

## The Colonial Laws Validity Act 1865



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C A P. LXIII.

An Act to remove Doubts as to the Validity of  
Colonial Laws. [29th June 1865.]

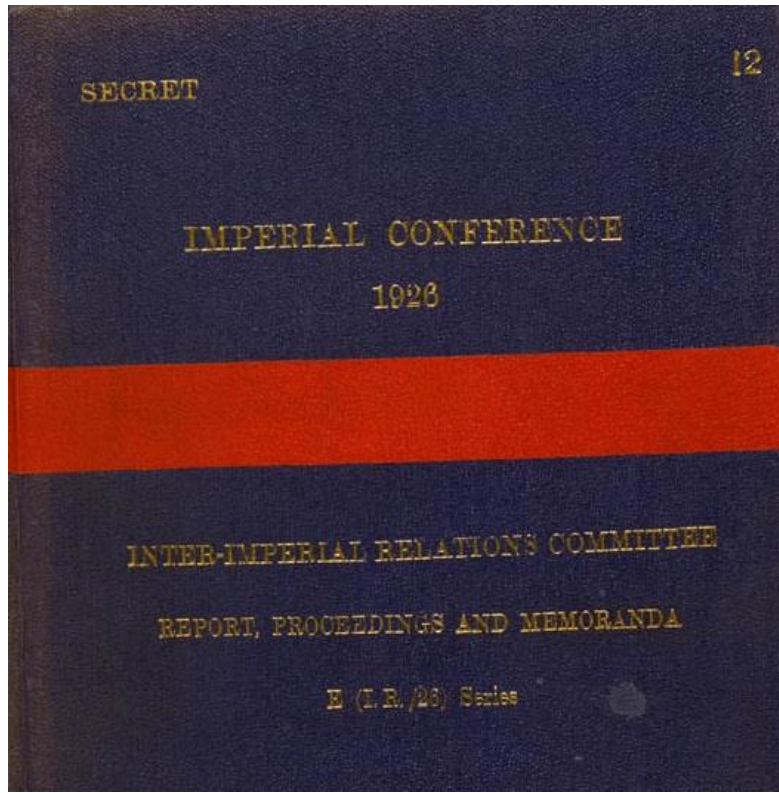
The [Colonial Laws Validity Act 1865](#) (28 & 29 Vict. c. 63) is an Act of the Parliament of the United Kingdom. Its long title is “*An Act to remove Doubts as to the Validity of Colonial Laws*”. The purpose of the Act was to remove any apparent inconsistency between colonial and Imperial legislation. Thus it confirmed that colonial legislation, provided it had been passed in the proper manner, was to have full effect within the colony, limited only to the extent that it was not in contradiction with any Act of Parliament that contained powers which extended beyond the boundaries of the United Kingdom to include that colony. This had the effect of clarifying and strengthening the position of colonial legislatures, while at the same time restating their ultimate subordination to the Westminster Parliament.

Until the passage of the Act, a number of colonial statutes had been struck down by local judges on the grounds of repugnancy to English laws, whether or not those English laws had been intended by Parliament to be effective in the colony. This had been a particular problem for the government in South Australia, where [Justice Benjamin Boothby](#) had struck down local statutes on numerous occasions in the colony’s Supreme Court.

By the mid-1920s, the British government accepted that the dominions should have full legislative autonomy. Accordingly, the imperial Parliament passed the [Statute of Westminster 1931](#), which repealed the application of the *Colonial Laws Validity Act 1865* to the dominions (i.e., Australia, Canada, the Irish Free State, New Zealand, Newfoundland, and the Union of South Africa). The *Statute of Westminster 1931* took effect immediately in Canada, the Irish Free State and South Africa. Australia adopted the Statute in 1942 with the passing of the [Statute of Westminster Adoption Act 1942](#), with retroactive effect to 3 September 1939, the start of World War II. The *Colonial Laws Validity Act 1865* continued to have application in individual Australian states until the [Australia Act 1986](#) came into effect in 1986.

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## The Balfour Declaration 1926



[The Balfour Declaration](#) agreed to at the Imperial Conference of 1926 declared that the self-governing dominions were to be regarded as

*“...autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect 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.”*

The declaration recognized the sovereign right of each dominion to control its own domestic and foreign affairs.

Scans: <https://freemandelusion.com/wp-content/uploads/2022/04/Balfour-Agreement-1926.pdf>

Text: <https://freemandelusion.com/wp-content/uploads/2020/11/balfour-agreement-1926.pdf>

## The Statute of Westminster Adoption Act 1942



No. 56 of 1942.

### AN ACT

To remove Doubts as to the Validity of certain Commonwealth Legislation, to obviate Delays occurring in its Passage, and to effect certain related purposes, by adopting certain Sections of the Statute of Westminster, 1931, as from the Commencement of the War between His Majesty the King and Germany.

Assented to

9<sup>th</sup> October, 1942.

The *Statute of Westminster 1931* was brought into effect in Australia by the [Statute of Westminster Adoption Act 1942](#). Section 2 deals with the *Validity of laws made by Parliament of a Dominion (28 and 29 Vict. c. 63)*:

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."*

<https://freemandelusion.com/wp-content/uploads/2020/11/statute-of-westminster-adoption-act-1942.pdf>

[Statute of Westminster Act 1931](#)

<https://freemandelusion.com/wp-content/uploads/2020/11/statute-of-westminster-act-1931.pdf>

The passage applied to the Commonwealth as a Dominion, but ties with the states continued until the passage of [Section 3 of the Australia Act 1986](#) relates to which enacted the verbatim termination of restrictions on legislative powers of Parliaments of States:

*(1) "The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State."*

*(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State 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 the 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 State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State."*

From [Volume 1 of the Final Report of the Constitutional Commission 1988](#):

*"The sovereign status of Australia resulted in the rejection of earlier colonial restrictions on the interpretation of the powers of the Commonwealth. The development of Australian nationhood did not require any change to the Australian Constitution. It involved, in part, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the Colonial Laws Validity Act 1865 and restricting what otherwise would have been the proper interpretation of the Constitution, by virtue of Australia's status as part of the Empire. When the Empire ended and national status emerged, the external restrictions ceased, and constitutional powers could be given their full scope.*

*Sir Garfield Barwick has described the result, in relation to the Framers' purpose in drafting the Constitution as follows: "The Constitution was not devised for the immediate independence of a nation. It was conceived as the Constitution of an autonomous Dominion within the then British Empire. Its founders were not to know of the two world wars which would bring that Empire to an end. But they had national independence in mind. Quite apart from the possible disappearance of the Empire, they could confidently expect not only continuing autonomy but approaching independence. This came within 30 years. They devised a Constitution which would serve an independent nation. It has done so, and still does."*



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