

If the General Assembly could only by express words alter and repeal, and have attempted to do so by implication, certainly an Act purporting to give validity to that which is invalid, from the manner in which it is attempted to be done, could be of no effect.

The only course which at present suggests itself to me is to repeal by express enactment the precise words which are inconsistent with the Acts of Assembly repealing and altering provisions of the Constitution Act ; but, if all the cases and opinions, and other papers, are sent to me, I will, after a more careful consideration, suggest the course which I think should be taken.

FRED. WHITAKER.

14th February, 1863.

FURTHER OPINION.

I have read the cases and opinions, and I still adhere to the above. I am not at all sure, looking at the complicated terms of the 5th question, that the Law Officers of England intended to decide that no provision of the Constitution Act could be repealed or *altered*, except in express terms. The 5th question indeed includes several, some of which might be answered affirmatively—some negatively. The special questions submitted to the Law Officers were in reference to the New Provinces Act—it may be that their negative had application only to those.

I do not, however, for a moment intend to set up my opinion in opposition to the Attorney and Solicitor Generals of England, and I recommend that steps be taken to obtain an explanation from them as to whether they intended to declare their opinion that the powers given by the Constitution Amendment Act to repeal, alter, and suspend certain provisions of the Constitution Act cannot be exercised inferentially, or by passing over-riding Acts, but must be exercised directly and *expressly* as an alteration, suspension, or repeal. If it be so it will be necessary to pass some measure in the next Session of the Assembly, and to cure the past as well as prevent difficulties for the future, the only effectual remedy as it appears to me would be to repeal in express terms every Section of the Constitution Act over which the General Assembly has control, and re-enact those of the provisions which are still required to be in force.

As examples explanatory of the manner in which over-riding Acts have been passed, copies of the “Disqualification Act, 1858,” the “Elections Writs Act, 1858,” the “Qualifications of Electors Amendment Act, 1858,” and the “Land Revenue Appropriation Act, 1858,” may be transmitted for the information and consideration of the Law Officers in England.

FREDERICK WHITAKER.

21st February, 1863.