[HIGH COURT OF AUSTRALIA.]

TAYLOR AND OTHERS . . . . PLAINTIFFS;

AND

THE ATTORNEY-GENERAL OF QUEENSLAND AND OTHERS . . . . DEFENDANTS.

H. C. OF A. 1917.

BRISBANE, *Aug.* 10, 13, 14, 15.

SYDNEY, *Sept.* 6.

Barton, Isaacs, Gavan Duffy, Powers and Rich JJ.

Constitutional Law (Qd.)—Amendment of Constitution—Validity of Act—Act of Parliament—Royal assent—Assent by Governor—Powers of Queensland Parliament—Bill passed by Legislative Assembly and rejected by Legislative Council—Referendum on Bill—Validity of Referendum Act—Power to abolish Legislative Council. Australian States Constitution Act 1907 (*Imperial*) (7 *Edw. VII. c.* 7), *sec.* 1—*Colonial Laws Validity Act* 1865 (*Imperial*) (28 *& 29 Vict. c.* 63), *sec.* 5—*Order in Council* (*Imperial*), 6*th June* 1859, *cl.* 22—*Constitution Act* 1867 (*Qd.*) (31 *Vict. No.* 38)—*Constitution Act Amendment Act* 1908 (*Qd.*) (8 *Edw. VII. No.* 2)—*Parliamentary Bills Referendum Act* 1908 (*Qd.*) (8 *Edw. VII. No.* 16).

The *Australian States Constitution Act* 1907 (Imperial), by sec. 1 (1), provides (*inter alia*) that it shall not be necessary to reserve, for the signification of His Majesty's pleasure thereon, any Bill passed by the legislature of any of the States if the Governor has previously received instructions from His Majesty to assent and does assent accordingly to the Bill.

Held, that the *Constitution Act Amendment Act of* 1908 (Qd.) is a valid and effective Act of Parliament, as the Governor of Queensland had, before assenting to the Bill, received instructions from His Majesty authorizing him to assent to it.

The *Colonial Laws Validity Act* 1865 (Imperial), in sec. 5, contains a provision that "every representative legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony."

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

The *Parliamentary Bills Referendum Act of* 1908 (Qd.) provides that when a Bill passed by the Legislative Assembly in two successive sessions has in the same two sessions been rejected by the Legislative Council, it may be submitted by referendum to the electors, and, if affirmed by them, shall be presented to the Governor for His Majesty's assent, and upon receiving such assent the Bill shall become an Act of Parliament in the same manner as if passed by both Houses of Parliament, and notwithstanding any law to the contrary.

Held, that the *Parliamentary Bills Referendum Act of* 1908 was a valid and effective Act of Parliament by virtue of the power conferred upon the Legislature of Queensland by sec. 5 of the *Colonial Laws Validity Act*.

Held, further, that there is power to abolish the Legislative Council of Queensland by an Act passed by the Legislative Assembly and affirmed by the electors in accordance with the provisions of the *Parliamentary Bills Referendum Act of* 1908.

By an Imperial Order in Council dated 6th June 1859, empowering the Governor of Queensland to make laws and to provide for the administration of justice in that colony, it was provided, by clause 22, that "the Legislature of the Colony of Queensland shall have full power and authority from time to time to make laws altering or repealing all or any of the provisions of this Order in Council in the same manner as any other laws for the good government of the Colony," &c.

Per Isaacs J.: Authority to pass the *Parliamentary Bills Referendum Act of* 1908 was also conferred upon the Parliament of Queensland by clause 22 of the Order in Council.

Decision of the Supreme Court of Queensland: *Taylor* v. *Attorney-General*, (1917) S.R. (Qd.), 208, reversed.

SPECIAL CASE stated for the opinion of the Full Court of the High Court.

By a writ issued on 12th April 1917 in the Supreme Court of Queensland by William Frederick Taylor, Bartley Fahey and William Stephens against the Attorney-General of Queensland and William James Gall, Richard Joseph Cole, William Bradshaw Hardcastle, Henry Taylor Macfarlane and Frederick Bennett, the plaintiffs claimed declarations (*inter alia*) that the *Constitution Act Amendment Act of* 1908 and the *Parliamentary Bills Referendum Act of* 1908 were invalid, that the provisions of the *Parliamentary Bills Referendum Act of* 1908 were not applicable to the provisions of a certain Bill called *A Bill to Amend the Constitution of Queensland by Abolishing the Legislative Council*, and that the provisions of that Bill were in contravention of the Constitution of the Commonwealth of

Australia and of the Constitution of the State of Queensland, and that by virtue of the provisions of the *Commonwealth Electoral (War-time) Act* 1917 any referendum or vote of the electors of the State of Queensland on 5th May 1917 was prohibited and unlawful. They also claimed an injunction with respect to proceeding or further proceeding with the taking of a poll directed to be taken on 5th May 1917 under the Referendum Act of 1908 on the Bill above referred to.

A similar writ was issued on 19th April 1917 by the above-named plaintiffs on behalf of themselves and all other members of the Legislative Council other than Frank McDonnell and Alfred James Jones, who, as well as the defendants named in the first-mentioned writ, were made defendants.

A motion by the plaintiffs for an injunction as prayed in the writs having been referred, on 19th April 1917, to the Full Court of the Supreme Court of Queensland by *Cooper* C.J., that Court granted an interlocutory injunction in each case, on 28th April 1917, restraining the defendants (other than the Attorney-General), their and each of their presiding officers, assistant presiding officers, servants and agents and everyone of them from proceeding or further proceeding with the taking of the poll and from doing any act or thing for the purpose of conducting, holding or taking the poll until after the trial of the action or until further order; and the Court ordered the question of costs to be reserved: *Taylor* v. *Attorney-General* (1).

From the orders of the Full Court of the Supreme Court the defendants, by special leave, appealed to the High Court, and on 4th May the High Court ordered that "on the Attorney-General for Queensland consenting that the question under sec. 14 of the *Commonwealth Electoral (War-time) Act* be raised in the case hereinafter mentioned by the necessary amendments and that the questions under secs. 38A and 40A of the *Judiciary Act* (that is the question of jurisdiction) becoming thereupon raised and the cause becoming thereupon removed into the High Court a case embracing all points in the action as originally indorsed on the said writ shall be stated by the parties for the determination of the Full Court of the High Court and the Attorney-General for Queensland

(1) (1917) S.R. (Qd.), 208.

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

undertaking that no steps be taken on the referendum until the determination by the High Court of the said points and the Attorney-General and other defendants undertaking not to raise in any Court any question as to the competency of the parties to this action or as to the said action being properly constituted as to all matters complained of and all parties undertaking to take such steps as the Court may direct for the purpose of enabling all matters raised to be determined this appeal be allowed and the interlocutory injunction be dissolved and the costs of the motion before the Supreme Court of Queensland and of this appeal be costs of the action."

The special case, dated 21st July 1917, which was stated by the parties for the opinion of the Full Court of the High Court under and in accordance with the above-mentioned order of 4th May, was substantially as follows :—

1. The plaintiffs are and were at all material times Members of the Legislative Council of Queensland, and are electors of and property holders in the State of Queensland and electors of the Commonwealth of Australia.

The plaintiff William Frederick Taylor is Chairman of Committees in the Legislative Council of Queensland, and by virtue of such office is entitled under the *Constitution Act Amendment Act of* 1896 to and is in receipt of a salary of £500 per annum.

2. The defendant William James Gall is the Under Secretary to the Home Secretary's Department of Queensland, and is the returning officer appointed as hereinafter stated by the Governor in Council for the taking of the referendum poll directed to be taken under the *Parliamentary Bills Referendum Act of* 1908, and the defendants Richard Joseph Cole, William Bradshaw Hardcastle, Henry Taylor Macfarlane and Frederick Bennett are the assistant returning officers appointed as hereinafter stated by the Governor in Council for the electoral districts of Brisbane, Fortitude Valley, South Brisbane and Toowong, respectively, for the taking of the said referendum poll. The defendants Frank McDonnell and Alfred James Jones are also Members of the said Legislative Council, and are the persons appointed by an order of his Honor the Chief Justice of Queensland to be joined as defendants on behalf of themselves

and all other persons having the same interest as themselves in this cause.

3. The Act entitled the *Constitution Act Amendment Act of* 1908 was passed and assented to by His Excellency the Governor on 3rd April 1908. The second reading of the said Act was passed in the Legislative Council on a division by 17 to 15 votes in a House consisting of 44 members, as appears in the Journals of the House of 1908, and the third reading of the said Act was passed in the said Legislative Council without division, as appears in the Journals of the House of 1908, at which sitting of the said Legislative Council 35 members were present. The second reading of the said Act was passed in the Legislative Assembly without division, at which sitting of the said Legislative Assembly 64 members were present, and the third reading by 41 votes to 19 in a House consisting of 71 members, as appears in the Journals of the House of 1908.

4. The Act entitled the *Parliamentary Bills Referendum Act of* 1908 was passed and assented to by His Majesty on 19th August 1908. The said Act passed the second and third readings in the Legislative Assembly without division, at which sittings 63 members and 71 members respectively were present, and passed the second and third readings in the Legislative Council without division, at which sittings 31 members and 30 members respectively were present, as appears in the Journals of the House of 1908. The Legislative Assembly at the time of the passing of the second and third readings consisted of 72 members and the Legislative Council of 44 members. This Act was reserved for the assent of His Majesty.

5. On or about 19th November 1915 the Legislative Assembly of Queensland passed a Bill entitled *A Bill to Amend the Constitution of Queensland by Abolishing the Legislative Council.* The second and third readings of the said Bill were passed by 38 votes to 17 votes and by 30 votes to 9 votes respectively in a House of 72 members, as appears in the Journals of the House of 1915.

6. On or about 8th December 1915 the said Bill was rejected by the Legislative Council of Queensland by 26 votes to 3.

7. On or about 15th September 1916, in a House consisting of 72 members, the said Legislative Assembly again passed the second reading of the said Bill by 35 votes to 15 votes, and on or about 19th

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

September 1916 the third reading without division, at which sitting of the said Legislative Assembly 66 members were present, as appears in the Journals of the House of 1916.

8. On or about 15th November 1916 the said Legislative Council again rejected the said Bill by 19 votes to 3, as appears in the Journals of the House of 1916.

9. On 3rd April 1917 His Excellency the Governor of Queensland, with the advice of the Executive Council, made and issued a Proclamation directing that the said Bill should be submitted to a referendum of the electors under the provisions of the *Parliamentary Bills Referendum Act of* 1908. The Proclamation aforesaid was published in the *Government Gazette* on 3rd April 1917.

10. On the said 3rd April 1917 His Excellency the Governor of Queensland, with the advice of the Executive Council, appointed the defendant William James Gall to be the returning officer for taking the said referendum poll (notification of which appointment was published in the *Government Gazette* of 3rd April 1917), and by writ under his hand commanded the said William James Gall to take the said referendum poll on 5th May 1917 and to return the said writ not later than 6th August 1917.

11. On the said 3rd April 1917 His Excellency the Governor of Queensland, by and with the advice of the Executive Council, made and issued regulations under the *Parliamentary Bills Referendum Act of* 1908 providing for the issue of the said writ and the taking of the said referendum poll, which regulations have been published in the *Government Gazette* of 3rd April 1917.

12. On the said 3rd April 1917 His Excellency the Governor of Queensland, with the advice of the Executive Council, appointed certain places to be the polling places at the said referendum poll in the electoral districts of Queensland, and directed the defendants Richard Joseph Cole, William Bradshaw Hardcastle, Henry Taylor Macfarlane and Frederick Bennett to be assistant returning officers for four of the said electoral districts, to wit, Brisbane, Fortitude Valley, South Brisbane and Toowong, respectively, notification of which appointment was published in the *Government Gazette* of 3rd April 1917.

13. In the *Government Gazette* of 3rd April 1917 the Home Secretary, in pursuance of the power in him vested by the *Parliamentary Bills Referendum Act of* 1908, published a public notification containing in the schedule thereto a copy of the Bill entitled *A Bill to Amend the Constitution of Queensland by Abolishing the Legislative Council.*

14. On 12th April 1917 the plaintiffs on their own behalf issued a writ in the Supreme Court of Queensland against some of the defendants. On 19th April 1917 a further writ was issued by the plaintiffs claiming the same relief and adding certain defendants in a representative capacity as Members of the Legislative Council.

15. On 19th April 1917 a motion for an injunction as prayed in the said writs was made to his Honor the Chief Justice of Queensland, which motion was referred to the Full Court of Queensland.

16. On 28th April 1917 the said Full Court granted interlocutory injunctions as prayed in the said writs.

17. On 1st May 1917 the High Court of Australia granted special leave to appeal from the orders of the Full Court of Queensland.

18. On 2nd, 3rd and 4th May the said appeal was heard before the High Court of Australia when an order (which is the order of 4th May already set out so far as material) was made by the said High Court.

19. The said referendum was duly taken on 5th May 1917, and a majority of votes was cast against the Bill.

20. The said 5th May 1917 was appointed as a polling day for an election of the Senate and for a general election of the House of Representatives, and an election for the Senate and a general election for the House of Representatives were duly held on the said day.

The questions for the opinion of the Court are :—

(1) Is the *Constitution Act Amendment Act of* 1908 a valid and effective Act of Parliament ?

(2) Is the *Parliamentary Bills Referendum Act of* 1908 a valid and effective Act of Parliament ?

(3) Is there power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the *Parliamentary Bills Referendum Act of* 1908 ?

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

(4) Was the referendum taken on 5th May 1917 a valid referendum?

(5) How and in what manner are the costs of the proceedings to be borne and paid?

The special case now came on for hearing.

Feez K.C. and *Stumm* K.C. (with them *Fowles* and *Douglas*), for the plaintiffs. The Constitution of Queensland has been established by the following Statutes: *Australian Courts Act* 1828 (9 Geo. IV. c. 83); *Australian Constitutions Act* 1842 (5 & 6 Vict. c. 76), providing a government for New South Wales, and giving authority for the establishment of new colonies in the territory comprised within the Colony of New South Wales, with similar forms of government; the *Australian Constitutions Act* 1850 (13 & 14 Vict. c. 59), which gave power to alter the constitution of the Legislative Councils established by 5 & 6 Vict. c. 76 or to establish instead thereof Councils and Houses of representatives, *i.e.*, power to establish a bicameral system of government. The bicameral system was introduced into New South Wales by 18 & 19 Vict. c. 54 (1855), secs. 3-7 and Schedule. Under the provisions of this Act an Order in Council was made in 1859 making Queensland a separate colony, and provision was made for a Legislative Council and Legislative Assembly (Order in Council, 6th June 1859, pars. 1, 2, 8, 14, 22).

The *Constitution Act Amendment Act of* 1908 was not reserved for His Majesty's assent as required by sec. 1 of the *Australian States Constitution Act* 1907, and is therefore invalid.

Secs. 1 and 2 of the Queensland *Constitution Act of* 1867 (31 Vict. No. 38) have not been altered or repealed. Before the Legislative Council could be abolished those sections would have to be amended so as to allow for its abolition. The Imperial Parliament has said that the Legislature of Queensland shall consist of a Legislative Council and a Legislative Assembly. The *Constitution Act of* 1867 is a consolidation (see preamble). Sec. 9 gives the only power to alter the Constitution. The Order in Council of 6th June 1859 is still the basis of the Constitution (*Cooper* v. *Commissioner of Income Tax (Qd.)* (1)). The *Constitution Act* is merely a transfer of powers

(1) 4 C.L.R., 1304.

to the Parliament of Queensland which are only as wide as those given by the Order in Council, and the exercise of any wider powers must be left to the Imperial Legislature. The power conferred is that of altering the constitution of either body of the Legislature, and determining what shall be the internal composition of both Houses; but no power is given to abolish either House (*Attorney-General for New South Wales* v. *Rennie* (1)).

[ISAACS J. referred to *Australian States Constitution Act* 1907, sec. 1 (2).]

Where the power to abolish is intended to be given the word "abolish" is used as in clause 20 of the Order in Council. The preamble to the Order in Council provides for the establishment of a legislature in a manner "as nearly resembling the form of government and legislature which should be at such time established in New South Wales," *i.e.*, the bicameral system. This system is the only one provided for by 18 & 19 Vict. c. 54. Under the provisions of 18 & 19 Vict. c. 54 it was not intended that the Legislature established by the Order in Council should have power to destroy one of its branches.

The Order in Council, by clause 22, gave limited power to alter the Constitution. Then further power was given by the *Colonial Laws Validity Act* 1865, sec. 5. So far as the Legislative Council is concerned, the Queensland Parliament have exhausted their power under both the Order in Council and the *Colonial Laws Validity Act*, by the passing of the *Constitution Act of* 1867. The *Parliamentary Bills Referendum Act of* 1908, which substitutes for the Legislative Council in some cases the vote of the people and the Legislative Assembly, goes beyond this power, and is invalid. Further, this Act does not apply to the Legislative Council: it requires for its continued operation the continued existence of both Houses.

The *Colonial Laws Validity Act* does not give power to abolish the Legislative Council; it may give power to take the power to abolish it, but that power has not been taken.

The provisions of sec. 14 of the *Commonwealth Electoral* (*War-time*) *Act* 1917 come within the defence power of the Commonwealth,

(1) (1896) A.C., 376, at p. 379.

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

and also within the power to regulate Federal elections (Commonwealth Constitution, sec. 51 (VI.) (*Farey* v. *Burvett* (1)).

Ryan A.-G. for Qd. and *Blair*, for the defendants. The *Constitution Act Amendment Act of* 1908 does not come under the class of Bills requiring reservation for His Majesty's signature (*Australian States Constitution Act* 1907, sec. 1 ; *Keith's Responsible Government in the Dominions*, vol. II., p. 998). In any event the Governor was authorized by the Secretary of State for the Colonies to assent to the Bill (*Australian States Constitution Act* 1907, sec. 1, proviso (*c*)).

The *Parliamentary Bills Referendum Act of* 1908 is to be read and construed with and as an amendment of the *Constitution Act of* 1867. This Act altered the Constitution in effect by providing for a third body, the electorate, in certain cases. The power to pass this Act was conferred by clause 22 of the Order in Council of 6th June 1859, or, if this is insufficient, by the *Colonial Laws Validity Act* 1865, sec. 5, which confers upon the Queensland Parliament full power to make laws altering or repealing any part of the Order in Council (*Dicey's Law of the Constitution*, 8th ed., p. 101 ; *Webb* v. *Outtrim* (2) ; *Cooper* v. *Commissioner of Income Tax (Qd.)* (3) ; *Keith's Responsible Government in the Dominions*, vol. I, p. 436 ; *R.* v. *Burah* (4) ; *West Derby Union* v. *Metropolitan Life Assurance Society* (5) ; *Powell* v. *Apollo Candle Co.* (6)).

The *Constitution Act of* 1867, by sec. 2, gives power to legislate in all cases whatsoever, and includes, therefore, a power to amend the Constitution (*Dicey's Law of the Constitution*, 8th ed., p. 101 ; *Jenkyns British Rule and Jurisdiction beyond the Seas*, p. 75).

The provisions of sec. 14 of the *Commonwealth Electoral (War-time) Act* 1917 (No. 8 of 1917) are not within the Commonwealth defence power or the power of regulating elections ; and, even if they are, its provisions are merely directory, and not mandatory, and therefore do not avoid a referendum taken on the same day as the Federal elections (see *Montreal Street Railway Co.* v. *Normandin* (7), and the title of the Act and sec. 2). By sec. 3 the *Commonwealth Electoral*

(1) 21 C.L.R., 433, at p. 442.
(2) (1907) A.C., 81 ; 4 C.L.R., 356.
(3) 4 C.L.R., 1304, at p. 1314.
(4) 3 App. Cas., 889, at p. 904.
(5) (1897) A.C., 647, at p. 655.
(6) 10 App. Cas., 282, at p. 290.
(7) (1917) A.C., 170.

(*War-time*) *Act* 1917 and the *Commonwealth Electoral Act* 1902-1911 are to be read as one. (See *Smith* v. *Oldham* (1).)

Feez K.C. and *Stumm* K.C., in reply.

The following judgments were read :—

Sept. 6.

BARTON J. This special case was stated as in the original jurisdiction of this Court in consequence of its order made on the fourth of last May by consent of the parties to an appeal, who are the present parties.

There are five questions for the opinion of the Court :—(1) Is the *Constitution Act Amendment Act of* 1908 a valid and effective Act of Parliament ? (2) Is the *Parliamentary Bills Referendum Act of* 1908 a valid and effective Act of Parliament ? (The two Statutes mentioned are Acts of the Parliament of Queensland.) (3) Is there power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the *Parliamentary Bills Referendum Act of* 1908 ? (4) Was the referendum taken on 5th May 1917 a valid referendum ? (5) How and in what manner are the costs of the proceedings to be borne and paid ?

As to question No. 1 the position of the plaintiffs rested on the contention that the Bill had not been reserved for the assent of His Majesty, and that in view of the necessity for that assent the Bill was not law. It in fact received the assent of the Governor of Queensland, which, it was contended, did not suffice to give it the form of law. On its appearing that the Governor had been authorized by the Secretary of State for the Colonies to assent to the Bill, counsel for the plaintiffs very properly withdrew the objection, and the answer to the question must be in the affirmative.

On question No. 2 I have had a great deal of doubt, but I have come to the conclusion that in this instance also the answer must be in the affirmative. I was for some time much impressed by the reasons and conclusions of the Supreme Court of Queensland in the able judgment read by *Lukin* J. upon the injunction motion which was the subject of the appeal already mentioned, and but for

(1) 15 C.L.R., 355, at p. 358.

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Barton J.

sec. 5 of the *Colonial Laws Validity Act* 1865 I should have been much disposed to agree with that judgment.

Assuming agreement with the Full Court up to that point, I am of opinion that sec. 5 of the Imperial Act establishes the contention of the defendants as to the validity of the Referendum Act of 1908. The section is both declaratory and enacting. The Act of which it is a part was passed by the Imperial Parliament two years before the Queensland *Constitution Act of* 1867 "to consolidate the laws relating to the Constitution of the Colony of Queensland."

The Parliament of Queensland is a "representative legislature" and also a "colonial legislature" within the meaning of the Imperial Act. As such it is deemed always to have had, and it has had from 1865, "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." Also it is deemed always to have had, and it has had from 1865, "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 Queensland. I take the constitution of a legislature, as the term is here used, to mean the composition, form or nature of the House of legislature where there is only one House, or of either House if the legislative body consists of two Houses. Probably the power does not extend to authorize the elimination of the representative character of the legislature within the meaning of the Act.

Argument has been raised on the difference in phraseology between the first part of this section referring to Courts of judicature, and the second part referring to the constitution, powers and procedure of the legislature, and I am far from thinking that there is not a good deal of force in the argument. But I think that the words of the second part of the section, with which we are more immediately concerned, are too strong and too comprehensive to enable one to say that the power therein given is not sufficient to give validity to the legislation impeached. The section is one of continuous vitality, and acts upon all laws as to the constitution and powers

of the legislature, so as to give them validity whether they were passed before or after 1865. It is true that the *Constitution Act of* 1867 provided for all laws passed thereunder to be enacted "by Her Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly in Parliament assembled," and that the Constitution did not recognize the making of laws by any other authority. It is also true that in general the legislation of a body created by and acting under a written charter or constitution is valid only so far as it conforms to the authority conferred by that instrument of government, and that therefore attempted legislation, merely at variance with the charter or constitution, cannot be held an effective law on the ground that the authority conferred by that instrument includes a power to alter or repeal any part of it, if the legislation questioned has not been preceded by a good exercise of such power; that is, if the charter or constitution has not antecedently been so altered within the authority given by that document itself. I stated that proposition in the case of *Cooper* v. *Commissioner of Income Tax (Qd.)* (1), in expressing my agreement with the other members of this Court. Normally, therefore, in the absence of such a provision as sec. 5 of the Imperial Act, I should have been prepared to hold that the *Parliamentary Bills Referendum Act of* 1908, which, though it professed to be an amendment of the *Constitution Act of* 1867, was merely, in view of its provisions, an Act at variance with the Constitution, not preceded by a valid extension of the constitutional power, was therefore itself, as it stood, invalid. But in the present case the Imperial provision seems to me to take away the application of the principle I have stated to legislation of the kind which it authorizes. The *Parliamentary Bills Referendum Act* is a law "respecting the powers" of the Legislature in certain cases. It provides that when a Bill passed by the Legislative Assembly in two successive sessions has in the same two sessions been rejected by the Legislative Council it may be submitted by referendum to the electors, and if affirmed by them shall be presented to the Governor for His Majesty's assent. It therefore provides for the substitution of the popular vote for the assent of the Legislative Council as often as the circumstances indicated may occur. I feel bound to say that

(1) 4 C.L.R., 1304.

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Barton J.

in my opinion the words of the Imperial sec. 5 cover such a case. If the Act in question had been invalid without it, I am constrained to think that it gives the necessary validity.

Question No. 2, therefore, I answer in the affirmative.

Question No. 3 asks whether the Legislative Council of Queensland could be abolished by the process provided by the Referendum Act of 1908. In 1916 a Bill for that purpose was twice in successive sessions passed by the Legislative Assembly and each time rejected by the Legislative Council. Seeing that it proposed the abolition of that branch of the Legislature, was it such a Bill as might validly be submitted to the process authorized by the Referendum Act? The latter Act was unrestricted, and, as I think it valid, I do not see how the fact of the Bill of 1916 being a Bill to deal with the Legislative Council can be held to place it beyond the legislative authority of 1908. There is power to make laws "respecting the constitution" of the legislature, and this, if passed, is such a law. The means of making it a law are provided validly by the Referendum Act. It seems to me, therefore, that I cannot but hold that there is power to abolish the Legislative Council by an Act passed in accordance with the Referendum Act. That is to say, I must answer question No. 3 in the affirmative.

The fourth question really raises a controversy as to the validity of the 14th section of the *Commonwealth Electoral (War-time) Act* 1917. In the circumstances we think it unnecessary to answer that question.

As to question No. 5, we are of opinion that there should be no costs.

ISAACS J. In view of par. 19 of the special case, I was of the same opinion as my learned brother *Barton*, that the Court ought not to answer the questions. The action was, in its inception, only in the nature of *quia timet*, and whatever argument was then open to maintain it—as to which I say nothing—seemed to me to disappear after the referendum was lost, because no damage had arisen or could possibly arise. It appeared to me that the observations of Lord *Loreburn* L.C. in *Glasgow Navigation Co.* v. *Iron Ore Co.* (1) as to

(1) (1910) A.C., 293, at p. 294.

hypothetical questions applied, and that no party had a right to insist on the Court answering the first four questions for the purpose of determining the fifth, as to incidence of costs. The majority of the Court, however, being of a different opinion, I merely record my own, and proceed to consider the questions.

1.—In my opinion the *Constitution Act Amendment Act of* 1908 is a valid and effective Act of Parliament.

The argument never seriously put the validity of this Act in contest. The plaintiffs rather threw the burden on the defendants of proving (1) that it had been passed by a two-thirds majority, and (2) that the royal assent had been validly given. Both provisions appear in fact to have been observed.

I also agree with the view expressed by Lord *Elgin*, on behalf of the Imperial Government, in his telegram of 23rd March 1908, that neither provision applied to the measure.

2.—"Is the *Parliamentary Bills Referendum Act of* 1908 a valid and effective Act of Parliament?" This Act, as is well known, was passed in consequence of a great constitutional crisis involving the relations of the two Houses, the Ministry and the Governor. Apparently it was enacted as a method of preventing the recurrence of such a situation. It was passed avowedly as an amendment of the Constitution by both Houses unanimously, and was reserved for His Majesty's assent. To declare such an enactment constitutionally impossible is no doubt within the function of a Court, but the consequences would be so momentous that only the very clearest conviction of its invalidity would justify the declaration.

Its effect may, for the present purpose, be shortly stated. Both Houses are left unaltered in composition and affirmative powers. But the change effected by the Act consists in no longer requiring as an absolute condition of legislation the concurrence of both Houses in advising the Crown. After two failures to agree, the advice of the Legislative Assembly is sufficient, provided there be obtained the approval of a majority of the electors at a referendum. Sec. 10 declares: "If the referendum poll is decided in favour of the Bill, the Bill shall be presented to the Governor for His Majesty's assent, and upon receiving such assent the Bill shall become an Act of Parliament in the same manner as if it had been passed by both

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Isaacs J.

Houses of Parliament, and notwithstanding any law to the contrary."

The Act makes no change in respect of the mode of obtaining the royal assent. Presentation to the Governor for that assent is always necessary, and whether it is given by the Governor at once or upon express instruction, or is reserved for His Majesty's personal assent, is a matter to be determined by considerations other than the provisions of the Act.

The effect, summed up briefly, is that the Legislature of Queensland—apart from the Crown, which must in all cases assent—henceforth consists of the two Houses concurring, except in the case of an irreconcilable difference, and in that case it is constituted by the Legislative Assembly alone, on condition that the electors approve of the Assembly's proposal.

The Attorney-General contends for two distinct authorities to pass this measure. One is clause 22 of the Order in Council of 1859; the other is the *Colonial Laws Validity Act* 1865.

The plaintiffs' answer to the Order in Council is twofold. They say that clause 22, whatever its ambit otherwise may have been, at all events extends no further than to alter provisions in the Order in Council itself, and as that was repealed by Act 31 Vict. No. 39 (1867) and replaced by the *Constitution Act of* 1867 (31 Vict. No. 38), a separate and distinct Act, and not the Order in Council, it follows that clause 22 can have no operation upon the Act. Then say the plaintiffs, further, as to the construction of clause 22, it never did extend so far as to exclude altogether one of the legislative Houses established by the Order in Council itself.

With respect to the *Colonial Laws Validity Act*, their argument is that, equally with clause 22 of the Order in Council, its extent does not reach to eliminating one of the Houses from law making. They urge that if that were possible, the Crown itself might be excluded, since the Crown is a part of the legislature.

Taking the *Colonial Laws Validity Act* first, on account of its more general importance, the relevant provision is contained in sec. 5. The crucial words are "every representative legislature shall . . . have . . . full power to make laws respecting the constitution, powers, and procedure of such legislature."

Mr. *Feez* argued that the words "constitution . . . of such legislature" are limited by the outward form of the legislature at the time the constitutional amendment is made. Thus, if it then besides the Crown consists of one chamber, it cannot provide for two chambers, and if it then besides the Crown consists of two chambers, it cannot provide for one chamber. According to the argument, internal changes only are possible—such as the number and qualifications of members and the electoral franchise. This argument, which was directed both to question 2 and question 3, went on to deduce that, as one chamber cannot be entirely abolished, neither can the necessity for joint concurrence of both Houses in every act of legislation. It was supported by urging that since "legislature" included the Crown, the Attorney-General's view would authorize the total elimination of the Crown as part of the legislature.

I do not agree with this contention. To begin with, the word "legislature" in this connection is not intended to include the Crown. That word is undoubtedly sometimes used to include the Crown, which is the first branch of it. But it is also frequently used even by Parliament itself to denote the law-making authority other than the Crown. In sec. 7 of the same Statute, referring to the "Legislature of South Australia," the expression "legislature" in the phrase "persons or bodies of persons for the time being acting as such Legislature" is manifestly exclusive of the Crown, both from its form and from the fact that the "assent" of the Queen or the Governor is regarded as an additional factor. This limited use of the term is common. For instance, in *Anson's Law and Custom of the Constitution* (vol. II., part 2, at p. 68), in dealing with the self-governing colonies, the learned author observes: "The legislature consists of two chambers, except in certain provinces of the Dominion of Canada." The context must always be looked at to see which is meant. The Imperial Act called the *Australian States Constitution Act* 1907 (7 Edw. VII. c. 7) is a good illustration. Sec. 1 contains examples of both senses. "Every Bill passed by the Legislature of any State" which "shall be reserved for the signification of His Majesty's pleasure thereon" necessarily, as to the expression "legislature," refers to the Houses only. But "any Act of the Legislature

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Isaacs J.

of the State " in the same section must include the Crown. Other examples are found in the same Act. When power is given to a colonial legislature to alter the constitution of the legislature, that must be read subject to the fundamental conception that, consistently with the very nature of our constitution as an Empire, the Crown is not included in the ambit of such a power.

I read the words " constitution of such legislature " as including the change from a unicameral to a bicameral system, or the reverse. Probably the " representative " character of the legislature is a basic condition of the power relied on, and is preserved by the word " such," but, that being maintained, I can see no reason for cutting down the plain natural meaning of the words in question so as to exclude the power of a self-governing community to say that for State purposes one House is sufficient as its organ of legislation. Some strong reason must be shown for cutting down the primary meaning of the words themselves applied to such a subject matter. I have shown why the grounds advanced for that purpose are insufficient.

Now, when the history of the enactment is remembered, does it present any reason for restricting the words ? It originated through difficulties arising in South Australia with regard to Acts passed there respecting the Constitution; and the matter, having been placed before the Imperial Government, was referred to the Law Officers of the Crown (Sir Roundell Palmer and Sir Robert Collier), whose report to Mr. Cardwell, dated 28th September 1864, indicates the origin of the general power contained in sec. 5 and other sections of the Act. That report certainly in no way suggests any such limitation as is contended for.

In my opinion, therefore, the full meaning of the words must be given to them, and, consequently, supposing there were no other authority to support the Queensland Referendum Act of 1908 than the *Colonial Laws Validity Act* 1865—which is a standing general power of all representative legislatures outside and irrespective of their own separate Constitutions—the answer to the second question should be in the affirmative.

But I am further of opinion that the Attorney-General's contention is right, that the same result would be attained by force of

clause 22 of the Order in Council of 6th June 1859. That Order in Council was issued under the authority of the Act of 1855 (18 & 19 Vict. c. 54). Some question having been raised as to its validity, because of a doubt whether the form of government and legislature it established followed with sufficient precision the form then existing in New South Wales, Act 24 & 25 Vict. c. 44, sec. 3, was passed by which it was validated retrospectively. It existed in full force up to 31st December 1867. Its 22nd clause says: "The Legislature of the Colony of Queensland shall have full power and authority from time to time to make laws altering or repealing all or any of the provisions of this Order in Council in the same manner as any other laws for the good government of the Colony except" &c. The exception preserves the 14th clause.

Now, in pursuance of that power, the Queensland Legislature passed the *Constitution Act of* 1867. That Act was partly a repetition and partly an alteration of the provisions of the Order in Council. The Order in Council had been altered by previous enactment, and the Act of 1867 consolidated all the constitutional laws up to that time. The only way an alteration in the Order in Council could be made was by an Act of Parliament, which therefore, by virtue of the 22nd clause of the Order, could and can itself be altered and repealed, unless that clause itself is to be regarded as no longer in existence. The only suggestion for so regarding it is that the Order was wholly repealed by the Queensland Act. It is true that by sec. 3 of Act 31 Vict. No. 39 the Order in Council is said to be repealed. But when the Act is read as a whole, including the Schedule, the intent of the Legislature is clear that their intention was to repeal entirely the Order in Council so far as it made provision for the Government of Queensland, but to leave untouched clause 14 (as an exception) and clause 22 (as an outside permanent power). I would in any case construe the 3rd section and the Schedule in favour of validity, which would exclude from the repeal clause 14 and, with it, clause 22.

The *Constitution Act of* 1867 was to come into force when the corresponding provisions of the Order in Council and the amending Acts—all consolidated in the *Constitution Act of* 1867—went out of operation. But neither did the Legislature intend, nor in my opinion

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Isaacs J.

had it the power, to alter or repeal clause 22. If it had power to repeal clause 22 *in toto*, it had power to repeal it in part, and, if so, it had power to alter it by excising the exception or the proviso, or both—which is unthinkable. Therefore, clause 22 stood, and in my opinion still stands, as a permanent power of the Queensland Legislature outside the express working provisions of the Constitution for the time being. This is the view taken by *Griffith* C.J. in *Cooper's Case* (1). I concurred in that opinion (2), and still think it correct.

The words of clause 22 are certainly not narrower—and are possibly even broader—than those of sec. 5 of the *Colonial Laws Validity Act* 1865, and consequently would, of themselves, support the Act we are considering, and possibly would support constitutional changes outside the ambit of sec. 5 of the *Colonial Laws Validity Act*. On both grounds, taken separately or conjointly, I answer the second question in the affirmative.

3.—"Is there power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the *Parliamentary Bills Referendum Act of* 1908?"

For the reasons given in my answer to the second question, with the additional observation that upon its construction the Act of 1908 includes the power to pass such an Act as is described, I answer this in the affirmative.

References were made during the argument to text-writers. Though they are not to be regarded as authorities, there is no doubt the opinions they express, and the examples they adduce, confirm the view I take independently.

The only qualification I make as to the exercise of the power is that the conditions attached to the grant in clause 22 of the Order in Council or in sec. 5 of the *Colonial Laws Validity Act* 1865, respectively, must be observed according to whichever of these grants is relied on.

4.—"Was the referendum taken on 5th May 1917 a valid referendum?"

Its validity so far as that depends on the State Constitution and State laws has already been dealt with.

The only other point raised was with reference to sec. 14 of the

(1) 4 C.L.R., at p. 1314. (2) 4 C.L.R., at p. 1329.

Commonwealth Electoral (War-time) Act 1917. On this, I agree with the statement made by my learned brother *Barton*.

5. Costs.—I agree that there should be no costs.

GAVAN DUFFY AND RICH JJ. We agree with what has been said by our brother *Barton* as to question 1.

Gavan Duffy J. Rich J.

We also agree with him in thinking that sec. 5 of the *Colonial Laws Validity Act* (28 & 29 Vict. c. 63) enables us to answer questions 2 and 3 in the affirmative. It provides that a representative legislature shall, in respect of the colony under its jurisidiction, have and be deemed at all times to have had full power to make laws respecting the constitution, powers, and procedure of such legislature, provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law for the time being in force in the said colony. In our opinion the word "constitution" in this collocation means "nature," "composition," or "make up," and the enactment enables a representative legislature to alter its constitution as it chooses, to allot to the legislature such powers as it thinks fit, and to prescribe the method in which it shall conduct its proceedings. It may perhaps be that the legislature must always remain a representative legislature as defined by the Statute, but it is unnecessary in the present case to determine whether that is so or not. This seems to us the plain meaning of the words used, but it is urged that some less extended meaning should be given to them because of the earlier words of the section which run as follows: "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." It is said that the word "abolish" is used here where it is intended to give power to put an end to a Court, and that a similar word would have been used had it been intended to give power to destroy the Legislative Council, which is an integral part of the existing legislature. Had it been intended to give to a representative legislature power to enact that there should thereafter be no legislature, the word "abolish" might well

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Gavan Duffy J. Rich J.

have been used, but the vice of the argument lies in a confusion between two distinct notions—the abolition of a legislature, and the abolition of a constituent part of such legislature. Mere alteration of the constitution of a legislature negatives the notion of the abolition of such legislature, but may entail the abolition of an integral part of it. The words of the section are properly chosen to express the powers sought to be conferred. It was intended that a colonial legislature should have power to constitute new Courts and to put an end to existing Courts, to determine whether specific Courts should continue to exist or should cease to exist, as well as to mould their form, prescribe their duties, and regulate their procedure, but it was not intended that a representative legislature should have power to produce anarchy by enacting that there should be no legislature; its powers are limited to determining what shall be the nature of the legislative body, what its powers of legislation, and what its methods of procedure. At the time the Legislature of Queensland passed the *Parliamentary Bills Referendum Act of* 1908, it was such a "representative legislature." It is said that the effect of that enactment was to provide that in certain cases laws should be made by the Legislative Assembly and the electors speaking by means of a referendum, instead of by the Legislative Assembly and the Legislative Council. We think its true effect was merely to limit the power of the Legislative Council by rendering its concurrence unnecessary in the making of laws in certain circumstances. But, however this may be, it is clear that it was a law within the competence of the then existing legislature, and that after its passage the Legislature of Queensland still remained a representative legislature within the meaning of the *Colonial Laws Validity Act*, and therefore competent to make laws with respect to its own constitution, powers, and procedure. It follows from what we have already said that a law to abolish the Legislative Council of Queensland would be such a law, for it would leave the Legislature of Queensland still a representative legislature within the meaning of the *Colonial Laws Validity Act*. Further argument was addressed to us on the construction of the *Parliamentary Bills Referendum Act*. It was said that an investigation of its terms showed that it was not intended to apply to such a measure as a Bill to abolish the Legislative Council.

How, it was asked, could it have been intended to apply the provisions of the Referendum Act to a measure which itself would render the Referendum Act valueless, if it did not impliedly repeal it? We see no reason why the provisions of the Referendum Act should not be applied even in the case of a Bill designed to repeal the Referendum Act itself. On this point we entirely agree with the view taken in the Supreme Court of Queensland. *Lukin* J., in delivering the judgment of the Court, said: "We know of no reason why an Act should not be brought into existence which may be applicable to many purposes, and amongst those many purposes to one that will make its further application for any purpose from its very nature impossible" (*Taylor* v. *Attorney-General* (1)).

Finally, it was said that sec. 10 of the Referendum Act of 1908 provides that the Bill shall be presented to the Governor for His Majesty's assent, and that these words are not appropriate to a Bill which in course of law should be reserved for His Majesty's assent. We think that the words of the section are applicable to the case of a Bill which is presented to the Governor for the purpose of being reserved by him for His Majesty's assent as well as to that of a Bill to which the Governor assents on behalf of His Majesty. The argument on the construction of the Referendum Act therefore fails.

We agree with the rest of the Court in thinking that it is unnecessary to answer question 4, and that there should be no order as to costs.

POWERS J. The questions for the opinion of the Court are set out in the judgments just delivered. My learned brothers have dealt so fully with the reasons why this Court should answer the questions in the way agreed upon by all members of the Court, that I propose to refer very briefly to some of the reasons for my concurrence in the proposed answers to the questions submitted.

I agree that the answer to question 1 should be in the affirmative. Counsel for the appellants did not, in the end, press for any other answer.

The answer to question 2, I hold, depends principally on the meaning and effect of sec. 5 of the *Colonial Laws Validity Act* 1865,

(1) (1917) S.R. (Qd.), at p. 243.

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Powers J.

passed two years before the Queensland *Constitution Act of* 1867.

Under the *Colonial Laws Validity Act* 1865 (an Imperial Act which is still in force) the Queensland Legislature as a "representative legislature" has had, at all times since the passing of the Act, power to make laws respecting the constitution, powers, and procedure of its 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 Queensland. The Queensland *Constitution Act of* 1867 has been amended by the Queensland Legislature from time to time. The Act mentioned, in my opinion, authorized such amendments.

The Queensland *Constitution Act Amendment Act of* 1908 was, I assume, passed under the authority of the Imperial Act, and it is not now contended that that is not a valid and effective Act of Parliament.

The *Parliamentary Bills Referendum Act of* 1908 was passed by both Houses of Parliament, and assented to by His Majesty the King. It was a law respecting the powers and procedure of the Legislature, and was passed as an amendment of the Constitution in the manner and form required by the colonial law for the time being in force. (See sec. 5 of the *Colonial Laws Validity Act* 1865.) I therefore hold that it was a law which the Queensland Legislature had power under sec. 5 of the *Colonial Laws Validity Act* 1865 to pass, and that it is a valid and effective Act of Parliament.

The third question is: "Is there power to abolish the Legislative Council of Queensland by an Act passed in accordance with the provisions of the *Parliamentary Bills Referendum Act of* 1908?" The question this Court is really asked to decide is whether the "Legislative Council" of Queensland—as one part of the Legislature—can be abolished by an Act amending the Constitution Act passed in accordance with the provisions of a valid Act.

Any Act abolishing the Legislative Council by an amendment of the Constitution passed in accordance with the Act mentioned would be a law respecting the Constitution passed in the manner and form required by the colonial law (the Queensland *Constitution Act*) for the time being in force (sec. 5 of the *Colonial Laws Validity Act*

1865), and in my opinion would be a valid and effective law passed under the powers granted by the Imperial Act.

The answer to question 3 should, therefore, be in the affirmative.

I have read the judgment of my brother *Isaacs*, and I agree with the reasons so clearly stated by him for holding that, if there were no other authority to support the *Parliamentary Bills Referendum Act of* 1908 than the *Colonial Laws Validity Act* 1865, the Act of 1908 was a valid exercise of the power of the Queensland Legislature. And I agree also with him, for the reasons mentioned by him, when he says (1) :—" When power is given to a colonial legislature to alter the constitution of the legislature, that must be read subject to the fundamental conception that, consistently with the very nature of our constitution as an Empire, the Crown is not included in the ambit of such a power. I read the words ' constitution of such legislature ' as including the change from a unicameral to a bicameral system, or the reverse. Probably the ' representative ' character of the legislature is a basic condition of the power relied on, and is preserved by the word ' such,' but, that being maintained, I can see no reason for cutting down the plain natural meaning of the words in question so as to exclude the power of a self-governing community to say that for State purposes one House is sufficient as its organ of legislation. Some strong reason must be shown for cutting down the primary meaning of the words themselves applied to such a subject matter."

I do not think it necessary, holding the view I do about sec. 5 of the Imperial Act, to decide whether clause 22 of the Order in Council of 1859 operates in any way which could affect the matter. I certainly think that, if the clause does so operate, the power given would be wide enough to authorize the Queensland Legislature to amend the Constitution by abolishing the Legislative Council.

Question 4.—I agree that it is unnecessary to answer this question.

Question 5.—I agree that costs should not be allowed.

Questions 1, 2 *and* 3 *answered in the affirmative. Question* 4 *not answered. As to question* 5, *no costs awarded.*

(1) *Ante*, p. 474.

H. C. OF A. 1917.

TAYLOR v. ATTORNEY-GENERAL OF QUEENSLAND.

Solicitors for the plaintiffs, *F. J. Fitzgerald & Walsh* and *Cannan & Peterson*.

Solicitor for the defendants, *W. F. Webb*, Crown Solicitor for Queensland.

Refd to *Dagi v Broken Hill Proprietary Co Ltd (No2)* [1997] 1 VR 428

[HIGH COURT OF AUSTRALIA.]

THE COMMONWEALTH . . . . . APPELLANT;
DEFENDANT,

AND

WOODHILL . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1917.

SYDNEY, *Aug.* 24, 27; *Sept.* 5.

Barton, Isaacs and Rich JJ.

Land—Acquisition by Commonwealth—Action for compensation—Conflict of laws—Jurisdiction of Supreme Court of State—"State Court of competent jurisdiction"—Land becoming part of Federal territory—Cause of action—Local or transitory actions—Lands Acquisition Act 1906-1916 (*No.* 13 *of* 1906—*No.* 12 *of* 1916), *secs.* 37, 38, 39—*Seat of Government (Administration) Act* 1910 (*No.* 25 *of* 1910), *sec.* 11—*Seat of Government Acceptance Act* 1909 (*No.* 23 *of* 1909), *sec.* 8—*Jervis Bay Territory Acceptance Act* 1915 (*No.* 19 *of* 1915), *secs.* 4, 6—*Judiciary Act* 1903-1915 (*No.* 6 *of* 1903—*No.* 4 *of* 1915), *secs.* 39, 56.

An action to recover compensation for the compulsory acquisition of land by the Commonwealth under statutory authority is in its nature local and not transitory.

The words "any State Court of competent jurisdiction" in sec. 37 of the *Lands Acquisition Act* 1906 mean any State Court having jurisdiction competent as to locality as well as subject matter.

On 1st May 1915 the Commonwealth, pursuant to the *Lands Acquisition Act* 1906, compulsorily acquired certain land of the respondent at Jervis Bay, then in the State of New South Wales. On 25th August 1915 the respondent made a claim for compensation in respect of such acquisition. On 4th September