* can now be repealed.

Statute 1 Anne c.2 (1701)

This is a statute dealing with the demise of the Crown. By section 6 the Act applies to "all Her Majesty's Dominions in America and elsewhere". We recommended in the Eighty-First Report of the Committee that a modern version of sections 4 and 5 of this Act should be included in South Australian legislation and we reaffirm that recommendation. Subject to that the remainder of the Act may now be repealed in this State.

6 Anne c.34 (1706)

This Act extends the Piracy Act of *11 and 12 Will.III c.7* and therefore, like the principal Act raises a Colonial Laws Validity Act question. The Piracy Act *11 and 12 Will.III c.7* was made perpetual by *6 Geo.I c.19* and accordingly there is no need to keep *6 Anne c.34* as part of the Law of South Australia today and it may be repealed.

Statute 6 Geo.I c.19 (1719)

This follows on from the last preceding Act and makes the statute of William III perpetual. We recommended in the Eightieth Report that the statute of George I be repealed in South Australia today and we repeat that recommendation.

Statute 4 Geo.II c.18 (1730)

This statute deals with forgery of passes to the Mediterranean. It is stated to be in force throughout the King's Dominions. It was repealed in 1867 in England. It is obsolete in South Australia today and should be repealed here.

Statute 18 Geo.II c.30 (1745)

This is another in the series of Acts dealing with piracy. It distinguishes between piracy and high treason in that a conviction or acquittal under this Act prevents a subsequent indictment being laid for high treason. It refers to "any of His Majesty's Islands, Plantations, Colonies, Dominions, Forts, or Factories". The statute should be repealed after the substance of it has been placed in a general Act relating to the criminal law.

Statute 12 Geo.III c.24 (1772)

This deals with arson of the Queen's dockyards and is in force in South Australia. It refers to offences committed "in any Place outside of this Realm". The statute should be repealed and the substantive law placed in a Criminal Law Act.

Statute 19 Geo.III c.67 (1779)

This is an Act relating to prize. Sections XXVII, XXXIV, XXXVI and XXXVII expressly apply to "His Majesty's Dominions". This statute was repealed in England as part of the general consolidation of Prize law in 1864 and it is the 1864 statute which governs the law of prize in Australia today. That being so this statute can be repealed.

Statute 22 Geo.III c.75 (1782)

This is a statute relating to the holding of public offices in the Colonies. It is referred to in the Sixty-First and Eighty-Sixth Reports of this Committee and is dealt with in detail in the Ninety-Third Report of the Committee. We point out, as we did in that Report, that before this Act can be repealed some mechanism will have to be provided for in South Australia under which Judges who are unjustly amoved from office by resolution of both Houses of Parliament concurred in by the Governor, have some right of appeal against the amotion. We repeat that recommendation. This statute should not be repealed until that point has been dealt with by legislation in this State.

Statute 36 Geo.III c.7 (1796)

This is a statute relating to treason. Part of it is not in our Criminal Law Consolidation Act as we pointed out in our Fifty-Ninth Report because at that stage the Colonial Laws Validity Act prevented that happening and the then Mr. Chamberlain drew the Criminal Law Consolidation Act 1935 with that consideration in mind. Those parts of the 1796 Act which do not presently appear in our Criminal Law Consolidation Act, should now since the passing of the Australia Act 1986 and its proclamation be placed in our Criminal Law Act when the new Act is drawn.

We draw your attention to a misprint in the commentary on this statute in the Fifty-Ninth Report. In the fourth line of the commentary the word "days" should read "persons".

Statute 42 Geo.III c.85 (1802)

This statute deals not only with the punishment of Governors but of all persons holding office in any of the colonies. By its wording it is within the scope of the Colonial Laws Validity Act. We dealt with it as

far as we could in the Fifty-Ninth Report of this Committee. Any persons committing offences in South Australia today would be dealt with under State or Commonwealth law and this statute is no longer needed and can be repealed.

Statute 43 Geo.III c.90 (1803)

This is a statute putting limits on the areas in which whales can be fished. Such matters would be regulated by international treaty today. No doubt when the statute was passed, it was done to stop the East India Company claiming jurisdiction over the whole of this area of ocean and over any British ship trading in the area. All of that is of antiquarian interest only now. Whale fishing today is regulated by International Conventions to which Australia is a party and we see no reason why this statute should not be repealed. We note that by an oversight the repeal of this statute is recommended by the Eighty-Ninth Report but without any discussion of the Colonial Laws Validity Act point which is involved in it, because c.90 is not referred to in the text but only in the recommendation for repeal.

Statute 49 Geo.III c.126 (1809)

This is a statute dealing with the sale of public offices. It is force in South Australia. It is dealt with in the Fifty-Ninth Report and there are detailed recommendations contained in the Eighty-First Report. We think, on consideration, the statute is caught by the Colonial Laws Validity Act but that since the proclamation of the Australia Act 1986 there is no reason why you should not proceed with legislation to carry out, if you see fit, the recommendations contained in our Eighty-First Report.

Statute 1 Will.IV c.22 (1831)

This is an Act to enable courts of law to order the examination of witnesses upon interrogatories and it gives authority for examination of witnesses in the colonies in relation to any action pending in any court in England. We see no reason why this provision should continue in existence. The English courts can make the usual request to the Courts of South Australia for the examination of witnesses and the examination will then take place and we think this statute may be repealed.

Statute 3 & 4 Will.IV c.41 (1833)

This is the first of the Acts giving a right of appeal from colonial courts to Her Majesty in Council. The right of appeal to the Privy Council has now been abolished as far as Australia is concerned and this statute can therefore be repealed.

Statute 7 Will.IV & 1 Vict. c.31 (1837)

This statute made provision for the continuation of military and naval commissions notwithstanding a demise of the Crown. We have already reported to you on this statute in the Eighty-First Report of this Committee and we repeat the recommendations we there made to you.

Statute 7 Will.IV & 1 Vict. c.88 (1837)

This is a statute relating to the suppression of piracy and is to be read as amending the Statutes of William III and George II relating to piracy. The importance of the statute is in section 11. The death penalty is substituted for other penalties in the earlier statutes. The policy of both parties in South Australia is not to have the penalty of death carried out. Accordingly section 11 of the statute which imposes the death penalty should be repealed in any event. Probably the whole statute could be

repealed at this stage, as we have provisions in the Criminal Law Consolidation Act relating to piracy.

Statute 3 & 4 Vict. c.62 (1840)

This was the Act which permitted the establishment of a legislative council in South Australia. It would seem necessary that the Act remain in force in this State as being one of the Acts which ultimately gave authority for the establishment of parliamentary government in South Australia.

Statute 3 & 4 Vict. c.65 (1840)

This was the first of the statutes which gradually increased the jurisdiction in Admiralty. It needs to remain in force for the time being in South Australia until the new Commonwealth Admiralty Act becomes law and possibly beyond then if the projected Commonwealth Admiralty Act does not apply to the interior gulfs and waters of South Australia.

Statute 5 & 6 Vict. c.36 (1842)

This is the statute which permitted the Colonies in Australia to alienate the waste lands of the Crown which previously was subject to direction from London. Much of the statute is overtaken by later events. However, there is no doubt that a great deal of land in South Australia was alienated by original grant pursuant to the powers in this statute and therefore forms part of the root of title of many pieces of land. Accordingly Sections II, III, and V should, at the very least be retained, although the remainder of the statute could, we think, be repealed. It was repealed in England by *18 & 19 Vict. c.46.*

Statute 5 & 6 Vict. c.51 (1842)

This amends the law relating to high treason in relation to attempts on Her Majesty's life. As we have said in previous reports to you, it is unthinkable that the protection of the treason laws deserts Her Majesty on her leaving the United Kingdom and indeed the contrary was assumed to be the law in *DeJager v. The Attorney-General of Natal (1907) A.C. 326* which clearly assumes that the treason laws are in force throughout the former Empire. The protection afforded in relation to attempts by *5 and 6 Vict. c.51* is not presently covered by the Criminal Law Consolidation Act, no doubt because this was not possible whilst the Colonial Laws Validity Act remained in force. We think the statute could be repealed and the substance of it placed in a Criminal Law Act of this State.

Statute 5 & 6 Vict. c.61 (1842)

This is the South Australia Act 1842 which abolished the jurisdiction of the Colonisation Commissioners and made South Australia a colony in the ordinary sense. It also provided for a Legislative Council and for what was called a General Assembly. It is the foundation of the present parliamentary jurisdiction of South Australia and the preamble and sections II, IV, and V ought, at the least, to be preserved.

Statute 5 & 6 Vict. c.69 (1842)

This is a statute conferring jurisdiction on the Court of Chancery to perpetuate testimony. It is not of its own force in force in South Australia but the Supreme Court Act 1855-1856 took over all the existing jurisdiction of (inter alia) the Court of Chancery and as this jurisdiction was conferred since 1836 and certain doubts have been expressed in litigation in the Court at various times with regard to the effect of conferment of

jurisdiction between 1836 and 1856, it might be wise to put this confirmatory jurisdiction into our Supreme Court Act or some other similar legislation in this State.

Statute 6 & 7 Vict. c.22 (1843)

This statute for the first time permitted aborigines to give evidence by providing that the legislatures of such colonies who had aborigines in or near their territory could make laws for the admission of evidence by aborigines notwithstanding that those laws would otherwise have been repugnant to the law of England. The statute may be repealed now but with a saving of the power conferred on the legislature of South Australia.

Statute 6 & 7 Vict. c.38 (1843)

This is the general Act which regulates appeals to the Privy Council. As those appeals have now been abolished following the proclamation of the Australia Act 1986 this statute can be repealed.

Statute 6 & 7 Vict. c.94 (1843)

This is the Foreign Jurisdiction Act 1843 which conferred power on Courts in colonies to obtain statements from a principal Secretary of State in London with regard to what jurisdiction Her Majesty possesses outside of Her Majesty's Dominions. Such a matter would be decided today by the Foreign Secretary of Australia and not in London and we think this statute should be repealed.

Statute 7 & 8 Vict. c.2 (1844)

This deals with the conferral of jurisdiction in admiralty to try offences committed on the high seas and is no doubt the source of the jurisdiction of the Supreme Court of South Australia to hear such matters. However, we think it would be best if the conferral of jurisdiction were now placed in a Criminal Law Act and that this statute be repealed.

Statute 7 & 8 Vict. c.49 (1844)

Under this statute the Colonies were given power to establish a postal system for letters through the Post Master General of England. That is, of course, not what happened in fact, although this is no doubt the power for permitting South Australia to set up such a postage system. Nevertheless, post and telegraph matters are by the Commonwealth Constitution within the power of the Commonwealth and this statute can be repealed.

Statute 7 & 8 Vict. c.69 (1844)

This is a further Act relating to appeals to the Privy Council. For the same reasons as we have already expressed in regard to the previous Act dealing with appeal to the Privy Council, this Act may be repealed.

Statute 9 & 10 Vict. c.99 (1846)

This is the statute which gives jurisdiction to the Court of Admiralty in salvage cases. Most of the statute does not matter today, but sections XL. and XLI ought to be preserved until a general Commonwealth Act is enacted in Admiralty and possibly thereafter in relation to any residual jurisdiction in the State Courts relating to the inland waters of South Australia.

Statute 9 & 10 Vict. c.104 (1846)

This is an amending Act dealing with the waste lands of the Crown in South Australia and other Australian States. The only possible section

which may be of importance in the present day is section IV relating to unauthorised occupation and use of Crown lands. In any event we would think this would be better placed in the Crown Lands Act 1939, and this statute may be repealed. It was repealed in England by *18 & 19 Vict. c.56.*

Statute 12 & 13 Vict. c.66 (1849)

This is the next of the statutes relating to postage in colonies and the one under which South Australia actually acted to establish postage. Again, as this is now a topic of Commonwealth legislation, this statute can be repealed.

Statute 12 & 13 Vict. c.96 (1849)

This is the statute which confers general jurisdiction in criminal cases upon colonial Courts of Admiralty and therefore upon the Supreme Court of South Australia. Either the statute must be preserved or the contents of it placed in a State Act relating to Criminal Law.

Statute 13 & 14 Vict. c.26 (1850)

This gives jurisdiction to the High Court of Admiralty and all Vice-Admiralty Courts in relation to arguments as to whether persons seized by hostile vessels are or are not pirates. Any such claim today in Australia would be made as against the Commonwealth representing the Navy and it is not necessary for this statute to remain.

Statute 13 & 14 Vict. c.59 (1850)

This is the Australian Colonies Government Act 1850 under which the Parliament of South Australia was set up. Only those sections which relate to South Australia namely, sections VII, XI, XII, XIV, XXXII, and XXXV need to be retained today.

Statute 14 & 15 Vict. c.83 (1851)

This is a statute relating to the Court of Chancery and to the Judicial Committee of the Privy Council. In so far as it concerns the Court of Chancery it does not apply in South Australia. In so far as it deals with the Judicial Committee of the Privy Council it is no longer necessary that that part of the statute should remain in force and the whole statute can be repealed in its application to South Australia.

Statute 15 & 16 Vict. c.39 (1852)

This statute was passed as a validating act to get over the fact that the proceeds of sale of crown lands in some parts of the former Empire had been used for local purposes. However, the statute does reaffirm the Crown's right to droits of the Crown and droits of Admiralty in the Colonies. Any such attempt by the Crown in right of England to assert such rights in relation to Australia or any part of it today would be totally obsolete and this statute should be repealed.

Statute 16 & 17 Vict. c.48 (1853)

This provides punishment for providing counterfeit coin in the colonies and giving jurisdiction to the local legislature to alter or vary the law in coinage matters. These pertain to the Commonwealth Parliament today and there is no reason why this statute should not be repealed.

Statute 18 & 19 Vict. c.56 (1855)

This statute by section V enabled the Parliament of South Australia when it was set up to make its own laws with regard to waste lands of

the Crown. Section V which does this is the only section referring to South Australia. Presumably, it ought to be kept as it is the source of the South Australian Parliament's power to make such laws but the rest of the statute can be repealed.

Section 19 & 20 Vict. c.113 (1856)

This gives jurisdiction to the Supreme Court to take the evidence of witnesses in relation to civil and commercial matters pending before foreign tribunals. The jurisdiction is a valuable one but we see no reason why it should not be conferred today by South Australian statute rather than by the Imperial Act of 1856 and that statute should therefore be repealed when sufficient provision has been made by legislation in South Australia.

Statute 22 Vict. c.20 (1859)

This is a statute permitting the taking of evidence in relation to actions in courts in South Australia and places in Her Majesty's Dominions out of the jurisdiction of the Tribunals. This statute is a valuable one. It was used some years ago by Mr. Justice Sangster to take evidence in Tasmania in an action proceeding in the Supreme Court of South Australia. It would be better if there was an exchange of reciprocal legislation between South Australia and other places formerly being part of the British Empire but for the time being until that can be achieved, it may be better to leave this statute in existence.

Statute 22 & 23 Vict. c.12 (1859)

This statute amends the statutes of *54 Geo.III c.15 and 5 & 6 Will.IV c.62* to substitute declarations for affidavits in proper cases. There is no doubt that the statute of William IV applies in South Australia. It is referred to in section 23 of the Oaths Act 1936. The statute of George III probably does not. It is a gift of power to the Parliament of South Australia to make provisions which in fact it has exercised differently from those in the Imperial Statutes. We see no reason why the statute *22 & 23 Vict. c.12* should not be repealed but with a saving of the power given by the statute to the Parliament of South Australia.

Statute 22 & 23 Vict. c.63 (1859)

This permits the Courts in one part of the Queen's Dominions to ascertain the law applicable to the facts of a case before it which law is the law of some other part of the Dominions by sending a case for the opinion in law of the relevant Court in the other part of the Dominions. Again, it would seem wise to have reciprocal provision for this if possible. The position is ameliorated to some extent by the presumption that the law of the other place is the same as the law of South Australia until the contrary is proved. That presumption applies unevenly and it would be better to get reciprocal legislation if that be possible. The present facilities however, are, we think, probably unworkable in that no other part of the former Empire would recognise the obligation to comply with *22 & 23 Vict. c.63*. In any event, somebody conversant with the law in the other Dominion and competent to give an opinion on it can always make an affidavit to that effect on which, if necessary he can be cross-examined. We think that on the whole this statute might well be repealed.

Statute 23 & 24 Vict. c.102 (1860)

This gives power to the legislature of South Australia to provide where any person was feloniously stricken, poisoned or otherwise hurt in any place in South Australia and dies of such stroke, poisoning or hurt upon the sea or at any place out of South Australia, the matter is punishable

within this State. The Parliament of this State in pursuance of that statute has passed section 37 of the Criminal Law Consolidation Act 1935 which enacts to that effect. We see no reason why the statute *23 & 24 Vict. c.122* should not now be repealed but with a saving of the power given to the Parliament of South Australia.

Statute 24 & 25 Vict. c.10 (1861)

This is the Admiralty Court Act 1861. It provides the major part of the jurisdiction of the Supreme Court of South Australia sitting in Admiralty. Until the Commonwealth completes its projected Admiralty jurisdiction Act, this Act should remain in force in South Australia.

Statute 24 & 25 Vict. c.11 (1861)

This is an Act to amend statute *22 & 23 Vict. c.63* relating to the ascertainment of the law as between various parts of Her Majesty's Dominions and enables the Court to remit a case to the Court of any foreign State with which a convention for that purpose exists. It is to be expected that any such procedure in Australia today would be governed by a convention or treaty between the Commonwealth of Australia and the country concerned. We doubt that there is any utility in preserving this statute in South Australia now.

Statute 24 & 25 Vict. c.44 (1861)

This is the statute by which the western boundary of South Australia was extended to the 129th degree of east longitude to be coterminous with Western Australia. Before the passing of this statute there was a certain area between South Australia and Western Australia which was still part of the Colony of New South Wales. The Act also gave power to annex other parts of New South Wales to existing colonies and it was under that part of the Act that the Northern Territory was until 1911 part of South Australia. However, it seems to us that only section 1, which affects the present boundaries of South Australia, need be retained out of this statute and the remainder may be repealed. The statute also provides by section 5 to make provision for determining disputed boundaries between States by agreement. But any change of boundaries between States today would almost certainly be effected under the provisions of the Commonwealth Constitution.

Statute 24 & 25 Vict. c.121 (1861)

This deals with the acquisition of domicile by a British subject dying in a foreign country and of a foreign subject dying in Great Britain or Ireland who has not obtained letters of naturalisation in some part of Her Majesty's Dominions. It also provides that where subjects of foreign states die in Her Majesty's Dominions the consul of the foreign state concerned may administer the estate. We think it is better that the law of domicile should be regulated by a general Act of Parliament of South Australia and that if such a facility is to be given to a consul of a foreign state in relation to probates granted by the Supreme Court of South Australia, that facility should be embodied in South Australian legislation and that this statute may be repealed.

Statute 25 & 26 Vict. c.11 (1862)

This is an Act to amend the Australian Colonies Government Act 1850. Some of the Australian States did not reserve their constitutions for Her Majesty's assent. South Australia was one of them and this is validating legislation. We think its effect has been spent today and the statute can be safely repealed in its application to South Australia.

Statute 25 & 26 Vict. c.20 (1862)

This provides that habeas corpus is not to issue out of any court in England to any of Her Majesty's colonies which have a court capable of issuing the writ. This statute was to override a decision of the Queen's Bench to the contrary effect in 1861: *Ex parte Anderson (1861) 3 El. & El. 487,121 E.R. 525.* We do not think that any Court in England would be likely to do such a thing today and this statute can be repealed.

Statute 26 & 27 Vict. c.76 (1863)

This is a statute to determine the time at which letters patent take effect in the colonies. The statute was repealed in England in 1973 so that no English proceedings could be taken today under this statute. We think it is a matter which should be governed by South Australian legislation and that this statute should be repealed when that legislation has been enacted.

Statute 26 & 27 Vict. c.84 (1863)

Due to the well known views of Mr. Justice Boothby, and to the less well known views of Mr. Justice Gwynne, there were considerable doubts as to the validity of Acts passed by the Parliament of this State for the purpose of altering the constitution of the Legislative Council and House of Assembly and this is validating legislation to get over the problems arising from various decisions of the Supreme Court of this State. The legislation appears to us to be spent and the statute can be repealed.

Statute 26 & 27 Vict. c.121 (1863)

This was a validating statute to get over problems arising out of *26 Geo.III c.84* limiting the ways in which the office of a priest or deacon within the Church of England could be exercised within Her Majesty's Dominions. The statute validated all previous Acts of any such clerical person and gave power to the legislature of any colony to authorise the exercising of clerical functions in the colony by priests and deacons where they had been ordained by Bishops consecrated under the statute of George III. The statute was repealed in 1875 so that it must have been regarded as a purely temporary expedient. We know of no legislation passed by the Parliament of South Australia under the powers given by this statute. Allowing for the well known separation of Church and State which has obtained since the responsible government in South Australia, it is very unlikely that any such legislation would have even been contemplated. We think that this statute can be repealed.

Statute 27 & 28 Vict. c.25 (1864)

This is the Naval Prize Act 1864. It would in time of war regulate all questions of Naval Prize in South Australia and is still in force here. However, the Commonwealth is proceeding to enact legislation covering all matter of Admiralty and Prize, and as soon as that legislation has been enacted this statute can be repealed.

Statute 28 & 29 Vict. c.14 (1865)

This is the Colonial Naval Defence Act 1865. It was the statute under which South Australia provided H.M.C.S. Protector. It was repealed in England in 1931. Naval matters are today within the cognisance of the Commonwealth and we think this statute may safely be repealed.

Statute 28 & 29 Vict. c.63 (1865)

This is the Colonial Laws Validity Act itself, a monument to the ingenuity of Mr. Justice Boothby. It was intended to settle such contro-

versies for all time and did in fact do so. However, with the passing and proclamation of the Australia Act 1986 the Colonial Laws Validity Act has ceased to have any effect in Australia and it may be repealed as far as South Australia is concerned.

Statute 28 & 29 Vict. c.64 (1865)

This was a further statute with regard to the problems arising as to marriages contracted in the colonies and validated all marriages where all parties were competent to contract marriage. The effect of the statute appears to have been spent although parts of the statute are still in force in England. We think the statute may safely be repealed here.

Statute 29 & 30 Vict. c.74 (1866)

It was probable that the law required that all Acts imposing customs duties had to be reserved for the signification of Her Majesty's pleasure. The South Australian Acts on the point, as well as those of most other Australian legislatures, had not been so reserved and this is a validating Act and an Act repealing the part of *5 & 6 Vict. c.76* which created the problem. The effect of this legislation appears to be spent and the statute can be repealed in South Australia today.

Statute 29 & 30 Vict. c.87 (1866)

This was an Act to amend the Foreign Jurisdiction Act to enable jurisdiction to be conferred upon Courts within Her Majesty's possessions which might lawfully be conferred in relation to a country or place out of Her Majesty's Dominions. The statute was repealed by the Foreign Jurisdiction Act 1890 which probably applied to South Australia in any case, and we do not know of any conferment of jurisdiction on the Supreme Court of South Australia under the 1866 Act. The statute may therefore be safely repealed in its application to South Australia.

Statute 31 & 32 Vict. c.29 (1868)

This gave power to colonial legislatures to enforce the registration of medical practitioners within its territory. It is no doubt, the source of power for Parliament to make the laws relating to medical practitioners which exist in this State. We think however, that such laws would today be treated as within the general competence of Parliament to make laws for the peace, order and good government of the State, and we think this statute may be repealed.

Statute 32 & 33 Vict. c.10 (1868)

This is the Colonial Prisoners Removal Act 1869 and permits colonies to enter into agreements for prisoners in one colony to serve their sentence in another. We do not know of any such agreement which affects South Australia and in any event, any such agreement if made today, would be made under the general powers of the South Australian legislature and we think that this Act may safely be repealed.

Statute 35 & 36 Vict. c.19 (1871)

This was a statute to prohibit blackbirding in the Pacific Islands and jurisdiction to hear prosecutions was conferred upon the Supreme Courts of the Australasian colonies. The Act has long since served its purpose and may be repealed now.

Statute 36 & 37 Vict. c.22 (1872)

This is the Australian Colonies Duties Act and gave powers to the Parliaments of the then Colonies now States to enact Customs Laws with

regard to produce from other States and other colonies or New Zealand. The power as to customs is now vested in the Commonwealth Parliament and this Act can be repealed.

Statute 37 & 38 Vict. c.27 (1873)

This Act regulates sentences which are capable of being imposed by the Courts of this State where the jurisdiction to try the offender is conferred by an Imperial Act. The statute is still in force and in use in South Australia today in such circumstances as it arises. It would however be better if the power were conferred upon the Courts by South Australian statute today if it is intended to leave such statutes as the 1849 Admiralty Offences Act standing. Of course, if all Imperial Acts conferring jurisdiction on South Australian Courts to try offences are repealed this statute will become redundant. For the time being it should stay on the statute book.

Statute 38 & 39 Vict. c.51 (1875)

This is an amendment to the Pacific Islanders Protection Act. It was, as we have said meant to deal with the gross abuse of blackbirding. It is obsolete today, and like the previous Act of 1872 it can be repealed now.

Statute 40 & 41 Vict. c.23 (1877)

This is the Colonial Fortifications Act 1877 and gives power to colonies to have vested in them forts and other defence works within the colony. It is without doubt the statute under which we have title to Fort Glanville and Fort Largs. The statute may be repealed with a saving of the power granted by the statute.

Statute 40 & 41 Vict. c.59 (1877)

This is the Colonial Stock Act 1877. The raising of money on public loan is governed by Commonwealth laws and by the Commonwealth Constitution. We do not see any reason why this statute should remain in force in South Australia.

Statute 41 & 42 Vict. c.73 (1878)

This is the Territorial Waters Jurisdiction Act 1878 which was passed as a result of the decision of the Court of Crown Cases Reserved in *The Queen v. Keyn (1876) 2 Ex. D. 63.* This statute extends the jurisdiction of our Courts in relation to offences committed within the territorial sea. It is still in force in South Australia today. It may be preferable to keep the statute in force here because of the arguments between the Commonwealth and the States as to whether the jurisdiction of the States, otherwise than is extended by statute, ceases at low water mark.

Statute 44 & 45 Vict. c.3 (1881)

This statute provides for membership of the Judicial Committee of the Privy Council. It no longer has any application in South Australia and should be repealed.

Statute 44 & 45 Vict. c.69 (1881)

This is the Fugitive Offenders Act 1881 which for many years governed the extradition of offenders. The Commonwealth has now legislated generally in this field. It is, however, doubtful, whether the Commonwealth's power so to legislate covers all circumstances in which a State Court might want to secure the rendition of a fugitive offender. We think it is probable the statute could properly be repealed now but it might be worthwhile taking the views of the Crown Law Office before that step is

finally taken. It is not so many years ago that the courts in New South Wales obtained the rendition of an offender from Sri Lanka using the provisions of this Act so that it still may be of some value.

Statute 46 & 47 Vict. c.30 (1883)

This is an Act to authorise British companies to keep local registers of their members in British Colonies. It was repealed in England in 1908 and therefore has no bearing on such matters in South Australia at the present day and can be repealed.

Statute 46 & 47 Vict. c.58 (1883)

This deals with the issue of English money orders in a British possession. Matters of postal administration are dealt with by the Commonwealth Parliament today and we see no reason why this statute should remain in force in South Australia.

Statute 47 & 48 Vict. c.31 (1884)

This is the Colonial Prisoners Removal Act 1884 and deals with the removal of colonial prisoners and colonial lunatics. We think such matters should be covered by legislation in this State if at all, today and recommend that this statute be repealed.

Statute 48 & 49 Vict. c.49 (1885)

The Submarine Telegraph Act 1885. This by section XI applies to the whole of Her Majesty's Dominions. Questions of post and telegraph are today governed by Commonwealth Law and we think this statute may be repealed in South Australia.

Statute 48 & 49 Vict. c.74 (1885)

This is an Act to amend the law relating to taking evidence by commission in the Colonies. We have already dealt with the subject in relation to the statute *22 Vict. c.20.* As we said in relation to the principal Act, this statute is a valuable tool as far as the Courts are concerned and we think it should remain on the statute book.

Statute 49 & 50 Vict. c.33 (1886)

This is an Act to amend the law relating to International and Colonial Copyright. Copyright is a matter dealt with by laws of the Commonwealth Parliament today and we do not think this statute need remain in force in South Australia except that there should be a saving in respect of any copyright which has already accrued and is still existing to any person in South Australia under that Act.

Statute 52 & 53 Vict. c.63 (1889)

This is the Imperial Acts Interpretation Act. By Section 18 it has definitions of "British possession" and "colony" which are out of date and demeaning to Australia's status as an independent nation. The statute should be repealed in its application to South Australia.

Statute 53 & 54 Vict. c.27 (1890)

This is the Colonial Courts of Admiralty Act which is the source of jurisdiction in admiralty in relation to the Admiralty jurisdiction of the Supreme Court of South Australia. It should remain in force in South Australia until the Commonwealth enacts general Admiralty legislation for Australia.

Statute 53 & 54 Vict. c.37 (1890)

The Foreign Jurisdiction Act, 1890. This is a power given to the Courts of South Australia to try persons committing offences outside the jurisdiction on an Order in Council being made in respect of Courts within the Queen's Dominions. We think these are matters which ought to be covered by treaty with other countries today under the external affairs power and should not rest on any grant of jurisdiction under this statute and the statute ought to be repealed.

Statute 55 & 56 Vict. c.6 (1892)

This is the Colonial Probates Act 1892 and provides for the recognition of probates granted by the Supreme Court of this State in its testamentary causes jurisdiction upon our making a similar recognition with regard to United Kingdom probates. Most of this statute deals with recognition in England and therefore we do not think that anything needs to be done with regard to the statute by the South Australian Parliament and it may be repealed.

Statute 55 & 56 Vict. c.35 (1893)

This is an Act to amend the Colonial Stock Act 1877. For the reasons we gave with regard to the 1877 Act we do not think this Act needs to be retained in South Australia and can be repealed here.

Statute 56 & 57 Vict. c.72 (1894)

This is a validating Act relating to Acts passed by (inter alia) the Parliament of South Australia which ought to have been reserved for Her Majesty's pleasure and were not. It appears to us that the effect of the validating Act is spent and this Act can be repealed in its application to South Australia.

Statute 57 & 58 Vict. c.17 (1894)

This is the Colonial Officers (Leave of Absence) Act 1894 and expressly applies to South Australia. It was repealed in England in 1973. We understand that it has been treated as applying, at least in times past, to Governors and Lieutenant-Governors. We see no reason why it should apply in South Australia today and recommend that it be repealed in its application to this State.

Statute 57 & 58 Vict. c.39 (1894)

This is the Prize Courts Act 1894 constituting Prize Courts in British possessions and would still be the source of power in time of war for the Supreme Court of South Australia to act as a Prize Court. As we said in relation to the principal Prize Courts Act 1894, the whole law of Admiralty and Prize is under review at Commonwealth level at the moment with a view to having all of this dealt with by an Act or Acts of Parliament of the Commonwealth. Until those Acts are passed the Prize Courts Act 1894 must remain in force in South Australia.

Statute 57 & 58 Vict. c.60 (1894)

This is the Merchant Shipping Act 1894 which has governed all shipping legislation for Australia except in so far as interstate shipping was governed by the Navigation Act of 1912 of the Parliament of the Commonwealth, and intrastate shipping by the Marine Act 1936 of the Parliament of this State. It is not consonant with Australia's position in the present day world that the Merchant Shipping Act should continue to apply in Australia and that has already been recognised by the Commonwealth Parliament. The Marine Act 1936 of South Australia should

therefore be redone from top to bottom to incorporate, in relation to intrastate shipping only, those provisions of the Merchant Shipping Act which could not be incorporated in the Marine Act previously by reason of the Colonial Laws Validity Act and as soon as that has been done the Merchant Shipping Act should be repealed in its application to South Australia.

Statute 58 & 59 Vict. c.3 (1895)

This is an amending Act with relation to Customs duties in the Australian Colonies which took away most of the restrictions previously existing with regard to customs legislation in South Australia. However, as we have pointed out before, Customs legislation is now a matter for the Parliament of the Commonwealth and this Statute may be repealed in its application to South Australia.

Statute 58 & 59 Vict. c.34 (1895)

This is the Colonial Boundaries Act 1895. Its application within the Commonwealth ceased by reason of Covering Clause 8 of the Commonwealth of Australia Constitution Act 1900. However, we apprehend that it still applies in relation to section 1 confirming the boundaries of South Australia in relation to their alteration prior to the coming into force of the Commonwealth of Australia Constitution Act. It would therefore apply for example to the extension of South Australia to the west from its original boundary to become co-terminous with the boundary of Western Australia and to that extent the statute ought to be preserved.

Statute 58 & 59 Vict. c.44 (1896)

This is a statute providing that a person who has been Chief Justice or a Judge of the Supreme Court of South Australia is eligible to be a member of the Judicial Committee of the Privy Council. We assume that with the abolition of appeals to the Privy Council no appointments will be made from the Australian judiciary to the Judicial Committee of the Privy Council and accordingly this statute would become redundant. We do not know the policy in relation to it and simply draw your attention to the matter so that if in fact our understanding is correct, this statute may be repealed in its application to South Australia.

Statute 61 & 62 Vict. c.44 (1898)

Section 11 of this statute deals with Colonial lighthouse dues. The question of lighthouses is now a matter for the Parliament of the Commonwealth and we think that this statute may be repealed in its application to South Australia.

Statute 63 & 64 Vict. c.12 (1900)

This is the Commonwealth of Australia Constitution Act which can only be amended in manner provided by the Constitution and does not require any attention by any Act of the Parliament of the State.

Statute 63 & 64 Vict. c.14 (1900)

This is the Colonial Solicitors Act 1900 and provides for the admission of already admitted South Australian solicitors in the United Kingdom. The Supreme Court rules lay down the rules for admission of all practitioners here. Those rules differ from the rules in existence in England. Whether the English rules are as favourable or less favourable than our own it is difficult for us to say. However, we think that the Colonial Solicitors Act may safely be left to its operation in England and can be repealed as far as South Australia is concerned.

Statute 63 & 64 Vict. c.32 (1900)

This is an Act relating to the limitation of liability of docks, canals or harbour authorities. The general limitation section of the Merchant Shipping Act: Section 503 does apply in South Australia and presumably these limitation provisions in this statute would also apply although we know of no authority on the point. For the reasons that we have set out before, we think that the Merchant Shipping Act and all its amendments should be repealed in South Australia after the Marine Act has been overhauled to cover all the matters which now pertain to intrastate shipping in South Australia under the Imperial Merchant Shipping legislation.

Statute 1 Edw.VII c.5 (1901)

This is the Demise of the Crown Act 1901 and applies by its terms to the Dominions of the Crown. We discussed the operation of this statute in the Eighty-First Report of this Committee and we reaffirm the recommendations therein made.

Statute 1 Edw.VII c.15 (1901)

This provides for an alteration of the Royal Style and Titles to refer to the British Dominions beyond the Seas. It was repealed in England in 1958 and is not in consonance with the present thinking which accords to the Queen the title: Head of the Commonwealth, and in our opinion it should be repealed in its application to South Australia.

Statute 4 Edw.VII c.8 (1904)

This is an Act to amend the Imperial Savings Bank Act. Section XII provides for arrangements for reciprocal transfer with government savings banks in any British possession, which would of course include South Australia. We are unaware of the existence of any such arrangement with this State. We draw the attention of the Government to the section. If it has never had any force or has no further force as the case may be, the statute may be repealed in its application to South Australia.

Statute 6 Edw.VII c.2 (1906)

Section 5 of this Act deals with fraudulent enlistment in Colonial forces and amends the Army Act to that effect. The question of defence is now dealt with by Commonwealth legislation and this statute should be repealed in its application to South Australia.

Statute 6 Edw.VII c.48 (1906)

This is an amendment to the Merchant Shipping Act 1894 and is the last of the Merchant Shipping Acts which applies in Australia. For the reasons set out in relation to the Act of 1894 this statute should be retained until proper amendments have been made to our Marine Act sufficient to incorporate all that was necessary to be incorporated from the Imperial legislation. Thereafter it can be repealed.

Statute 7 Edw.VII c.7 (1907)

This is the Australian States Constitution Act 1907. It requires the reservation of certain Acts of the Parliament of South Australia altering the constitution of the legislature of the State or of either House, affecting the salary of the Governor, or required to be reserved under an Act of the State of South Australia or by a provision in a bill for an Act, and by section 11 there is a validation of certain Australian statutes which had not been passed, as required, by the signification of the Queen's pleasure. This statute is a restriction on the constitutional powers of

South Australia which ought to be repealed in its application to this State.

Statute 8 Edw. VII c.51 (1908)

This is a further statute amending the law relating to appeals to the Judicial Committee of the Privy Council. As those appeals have been abolished this statute can be repealed in its application to this State.

Statute 9 Edw. VII c.3 (1909)

This statute by sections 8, 9 and 11 refers to a "colony" and it makes forces in a Colony subject to Imperial law. The question of the regulation of the Army is now a matter for the Parliament of the Commonwealth and this statute should be repealed in its operation in South Australia.

Statute 9 Edw. VII c.19 (1909)

This was an Act to amend the Colonial Naval Defence Act 1865 to which we have referred earlier, and gives authority to the Parliament of South Australia with regard to volunteers for the Navy. Again, the question of the defence of the Commonwealth is a matter for the Parliament of the Commonwealth and this statute should be repealed in its application to South Australia.

Statute 1 & 2 Geo. V c.20 (1911)

This is the Geneva Convention Act relating to the use of the Red Cross and on the face of it extends to South Australia. Any legislation relating to the Red Cross ought to be made either under convention by the Parliament of Commonwealth or within South Australia by the Parliament of this State. We think this statute may be repealed in its relation to South Australia.

Statute 1 & 2 Geo. V c.28 (1911)

This is the Official Secrets Act and provides by section 10 to make acts committed in parts of His Majesty's Dominions offences under the Act. It may be said that in one sense this is merely an instruction to British Courts. On the other hand, it does provide for acts which might be lawful otherwise in South Australia to be offences by reason of English legislation and at least as a matter of caution the Official Secrets Act should be repealed in its application to South Australia.

Statute 2 & 3 Geo. V c.5 (1912)

This extends the provisions of the English Army Act to forces raised in a Colony, see section VIII. The question of the discipline of the Army is a matter for the Parliament of the Commonwealth of Australia and not for the Imperial Parliament and this statute should be repealed in its application to South Australia.

Statute 3 & 4 Geo. V c.21 (1913)

This is the Appellate Jurisdiction Act 1913 and deals with appeals to the Judicial Committee of the Privy Council. For the reasons given in respect to previous Acts of this kind it should be repealed in its application to South Australia.

Statute 4 & 5 Geo. V c.13 (1914)

This deals with the procedure in Prize Courts. As we have said the Prize Courts Acts from 1864 onwards are the source of jurisdiction for the Supreme Court of South Australia today. The Acts should remain in force until the Commonwealth has enacted the projected legislation in Admiralty and Prize to which we referred earlier.

Statute 4 & 5 Geo.V c.59 (1914)

This is the Bankruptcy Act 1914. By section 123 of this Act any warrant of a Court having jurisdiction in Bankruptcy in England may be enforced anywhere in His Majesty's Dominions. The Parliament of the United Kingdom should not have the power to say what warrants should or should not be executed in South Australia and the Bankruptcy Act 1914 should be repealed in its application to South Australia.

Statute 5 & 6 Geo.V c.39 (1915)

This is an Act amending the Fugitive Offenders Act 1881 and extends the Fugitive Offenders Act to protected States. As far as we know there are no protected States today and although, in discussing the principal Act we suggested that there might be some value in keeping the principal Act, we cannot see that there is any subject matter to which this amending Act could possibly apply today, and it can therefore be repealed in its application to South Australia.

Statute 5 & 6 Geo.V c.57 (1915)

This is an amendment to the Prize Courts Act dealing with transfer of proceedings from one Prize Court to another and with jurisdiction. For the reasons we have expressed previously in regard to Prize Courts legislation, this Act should remain in force in South Australia until the Commonwealth passes its projected legislation in Admiralty and Prize after which it can be repealed.

Statute 6 & 7 Geo.V c.2 (1916)

This is a further statute dealing with procedure in Naval Prize and should for the reasons explained before, be retained until the Commonwealth legislates with regard to Admiralty and Prize after which it may be repealed.

Statute 8 & 9 Geo.V c.30 (1918)

This is another statute dealing with Prize. However it appears to be restricted to Prize of War obtained during the first World War except as to payment of prizemoney in certain cases which is a direction to the Admiralty in England. We do not think that anything need to be done with regard to this statute. We doubt if it ever applied in South Australia and it can for certainty be repealed.

Statute 18 & 19 Geo.V c.26 (1928)

Part III of this Statute deals with Dominion Judges being members of the Judicial Committee of the Privy Council. With the abolition of appeals to the Privy Council this Act should cease to apply in relation to South Australia. See our comments under 58 and 59 Vict.c.44.

Statute 18 & 19 Geo.V c.45 (1928)

Section 10 of this Act gives power to a company which transacts business in South Australia to keep a branch register in this State. The question of branch registers is dealt with in South Australia by section 521 of the Companies (South Australia) Code and it should be enacted that the United Kingdom Act of 1928 shall cease to have force in South Australia. The Act was repealed in England in 1948 Section 459 but there is a saving clause in sub-section 2 of that section.

Statute 19 & 20 Geo.V c.8 (1929)

This statute makes further provision with regard to the Constitution of the Privy Council. For the reasons given in relation to previous Privy

Council Acts, this Act should be repealed in its application to South Australia.

Statute 21 & 22 Geo.V c.9 (1931)

This is an Act to amend and consolidate the Colonial Naval Defence Acts and gives power to the Parliament of South Australia to make laws with regard to naval forces and Naval vessels. As we have said before in relation to previous Acts the question of defence is a matter for the Parliament of the Commonwealth and this Act should be repealed in its application to South Australia.

Statute 22 Geo.V c.4 (1931)

This is the Statute of Westminster. In so far as it is an enabling Act no doubt Parliament will wish to keep it in force in South Australia. However, section 2 provides that the Colonial laws Validity Act should not apply to any law made after the commencement of the Act by the Parliament of the Dominion. The present law now envisages that the Colonial laws Validity Act should not apply at all to the Australian States and section 2 should cease to apply in South Australia. Section 3 provides that the Parliament of a Dominion has full power to make laws having extra territorial operation. The converse of that would be that the Parliament of the State has not and that is not now intended and accordingly, section 3 should cease to have effect within South Australia. Section 9(2) of the Statute of Westminster envisages the continuing power of the Parliament of the United Kingdom to make laws for South Australia. Again this sub-section of section 9 should cease to have effect within South Australia.

Statute 23 & 24 Geo.V c.6 (1933)

This is the Visiting Forces (British Commonwealth) Act 1933. A proviso to sub-section (3) of section 4 of that Act provided that His Majesty might, by Order in Council direct, in relation to members of a force of any part of the Commonwealth specified in the order, that the Naval Discipline Act, the Army Act or the Airforce Act should apply with exceptions, adaptations, and modifications. This means in effect, that the members of Australian Forces could be subject to Imperial Orders without the concurrence of the Commonwealth, because there is no provision for that to apply in this section, though it does apply elsewhere in the Act. Section 7 of the Act does not seem to modify this position but on the contrary seems to reinforce the application of previous statutes to the citizens of the Commonwealth who come within the purview of the Act. Any law relating to the defence personnel of the Commonwealth should be made today by the Parliament of the Commonwealth of Australia and not by any Imperial Authority and this statute should have no further force or effect within South Australia.

Statute 24 & 25 Geo.V c.49 (1934)

This is a statute to give effect to a Convention for the regulation of whaling. The Imperial Parliament by the Statute of Westminster, promised that it would not make any further legislation affecting a Dominion without the request and consent of that Dominion. Section 15 of the Whaling Industry (Regulation) Act contravenes the Statute of Westminster. It gave an extra head of power in effect to the Parliament of the Commonwealth, in addition to those already given by section 51 of the Constitution, to make extra-territorial laws with regard to Australian ships in respect of the Whaling Convention. That was a matter for the electors of the Commonwealth of Australia under Section 128 and not for the Imperial Parliament. The defect was not noticed until Mr. Justice

Dixon pointed it out at an Australian Legal Convention both in respect to this Act and to a later Act which is referred to in this Report. The statute should cease to have effect within South Australia. It was routinely removed from every small island and territory previously forming part of the British Commonwealth at Independence but not from Australia.

Statute 1 Edw.VIII & 1 Geo.VI c.3 (1936)

This was the statute under which Edward VIII abdicated the throne. It is certainly in force in South Australia. It was merely concurred in for Australia by resolutions of both Houses of the Commonwealth Parliament. Its effect appears to be spent and it may be repealed in its application to South Australia.

Statute 1 Edw.VIII & 1 Geo.VI c.15 (1937)

This was a statute to give effect to the Geneva Convention as to the treatment of sick and wounded men in time of war. Section 2 gives power to the Parliament of the Commonwealth of Australia to make laws to give effect to the Convention. Once more, as Dixon J. pointed out, the Imperial Parliament acted in direct contravention of the Statute of Westminster, because what it did was tantamount to amending section 51 of the Constitution, otherwise than by the procedure prescribed by section 128 of that Constitution, by conferring an additional power to legislate on the Parliament of the Commonwealth. The statute was repealed in England with savings by the Geneva Conventions Act 1957: *5 & 6 Eliz.II c.52.* The statute should be repealed in its application to South Australia.

The Imperial Australia Act 1986

This is the last statute of the British Parliament ever to apply to Australia, as complemented by Commonwealth legislation on the same matter. We take it that no action need be taken by the Parliament in relation to this Imperial Act.

We have the honour to be

HOWARD ZELLING
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