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SOUTH



AUSTRALIA

SIXTY-FIFTH REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

**RELATING TO THE INHERITED
IMPERIAL LAW
REGARDING THE CROWN**

1981

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19 September 1968. The present 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.

D. W. BOLLEN, Q.C.

M. F. GRAY, S.-G.

D. F. WICKS.

A. L. C. LIGERTWOOD.

G. F. HISKEY.

The Secretary of the Committee is Miss J. L. Hill, C/- Supreme Court, Victoria Square, Adelaide 5000.

**SIXTY-FIFTH REPORT OF THE LAW REFORM COMMITTEE OF
SOUTH AUSTRALIA RELATING TO THE INHERITED
IMPERIAL LAW REGARDING THE CROWN**

To:

The Honourable K. T. Griffin, M.L.C.,
Attorney-General for South Australia.

Sir,

This report concerns so much of the inherited Imperial law as concerns the rights duties and functions of the Crown.

We have already in previous reports dealt with the question of applicability, of implied repeal, and with the general grounds on which we make recommendations with regard to inherited Imperial law and we shall not in this report repeat what we have already said in prior reports.

Magna Carta; 9 Hen. III (1225) (sometimes referred to as Statute 25 Edw. I (1297)).

Chapter 8: This provides that the Crown shall not seize land or rents for any debt as long as there are chattels of the debtor sufficient to pay the debt and the debtor be ready to satisfy the debt, nor are sureties to be distrained as long as the Crown's principal debtor is sufficient for payment. It also gives the sureties a right against the principal debtor by way of subrogation if they are called on to pay. It was the opinion of *Chitty: Prerogatives of the Crown (1820)* page 281 that the statute was partly repealed by the Statute 33 Hen. VIII c.39 and that the Crown could seize the defendant's lands even though his goods were sufficient to satisfy the debt but could not sell them. That however was not the opinion of Lord Coke: see 2 Inst. 19. Coke's view apparently commended itself to the revisers of the statutes because the whole statute was repealed in England by the Statute Law (Repeals) Act 1969. The statute was certainly received in South Australia. It is a proper limitation on this prerogative of the Crown. We think it can be repealed here but with a saving of the amendment of the law made by the statute.

Chapter 30: This deals with enemy aliens as well as with merchants in time of peace. These matters are now dealt with by Commonwealth legislation; by passport legislation in peace time, or by defence legislation in war time. This statute was also repealed by the Statute Law (Repeals) Act 1969 and can be repealed here.

The Statute of Merton; 20 Hen. I (1235)

Chapter 9: This deals with the Crown's right to succeed to the estate of a bastard. That right has for all practical purposes been swept away today by the Family Relationships Act 1975 and the consequential amendments to other Acts which followed the enactment of that Act but there are still cases in which the Crown's right may apply today; see *In re Holliday [1922] 2 Ch. 698*. Accordingly the statute can be repealed in South Australia but with a saving of the rights of the Crown. It was repealed in England by the Statute Law Revision Act 1948.

Statutum de Scaccario; 51 Hen. III st.5 (1266) (in the Statutes of the Realm placed among the statutes of uncertain date).

This deals with payment of money by the King's debtors. The whole of it is obsolete today. It was probably obsolete here in 1836 because most of the old system went up in the great fire in St Stephens in 1834.

It was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute of Westminster I; 3 Edw. I (1275)

Chapter 32: This deals in part with the payment of Crown debts by using other Crown monies for the purpose. This could not happen under audit procedures today. The statute was repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute of Westminster II; 13 Edw. I (1285)

Chapters 29 and 30: These deal with, amongst other things, commissions for doing justice. Chitty (op. cit.) page 77 regards these statutes as being a limitation on the right of the Crown to issue special commissions and says that in ordinary cases commissions of oyer and terminer can only be granted to the judges. As c.30 is a limitation on the right rather than giving the right itself and such matters are dealt with either by the Supreme Court Act or by the inherent power of the Governor to issue commissions under his own commission of authority, it is not necessary for the statute to remain in force in South Australia and it can be repealed. It was repealed in England partly by the Statute Law Repeal and Civil Procedure Act 1881 and partly by the Statute Law Repeal Act 1950.

Chapter 45: This deals with Crown recoveries of fines and recognizances. As far as fines are concerned, the recovery of fines is dealt with in the Justices Act 1921. As far as recognizances are concerned, they are left very much to the common law together with the early statutes. We doubt whether recovery by such means as scire facias is very likely today but there are occasionally cases in which it is still necessary for the Crown to proceed by information on the Latin side of the Exchequer. We think that it should be sufficient if the statute were repealed in South Australia but with a saving of the rights given by the statute. It was repealed in England by the Statute Law Revision Act 1948.

Statutum de Justiciariis Assignatis; 21 Edw. I (1293) (in Ruffhead placed among the statutes of uncertain date).

This dealt with the question of who should be justices of assize. Such matters are dealt with by the Supreme Court Act in South Australia and by the Crown's prerogative to issue commissions. The statute was repealed in England by the Statute Law Revision and Civil Procedure Act 1818 and can be repealed here.

Statute 9 Edw. II st.2 (1315)—the Statute of Sheriffs made at Lincoln.

This deals with who the Crown may appoint as sheriffs. It was impliedly repealed in this State by the Ordinance 15 of 1842 and has no bearing on the present organisation of the sheriff's office. It was repealed in England by the Sheriffs Act 1887 and can be repealed here.

The Statute De Prerogativa Regis; 17 Edw. II st.1 (1324) (in the Statutes at Large printed amongst the statutes of uncertain date).

Chitty (op. cit.) page 4 says that the Statute De Prerogativa Regis is merely declaratory of the common law and refers to Coke on the point (2 Inst. 496 and 263 and 10 Co. Rep. 64). Accordingly the repeal of any part of this statute will not affect the underlying common law.

Chapters 4-9 deal with wardship and with tenure in capite. These chapters all became obsolete by the Statute of Tenures 12 Car. II c.24. They were repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Chapter 13: This deals with the Crown prerogative in wreck of the sea, whales and sturgeons. The statute was amended by the Merchant Shipping Act 1894 (57 and 58 Vict. c.60 s.745). Apart from that, the statute is still in force in England. The law is amended as to wreck by the Commonwealth Navigation Act 1912-1973 Section 308. It has however been doubted whether the provision is justified by the Commonwealth Constitution c.p. *Lumb & Ryan* pp. 333 ff. The Crown prerogative as to sturgeon was reaffirmed within recent months in England. We think that the section may be repealed here but a section in similar form should be placed in the Marine Act where anybody would look for it: Although the Commonwealth asserts a title to all wreck in Australia by Section 308 to which we have referred, obviously the power of the Commonwealth would not extend to wreck within the Gulfs or the enclosed bays which are part of South Australia. There is work for the statute still to do in relation to Crown rights in this State and this statute should be placed in a modern enactment on its repeal in this State.

Chapter 17: This deals with the construction of Crown grants and provides a reservation of Knights' fees, advowsons and dowers. The first two never applied in South Australia and the third is for all practical purposes obsolete. Accordingly the statute does not today have any useful function in this State. It is still partly in force in England as amended by the Crown Estate Act 1961. It can be repealed here.

Chapter 18: This deals with the Crown's right to the lands of felons. The doctrine of attain was abolished in South Australia by the Act 25 of 1874 and the statute can be repealed here. It was repealed in England partly in 1925 and partly in 1948.

Statute 1 Edw. III st.2 c.4 (1327)

This was a special section giving powers to the Treasurer and the Barons of the Exchequer where the debt due to the Crown did not exceed three hundred pounds. The statute is treated by Ruffhead as having expired. There is nothing on the face of it to suggest that that is so. It was in fact repealed in England by the Statute Law Revision Act 1863 and can be repealed here.

Statute 1 Edw. III st.2 c.5 (1327)

This deals with the Crown's right to compel military service in time of invasion. That matter is dealt with today by the Commonwealth Defence Act and it is not necessary that the statute remain in force in South Australia. It was repealed in England in 1863 and can be repealed here.

Statute 1 Edw. III st.2 c.12 (1328)

This provides that lands held in capite of the Crown shall not be forfeited if there is an alienation without licence. This matter is now dealt with by the provisions of the Crown Lands Act 1939 and it is not necessary that this statute should remain in force in South Australia. It was repealed in England in 1863 and can be repealed here.

Statute of Northampton; 2 Edw. III (1328)

Chapter 5: This deals with the delivery of writs to a sheriff for execution. Such matters are now dealt with by separate legislation in this State. The statute was repealed in England in 1887 and can be repealed here.

Chapter 6: This deals with the grant of power to Justices for the general observance of the Queen's peace. This, rather than the better known statute of 1361, is probably the source of power in the Supreme Court today to deal with this matter. The statute was repealed in England in 1863. It can be repealed here but with a saving of the jurisdiction given by the statute.

Statute 9 Edw. III st.1 c.5 (1335)

This deals with the accounting of Crown revenue derived from the Courts. The process used is obsolete today and the statute may be repealed. It was repealed in England in 1863.

Statute 10 Edw. III st.1 c.2 (1335)

This places a restriction on the Crown's power of pardon, in that general charters of pardon could not be granted. Such charters are not granted at the present day nor have been in the knowledge of any of us on this Committee. The statute was repealed in England in 1863 and can be repealed here.

Statute 18 Edw. III st.2 c.1 (1344)

This says that commissions of new enquiry shall cease. Chitty (op. cit.) page 77 says—

“Neither can the King grant any new commission which is not warranted by antient precedence, however necessary, or conducive to the public good it may appear to be;”

and he cites this chapter and also chapter 4 of the same statute. Commissions in South Australia are now dealt with by the Royal Commissions Act 1917. The statute was repealed in England in 1863 and can be repealed here.

Statute 20 Edw. III (1346)—the oath of the Justices (in Ruffhead 18 Edw. III st.4 (1344).

This prescribes a form of judicial oath. It is not the form now in force in South Australia. The statute was repealed partly in 1881 and partly in 1950 in England. It can be repealed here. It assumes a relationship between the King and the Justices which is completely inconsistent with the Bill of Rights 1689. It appears to be a doublet of one which has already been dealt with in the Fifty-Fifth Report but the two appear separately in both lists of statutes.

Statute 25 Edw. III st.5 c.13 (1350)

This places a restraint on the Crown's power of altering the coinage. The extent to which it did so was the subject of a difference of opinion between Coke (2 Inst. 575 and 577) and Hale (1 Hale: Pleas of the Crown 192). The matter is dealt with by Commonwealth legislation today and the statute does not need to continue in force in this State. It was repealed in England in 1863.

Statute 25 Edw. III st.5 c.19 (1351)

The effect of this statute is set out in Chitty (op. cit.) at page 291. The statute narrowed the Crown prerogative as to debts, by allowing the suits of other creditors to proceed to judgment, notwithstanding any protection previously granted by the Crown to a debtor, but execution was suspended unless the creditor should undertake to pay the Crown debt if necessary. Protections to Crown debtors have been obsolete for centuries. The statute was repealed in England in 1863 and can be repealed here.

Statute 43 Edw. III c.4 (1368)

This places restrictions on the Crown's power of appointing persons to Royal Commissions. The matter, as we have said before, is dealt with by the Royal Commissions Act 1917 in this State. The statute was repealed in England in 1894 and can be repealed here.

Statute 42 Edw. III c.5 (1368)

This provides for a landholding qualification for any person who is the King's escheator. We have already said that general question of escheat

ought to be referred to this Committee. This statute however need not remain. It is simply typical fourteenth century legislation of its type. It was repealed in England in 1863 and can be repealed here.

Statute 1 Ric. II c.11 (1377)

This places restrictions on the Crown in appointing sheriffs. This however deals with the idea of an annual appointment of a sheriff which has not been the position in South Australia for well over a century. The statute was repealed in England in 1887 and can be repealed here.

Statute 7 Ric. II c.14 (1383)

This gave power to the Crown to issue a patent so that a person against whom a writ of praemunire facias had been taken out could proceed in their legal proceedings by an attorney. A praemunire, as we have said in previous reports, is still technically possible in South Australia. However no writ of praemunire facias has been sued out in the Supreme Court at all to our knowledge. Accordingly we think the statute may be repealed in its application to South Australia. It was repealed in England in 1879.

Statute 11 Ric. II c.7 (1387)

This is stated by Chitty (op. cit.) pages 163-164 to be a restriction of the Crown's general prerogative in relation to trade. If this be so it is long since obsolete. It was repealed in England in 1881 and can be repealed here.

Statute 12 Ric. II c.2 (1388)

This statute says that the Crown shall not appoint anybody to office for reward but only on merit. This is no doubt a good and wholesome principle but there is no reason to think that the Crown makes appointments any other way at the present day. It was repealed in England in 1871 and can be repealed here.

Statute 13 Ric. II st.1 c.14 (1389)

Where a bond was given to the Crown for surety for debts or duties, the penal sum of the bond was previously twice the amount of the debt or duty. The right to a penal sum of double the amount concerned was taken away by this statute and it was enacted that the bond should in future simply provide sufficient surety. The reform is a proper reform of the law but the statute does not need to be kept in force. It was repealed in England in 1881 and can be repealed here but with a saving of the amendment of the law made by the statute.

Statute 15 Ric. II c.12 (1391)

This provides that no suit in relation to the freehold of land is to be brought except in the King's Courts. There are no private Courts today. The statute was repealed in England in 1863 and can be repealed here.

Statute 16 Ric. II c.6 (1392)

This statute is regarded by Chitty (op. cit.) page 99 as providing a restriction upon the Crown's right to grant pardon in treason, murder and rape. The statute has not been used in relation to murders or rapes in this State to the knowledge of the Committee. It was repealed in England in 1948. It seems an unnecessary restriction upon the Crown's right to pardon today if the restriction still exists, and should be repealed here.

Statute 2 Hen. IV c.10 (1400)

This gives power to the Clerk of the Crown to charge fees for indictments. Accused persons do not have to pay for copies of indictments today. The statute was repealed in England in 1872 and can be repealed here.

Statute 4 Hen. IV c.4 (1402)

This provides that Crown grants of land are not to be made except to persons who deserve them. It might be an interesting question with regard to existing grants in this State, if the statute were suddenly applied here. It was repealed in England in 1863 and the matter of grants of Crown lands is dealt with in South Australia by the Crown Lands Act 1939. Accordingly it can be repealed here.

Statute 6 Hen. IV c.3 (1404)

This deals with the power to re-open accounts of Crown debtors in case of fraud and deceit, giving an action for treble damages, and providing for imprisonment until the money be paid. Crown debts are not recoverable in that summary way these days and the question of Crown debts, along with other debtors where imprisonment is available, is dealt with in the Debtors Act 1936. The statute was repealed in England in 1872 and can be repealed here.

Statute 2 Hen. V st.2 c.3 (1414)

This deals with the qualification by way of real estate that a juror must have in inquests for the King. Juries are summoned from the ordinary electoral roll of South Australia today and the statute must be taken to be impliedly repealed by Part III of the Juries Act 1927. The statute was repealed in England in 1949 and can be repealed here.

Statute 4 Hen. V c.7 (1416)

This gives power to the Crown to issue letters of marque. The procedure is set out in Chitty (op. cit.) pages 41-42. In the old days where an injury was sustained on the sea from the acts of the subject of a foreign country, the Crown could issue letters of marque or reprisal against any subject of the foreign country to obtain satisfaction. As Chitty points out at page 42, the "mode of obtaining letters of marque pointed out in the statute has been long disused". The statute was repealed in England in 1863 and can be repealed here.

Statute 9 Hen. V st.1 c.11 (1421)

This provides for the Crown to determine the weight of gold coinage. These matters are dealt with now by the currency legislation of the Commonwealth and it is not necessary for this statute to remain in force in South Australia. It was repealed in England in 1863 and can be repealed here.

Statute 2 Hen. VI c.6 (1423)

This gives power to the Crown to stop the export of gold and silver out of the Realm. This would be dealt with in Australia today by Exchange Control Regulations or Treasury orders. The statute was repealed in England in 1863 and can be repealed here.

Statute 2 Hen. VI c.13 (1423) (in Ruffhead c.10)

This gives power to the holders of major offices at Court, who held them of the King, to appoint sufficient deputies. The performance of office by deputy has long been forbidden. It was repealed in England in 1863 and can be repealed here.

Statute 6 Hen. VI c.1 (1427)

This statute regulates process in outlawry and is treated in Short & Mellor's Crown Office Practice (op. cit.) page 270 as still being in force in England down to 1888. The statute was repealed in England partly in 1863 and partly in 1888 and although outlawry has a shadowy existence still in South Australia as we have indicated previously, the statute can be repealed.

Statute 10 Hen. VII c.6 (1432)

This deals with Crown process removed by *capias* or *certiorari*. Short & Mellor (op. cit.) page 270 regards the statute as still having effect down to 1888, and indeed the statute does not appear to have been finally repealed until the Administration of Justice (Miscellaneous Provisions) Act 1938. Indictments in South Australia are dealt with by the Criminal Law Consolidation Act 1935 and by the indictments rules and the statute is not required and can be repealed here.

Statute 15 Hen. VI c.3 (1436)

This deals with what matters are requisite to make the King's safe conduct effectual and, according to Chitty, is one of the statutes which control the issue of such safe conducts: Chitty (op. cit.) page 48. Safe conducts are probably obsolete today. If they were issued, they would be issued under the Commonwealth defence power and not under this Statute. The Statute was repealed in England in 1863 and can be repealed here.

Statute 18 Hen. VI c.6 (1439)

This statute provides that no land shall be granted by letters patent until the King's title be found by inquisition. Chitty (op. cit.) page 254 says that this statute was enacted to prevent evasions of former statutes and that if the statute be not complied with before letters patent are issued they are void. Land grants are today not made by letters patent in this State and in any case the topic of granting of land is dealt with in the Crown Lands Act 1939. The statute was repealed in England in 1887 and can be repealed here.

Statute 18 Hen. VI c.8 (1439)

This is a further statute regarding safe conducts and is cumulative upon the statute 15 Hen. VI c.3 with which we dealt above. For the same reasons as are dealt with in relation to that statute this statute has no further value in the law in South Australia and can be repealed. It was repealed in England in 1863.

Statute 20 Hen. VI c.1 (1442)

This is a further statute in the series of statutes relating to the Crown's powers to issue safe conducts and requires them to be enrolled in the Chancery. For the reasons we gave before the statute has no further use in the administration of the law in this State and can be repealed. It was repealed in England in 1863.

Statute 23 Hen. VI c.9 (1444)

This deals with fees payable to the Crown in relation to sheriffs, bailiffs, gaolers and other similar officers and also provides that the Crown is not bound by the statutes relating to bail bonds: see Chitty (op. cit.) page 281. The statute was repealed in England in 1887 and can be repealed here.

Statute 31 Hen. VI c.4 (1452)

This is another in the long series of statutes relating to safe conducts and provides a remedy for somebody who having the safe conduct is robbed at sea. The statute was repealed in England in 1863 and can be repealed here.

Statute 12 Edw. IV c.9 (1472)

This is another in the series of statutes requiring escheators to hold land of a given value. For the reasons given before in relation to previous statutes of the same kind, it can be repealed here. It was repealed in England in 1863.

Statute 1 Ric. III c.2 (1483)

This made the Crown's right of seeking benevolences, which is simply a disguised form of loan, or sometimes even a gift, from the subject illegal. The statute was repealed in England in 1863 and can be repealed here.

Statute 11 Hen. VII c.18 (1494)

This statute forfeits the lands of those who do not go in person to war with the King. As the King has not gone in person to war since George II in 1749, it is unlikely that this statute will be wanted again. The statute was repealed in England in 1863 and can be repealed here.

Statute 19 Hen. VII c.1 (1503)

This is a further statute requiring the subject to attend upon the King personally in time of war upon pain of forfeiture. Like the previous statute it was repealed in England in 1863 and can be repealed here.

Statute 27 Hen. VIII c.11 (1535)

This deals with the use of the Crown's signet and privy seal. Neither the signet nor the privy seal are in use in South Australia. The statute was repealed in England in 1884 and can be repealed here, but as the Governor's commission is under the privy seal, with a saving of the powers given by the statute.

Statute 27 Hen. VIII c.24 (1535)

This is a statute relating to rights of appointment of the Crown and other rights of the Crown in relation to the administration of justice. Section 1 provides that no person shall pardon treasons or felonies except the King. Section 2 provides that no person shall make justices except the King. Those sections would appear to be in force in South Australia today. The remainder of the Act is local in nature and never applied in South Australia. This seems to be the position from Chitty (op. cit.) pages 78 and 89. The statute has been repealed in England by a series of statutes from 1863 to 1971. As it may well be that some of the powers in the Governor's commission do depend upon this statute, the statute may be repealed in South Australia with a saving of the rights conferred by the statute.

Statute 32 Hen. VIII c.16 (1540)

This is the first general statute relating to aliens. Most parts of the statute do not apply in South Australia but Section IX does which provides that every alien coming to the realm or elsewhere within the King's Dominions shall be bound by the laws and statutes of the realm. The general power as to immigrants is now by the Constitution vested in the Commonwealth Parliament. The statute was repealed in England in 1863. It can be repealed here but with a saving of the amendment of the law in Section IX.

Statutes 3 and 4 Edw. VI c.4 (1549)

This statute deals with grants by patentees arising out of letters patent issued by the Crown. As these were patents relating to land, the matter would now be dealt with by the Crown Lands Act 1939 in South Australia. The statute was repealed in England in 1948 and can be repealed here.

Statutes 5 and 6 Edw. VI c.16 (1552)

This provides that no office of service to the Crown can be the subject of sale. Section 2 subsection (7) was repealed by 6 Geo. IV c.105 s.10. The remainder was no doubt in force in South Australia in 1836. The statute is still partly in force in England. Such matters are dealt with in South Australia by Public Service and other similar legislation. Nevertheless the law laid down by the statute is sound law. According to

Chitty (op. cit.) page 85 if an officer sells his office illegally it is a cause either of forfeiture or of seizure of office into the Crown's hand. We recommend that the statute be repealed here but with a saving of the amendment in the law made by the statute.

Statute 7 Edw. VI c.1 (1553)

This deals with the punishment of those who do not pay money over to the Crown when it comes into their hand and provides for remedies to recover the money from the Crown debtor. The methods used are the old methods of the Exchequer which have been obsolete as we have said for nearly one hundred and forty years. The statute was repealed in England in 1863 and can be repealed here, but with a saving of the rights of the Crown.

Statute 1 Eliz. c.1 (1558)

This statute in general is the Statute of Supremacy of the Church of England but Section 16 provides that no foreign power or authority spiritual or temporal can use enjoy or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege spiritual or ecclesiastical within the Realm or with any other of the Dominions. Part of the Act is still in force in England and part has been repealed. Because of the expression "the Queen's dominions" it is possible that the statute cannot be repealed here and we shall report to you further on this topic when we deal with the question of the applicability of the Colonial Laws Validity Act.

Statute 13 Eliz. c.4 (1571)

This statute provided that debts due by persons collecting on behalf of the Crown, if not paid, bound their lands from the time when they entered into the office which they were then executing. It is doubtful whether this statute would apply to land under the Real Property Act unless the Crown's interest were registered on the title. In any event we do not know of any recent use of the statute. The statute was repealed in England in 1924 and can we think be repealed here.

Statute 27 Eliz. c.3 (1585)

This is a statute which is in explanation of the statute 13 Eliz. c.4 and, like the previous one, bound the lands of the Crown's accountant unless he received a quietus or discharge. This statute was also repealed in 1924. For the reasons we gave in respect to the previous statute we think the statute may be repealed here. It may be noted that Chitty (op. cit.) page 308 describes the remedies given by the statutes of Elizabeth as "prolix and inconvenient", and the Crown does not regard the statutes as of practical application today.

Statute 39 Eliz. I c.7 (1597)

This is a further statute relating to the lands of those who owe money to the Crown and gives the Crown a power of sale of those lands. According to Ruffhead the statute has expired but it was treated as being in force by Chitty (see Chitty op. cit. page 308 note (a)). The statute was in fact repealed in England by the Statute Law Revision Act 1863. We think it should be repealed in South Australia. The matters dealt with by the Statute are now encompassed in the Crown Rates and Taxes Recovery Act 1945.

Statute 7 Jac. I c.15 (1609)

This deals with what debts may be assigned to the Crown. The statute was repealed in England partly in 1948 and partly in 1969. We suggest that it be repealed here but with a saving of the rights of the Crown established by the Statute. The law on the subject may be seen in Chitty (op. cit.) page 388.

Statute 21 Jac. I c.2 (1623)

This is the first of the Nullum Tempus Acts fixing sixty years as the period of limitation as against the Crown. Most of what is important seems to be covered by the Act of 1769 to which we shall refer later. The statute was repealed in England in 1863. We think it may be repealed here but with a saving of the rights given by the statute.

Statute 16 Car. I c.10 (1640)

This is the statute which abolished the Star Chamber and dealt with the operation of the King's Privy Council. It also provided for a person committed by royal command to have a habeas corpus and is therefore the first of the important list of habeas corpus acts. The statute has been repealed in England by a series of Acts from 1888 to 1968. We think the statute may be repealed here but with a saving of the right of habeas corpus given by Section VIII of the Statute.

Statute 16 Car. I c.20 (1640)

This provides that no person shall be compelled to be knighted if he does not wish to do so. We have not noticed any reluctance in this State in relation to this matter and we think the statute may be repealed. It was repealed in England in 1863.

Statute 12 Car. II c.14 (1660)

This provided for a perpetual thanksgiving on Oak Apple Day; that is May the 29th, the day on which Charles II by hiding in an oak apple tree escaped detection by the Roundheads and which was also the day of his restoration to the throne. The Act refers to the statute being in force throughout the King's dominions. However the statute was repealed as far back as 1859 and in any case it enjoined an ecclesiastical observance, so that we cannot see how the statute came to be in force in South Australia and we think it should be repealed here. There is a possibility that the statute is within the Colonial Laws Validity Act 1865 although the repeal is anterior to the statute and we will comment further on that aspect in our report on that topic.

Statute 13 Car. II st.1 c.4 (1661)

This repeats the provisions of 1 Ric. III c.2 to which we have already referred relating to the illegality of benevolences when demanded by the Crown. The problem has been obsolete now for centuries. The statute was repealed in England by the Statute Law Revision Act 1887 and can be repealed here.

Statute 13 Car. II st.1 c.6 (1661)

This declares the King to be commander in chief of the armed forces. The matter is dealt with in this country by Section 68 of the Commonwealth Constitution. The statute was repealed in England partly by the Statute Law Revision Act 1863 and partly by the Statute Law (Repeals) Act 1969 and it may be repealed here.

Statute 13 Car. II st.1 c.11 (1661)

This statute confirms the Oak Apple Day to which we have already referred. For the same reason as we said with regard to the former Act, we think this statute can be repealed here. It was repealed in England in 1863.

Statute 14 Car. II c.17 (1662)

This enabled collectors of Crown revenues to plead the general issue. Pleas of the general issue are not in favour in South Australia today. The statute was repealed in England in 1863 and can be repealed here.

Statutes 18 and 19 Car. II c.5 (1666)

This regulated the Crown prerogative in minting gold coin. It was repealed in England by the Coinage Act 1870. The matter is dealt with by Commonwealth legislation in Australia and the statute can be repealed here.

Statute 25 Car. II c.8 (1672)

This statute is an amendment of the statute 18 Car. II c.5 relating to gold coin with which we have already dealt. The statute was repealed in England in 1863 and can be repealed here.

Statute 1 Jac. II c.7 (1685)

This is a further statute dealing with the royal prerogative with regard to gold coinage. The subject is dealt with by Commonwealth legislation in Australia. The statute was repealed in England in 1863 and can be repealed here.

Statute 1 Will. & Mary c.8 (1688)

This provides the oaths of supremacy and allegiance taken to the Crown. It was repealed in England by the Promissory Oaths Act 1871. The oaths prescribed are not in the current form and the statute should be repealed here.

Statute 1 Will. & Mary c.30 (1688)

This deals with the Royal prerogative in relation to mines. The subject is now covered in South Australia by the Mining Act 1971. The statute is still at least partly in force in England. It can be repealed here.

Statutes 7 and 8 Will. III c.1 (1695)

This is a further statute with regard to the King's prerogative in coining. The coinage had got into a parlous state during the reigns of the later Stuarts and it was necessary to make fresh provision for the coinage. The statute was repealed in England in 1867 and can be repealed here.

Statutes 7 and 8 Will. III c.19 (1695)

This is a further statute relating to the King's prerogative in coinage which is cumulative on Chapter 13. For the reasons given with regard to the last statute the statute can be repealed here. It was repealed in England in 1867.

Statutes 8 and 9 Will. III cc.1, 2 and 8 (1696)

These three chapters are all further chapters relating to the coinage. Chapters 1 and 2 were repealed in 1867. Chapter 8 is still partly in force in England. As all these matters are covered by Commonwealth legislation in Australia, all three statutes can be repealed in South Australia.

Statute 9 Will. III c.2 (1697)

This is a further statute in the series of statutes relating to the coinage. Like the others it was repealed in England in 1867 and can be repealed here.

Statutes 2 and 3 Anne c.11 (1703)

This was a statute to enable the charging of interest on debts due to the Crown. The statute was treated by Ruffhead as having expired and on the face of it there is a reasonable argument for that to be so. Nevertheless it was thought necessary to repeal it in England in 1867 and it should be repealed here.

Statute 6 Anne c.66 (1707)

This provides an old form of the oath of allegiance which is not now used. It was repealed in England by the Promissory Oaths Act 1871 and can be repealed here.

Statute 8 Anne c.15 (1709)

This statute is ancillary to the last one on which we have just commented. It was likewise repealed in 1871 and can be repealed here.

Statute 1 Geo. I st.2 c.13

This is another in the series of the statutes requiring oaths to be taken for the security of the Sovereign. It is obsolete today. It was repealed in England in 1871 and can be repealed here.

Statute 1 Geo. I st.2 c.51 (1715)

This deals with the Sovereign's power to go abroad and with restrictions on that power. If such legislation was thought to be necessary today it would be passed in England and not in this country. The statute was repealed in England in 1867 and can be repealed here.

Statute 9 Geo. III c.16—the Nullum Tempus Act (1769)

This Act is in force in South Australia: see *South Australian Company v. The City of Port Adelaide 1914 S.A.L.R. 16*. It provides for a limitation period of sixty years against claims made by the Crown and is in furtherance of the Act 21 Jac. I c.2 on which we have already reported. The statute should remain in force here. There is no reason however why the statute should not become part of the statute law of South Australia where one might more easily find it. It was repealed in England by the Limitation Act 1939. We recommend that the statute be repealed here but that the provisions of the statute so far as relevant to South Australia be placed in our Limitation of Actions Act where anyone seeking such a limitation statute would expect to find the provisions. The Government may wish to consider whether the period of 60 years prescribed by the statute is too long by present day standards.

Statute 14 Geo. III c.84 (1774)

This requires candidates for naturalisation to have resided in Great Britain or the Dominions for seven years prior to a bill of naturalisation. Naturalisation is carried out today under the authority of Acts of the Commonwealth Parliament and it is not necessary for the Act to remain in force in South Australia. It was repealed in England in 1870.

Statute 14 Geo. III c.92 (1774)

This deals with the weights required for coinage at the Mint. Currency is dealt with by Commonwealth legislation in South Australia. The statute was repealed in England in 1870 and can be repealed here.

Statute 15 Geo. III c.30 (1775)

This is an amending Act to the Act last dealt with. It was likewise repealed in England in 1870 and can be repealed here.

Statute 32 Geo. III c.58 (1792)

This is a limitation of the use of the writ of quo warranto as against the Crown. Chitty (op. cit.) pages 380-381 says that by this statute "six years' possession of a corporate office gives the corporator a prescriptive title upon an information in the nature of a quo warranto, exhibited by the Attorney-General, or other officer, on the behalf of the Crown, by virtue of any Royal prerogative, or otherwise". This would seem to be still the law in South Australia although it may be that in relation to a quo warranto taken out in respect of an office in local government, the position has been altered by Sections 710 and 713 of the Local Government Act 1934. The statute was repealed in England in 1887. We think that the statute ought to be repealed here and the provisions put in the Crown Proceedings Act or possibly in the State Constitution as being the most likely place where anyone would look for it.

Statute 54 Geo. III c.145 (1814)

This is a statute which took away the Crown's rights with regard to corruption of blood except for major crime. The whole doctrine was swept away in South Australia in 1874 and the statute can be repealed here. It was repealed in England in 1960.

Statute 55 Geo. III c.54 (1815)

As is said in Chitty (op. cit.) page 49, this statute "was passed for the purpose of vesting extraordinary powers in the King and Magistracy, in order that the country might be protected against aliens; . . .". The question of aliens and immigration are both now matters for Commonwealth law. The statute was repealed in England in 1873 and can be repealed here.

Statute 55 Geo. III c.134 (1815)

This extends the Crown's prerogative right in respect to minerals, to give a right of pre-emption in relation to lead ore. It is doubtful whether the statute was ever in force in South Australia. In any event the Crown's title as to minerals is now regulated in this State by the Mining Act 1971. The statute was repealed partly in 1890 and partly in 1969 in England and can be repealed here.

Statute II Geo. IV and 1 Will. IV c.23 (1830)

This provides for the signature of the Crown by commission and not by sign manual. The Committee do not think that the statute is likely to be required today in South Australia. It was repealed in England in 1873 and can be repealed here, but with a saving of the powers conferred by the statute.

Statutes 5 and 6 Will. IV c.33 (1835)

This deals with certiorari in relation to Crown process. The method of procedure is obsolete today. It was repealed in England in 1891 and can be repealed here.

We have the honour to be

HOWARD ZELLING
J. M. WHITE
CHRISTOPHER J. LEGOE
D. W. BOLLEN
M. F. GRAY
D. F. WICKS
A. L. C. LIGERTWOOD
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Law Reform Committee of South Australia

30th June, 1981.

