STATUTE OF WESTMINSTER, 1931.

(22 Geo. 5, c. 4.)
(Imperial.)

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.

[11th December, 1931.]

Whereas the delegates of His Majesty’s Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences helden
ss. 1, 2. Commonwealth and States. [Vol. I.

at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

1. Meaning of "Dominion" in this Act.—In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

2. Validity of laws made by Parliament of a Dominion.—(1.) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2.) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any
such Act, and the powers of the Parliament of a Dominion shall include
the power to repeal or amend any such Act, order, rule or regulation
in so far as the same is part of the law of the Dominion.

This section will not apply to the Commonwealth of Australia unless adopted
under s. 10, post.

This section follows a recommendation of the Imperial Conference of 1930.
The Colonial Laws Validity Act, 1865 (title Constitution), was passed to
remedy the state of affairs disclosed by decisions, especially of the South
Australian Supreme Court, which held certain Acts of the Legislature invalid
because they were repugnant to the law of England. See per Stephen J. in
H. v. Call (1881), 7 V.L.R. (L.), at p. 123. The Act declared that such laws
should not be invalid unless they were repugnant to some Act of Parliament
which expressly or by necessary intendment applied to the colony, and then
only to the extent of such repugnancy. Colonial legislatures were thus left free
to pass laws which might be repugnant to the common law of England. Had
the Legislature been content with the repeal of the Colonial Laws Validity Act,
1865, the situation which existed before it was passed might have been restored,
i.e., that laws made in the Dominions that were repugnant to the common law
of England were invalid, or, at the least, open to challenge.

This Act does not confer power to repeal or alter the Commonwealth
Constitution, ante, nor extend the powers of the Commonwealth at the expense
of those of the States. (Ss. 8, 9, post.)

See also article by Prof. K. H. Bailey in 5 Aust. L.J., at p. 302.

—It is hereby declared and enacted that the Parliament of a Dominion
has full power to make laws having extra-territorial operation.

This section will not apply to the Commonwealth of Australia unless adopted
under s. 10, post.

For "Dominion," see s. 1, ante.

As to territorial limits on legislative powers of the Dominions, see Halsbury's

As to whether this section is retrospective, see Croft v. Durnphy, [1933]
A.C. 156.

See generally, article by Prof. K. H. Bailey in 5 Aust. L.J., at p. 302.

4. Parliament of United Kingdom not to legislate for Dominion
except by consent.—No Act of Parliament of the United Kingdom
passed after the commencement of this Act shall extend, or be deemed
to extend, to a Dominion as part of the law of that Dominion unless it
is expressly declared in that Act that that Dominion has requested,
and consented to, the enactment thereof.

As to the application and effect of this section, see s. 1, ante, and ss. 9, 10,
post.

The words "as part of the law of that Dominion" were inserted on the
1929 Conference recommendation, the 1929 Conference having submitted the
clause as it stood without them. The effect will be that laws passed by the
British Parliament in the future will have that operation in the Dominions
which the comity of nations allows the laws of every country to have in the
territory of every other. Thus the English courts consider people who have
been divorced in Germany well divorced if the decree was made according to the
law of Germany, even though it may have been given for reasons which no
5. Powers of Dominion Parliaments in relation to merchant shipping.—Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

For application of this section, see s. 1, ante, and s. 10, post.

For the Merchant Shipping Act, 1894, see title Shipping.

6. Powers of Dominion Parliaments in relation to Courts of Admiralty.—Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

For application of this section, see s. 1, ante, and s. 10, post.

S. 4 of the Colonial Courts of Admiralty Act, 1890 (title Admiralty), in effect prevented the Colonial Legislatures from touching the jurisdiction, practice or procedure of the Admiralty Courts established in their territories, unless the Secretary of State had previously approved the change. If this approval had not been secured, the Governor was bound to reserve the amending Bill unless it contained within itself a suspensive provision, holding up its operation until the Sovereign's pleasure upon it was declared. S. 7 of the same Act imposed a similar restriction on the making of rules for regulating the procedure and practice of the Courts. Before becoming operative they had to be approved by the Sovereign in Council—unless they dealt with mere details for the reform whereof a general authority had been previously given by such Order.

These restrictions will now disappear, and in addition to this the Dominion Parliaments will, under s. 2 (2), ante, have power to repeal locally the Act of 1890.

7. Saving for British North America Acts and application of the Act to Canada.—(1.) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2.) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3.) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. Saving for Constitution Acts of Australia and New Zealand.—Nothing in this Act shall be deemed to confer any power to repeal or
Statute of Westminster, 1931 (Imperial). ss. 8, 9.

alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

For the Commonwealth of Australia Constitution Act, 1900, and the Constitution, see this title, ante. The alteration of the Constitution is regulated by s. 123 thereof.

9. Saving with respect to States of Australia.—(1.) Nothing in this Act shall be deemed to authorise the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2.) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3.) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

Cf. the effect of ss. 106-108 of the Commonwealth Constitution, ante.

The "constitutional practice existing," etc., appears to be that, in a matter within the jurisdiction of an Individual State or States, Parliament may still legislate for a State or States without asking for the concurrence of the Parliament or Government of the Commonwealth. It may be mentioned that in 1907 Parliament passed the Australian States Constitution Act, 1907 (title Constitution), providing that Bills which altered the Constitution of a State, or affected the Governor's salary, or themselves contained a suspensive provision, should be reserved, and laid down what Bills should, and what should not, be treated as measures of constitutional change. It also made subsidiary provisions. The right of the Crown to issue instructions to Governors directing them to reserve Bills was confirmed, and certain Acts which the Governors should have reserved, but to which they had assented, were validated.

It is difficult to conceive nowadays any set of circumstances in which a State would call upon the Imperial Parliament to act without the concurrence of the Commonwealth, but the power is reserved in case the necessity should arise.

It is possible, though not absolutely easy, to read this provision so as to make it consistent with s. 4, ante. If Parliament intervened at the request of Western Australia to make a law for it, some jurists might contend that the Imperial Act extended to a part at least of the Commonwealth. The answer would be to draw a distinction between a geographical entity (Australia) and a political entity (the Commonwealth of Australia).

See also article by Prof. K. H. Bailey in 5 Aust. L.J., at pp. 362, 398.
10. Certain sections of Act not to apply to Australia, New Zealand or Newfoundland unless adopted.—(1.) None of the following sections of this Act, that is to say, sections two, three, four, five, and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2.) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(3.) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

This Act has not, up to the time of publication, been adopted by the Parliament of the Commonwealth of Australia.

11. Meaning of "Colony" in future Acts.—Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

The definition of "colony" in the Interpretation Act, 1889, s. 18, Halsbury's Statutes of England, Vol. 18, p. 1000, is "any part of His Majesty's Dominions exclusive of the British Islands and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony."

12. Short title.—This Act may be cited as the Statute of Westminster, 1931.