

[HIGH COURT OF AUSTRALIA.]

THE STATE OF WESTERN AUSTRALIA . . . PLAINTIFF;

AND

THE COMMONWEALTH OF AUSTRALIA . . . DEFENDANT.

THE STATE OF NEW SOUTH WALES . . . PLAINTIFF;

AND

THE COMMONWEALTH OF AUSTRALIA . . . DEFENDANT.

THE STATE OF QUEENSLAND . . . PLAINTIFF;

AND

THE COMMONWEALTH OF AUSTRALIA . . . DEFENDANT.

Constitutional Law (Cth)—Parliament of the Commonwealth—Deadlock between Houses—Double dissolution—Power of Governor-General to dissolve both Houses after Senate rejects or fails to pass a proposed law twice—Lapse of time between second rejection and dissolution—Prorogation of Parliament after first rejection or failure to pass by Senate—Effect on power to dissolve both Houses simultaneously—Rejection of bills by new Senate—Proclamation convening joint sitting to consider named Bills—Requirements of s. 57 of Constitution not satisfied in respect of one bill—Efficacy of proclamation—Whether bills passed at joint sitting which receive Royal assent valid laws—The Constitution (63 & 64 Vict. c. 12), s. 57.

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1975.

SYDNEY,
May 21, 22;

MELBOURNE,
Oct. 10, 17.

Barwick C.J.,
McTiernan,
Gibbs,
Stephen,
Mason,
Jacobs and
Murphy JJ.

Constitutional Law (Cth)—Territories—Representation in Parliament—Representation in Senate of the Australian Capital Territory and the Northern Territory—Elected representatives to be senators and to have all powers of State senators including power to vote—Validity—Representation—Whether connotes right to vote—The Constitution (63 & 64 Vict. c. 12), ss. 7, 121, 122—Senate (Representation of Territories) Act 1973 (Cth), ss. 4, and 5.*

In 1973 the Senate (Representation of Territories) Bill 1973, the Commonwealth Electoral Bill (No. 2) 1973 and the Representation Bill 1973 ("the three bills") were passed by the House of Representatives, rejected by the Senate, passed again by the House, and again

*Post p. 243.

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rejected by the Senate. The Senate rejected the first bill a second time on 29th August, and the others on 14th November. On 14th February 1974 the Parliament was prorogued until 28th February 1974. By proclamation made on 11th April 1974 the Governor-General dissolved the Senate and the House of representatives. The proclamation contained recitals which referred to s. 57 of the Constitution and stated that the conditions upon which the Governor-General was empowered by s. 57 to dissolve the Senate and the House of Representatives simultaneously had been fulfilled in respect not only of the three bills but also of, inter alia, the Petroleum and Minerals Authority Bill 1973. An election was then held for both Houses. All the bills referred to in the proclamation were passed by the House of Representatives in the new Parliament and were rejected by the Senate. By proclamation made on 30th July 1974 which referred to s. 57 and stated that the conditions upon which the Governor-General was empowered by s. 57 to convene a joint sitting of members of the Senate and the House of Representatives had been fulfilled in respect of the bills referred to in the proclamation of 11th April 1974, the Governor-General convened a joint sitting of the members of both Houses of Parliament "at which they may deliberate and shall vote together upon each of the said proposed laws". The three bills were passed at the joint sitting held pursuant to the proclamation and were given Royal assent. On 24th June 1975 the High Court held that the Petroleum and Minerals Authority Bill was not a proposed law which met the requirements of s. 57: *Victoria v. The Commonwealth and Connor*, ante p. 81.

Held: (1) That the proclamation dissolving both Houses simultaneously was effective notwithstanding that some time had elapsed between the second rejection of the three bills by the Senate and the date of the proclamation.

Per McTiernan, Gibbs, Stephen, Mason, Jacobs and Murphy JJ.: The Governor-General's power to dissolve both Houses simultaneously does not depend upon his acting to do so within any particular period after the Senate's second rejection of a bill passed twice by the House.

Per Barwick C.J.: The power to dissolve both Houses involves the existence of a relationship between the time when the Senate rejects or fails to pass a proposed law a second time and the date of the double dissolution. If the disagreement between the Houses is not current at the time of the double dissolution the acts of a joint sitting will not have the force of law.

(2) That the power of the Governor-General to dissolve both Houses had not been affected by the proroguing of Parliament in February 1974.

(3) That the proclamation convening the joint sitting was authorized by s. 57 notwithstanding that it contemplated that the sitting would deliberate and vote upon measures which included the Petroleum and Minerals Authority Bill, in respect of which the procedural requirements of the section had not been satisfied.

Accordingly, the three bills had been duly passed by both Houses of Parliament within the meaning of s. 57.

Per Barwick C.J., McTiernan, Gibbs and Mason JJ., *Murphy J. contra*: The question whether the three bills were duly passed by both Houses of Parliament within the meaning of s. 57 is justiciable.

for these three Acts and the Governor-General's subsequent dissolution of both chambers simultaneously in purported exercise of his power under s. 57 of the Constitution. One of these three bills was rejected by the Senate for the second time in August 1973, the other two in November 1973, but it was not until 11th April 1974 that both chambers were dissolved, the proclamation reciting that the conditions under which his Excellency was empowered by s. 57 to dissolve both chambers had been fulfilled in respect of six proposed laws, including the three abovementioned.

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It was contended that the Governor-General may only exercise his power under s. 57 to dissolve both chambers simultaneously if he does so without undue delay after the Senate's second rejection of a bill twice passed by the House and that this limitation upon his power arises from the ordinary meaning of the words in s. 57. Alternatively it was said that some such word as "thereupon" should be implied after the words "the Governor-General may" in the first paragraph of the section, thus leading to the same result; not to do so would involve, it was said, the unacknowledged insertion, in its stead, of words such as "at any time" and this would do violence to the whole sense of the section.

This interpretation has one obvious attraction, its acceptance would prevent the happening of what I have on an earlier occasion referred to as that wholesale impairment of the legislature's bicameral character which would occur were the House, by the repeated second passage of bills previously rejected by the Senate and which the Senate persisted in rejecting, to store up over a period a great number of measures which, following one double dissolution, might then be enacted at a joint sitting of both chambers.

However to accede to this submission would, I think, be to read into s. 57 words which are not there and to do so without good reason. To read words into any statute is a strong thing and, in the absence of clear necessity, a wrong thing—*Thompson v. Goold & Co.* (32); a fortiori in the case of the Constitution. In *Bradley v. Greenwich Board of Works* (33), Cockburn C.J., speaking in a very different statutory context but where a not dissimilar contention had been urged, said, "we seek in vain for any limitation of the time within which the apportionment is to be completed. And as the legislature have fixed no limit it is impossible for us to introduce one". His Lordship's words apply aptly enough to the present case. Section 57 contains no ambiguity

(32) [1900] A.C. 409, at p. 420.

(33) (1878) 3 Q.B.D. 384, at p. 388.