

HIGH COURT OF AUSTRALIA

Taylor

Vs.

Attorney-General of Queensland

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

6 September 1917

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 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 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.*[2] as to 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 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 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 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*[3]. I concurred in that opinion[4], 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 *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.

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 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. 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 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*[5]).

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*, 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^[6]:—"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.

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

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

[1] [\[1907\] HCA 27; 4 C.L.R., 1304.](#)

[2] [\(1910\) A.C., 293](#), at p. 294.

[3] 4 C.L.R., at p. 1314.

[4] 4 C.L.R., at p. 1329.

[5] (1917) S.R. (Qd.), at p. 243.

[6] Ante, p. 474.

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