1947
NEW ZEALAND

THE STATUTE OF WESTMINSTER

NOTES ON THE PURPOSE AND EFFECT OF THE ADOPTION BY NEW ZEALAND PARLIAMENT OF SECTIONS 2, 3, 4, 5 AND 6 OF THE STATUTE OF WESTMINSTER AND THE NEW ZEALAND CONSTITUTION AMENDMENT (CONSENT AND REQUEST) BILL

Presented to both Houses of the General Assembly by Leave

By Authority: E. V. PAUL, Government Printer, Wellington—1947

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I. INTRODUCTORY

1. Though the fact of the growth to full nationhood of the self-governing members of the British Commonwealth of Nations lies behind the Statute of Westminster, its adoption should not be occasion for raising the question of the general constitutional status of New Zealand. That status—full nationhood—is settled. More than twenty years ago the Imperial Conference of 1926 was merely *describing* the status which the Dominions had reached after their long and steady growth to full self-governing nationhood in the historic section known as the " Balfour Report " which stated :

> *They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any respect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

2. That description records the practical independence of the members of the Commonwealth and sets out their recognition of their inter-dependence and hence their desire to remain freely associated. New Zealand has for long taken an independent and fully sovereign part in British Commonwealth and in international affairs. At the same time we have maintained our intimate association with the United Kingdom and with the other members of the Commonwealth. Not only the day-to-day actions of the Government and the attitude of New Zealanders to the two Great Wars, but also the actions of private individuals and groups, show that this recognition of independence and interdependence is part of our national way of thinking and feeling. No definitions or statutes can affect this practical position : they cannot take away New Zealand's independent status, nor can they reduce our desire to remain associated with our friends and kinsmen.

3. It is, however, a frequent occurrence—especially in countries which share the British legal tradition—that contemporary legal forms lag behind the actual facts. Often this does not matter ; but from time to time it is necessary to bring the law up to date—not to alter the contemporary state of affairs, but merely to ensure that the law more accurately describes it. The British Commonwealth representatives (for the most part experts in the law) who met in 1929 at the " Conference on the Operation of Dominion Legislation " found such a situation and attempted to deal with it. The Imperial Conference of 1926 had noted that the individual members of the Commonwealth were autonomous communities, equal in status and in no way subordinate one to another. But the law was eighty or more years behind the times. The Conference

of 1929 brought into the light the fact that in each British Commonwealth country the ordinary exercise of self-government was hampered by the existence of unnecessary and out-of-date legal restrictions which led to the raising of doubts as to the legal validity of important Dominion legislation and regulations. The Conference therefore considered what legal machinery was necessary to remove from each Dominion restrictions upon the exercise of its full power of self-government. At that conference New Zealand was represented by Sir James Parr, High Commissioner for New Zealand, and Mr. S. G. Raymond, K.C., who were parties to the report of that conference.

4. The report of the Conference on the Operation of Dominion Legislation was considered by the Imperial Conference of 1930, which recommended the passage of legislation by the United Kingdom Parliament to give effect to the recommendations of the Conference of 1929. (The United Kingdom Parliament, unlike the Parliaments of the Dominions, can also be considered for certain wider purposes as an Imperial Parliament, and can—with the request and consent of each self-governing member—legislate for the whole Commonwealth. Without such request and consent the United Kingdom Parliament is constitutionally, though not legally, incapable of concerning itself with matters appertaining to New Zealand self-government. Nor would it desire to do so, any more than our Parliament would be concerned with matters within the jurisdiction of the United Kingdom Parliament.)

5. After the 1930 Conference resolutions were adopted by the Parliaments of all the Dominions concerned which, in effect, concurred with the recommendations of the Imperial Conference and requested the passage of the Statute of Westminster by the United Kingdom Parliament. In New Zealand the resolution was moved in the House of Representatives by the then Prime Minister, the Right Hon. Mr. Forbes, on 23 July, 1931, and was carried without a division. On 22 July, 1931, the resolution was moved in the Legislative Council by the Hon. Sir Thomas Sidey. This motion was agreed to on 24 July, 1931.

6. The formal responsibility for the passage of the Statute of Westminster was ultimately one for the United Kingdom (Imperial) Parliament, which passed the Statute acting at the request—and, in effect, as the agent—of all the self-governing Dominions. There was no division in either the House of Lords or the House of Commons on the motion for the second reading.

7. The Statute of Westminster applied to Canada, South Africa, and Eire without adoption. In the case of Australia, New Zealand, and Newfoundland the Statute provided that sections 2 to 6 should not apply unless adopted.

8. It is clear from what has been said that adoption of the Statute of Westminster will make no changes in the political status of New Zealand. The relationship between the United Kingdom and the

Dominions is governed by constitutional conventions which have been in existence for many years and are recognized in the Preamble to the Statute itself, which merely declares the existing position. Nor will it weaken the tie between New Zealand and the United Kingdom and the other members of the Commonwealth. The Statute is merely a lawyers' document for bringing legal form into line with political fact. The real, as distinct from the formal or legal, relationship of Canada, Australia, South Africa, and Eire with the other members of the British Commonwealth was precisely the same in each case after it had adopted the Statute as it had been before. The association between Britain and New Zealand rests on a more substantial basis than the legal subordination of the Parliament of the people of New Zealand to the Parliament of the people of the United Kingdom. All that the adoption of sections 2 to 6 will do is to move to the position where the New Zealand Parliament, like the Parliaments of all the other self-governing members of the British Commonwealth, will have full legislative capacity. For example, legislation on New Zealand affairs passed by duly elected New Zealanders in their own Parliament will no longer run the risk of invalidation through the operation of a British Act of Parliament passed over eighty years ago when New Zealand was still a colony—an Act passed before the British Commonwealth had grown into a free association of independent countries—equal partners in a great enterprise.

9. It is necessary to use the words "move to the position where the New Zealand Parliament will have full legislative capacity" because the Statute of Westminster contains a clause which was also made to include New Zealand when the Statute was drafted in 1931 and which has the effect of taking away with one hand what it gives with the other. The purpose of the Statute is to ensure that the legal forms correspond with the real status of the self-governing members of the Commonwealth. Accordingly, section 2 terminates the application, in so far as New Zealand legislation is concerned, of the Colonial Laws Validity Act of 1865, an Act which, though having mainly a liberating effect, had come in time to be important chiefly for the restrictions on colonial legislatures, which it still retained; and, similarly, other sections remove obsolete formal shackles from the various Parliaments. But sections 7 and 8 say that the Statute shall not give to Canada, Australia, and New Zealand any more power legally to alter their Constitutions than they had before the Statute was adopted. As far as New Zealand is concerned that means that, even if we pass the Statute of Westminster, we shall still be limited by those provisions of the 1857 New Zealand Constitution Amendment Act, which prevent us from altering certain sections of our Constitution (including that which establishes the Legislative Council). Thus a Statute intended to give us legislative autonomy will clear away most legal restrictions, but will leave our Parliament still powerless to alter its Constitution. This curious position arose in this way: Canada and Australia have federal constitutions,

and it was necessary to ensure that the central Parliaments would not have power to alter the constitutions and thus to encroach on the jealously guarded rights of the various State Parliaments. But New Zealand does not have a federal constitution and clearly we should never have been included in section 8.

10. To remedy the position it is necessary, therefore, not only to adopt the Statute of Westminster, but also to arrange for the United Kingdom Parliament to remove the restrictions imposed by the 1857 New Zealand Constitution Amendment Act. This is the purpose of the New Zealand Constitution (Request and Consent) Bill. The New Zealand Parliament will then have the legislative autonomy which in theory it has had for more than twenty-five years, but which in strict law it still has not. Obviously it is a better procedure to pass the Statute *and* at the same time additionally secure the power to repeal the 1857 Amendment. To deal with the Constitution Amendment alone would be to remove only one of several restrictions upon the autonomy of our Parliament and to put future New Zealand Parliaments in the position of having to make a fresh approach to the United Kingdom Parliament every time they found it necessary to have a particular restriction removed—a procedure undignified for New Zealand and inconvenient and time-wasting to the United Kingdom Parliament which passed the omnibus Statute of Westminster to avoid this very type of situation.*

11. The adoption of the Statute will not alter New Zealand's practical standing in Commonwealth and world affairs. Since the Peace Conference of 1919 New Zealand has been a fully sovereign country in world affairs, with the right to attend international conferences, make treaties, and send and receive foreign envoys. But the adoption of the Statute will make it impossible in the future for some foreign observers and States—unaware of the real nature of Dominion status and the modern Commonwealth—to argue, as they have done from time to time when it suited their purposes to embarrass us or Britain, that our non-adoption of the Statute and our consequent legislative inferiority should deny New Zealand the right of separate representation in world councils. It should be noted that it has been possible to achieve our present freedom in the international field without amending British or New Zealand statutes because the flexibility of the common law and the King's prerogative (foreign affairs being within the prerogative) were at our disposal. The paradox is that in internal affairs, however, we are confronted with the rigidity of several anachronistic statutes,

* It should be made clear that the Treaty of Waitangi will in no way be affected. The Treaty is not of its own force part of the law, but its principles are law because they have been written into the Acts of Parliament that particularly affect the Maori people. Most of such provisions are now to be found in the Native Land Act, 1931. In the Fisheries Act, 1908, it is provided that nothing in Part I of the Act (which relates to sea-fisheries) shall affect any existing Maori fishing-rights.

and we cannot achieve similar legal freedom unless we tidy up these legal forms.

12. The legislative inability of the New Zealand Parliament has not proved excessively burdensome because the ways adopted by various Governments of circumventing the difficulties involved have seldom been challenged. (Though there was, and there is always, the risk of this being challenged as being invalid, as might well have been the case during the last war period, particularly in respect of emergency legislation affecting shipping.) Moreover, New Zealanders have never shared the desire of some other Dominions for theoretical "equality of status" with the United Kingdom and were reluctant to identify themselves with groups which insisted too much on "equality" and pursued separatism under cover of the Statute of Westminster. For many years past, however, the question of status has been settled, and separatism is a dead issue. The cohesion of the Commonwealth and the attitude of our own people during the recent war and since are the answers to the prophets of gloom of the inter-war years. The Statute can now be seen purely as the practical lawyers' document it is, and its usefulness can be shown unclouded by the important but extraneous issues which were once associated with it. Some of these practical points are listed briefly in sections that follow.

II. ANALYSIS OF THE STATUTE OF WESTMINSTER

A. SECTION 2: THE RESTRICTIONS IMPOSED BY THE COLONIAL LAWS VALIDITY ACT, 1865

13. Section 2 of the Statute of Westminster provides that—

> 2. (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.

On the adoption of this section, New Zealand legislation will no longer be deemed to be invalid merely on the ground of repugnancy to existing or future Acts of the Parliament of the United Kingdom or any regulations made under such Acts.

14. It will be noted that the Colonial Laws Validity Act was passed in 1865, while the system of responsible government in most of the colonies was still in its infancy and before Dominion status had evolved.

The provision of the Colonial Laws Validity Act to which reference should be made is section 2, which reads:

> 2. 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.

15. The Colonial Laws Validity Act affects several New Zealand statutes where they deal with matters covered by United Kingdom statutes. The outstanding example arises from the combined effect of the Merchant Shipping Act, 1894, and the Colonial Laws Validity Act. Until section 2 of the Statute of Westminster is adopted and section 2 of the Colonial Laws Validity Act is thereby rendered inapplicable, New Zealand legislation will remain liable to be defeated by any repugnancy to any provisions of the Merchant Shipping Act.

16. The Merchant Shipping Act of 1894 is largely a re-enactment of the Act of 1854. This fact is stressed in paragraph 83 of the report of the Conference on the Operation of Dominion Legislation, which, after pointing out that the Merchant Shipping Act is still the controlling legislation in respect of merchant shipping and that under it the legislatures of the Dominions are treated as subordinate legislatures, went on to say:—

> The reason for this is not difficult to understand when it is explained that the Merchant Shipping Act, 1854, which was made for the situation existing at that date, is substantially the legislation which continues to be applicable, to the Dominions. The Merchant Shipping Act, 1894, which with its amendments is now the governing Act, was merely a re-enactment of the 1854 Act, with the insertion of amendments made during the intervening years. In the year 1854 none of the Dominions as such was in existence, and it is obvious that legislation cast in a form appropriate to the constitutional status of the British possessions over half a century ago must be inconsistent with the facts and constitutional relationships obtaining in the British Commonwealth of Nations as that system exists to-day.

17. The field within which New Zealand may legislate with respect to shipping is determined by the Merchant Shipping Act. The scope of that legislative capacity is much more restricted than is usually supposed. The merchant shipping legislation of the United Kingdom permits Dominion legislatures to legislate on certain topics of navigation and shipping, but subject to the conditions laid down in the United Kingdom statutes. If legislation is enacted which transgresses the boundaries fixed by the United Kingdom legislation, it will be deemed repugnant to the Merchant Shipping Act and therefore, by reason of the Colonial Laws Validity Act, invalid. An examination of sections 735

and 736 of the Merchant Shipping Act illustrates the limitations imposed on the New Zealand Parliament with respect to shipping.

18. The effect of the Colonial Laws Validity Act on the legislation of the Dominions was discussed at the Conference on the Operation of Dominion Legislation in 1929. It is stated in paragraph 50 of the report :—

> We have therefore proceeded on the basis that effect can only be given to the principles laid down in the report of 1926 by repealing the Colonial Laws Validity Act, 1865, in its application to laws made by the Parliament of a Dominion, and the discussions at the Conference were mainly concerned with the manner in which this should be done. Our recommendation is that legislation be enacted declaring in terms that the Act should no longer apply to the laws passed by any Dominion.

Section 2 of the Statute gives effect to this recommendation.

19. The legislative power of the General Assembly was extended, but to a very limited extent, by the Whaling Industry (Regulation) Act, 1934 (U.K.)

B. SECTION 3 : EXTRA-TERRITORIAL LEGISLATION

20. Section 3 of the Statute of Westminster provides :—

> 3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

It is intended that this section will set at rest the doubts as to the validity of Dominion legislation having extra-territorial effect. For example, doubts have existed as to the competence of Dominions to legislate in respect of fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration. (Paragraph 38 of the report of the Conference on the Operation of Dominion Legislation.)

21. The United Kingdom Parliament has always had power to legislate with full extra-territorial effect, but, because of their origins as colonies, Dominion legislatures have not. Such power is necessary to a developed and sovereign State. The uncertainty of the position in the Dominions is illustrated in a number of leading cases. In *McLeod* v. *Attorney-General of New South Wales*, (1891) A.C. 455, the Privy Council held that the Legislature of New South Wales could not apply its law relating to bigamy to a person married in New South Wales who entered into a bigamous marriage while temporarily in the United States of America. In that case the act charged as a crime (the second marriage) took place outside New South Wales—*i.e.*, outside the territorial jurisdiction of Australia. The decision in this case was followed in New Zealand in the case of *R.* v. *Lander*, [1919] N.Z.L.R. 305, in which the Court decided that legislation making bigamy committed abroad an offence

in New Zealand is *ultra vires* the General Assembly. A similar decision was made in *Tagaloa* v. *Inspector of Police*, [1927] N.Z.L.R. 883. In this case the Court took the view that, under the New Zealand Constitution Act, our Legislature had no power to legislate for Samoa. The Constitution Act, 1852 (section 53) gave the Legislature power only to legislate for " the peace, order, and good government " of New Zealand, and the Legislature, therefore, could not under that source of authority legislate for territory outside the boundaries of the Dominion. A special Imperial Order in Council relating to Samoa and made under Imperial statutory authority was necessary to give New Zealand power to legislate in our own mandated territory. The decisions in *Croft* v. *Dunphy*, (1933) A.C. 156, and *Jolley* v *Mainka*, [1933] 49 C.L.R. 242, however, throws some doubt on the extent to which these decisions are likely to be followed.

22. Although the decision in *Croft* v. *Dunphy* indicates that the earlier decisions may not be as wide as they were formerly considered to be, paragraphs 38 and 39 of the report of the Conference on the Operation of Dominion Legislation remain an accurate statement of this limitation on the power of Dominions to legislate extra-territorially :—

> 38. The subject is full of obscurity and there is conflict in legal opinion as expressed in the Courts and in the writing of jurists both as to the existence of the limitations itself and as to its extent. There are differences in Dominion constitutions themselves which are reflected in legal opinion in those Dominions. The doctrine of limitation is the subject of no certain test applicable to all cases and constitutional power over the same matter may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. The practical inconvenience of the doctrine is by no means to be measured by the number of cases in which legislation has been held to be invalid or inoperative. It introduces a general uncertainty which can be illustrated by questions raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration. The state of the law has compelled Legislatures to resort to indirect methods of reaching conduct which, in virtue of the doctrine, might lie beyond their direct power but which they deem it essential to control as part of their self-government.
>
> 39. It would not seem to be possible in the present state of the authorities to come to definite conclusions regarding the competence of Dominion Parliaments to give their legislation extra-territorial operations ; and, in any case, uncertainty as to the existence and extent of the doctrine renders it desirable that legislation should be passed by the Parliament of the United Kingdom making it clear that this constitutional limitation does not exist.

23. This uncertainty made it necessary for the United Kingdom Parliament to enact section 5 of the Emergency Powers (Defence) Act, 1939, and section 187c of the Army and Air Force Act, 1940. By section 5 the Parliaments of Australia and New Zealand—the only

Dominions to which the Statute of Westminster did not then apply —were expressly empowered to give extra-territorial operation to their wartime legislation in relation to ships and aircraft registered in Australia or New Zealand. As the power of the New Zealand Parliament to legislate for its own forces overseas was regarded as doubtful, section 187c was incorporated in the Army and Air Force Act, 1940. This section provided that the legislation of Australia and New Zealand relating to the government and discipline of forces raised in those Dominions should apply to those forces when outside those Dominions. The fact that this legislation was considered necessary indicates that section 3 of the Statute of Westminster should be adopted in order to remove this uncertainty.

C. SECTION 4: LEGISLATION FOR NEW ZEALAND BY THE UNITED KINGDOM

24. Section 4 provides:—

> 4. 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.

The enactment of this provision was also recommended by the 1929 Conference on the Operation of Dominion Legislation. For many years it has been a recognized constitutional convention, indeed it is recited in the third Preamble to the Statute, that no Act directly applying to any Dominion should be passed by the Parliament of the United Kingdom, except with the prior consent and request of that Dominion. Dealing with this convention, and the need for an express provision in the Statute, the Conference reported:

> 53. Practical considerations affecting both the drafting of bills and the interpretation of statutes make it desirable that this principle should also be expressed in the enacting part of the Act, and we accordingly recommend that the proposed Act should contain a declaration and enactment in the following terms:—
>
> "Be it therefore declared and enacted that no Act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof."

25. Accordingly, with the approval of New Zealand, given by resolution of the House of Representatives on 21 July, 1931, and by the Legislative Council on 24 July, 1931 (New Zealand Parliamentary Debates, 1931, pp. 633, 685, 688), and the other self-governing Dominions, section 4 was inserted in the Statute of Westminster by the Parliament of the United Kingdom. This section merely restated in statutory form the convention which had already been followed in practice. The section permits the United Kingdom Parliament to legislate for one or more

of the Dominions on their request. Section 4, by requiring that any legislation shall expressly declare that it applies to the Dominions, also makes it clear, particularly to the Courts, that such legislation extends to the Dominions.

D. SECTIONS 5 AND 6: LEGISLATION CONCERNING MERCHANT SHIPPING AND COURTS OF ADMIRALTY

26. Section 5 provides:

> 5. 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.

27. Under section 735 the New Zealand Parliament may, with respect to ships registered in New Zealand, repeal any of the provisions of the 1894 Act (Imperial) or its amendments, other than those which relate to emigrant ships. The New Zealand Parliament is then in a position to substitute its own laws. But the Act providing for repeal must be confirmed by His Majesty in Council and does not take effect until the approval has been proclaimed in New Zealand. This section, as well as section 736, combined with the Colonial Laws Validity Act, 1865, can and does produce unexpected as well as irksome results. If there should be any conflict of laws dealing with masters and seamen (Part II of the Imperial Act), the case is apparently to be governed by the 1894 Act and not by the laws of New Zealand. Our authority to make laws with extra-territorial effect may be questioned. New Zealand may not make laws repugnant to the Imperial statute affecting ships registered in other parts of the Commonwealth or in foreign countries.

Section 736 enables the New Zealand Parliament to regulate our coasting trade. Such legislation must, however, be reserved for the Royal Assent, it must treat all British ships alike, and preserve any coastal trading rights granted to a foreign Power before 1869.

The continued application to New Zealand of these two sections of the United Kingdom Statute is in accordance with neither the constitutional position of New Zealand nor the legal necessities of a sovereign legislative Assembly.

28. Section 6 provides:—

> 6. 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.

29. These provisions of the Colonial Courts of Admiralty Act are similar to those of the Merchant Shipping Act, 1894, as sections 4 and 7 of the Colonial Courts of Admiralty Act require certain legislation to be reserved for the Royal assent.

30. Under these Acts New Zealand has been, and still is, required to reserve certain of its legislation for the Royal assent, a practice which had its origin in the days when New Zealand was a colony and feeling its way towards self-government. Reservation serves no useful purpose because it would not be in accord with constitutional practice for His Majesty to refuse assent. Until the adoption of sections 5 and 6 of the Statute of Westminster, legislation must be reserved if the threat of invalidity is to be avoided.

III. SUMMARY OF ANALYSIS OF THE STATUTE OF WESTMINSTER

31. In brief, the legal effect of adopting sections 2 to 6 of the Statute of Westminster will be—

(i) The Colonial Laws Validity Act of 1865 will cease to apply. New Zealand legislation will no longer be liable to be invalidated because of some "repugnancy" of that legislation to some Act or regulation of the United Kingdom. (Section 2 of the Statute.)

(ii) The New Zealand Parliament will be empowered to pass legislation having extra-territorial effect. The doubts as to whether such legislation is for "the peace, order, and good government of New Zealand" will be set at rest. (Section 3 of the Statute.)

(iii) No United Kingdom Act will extend to New Zealand unless at the request and with the consent of New Zealand. (Section 4 of the Statute.)

(iv) It will no longer be necessary to reserve for the Royal assent any legislation dealing with navigation and shipping, or any rules relating to the practice and procedure of a Court of Admiralty established in New Zealand. (Sections 5 and 6 of the Statute.)

IV. THE STATUTE OF WESTMINSTER AND THE NEW ZEALAND CONSTITUTION AMENDMENT ACT

32. The foregoing paragraphs are directed to a consideration of the effect of sections 2 to 6 of the Statute, which are not yet in force in New Zealand. Sections 7 to 12 of the Statute deal with certain consequential matters, and of these, sections 8 to 10 only concern New Zealand. The latter made provision as to how the operative sections (2 to 6 inclusive) would apply in New Zealand and how they might be

revoked. Section 8, which also dealt with the Constitution Act of Australia, provided with respect to New Zealand that—

> Nothing in this Act shall be deemed to confer any power to repeal or alter . . . the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

This section, and section 7 in respect of Canada, were inserted at the request of the Canadian, Australian, and New Zealand Governments for the reasons indicated in the introductory notes. There is no necessity for New Zealand, with its unitary constitution, to retain the restrictions which the dominions with Federal constitutions such as Canada and Australia, regard as essential for the protection of State rights; but, since this particular restriction has been provided for in section 8 of the Statute of Westminster, it is necessary to request the United Kingdom Parliament to pass a further statute—the New Zealand Constitution Amendment Act, which is set out in the Schedule to the New Zealand Constitution Amendment (Request and Consent) Bill. The effect of section 8 is to preserve the restrictions on the amendment of the Constitution Acts of 1852 and 1857 as they existed in 1931, when the Statute of Westminster was enacted. In 1931 the power of the New Zealand Parliament to amend its Constitution was limited. Certain sections "entrenched" by the Constitution Act, 1852, remained entrenched by the Constitution Amendment Act, 1857, and can be amended or repealed only by an Act of the United Kingdom Parliament. It is of the essence of the enjoyment of full self-government that we in New Zealand should have full power to deal with our Constitution.

33. It seems appropriate, therefore, that this opportunity should be taken to remove all restrictions on the legislative competence of the New Zealand Parliament and with this in mind it is proposed that the draft Bill set out in the Schedule to the New Zealand Constitution Amendment (Request and Consent) Bill be submitted to the United Kingdom Parliament for enactment.

V. CONCLUSION

34. In sum, the adoption of the Statute and the enactment by the United Kingdom Parliament of the New Zealand Constitution (Amendment) Bill will give the New Zealand Parliament full legislative capacity and free it from the legislative restrictions imposed by certain United Kingdom statutes; it will bring New Zealand into line with the other Dominions; and it will clarify New Zealand's international status in the eyes of foreign countries.

APPENDICES

APPENDIX 1.—RELEVANT STATUTORY ENACTMENTS

(*a*) THE STATUTE OF WESTMINSTER, 1931

(22 Geo. V, c. 4)

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 holden 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:

On 21st July, 1931, the House of Representatives, and on 24th July the Legislative Council, agreed to resolutions that an Address be presented to His Majesty praying him to cause a measure to be laid before the Parliaments of Great Britain and Northern Ireland to give effect to paras. 2 and 3 of the Preamble of this measure, and to ss. 2, 3, 4, 5, 6, 8, 11 (*mutatis mutandis*). To this they added a clause similar to the present s. 10 (1), providing that no provision of the Statute should apply to New Zealand unless that provision was adopted by the Parliament of the Dominion—with power to date the adoption as at the

commencement of the Imperial Statute or such other date as the adopting Act might fix. S. 10 (2) as it appears in the measure was not proposed by New Zealand (New Zealand Parliamentary Debates, 1931, pp. 685–686).

For further notes on the provisions of this Act, see the Supplement to Halsbury's Statutes of England, under title " Dominions ".

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 follows the recommendation of the Imperial Conference of 1930.

It does not apply to New Zealand unless adopted.

For the Colonial Laws Validity Act, 1865, see p. 18, *post.*

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

This section follows verbatim the recommendation submitted in the Legislation Conference Report. See the notes to this section in the Supplement to Halsbury's Statutes of England.

This section does not apply to New Zealand unless adopted; see s. 10, *post.*

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.

This section follows the recommendation of the Imperial Conference of 1930.

It does not apply to New Zealand unless adopted; see s. 10, *post.*

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.

This section does not apply to New Zealand unless adopted; see s. 10, *post.*

For the Merchant Shipping Act, 1894, see p. 20.

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.

This section does not apply to New Zealand unless adopted ; see s. 10, *infra*.

For Sections 4 and 7 (1) the Colonial Courts of Admiralty Act, 1890, see p. 20, *post*.

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 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.

The power to amend the New Zealand Constitution Act was conferred by the New Zealand Constitution (Amendment) Act, 1857 (Imperial) ; see p. 25, *post*.

9. *Saving with respect to States of Australia.*—(1) Nothing in this Act shall be deemed to authorize 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.

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.

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.

For the definition of "colony" in the Interpretation Act, 1889 (Imperial), see Halsbury's Statutes of England, Vol. 18, p. 1000.

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

(*b*) THE COLONIAL LAWS VALIDITY ACT, 1865
(28 & 29 Vict., c. 63.)

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

[29th June, 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:

1. *Interpretation.*—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 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 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. *Evidence of passing, disallowance and 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.

[7. *This section, relating to certain Acts enacted by the legislature of South Australia, is omitted as having no application to New Zealand.*]

(*c*) THE MERCHANT SHIPPING ACT, 1894 (SECTIONS 735 AND 736)

735. (1) The Legislature of any British possession may by any Act or Ordinance, confirmed by Her Majesty in Council, repeal, wholly or in part, any provisions of this Act (other than those of the Third Part thereof which relate to emigrant ships), relating to ships registered in that possession; but any such Act or Ordiannce shall not take effect until the approval of Her Majesty has been proclaimed in the possession, or until such time thereafter as may be fixed by the Act or Ordinance for the purpose.

(2) Where any Act or Ordinance of the Legislature of a British possession has repealed in whole or in part as respects that possession any provision of the Acts repealed by this Act, that Act or Ordinance shall have the same effect in relation to the corresponding provisions of this Act as it had in relation to the provision repealed by this Act.

736. The Legislature of a British possession may, by any Act or Ordinance, regulate the coasting trade of that British possession, subject in every case to the following conditions :—

(*a*) The Act or Ordinance shall contain a suspending clause providing that the Act or Ordinance shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed :

(*b*) The Act or Ordinance shall treat all British ships (including the ships of any other British possession) in exactly the same manner as ships of the British possession in which it is made :

(*c*) Where by treaty made before the passing of the Merchant Shipping (Colonial) Act, 1869 (that is to say, before the thirteenth day of May, eighteen hundred and sixty-nine), Her Majesty has agreed to grant to any ships of any foreign State any rights or privileges in respect of the coasting trade of any British possession, those rights and privileges shall be enjoyed by those ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance to the contrary notwithstanding.

(*d*) THE COLONIAL COURTS OF ADMIRALTY ACT (SECTIONS 4 AND 7 (I))

4. Every Colonial law which is made in pursuance of this Act, or affects the jurisdiction of or practice or procedure in any court of such possession in respect of the jurisdiction conferred by this Act, or alters any such Colonial law as above in this section mentioned, which has been previously passed, shall unless previously approved by Her Majesty through a Secretary of State, either be reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause providing that such law shall not come into operation until her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

7.—(1.) Rules of court for regulating the procedure and practice (including fees and costs) in a court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said court in the exercise of its ordinary civil jurisdiction respectively are made:

Provided that the rules under this section shall not, save as provided by this Act, extend to matters relating to the slave trade, and shall not (save as provided by this section) come into operation until they have been approved by Her Majesty in Council, but on coming into operation shall have full effect as if enacted in this Act, and any enactment inconsistent therewith shall, so far as it is so inconsistent, be repealed.

(*e*) THE NEW ZEALAND CONSTITUTION ACT, 1852

(15 & 16 Vict., c. 72)

An Act to grant a Representative Constitution to the Colony of New Zealand. [30th June, 1852.]

[*Preamble, reciting* 3 *&* 4 *Vict., c.* 62, *s.* 2; *Letters Patent* 16*th November*, 1840; 9 *&* 10 *Vict., c.* 103; *and* 11 *&* 12 *Vict., c.* 5, *was repealed by* 55 *&* 56 *Vict., c.* 19.]

[1–31. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

32. *Establishment of a General Assembly.*—There shall be within the colony of New Zealand a General Assembly, to consist of the Governor, a Legislative Council, and House of Representatives.

[33. *Rep. by* 1891, *No.* 25, *s.* 10 *(N.Z.), and* 55 *&* 56 *Vict., c.* 19.]

[34. *Rep. by* 1891, *No.* 25, *s.* 10 *(N.Z.), and* 56 *&* 57 *Vict., c.* 14.]

[35–39. *Rep. by* 1891, *No.* 25, *s.* 10 *(N.Z.), and* 55 *&* 56 *Vict., c.* 19.]

[40. *Rep. by* 1902, *No.* 21, *s.* 224 *and 5th Sched. (N.Z.).*]

[41, 42. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

[43. *Rep. by* 1881, *No.* 12, *s.* 77 *and 9th Sched. (N.Z.), and* 55 *&* 56 *Vict., c.* 19.]

44. *Time and place of holding the General Assembly.*—The General Assembly of New Zealand shall be holden at any place and time within New Zealand which the Governor shall from time to time by Proclamation for that purpose appoint; . . . and the Governor may at his pleasure prorogue or dissolve the General Assembly.

Words were omitted from this section by 57 & 58 Vict., c. 56.

[45. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

46. *Oath of allegiance.*—No member of the said Legislative Council or House of Representatives shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor, or before some person or persons authorized by him to administer such oath:

> 'I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria. So help me GOD.'

The difference between this oath and the Oath of Allegiance contained in s. 2 of the Promissory Oaths Act, 1908, should be noted.

In the case of a member of Parliament it is necessary to take a fresh oath on the demise of the Crown; see s. 3 of the Demise of the Crown Act, 1908.

47. *Affirmation or declaration instead of oath.*—Every person authorized by law to make his solemn affirmation or declaration instead of taking an oath may make such affirmation or declaration in lieu of the said oath.

[48. *Rep. by* 1902, *No.* 21, *s.* 224 *and 5th Sched. (N.Z.).*]

[49, 50. *Rep. by* 1881, *No.* 12, *s.* 77 *and 9th Sched. (N.Z.), and* 55 *&* 56 *Vict., c.* 19.]

[51, 52. *Rep. by* 55 *&* 56 *Vict. c.* 19.]

53. *Power of General Assembly to make laws.*—It shall be competent to the said General Assembly (except and subject as hereinafter mentioned) to make laws for the peace, order, and good government of New Zealand, provided that no such laws be repugnant to the law of England; and the laws so to be made by the said General Assembly shall control and supersede any laws or ordinances in anywise repugnant thereto, which may have been made or ordained prior thereto by any provincial council; and any law or ordinance made or ordained by any provincial council in pursuance of the authority hereby conferred upon it, and on any subject whereon under such authority as aforesaid it is entitled to legislate, shall, so far as the same is repugnant to or inconsistent with any Act passed by the General Assembly, be null and void.

The law of England for the purposes of this section is limited to Imperial legislation extending to New Zealand; see ss. 2 and 3 of the Colonial Laws Validity Act, 1865 (Imperial), p. 19, *post.*

54. *Appropriation and issue of money.*—It shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to, any bill appropriating to the public service any sum of money from or out of her Majesty's revenue within New Zealand, unless the Governor on her Majesty's behalf shall first have recommended to the House of Representatives to make provision for the specific public service towards which such money is to be appropriated; and (save as herein otherwise provided) no part of her Majesty's revenue within New Zealand shall be issued except in pursuance of warrants under the hand of the Governor directed to the Public Treasurer thereof.

55. *Governor may transmit drafts of laws to either House.*—It shall and may be lawful for the Governor to transmit by message to either the said Legislative Council or the said House of Representatives for their consideration the drafts of any laws which it may appear to him desirable to introduce; and all such drafts shall be taken into consideration in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided.

56. *Governor may assent to, refuse assent to, or reserve or amend bills.*—Whenever any bill which has been passed by the said Legislative Council and House of Representatives shall be presented for her Majesty's assent to the Governor, he shall declare according to his discretion, but subject nevertheless to the provisions contained in this Act and to such instructions as may from time to time be given in that behalf by her Majesty . . . , that he assents to such bill in her Majesty's name, or that he refuses his assent to such bill, or that he reserves such bill for the signification of her Majesty's pleasure thereon: Provided always, that it shall and may be lawful for the Governor, before declaring his pleasure in regard to any bill so presented to him, to make such amendments in such bill as he thinks needful or expedient, and by message

to return such bill with such amendments to the Legislative Council or the House of Representatives, as he shall think the more fitting; and the consideration of such amendments by the said Council and House respectively shall take place in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided.

The words "her heirs and successors" were omitted from this section by 55 & 56 Vict., c. 19.

57. *Governor to conform to instructions transmitted by her Majesty.*—It shall be lawful for her Majesty, with the advice of her Privy Council, or under her Majesty's Signet and Sign-manual, or through one of her Principal Secretaries of State, from time to time to convey to the Governor of New Zealand such instructions as to her Majesty shall seem meet, for the guidance of such Governor, for the exercise of the powers hereby vested in him of assenting to or dissenting from or for reserving for the signification of her Majesty's pleasure bills to be passed by the said Legislative Council and House of Representatives; and it shall be the duty of such Governor to act in obedience to such instructions.

58. *Disallowance by her Majesty of bills assented to by the Governor.*—Whenever any bill which shall have been presented for her Majesty's assent to the Governor shall by such Governor have been assented to in her Majesty's name, he shall by the first convenient opportunity transmit to one of her Majesty's Principal Secretaries of State an authentic copy of such bill so assented to; and it shall be lawful, at any time within two years after such bill shall have been received by the Secretary of State, for her Majesty, by order in council, to declare her disallowance of such bill; and such disallowance, together with a certificate under the hand and seal of the Secretary of State certifying the day on which such bill was received as aforesaid, being signified by the Governor to the said Legislative Council and House of Representatives by speech or message, or by proclamation in the Government Gazette, shall make void and annul the same from and after the day of such signification.

59. *No reserved bill to have any force until assented to by her Majesty, &c.*—No bill which shall be reserved for the signification of her Majesty's pleasure thereon shall have any force or authority within New Zealand until the Governor shall signify, either by speech or message to the said Legislative Council and House of Representatives, or by proclamation, that such bill has been laid before her Majesty in council, and that her Majesty has been pleased to assent to the same; and an entry shall be made in the journals of the said Legislative Council and House of Representatives of every such speech, message, or proclamation; and a duplicate thereof, duly attested, shall be delivered to the registrar of the supreme court, or other proper officer, to be kept among the records of New Zealand; and no bill which shall be so reserved as aforesaid shall have any force or authority within New Zealand, unless her Majesty's assent thereto shall have been so signified as aforesaid within the space of two years from the day on which such bill shall have been presented for her Majesty's assent to the Governor as aforesaid.

[60. *Rep. by* 55 & 56 *Vict., c.* 19.]

61. *Duties not to be levied on supplies for troops; nor any dues, &c., inconsistent with treaties.*—It shall not be lawful for the said General Assembly to levy any duty upon articles imported for the supply of her Majesty's land or sea forces, or to levy any duty, impose any prohibition or restriction, or grant any exemptions, bounty, drawback, or other

privilege upon the importation or exportation of any articles, or to impose any dues or charges upon shipping, contrary to or at variance with any treaty or treaties concluded by her Majesty with any foreign Power.

[62, 63. *Rep. by* 55 & 56 *Vict., c.* 19.]

64. *Grant of sums mentioned in schedule for civil and judicial services.*—There shall be payable to her Majesty, every year, out of the revenue arising from such taxes, duties, rates, and imposts, and from the disposal of such waste lands of the Crown in New Zealand, the several sums mentioned in the schedule to this Act; such several sums to be paid for defraying the expenses of the services and purposes mentioned in such schedule, and to be issued by the Treasurer of New Zealand in discharge of such warrants as shall be from time to time directed to him under the hand and seal of the Governor; . . .

Words were omitted from the end of this section by 55 & 56 Vict., c. 19.

65. *Alteration of sums mentioned in schedule.*—It shall be lawful for the General Assembly of New Zealand, by any Act or Acts, to alter all or any of the sums mentioned in the said schedule, and the appropriation of such sums to the services and purposes therein mentioned; but every bill which shall be passed by the said Legislative Council and the House of Representatives altering the salary of the Governor, or altering the sum described as for Native purposes, shall be reserved for the signification of her Majesty's pleasure thereon; and until and subject to such alteration by Act or Acts as aforesaid the salaries of the Governor and judges shall be those respectively set against their several offices in the said schedule; and accounts in detail of the expenditure of the several sums for the time being appropriated under this Act, or such Act or Acts as aforesaid of the said General Assembly, to the several services and purposes mentioned in the said schedule, shall be laid before the said Legislative Council and House of Representatives within thirty days next after the beginning of the session after such expenditure shall have been made: Provided always, that it shall not be lawful for the said General Assembly, by any such Act as aforesaid, to make any diminution in the salary of any judge to take effect during the continuance in office of any person being such judge at the time of the passing of such Act.

66. *Appropriation of revenue.*—After and subject to the payments to be made under the provisions herein-before contained, all the revenue arising from taxes, duties, rates, and imposts levied in virtue of any Act of the General Assembly, . . . shall be subject to be appropriated to such specific purposes as by any Act of the said General Assembly shall be prescribed in that behalf; . . .

Words were omitted from this section by 55 & 56 Vict., c. 19.

[67–69. *Rep. by* 20 & 21 *Vict., c.* 53, *s.* 1.]

[70. *Rep. by* 55 & 56 *Vict., c.* 19.]

71. *Provision as to native laws and customs.*—And whereas it may be expedient that the laws, customs, and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within such laws, customs, or usages should be so observed:

It shall be lawful for her Majesty, by any letters patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs, or usages to the law of England, or to any law, statute, or usage in force in New Zealand, or in any part thereof, in anywise notwithstanding.

72. *General Assembly may regulate sales, &c., of waste lands.*—Subject to the provisions herein contained, it shall be lawful for the said General Assembly to make laws for regulating the sale, letting, disposal, and occupation of the waste lands of the Crown in New Zealand; and all lands wherein the title of natives shall be extinguished as herein-after mentioned, and all such other lands as are described in an Act of the session holden in the tenth and eleventh years of her Majesty, chapter one hundred and twelve, to promote colonization in New Zealand, and to authorize a loan to the New Zealand Company, as demesne lands of the Crown, shall be deemed and taken to be waste lands of the Crown within the meaning of this Act: . . .

Words were omitted from the end of this section by 55 & 56 Vict., c. 19.

[73. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

[74. *Rep. by* 20 *&* 21 *Vict., c.* 53, *s.* 1.]

[75–79. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

80. *Interpretation of "Governor."*—In the construction of this Act the term "Governor" shall mean the person for the time being lawfully administering the government of New Zealand; . . .

Words relating to the boundaries of New Zealand were omitted from the end of this section by the New Zealand Boundaries Act, 1863 (Imperial), s. 1. The present boundaries are laid down in s. 2 of that Act.

The Governor is now the Governor-General.

[81. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

82. *Proclamations to be published.*—The proclamation of this Act, and all proclamations to be made under the provisions thereof, shall be published in the New Zealand Government Gazette.

[*Sched. rep. by* 55 *&* 56 *Vict., c.* 19.]

(*f*) THE NEW ZEALAND CONSTITUTION (AMENDMENT) ACT, 1857

(20 & 21 Vict., c. 53)

An Act to amend the Act for granting a Representative Constitution to the Colony of New Zealand. [17th August, 1857.]

[*Preamble, reciting* 15 *&* 16 *Vict., c.* 72, *rep. by* 55 *&* 56 *Vict., c.* 19.]

[1. *Rep. by* 25 *&* 26 *Vict., c.* 48, *s.* 6.]

2. *General Assembly of New Zealand may vary the provisions of the recited Act with the exceptions herein mentioned.*—It shall be lawful for the said General Assembly of New Zealand by any Act or Acts from time to time to alter, suspend, or repeal all or any of the provisions of the said Act, except such as are herein-after specified; namely, . . .

The provisions contained in sections . . . thirty-two, forty-four, forty-six, forty-seven, fifty-three, fifty-four, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty-one, sixty-four (save

so much as charges the Civil List on the revenues arising from the disposal of waste lands of the Crown), sixty-five, seventy-one, . . . and eighty of the said Act: . . .

The words omitted from this section were repealed by 55 & 56 Vict., c. 19. The sections references to which were omitted were 3, 18 (save the exception therein contained), 25, 28, 29, and 73.

[3. *Rep. by* 55 *&* 56 *Vict., c.* 19.]

APPENDIX 2.—LIST OF REFERENCES

(*a*) *Imperial Conference Reports*—

Imperial Conference, London, 1926: Summary of Proceedings. (*Vide* Appendices to the Journals of the New Zealand House of Representatives, 1927, A.-6.)

Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, London, 1929: Report. (*Vide* Appendices to the Journals of the New Zealand House of Representatives, 1930, A.-6.)

Imperial Conference, London, 1930: Report. (*Vide* Appendices to the Journals of the New Zealand House of Representatives, 1931, A.-6.)

(*b*) *Parliamentary References*—

Australia—

Statute of Westminster Adoption Act, 1942. (Commonwealth Acts, 1942, No. 56, p. 181.)

Parliamentary Debates, 1940–1942, Vol. 172, pp. 1321–1338, 1387–1400, 1424–1478, 1491–1514, 1551–1569.

New Zealand—

Parliamentary Debates, 1931, Vol. 228, pp. 545–587, 633–643, 685–686, 688–692.

(*c*) *Works of Reference*—

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