

Chapter 25

Colonial Laws Validity Act, 1865

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

28 & 29 Vict., c. 63 (U.K.)¹

[29 June 1865]

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¹ This Act was amended by the *Statute Law Revision Act 1893*, 56 & 57 Vict c 14

Colonial Law Validity Act 1865

Whereas Doubts have been entertained respecting the Validity of divers laws enacted or purporting to have been enacted by the Legislatures of certain of Her Majesty's Colonies and respecting the Powers of such Legislatures and it is expedient that such Doubts should be removed:

Be it hereby enacted by the Queen's most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the Authority of the same as follows:

1 Definitions

The Term "Colony" shall in this Act include all of Her Majesty 's Possessions abroad in which there shall exist a Legislature as hereinafter defined except the Channel Islands the Isle of Man and such Territories as may for the Time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of India

The Terms "Legislature" and "Colonial Legislature" shall severally signify the Authority other than the Imperial Parliament or Her Majesty in Council competent to make Laws for any Colony:

The Term "Representative Legislature" shall signify any Colonial Legislature which shall comprise a Legislative Body of which One Half are elected by Inhabitants of the Colony:

The Term "Colonial Law" shall include Laws made for any Colony either by such Legislature as aforesaid or by Her Majesty in Council:

An Act of Parliament or any Provision thereof; shall in construing this Act be said to extend to any Colony when it is made applicable to such Colony by the express Words or necessary Intendment of any Act of Parliament:

The Term "Governor" shall mean the Officer lawfully administering the Government of any Colony:

The Term "Letters Patent" shall mean Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland

2 Colonial laws, when void for repugnancy

Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3 Colonial laws, when not void for repugnancy

No Colonial Law shall be or be deemed to have been void or inoperative on the Ground of Repugnancy to the Law of England, unless the same shall be repugnant to the Provisions of some such Act of Parliament, Order, or Regulation as aforesaid.

4 Colonial laws not void for inconsistency with instructions to Governors

No Colonial Law, passed with the Concurrence of or assented to by the Governor of any Colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any Instructions with reference to such Law or the Subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any Instrument other than the Letters Patent or Instrument authorizing such Governor to concur in passing or to assent to Laws for the Peace, Order, and good Government of such Colony, even though such Instructions may be referred to in such Letters Patent or last-mentioned Instrument.

5. Colonial legislatures may establish, etc, courts of law. Representative legislatures may alter their constitutions

Every Colonial Legislature shall have, and be deemed at all Times to have had full Power within its Jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the Constitution thereof, and to make Provision for the Administration of Justice therein; and every Representative Legislature shall, in respect to the Colony under its Jurisdiction, have, and be deemed to at all Times to have had, full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature; provided that such Laws shall have been passed in such Manner and Form as may from Time to Time be required by any Act of Parliament, Letters Patent,

Order in Council, or Colonial Law for the Time being in force in the said Colony.

6. Certified copies of laws assented to or Bills reserved to be prima facie evidence that they are properly passed. Proclamations as to Her Majesty's disallowance or assent, published in colonial newspaper, to be prima facie evidence of disallowance or assent

The Certificate of the Clerk or other proper Officer of a Legislative Body in any Colony to the Effect that the Document to which it is attached is a true Copy of any Colonial Law assented to by the Governor of such Colony, or of any Bill reserved for the Signification of Her Majesty's Pleasure by the said Governor shall be prima facie Evidence that the Document so certified is a true Copy of such Law or Bill, and, as the Case may be, that such Law has been duly and properly passed and assented to, or that such Bill has been duly and properly passed and presented to the Governor; and any Proclamation purporting to be published by Authority of the Governor in any Newspaper in the Colony to which such Law or Bill shall relate, and signifying Her Majesty's Disallowance of any such Colonial Law, or Her Majesty's Assent to any such reserved Bill as aforesaid, shall be prima facie Evidence of such Disallowance or Assent.

"And whereas Doubts are entertained respecting the Validity of certain Acts enacted or reputed to be enacted by the Legislature of South Australia:" Be it further enacted as follows:

7 Validation of Acts

All Laws or reputed Laws enacted or purporting to have been enacted by the said Legislature, or by Persons or Bodies of Persons for the Time being acting as such Legislature, which have received the Assent of Her Majesty in Council, or which have received the Assent of the Governor of the said Colony in the Name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the Date of such Assent for all Purposes whatever; provided that nothing herein contained shall be deemed to give Effect to any Law or reputed Law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful Disallowance or Repeal of any Law.

Notes

1. Repeal for Cth and state operation - give details

