

subject of the King was no alien in England. And so in *Gavin Gibson and Co. v. Gibson*, [1913] 3 K.B. 379, Atkin, J., pointed out that the effect of *Calvin's case* was to establish that throughout the Empire the King acts everywhere as the same individual, and that all subjects everywhere are his subjects, and not those of any particular State or colony; that a subject of the King in one part of the Empire is equally his subject elsewhere.

In the last case there was no question of legislation—of the power of this or that legislature to bind the Crown—as, e.g., to bind the King to accept a certain man as a subject of his. Where there is no such question of legislative power involved, the unity of the Crown came neatly out, as Mr. Keith observes in his great work on Responsible Government in the Dominions, vol. 3, p. 1456, in *Williams v. Howarth*, [1905] A.C. 551. In that case the New South Wales Government were sued in a New South Wales court, on a contract to pay a soldier ten shillings a day for service in South Africa. The Imperial Government had paid him four shillings and sixpence a day, and the New South Wales Government claimed to set this amount off against the total claim. The Privy Council held that this could be done, and they stated that in such a case there could be no difference asserted between the Crown in its several positions as the Crown in the United Kingdom and the Crown in the State of New South Wales. As the Lord Chancellor said, p. 554:—

"The plaintiff was in the service of the Crown, and his payment was made to the Crown. Whether the money by which he was to be paid was to be found by the colony or the Mother Country was not a matter which could in any way affect his relation to his employer, the Crown."

When it is a case of legislation binding the Crown, other considerations arise. And so in the very recent case in England of *Rez v. Francis, Ex parte Markwald* (1918), 34 T.L.R. 273, a Divisional Court held that an alien who, born in Berlin, enters Australia and is duly granted there a certificate of naturalization under the powers conferred by the Commonwealth Constitution Act, 1900, is a subject of the King only in Australia, and remains an alien in other parts of the King's Empire, including the United Kingdom. The local legislature could not bind the King to accept a man as a subject of his, except within the territorial limits of its jurisdiction.

The fact is we are forced by constitutional circumstances—or at all events it is convenient under the circumstances of the Constitution of the British Empire as it exists to-day—to draw a distinction between "the King" and "the Crown." It is quite true, as Mr. Keith, quoting Lord Haldane, says, in his recent work on Imperial Unity and the Dominions, p. 385, that "the King is not a local but an Imperial institution, and is present in each of his dominions, and represented by his Ministers"; who in their turn, are, under responsible government, controlled by the local legislatures. It is also true as said by Pollock and Maitland in their *History of English Law*, 2nd ed., p. 515, that:—

"There is something anomalous in the ascription to a King of powers that he may not lawfully exercise in person—something which suggests that our "King" is rather a figment of law than a man."

Perhaps, instead of calling the King "a figment of law," it is preferable to say that "the Crown"—that "magic circle," as the same learned writers