

THE IMPERIAL LAWS APPLICATION ACT 1988

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I INTRODUCTION

One of the occasionally difficult or perplexing elements of New Zealand's colonial legal heritage is the discovery of a point of law which is governed by, or may be affected by, an English or United Kingdom statute of greater or lesser antiquity and comprehensibility. Discovering whether such a statute exists, or has application to any particular problem can be a matter of considerable difficulty, requiring at times considerable research. This comes about largely because of the manner in which British law was introduced, or considered to be introduced, to this country. The common law had, well before any British claims to New Zealand had been put forward, recognised that in those British colonies acquired by settlement, the British colonists took with them elements of English law, though only those elements that were applicable to the circumstances of the colony¹. The principle found statutory embodiment in section 1 of the English Laws Act 1858 (N.Z.) and, until the passing of the Imperial Laws Application Act, continued to be of application through the English Laws Act 1908.

The application of this apparently simple proposition has not been without difficulties — in particular in relation to whether English statutes which related to activities not current in the colony at the time of inheritance were applicable when the activities later became common in the colony. The New Zealand courts produced no clear rule for this² and the jurisprudence of other colonies was little, if at all, clearer³. The question of the applicability of common law rules has perhaps caused fewer conceptual difficulties, but by its nature no general elucidation of the criteria for applicability could properly occur, and the whole process of discovery was dependent on the accidents of litigation.

Reform of the law was, in essence, the only way to resolve the difficulties caused by the uncertainty as to whether British or English statutes or elements of the common law were in force in this country. Such reform has been slow in coming, but it has, at last, arrived. The Imperial Laws Application Act 1988 has radically altered the law, and as such becomes the first point of reference on any issue relating to the operative elements of inherited law. As such, it is one of the most important and far-reaching statutes of recent times. There are a number of separate, though related, issues presented by the Imperial Laws Application Act, both in relation to the statutes repealed, and in relation to the law preserved. A number of the issues raised merit substantial discussion, both in relation to the content of the Imperial Laws

¹ Blackstone, *Commentaries* (15th ed.), Vol. 1, p.106 — the curious statement in Hight and Bamford, *Constitutional History and Law of New Zealand* p.119-120 that the principle derives from the judgment of Lord Mansfield C.J. in *Campbell v. Hall* (1774) 1 Cowp. 204; 98 E.R. 1045 is based on an alleged dictum not to be found in the reports of that case.

² Contrast *Brett v. Young* (1882) N.Z.L.R. 1 S.C. 262 with *Ruddick v. Weathered* (1889) 7 N.Z.L.R. 491 and *Re Lushington, Manukau County v. Wynyard* [1964] N.Z.L.R. 161.

³ Compare *Cooper v. Stuart* (1889) 14 App. Cas. 286 with *Quan Yick v. Hinds* (1905) 2 C.L.R. 345; and see Roberts-Wray *Commonwealth and Colonial Law* (London, Stevens, 1966) pp. 544-547.

Application Act, and its related legislation, and to the methodology its preparation.

II BACKGROUND TO THE IMPERIAL LAWS APPLICATION ACT

The aim of the act was to clarify the position of old English or British statutes in our law, and to provide for the preservation of those where, for one reason or another, retention was necessary. The statute was the result of a very long-drawn out period of research and consultation with various interested parties, including the New Zealand Law Society⁴. The results of this process were embodied in several earlier Bills drafted by Parliamentary Counsel, (largely the work of the late Mr. J.G. Hamilton, former Chief Parliamentary Counsel). The whole area was also investigated by the Law Commission and was the subject of the Commission's inaugural report⁵. The task, not surprisingly, took a number of years. The first bill was introduced into Parliament in 1981; the final version only received the royal assent as the Imperial Laws Application Act in 28th of July 1988, and came into force on the 1st of January 1989.

New Zealand has been able to benefit from the activities of Australian law reformers — several Australian states have conducted similar exercises, though with some results which differ from the New Zealand experience. Victoria was the first of the Australasian jurisdictions to begin the process of patrialing its statute books — the work of a committee chaired by Sir Leo Cussen which culminated in the Imperial Acts Application Act 1922 (Vic.) was followed more recently by further reports in the 1970s and the passage of the Imperial Law Re-enactment Act 1980 (Vic.) and the Imperial Laws Application Act 1980 (Vic.). These reforms were paralleled by the Imperial Laws Application Act 1969 of New South Wales, the Imperial Laws Application Act 1984 (Queensland) and the Imperial Laws Application Ordinance 1986 and Imperial Acts (Substituted Provisions Ordinance) 1986 (A.C.T.) — both these last were amended in 1987. Proposals for reform in South Australia have apparently yet to result in legislation. These reports and statutes have obviously been of great assistance in the preparation of the New Zealand enactment, although the trans-Tasman approach has not been entirely uniform⁶.

There is a parliamentary commitment by the Minister of Justice⁷ to the eventual publication of much of the detail of the research that went into the final form of the Imperial Laws Application Act, including in particular the schedules to the bill explaining why particular enactments are, or are not, preserved. The publication of such material is an unusual step, but not

⁴ The writer had the pleasure of serving on a New Zealand Law Society sub-committee on the Imperial Laws Bill (together with Messrs. W.G.C. Templeton and G.B. Chapman of Auckland). I would like to acknowledge the assistance I have gained from their comments on the Bill, and to thank Mr. Templeton, the Convenor of the sub-committee, for permission to use for the purposes of this article material I received or prepared for the purposes of the sub-committee's work.

⁵ "Report on Imperial Legislation in Force in New Zealand" (1987). Hereafter cited as "Report".

⁶ The Queensland statute shows a considerable divergence from other Australian legislation, preserving a number of statutes which are repealed as obsolete in other jurisdictions and which were not retained in the New Zealand statute. Such unusual retentions include the Crimes by Governors of Colonies Act 1698, 11 Will. 3 c.12; the Criminal Jurisdiction Act 1802, 42 Geo. 3 c.85 and the Commissariat Accounts Act 1821, 1 & 2 Geo. 4 c.121.

⁷ 488 N.Z.P.D. 4256.

unprecedented⁸. Certainly many researchers will in the future find such a publication of great value.

It is clear that the draft Bill prepared by the Law Commission has been the dominant influence in the final shaping of the Imperial Laws Application Act, since the earlier drafts by Parliamentary Counsel are considerably more complex, and provided for a far greater number of retained statutes, as well as for very complex procedures for determining the authoritative text of older English Statutes⁹. The problems which may arise from the form of the enacted provisions relating to the ascertainment of the text of preserved enactments are considered below. It is significant that the Law Commission's proposed list of preserved enactments is remarkably close to that prevailing in the final version of the Imperial Laws Application Act, and would appear in large part to have been preferred over the rather shorter list recommended by Parliamentary Counsel¹⁰.

III SUBSTITUTED ENACTMENTS

The Imperial Laws Application Act must be read in conjunction with a number of other acts passed at the same time, which were designed to insert into the relevant New Zealand statute certain provisions from earlier English acts. There were six such accompanying amendments whose provisions cover a number of matters, some unsurprising, others which give rise to unusual, and perhaps unintended, results. The more predictable and uncontroversial substituted enactments include the Crown Proceedings Amendment Act 1988 (which abolished the action for writs of intrusion); the Crimes Amendment Act 1988 (which, perhaps unnecessarily, confirmed that breaches of any Imperial statute or subordinate legislation are not punishable under section 107 of the Crimes Act 1908) and the Shipping and Seamen Amendment Act 1988, which repealed two English Statutory Instruments relating to shipping¹¹.

Rather more surprising is the formal restatement in the Judicature Amendment Act 1988 of the power to grant damages in addition to, or in substitution for, an injunction or order for specific performance. This power was given to the Court of Chancery in England by Lord Cairns's Act (Court of Chancery Amendment Act 1858). The English statute, which is essential to the flexibility in awarding remedies in equity now possessed by our courts, has in recent years been assumed to be applicable in the New Zealand courts¹² and thus to be the source of the enhanced jurisdiction the courts possess. In reality, it seems that Lord Cairns's Act is not, and never has been, in force in this country. The Court of Appeal in *Ryder v. Hall*¹³ clearly took the view that the Supreme Court had the powers equivalent to those that the statute conferred on the Court of Chancery, but these derived not from

⁸ One prior example of such a procedure is the publication in the 1908-1931 Reprint of Statutes of the Report of the Commissioners on the Criminal Code Act 1893).

⁹ See e.g. Imperial Laws Application Bill (No. 2) 1985, cl. 3.

¹⁰ The Parliamentary Counsel's drafts would have included in the retained list, among others, sections 1 and 6 of the Statute of Monopolies, (1623-4) 21 Ja. 1, c.3 and the Title, Preamble, and section 1 of the Cestui Que Vie Act 1666, 18 and 19 Cha. 2, c.11.

¹¹ The Merchant Shipping (Urgency Signal Order 1932 (S.R. 1945/185) and the Merchant Shipping (Registration of New Zealand Government Ships) Order 1946 (S.R. 1946/174).

¹² See *Attorney-General v. Birkenhead Borough* [1968] N.Z.L.R. 383 and *Souster v. Epsom Plumbing Ltd.* [1974] 2 N.Z.L.R. 515.

¹³ (1908) 27 N.Z.L.R. 385.

Lord Cairns' Act being in force here, but from the statutory conferring on the Supreme Court of the extended Chancery jurisdiction through the operation of section 5 of the Supreme Court Act 1862, which declared the Supreme Court to have all the jurisdiction that the Court of Chancery then possessed. Thus the Judicature Amendment Act would appear to formally conferring on the High Court a power which it has had for more than a century. This will certainly remove any doubts as to the Court's powers and prevent confusion, (as it seems was the desire of some interested parties such as the Law Society), but it might be judged to be rather unnecessary.

The most concerning element of the substituted enactments relates to the failure, either in these statutes or in the Imperial Laws Application Act itself, to provide for a entirely satisfactory method of ascertainment of the text of any preserved statute. Two substituted enactments do bear on this question, but it may well be that they do not fully or satisfactorily resolve the possible problems. The Acts Interpretation Amendment Act 1988 provides for the courts to use, as sufficiently authoritative texts of English statutes in force in New Zealand after the Imperial Laws Application Act, any copy produced by the Government Printer or otherwise published under the authority of the New Zealand Government. This will solve the practical difficulties inherent in discovering the text, when and if such a volume is prepared and published — indeed the New Zealand Law Society pressed for the early preparation of such a volume, in the interests of efficiency and clarity, if the preserved enactments were not to be reprinted as Schedules to the Imperial Laws Application Act¹⁴. It may also be observed that the method of identification of the authoritative text envisaged by the final version of the act means that the final text of legislation in force in this country is not ultimately determined by Parliament but by its delegates. This is, in itself, a rather strange constitutional device.

An alternative method of determining the text of the preserved enactments is provided for by the Evidence Amendment Act 1988. This act, apart from confirming that witnesses cannot claim a privilege to refuse to answer any question tending to establish any debt or civil liability¹⁵, provides that it shall be sufficient evidence of any imperial act preserved by the Imperial Laws Application Act to produce a copy printed by the King's or Queen's Printer or by Her Majesty's Stationery Office. This will answer admirably for more recent statutes, but some of the older English statutes have never been so printed. In any cases not involving a statute officially printed, it will be necessary to have recourse to a method not provided in the Imperial Laws Application Act or its siblings, and to cite the text as found in Ruffhead's edition of the *Statutes At Large*. Since this edition now has the status in the United Kingdom of an official text of those statutes¹⁶, it will be possible for the Ruffhead text to be taken as authoritative in New Zealand under the provisions of section 39 of the Evidence Act 1908.

IV PRESERVED STATUTES

There are a substantial number of old statutes preserved by the Imperial

¹⁴ Submission to Parliamentary Select Committee on the Imperial Laws Application Bill 1986, 9th February 1987.

¹⁵ Repeating the provisions of the Witnesses Act 1806, 46 Geo. 3, c.37.

¹⁶ Interpretation Act 1978 (U.K.) s. 19(1)(c).

Laws Application Act¹⁷. These can be divided, more or less satisfactorily, into certain functional classes.

1. Constitutional enactments

The Imperial Laws Application Act preserves a number of statutes which are undoubtedly important both legally and emotionally. Included here are statutes which preserve certain of the fundamental elements of New Zealand's British constitutional heritage. First place among them deservedly goes to the famous words of the First Statute of Westminster 1275 (3 Edw. 1, c.1):

The king willeth and commandeth . . . that common right be done to all, as well poor as rich, without respect of persons.

Other constitutional enactments preserved include Magna Carta, as adopted in 1297 by 25 Edw. I, c.29 and the guarantees of liberty of the individual, subject to the due process of law in the certain other statutes related to Magna Carta¹⁸. One may include in this group of preserved statutes, which essentially attempt to lay down the basis of the legal relationship of the state and the individual, the Petition of Right 1627 and the Bill of Rights 1688 as well as the retained provisions of the Habeas Corpus Acts of 1640, 1679 and 1816.

A linked group of preserved statutes essentially relate to the constitutional structure of New Zealand. Included here, as part of the necessary framework for the constitutional monarchy are the relevant parts of the Act of Settlement 1700, the Royal Marriages Act 1772 and the Accession Declaration Act 1910. More prosaically, the Imperial Laws Application Act also retains the Preamble and section 2 of the New Zealand Boundaries Act 1863 and the British Settlements Acts of 1887 and 1945.

2. Statutes relating to the Privy Council

The Imperial Laws Application Act preserves in force a number of statutes dealing with the jurisdiction of the Privy Council, and regulating the procedure for appeals from New Zealand courts to that body. The statutes preserved are of reasonably formidable proportions, and it is may well be that their bulk was one of the reasons for determining not to re-enact the relevant parts of the acts as substituted provisions. It is, perhaps, in this area more than any other that the failure to re-enact a statute, or at the least to ensure the easy availability of an authentic text, may be the cause of annoyance, if not of concern. It would surely be far easier to read a separate statutory provision than to determine the substance of an enactment preserved in the following terms:

(1833) 3 and 4 Will. 4, c.41 — The Judicial Committee Act 1833; section 1 [as amended by section 1 of the Statute Law Revision Act 1874 (37 and 38 Vict. c.35) and section 1 of the Statute Law Revision (No.2) Act 1888 (51 and 52 Vict., c.570)], section 3, section 5 [as amended by section 16 of the Court of Chancery Act 1851 (14 and 15 Vict., c.83)], and sections 6 to 9, 11 to 13, 15 to 21, 23, 24 and 28 [as amended by section 6 of the Judicial Committee Act 1843 (6 and 7 Vict., c.38)].

¹⁷ The Imperial Laws Application Act also preserves certain subordinate legislation — essentially that relating to elements of New Zealand's boundaries or dependencies and regulating procedures for appeals to the Privy Council. Other statutory instruments retained relate to the prize jurisdiction, merchant shipping and extradition.

¹⁸ These being (1351) 25 Edw. 3, St.5, c.4, (1354) 28 Edw. 3, c.3, and (1368) 42 Edw. 3, c.3.)

3. *Land law and Property law statutes*

The Imperial Laws Application Act also preserves a substantial number of statutes relating to land law and real property generally. Some of are major historical importance such as the statute of 1289-90 (18 Edw. 1, St.1, c.1 and c.3) — always known from its opening words as the Statute of Quia Emptores. The majority of the statutes preserved, however, cover, the law relating to the partition of land, and to distress for rent. It is in connection with these preserved statutes that one of the most notable difficulties with the Imperial Laws Application Act emerges most clearly. The act is designed to be a consolidation of existing law, and where there was any substantial element of policy choice inherent in the preservation or repeal of a statute, the Imperial Laws Application Act, as its drafters were perhaps obliged to do, has opted for the status quo. Thus although the statutes preserved may be quite outdated and unsuited for modern conditions, they are preserved until at some future date substantial reform can be implemented. It is to be regretted that the necessary resources, including parliamentary time, could not be found to determine the necessity of preserving the enactments, or the desirability of re-enacting those that deserved to be maintained in a substituted enactment. Much of the detailed work needed to be done on any such reform statute has already been done by the Property Law and Equity Reform Committee in its Reports of 1983 and 1986. It is perhaps inevitable that no matters which might require controversial decisions should be allowed to intrude into the final version of the Imperial Laws Application Act, but the decision is regrettable. While it will be of assistance to the practitioner to know what statutes might be of relevance, there may be occasions where considerable research will have to be done to establish whether or not the antique English provisions will be relevant. Such research is not rendered any the more easy by the text and drafting of the preserved enactments — the Law Commission noted, in a supplementary Report¹⁹, that the Prescription Act 1832

has . . . been criticised as strange and perplexing and as one of the worst drafted Acts in the statute book . . . In the meantime, however, we include it in the draft schedule.

And so it remains as part of our law.

The problems inherent in maintaining on the books a statute whose meaning and effect are uncertain are, however, not limited to those concerning real property. One of the most interesting survivals from the earlier statutes is section 6 of the Statute of Frauds Amendment Act 1828 (Lord Tenterden's Act). This provision, which provides:

No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance shall be made in writing, signed by the party to be charged therewith.

The apparently meaningless reference to "Obtain credit, money or goods upon" which appears in the text of the statute, has been judicially determined to mean "obtain money or goods on credit"²⁰. As the Law Commission noted

¹⁹ In May 1987.

²⁰ See *Diamanti v. Martelli* [1923] N.Z.L.R. 663, 667).

in its Report²¹, the earlier draft Bills had suggested it should be re-enacted as an amendment to the Contracts Enforcement Act 1956, but this would be inappropriate as the statute is of relevance in tort as well as contract. Indeed, the provision may have very serious effects in the field of negligent misrepresentation. The case for its preservation cannot, however, be said to be obvious.

4. *Other preserved enactments*

There are certain other miscellanea which have been preserved, simply because there is no satisfactory alternative, and any substitution would appear clumsier than preservation. One obvious example is the preservation of the Calendar (New Style) Act 1750 (24 Geo. 2 c.23); another is the retention of the Fires Prevention (Metropolis) Act 1774.

It is perhaps not surprising, also, to see the retention of two old statutes concerning set-off, the acts of 1728 and 1734²², since these have been the subject of recent judicial notice²³. Few would think it other than appropriate to preserve such important enactments as the Wills Act 1837 (7 Will. 4 and 1 Vict., c.26) and the Wills Act Amendment Act 1852 (15 and 16 Vict., c.24). Nor is it surprising that the decision should be taken to retain the Fugitive Offenders Act 1881 (44 and 45 Vict., c.69) and the Fugitive Offenders (Protected States) Act 1915 (5 and 6 Geo. 5., c.39).

There are, however, a number of statutes retained which at earlier stages both the Parliamentary Draftsman and the Law Commission would have deleted — the leading example being the legislation dealing with naval prizes in time of war²⁴. As with some other areas, the case for preservation in this form, if at all, is not immediately apparent.

V PRESERVATION OF THE COMMON LAW

The most important difference between the Law Commission draft Bill and the final statute is that the Imperial Laws Application Act includes a provision as to the applicability of the rules of common law and equity in this country. This is section 5, which provides:

After the commencement of this act, the common law of England (including the principles and rules of equity), so far as it was part of the laws of New Zealand immediately before the commencement of this act, shall continue to be part of the laws of New Zealand.

This provision clearly safeguards the position of the multitude of changes and developments in the common law since 1840. The form in which it is expressed may, however, have considerably wider implications.

Until relatively recently, the New Zealand judiciary accepted the unitary view of the common law — that it was one and indivisible. Adherence to this attitude required that the New Zealand courts should, as they did almost

²¹ "Report" p.28.

²² 2 Geo. 2, c.22 and 8 Geo. 2, c.24

²³ See *Tony Lee Motors Ltd v. M.S. MacDonald & Son (1974) Ltd.* [1981] 2 N.Z.L.R. 281, 288.

²⁴ The Prize Acts preserved are the Naval Prize Act 1864, the Prize Courts Act 1894, the Prize Courts (Procedure) Act 1914, the Prize Courts Act 1915, the Naval Prize (Procedure) Act 1916 and the Prize Act 1939.

without argument or question, apply the common law as it had developed in England, saving only such rules as were clearly inapplicable to the circumstances of a developing colony. This required a constant preparedness to deviate from their own earlier decisions when the House of Lords or the Privy Council issued a fresh pronouncement on any major issue²⁵. It has become clear in more recent years that the New Zealand Court of Appeal is far more prepared now to select for itself those developments of the common law which it will adopt (including indeed the rules as to precedent²⁶. Such a display of independence, even in the face of pressures for uniformity expressed by the Privy Council²⁷ may now be strengthened since the provisions of section 5 of the Imperial Laws Application Act can be said to amount to legislative recognition that the common law is not uniform. A statement that only the common law so far as it was a part of our law before the act is to continue surely implies that new developments do not automatically become part of the law of this country. The argument that the New Zealand courts do not have to follow the decisions of the Privy Council in appeals from other jurisdictions if there are significantly different circumstances and a substantial body of established case law operating in this country²⁸ may now be claimed to rest as much on statutory grounds as on considerations of policy.

VI REPEALED LEGISLATION

In general, the decisions to repeal any statute which was not obviously obsolete were made as a result of enquiries to interested parties, Government Departments and the like, which ensured, for the most part, retention of only those statutes for which there could possibly be some relevant application. Thus several statutes regulating matters to do with colonial clergymen of the Anglican church were set down for repeal only after the Anglican church confirmed that it had no objection to repeal²⁹; some legislation relating to deed system land was repealed only after it was clear that there could be no practical need for the statutes to continue³⁰. It must be presumed that a similar process of consultation resulted in the otherwise puzzling repeal of all statutes relating to Notaries Public — leaving this country with no statutory recognition or regulation of the position³¹. The clearing away of so much legislative deadwood can only be of long-term benefit — though of course it has also reduced the picturesque aspects of some elements of our inheritance.

Among the less important of its effects are the purging from the statute

²⁵ An attitude that reached its apotheosis in *Smith v. Wellington Woollen Manufacturing Co. Ltd.* [1956] N.Z.L.R. 491.

²⁶ See *Collector of Customs v. Lawrence Publishing Co. Ltd.* [1986] 1 N.Z.L.R. 404.

²⁷ See *Attorney-General of St. Christopher, Nevis and Anguilla v. Reynolds* [1980] A.C. 637 and *de Lasala v. de Lasala* [1980] A.C. 546.

²⁸ See *Geelong Harbour Trust Commissioners v. Gibbs Bright & Co.* [1974] A.C. 810, adopted in *Collector of Customs v. Lawrence Publishing Co. Ltd.* [1986] 1 N.Z.L.R. 404

²⁹ E.g. the Colonial Clergy Act 1819, 59 Geo. 3 c.60 and the statute of 1786, 26 Geo. 3 c. 84, concerning the consecration of bishops abroad.

³⁰ E.g. the Act of 1692 4 Will. and Mar. c.16, forbidding clandestine mortgages — this could only have applied to those tiny amounts of deed system land never brought under the Land Transfer Act nor registered under the old Deeds Registration system.

³¹ The relevant legislation was the Public Notaries Act 1801 (41 Geo. 3 c.79). In earlier drafts of the Bill, it was noted that a replacement statute was in contemplation (Imperial Laws Application Bill 1986, p.xvi.)

book of some of the more peculiar accidents of the legislative process in past years, such as the adoption by the English Acts Act 1855 of the statute 17 and 18 Victoria c.24, described as “ An act to amend the law relating to the administration of the estates of deceased persons “. The statute on that topic is in fact 17 and 18 Vict. c.113. The act actually adopted in 1858 was the Income Tax Act 1854 (U.K.). Although the statute appears never to have been the subject of judicial scrutiny in any reported case, it would be interesting to know if many lawyers advised their clients over the years on the basis of an English statute never properly adopted in this country.

Alas, also gone are such wonderful, if never-observed, curiosities as the Observance of the 5th of November Act 1606 (3 Ja. 1, c.1) and the Observance of 29 May Act 1660 (12 Cha. 2, c.14), which required the Anglican Bishops of England and all the colonies overseas to preach sermons of thanksgiving to commemorate, respectively, the escape of James I from the Gunpowder plot and the restoration of Charles II.

Whether the repeal of a statute of 1818³², which prohibited the charging of fees for the drawing up of a pardon was motivated by the laudable desire for law reform or by a desire to establish the “user pays” philosophy within the Justice Department must remain a matter for speculation.

On a much more serious note, the Imperial Laws Application Act does give rise on one respect to serious questions of constitutional significance. Among the acts repealed is the English Laws Act 1908. This, and its 1858 predecessor, declared that the laws of England *as at the 14th of January 1840* were to be in force in New Zealand. The importance of that date is clear to all constitutional lawyers — it was the date of the Proclamation, in Sydney, by Governor Gipps of New South Wales of the intention of the British Crown to extend sovereignty to New Zealand. In that the English Laws Act amounted to a legislative recognition of that date, rather than the date of the Treaty of Waitangi or any subsequent proclamation by Captain Hobson, as being the fundamental date for the commencement of British rule in New Zealand, the Imperial Laws Application Act marks a shift in the proclaimed constitutional foundations for New Zealand. Such a shift may well be overdue, but it is surprising to see it made in this way, and with so little discussion. It will be interesting to see whether the change made by the Imperial Laws Application Act is seen in later years as showing a Parliamentary disinclination to rely on the strictly British traditionalist view of the acquisition of sovereignty in New Zealand.

VII CONCLUSION

Although there are a number of matters in which it is possible to be critical of the Imperial Laws Application Act, it must be adjudged, overall, as a remarkably sound piece of legislation. The range of legislation that had to be covered and, at times, the conflicting views as to the appropriate course to pursue must have presented the Parliamentary Draftsmen, and the researchers for the Law Commission with a task of daunting proportions. That they have succeeded so well in preparing a coherent act and reached what are, generally, obviously correct conclusions as to the statutes to repeal or to preserve is a tribute to their industry and skill. Several of the major deficiencies of the

³² 58 Geo. 3, c.29.

Imperial Laws Application Act are those inherent in its consolidatory nature. It is to be hoped that at some future time, the act will be reviewed and some issues reconsidered. The long-awaited abolition of appeals to the Privy Council, which will require amendments to the Imperial Laws Application Act, may provide a suitable occasion for such a review. Until the time of any such review, the Imperial Laws Application Act must stand as an example of a very good, but not perfect, piece of law reform.