

slowly emerged from the experience of the self-governing communities now constituting that most remarkable and successful experiment in co-operation between free democracies which has ever been developed, the British Commonwealth of Nations; they have been tested under the most trying conditions and have stood that test; they have been given authoritative expression by the Governments represented at the Imperial Conference of 1926; and have been accepted throughout the British Commonwealth. The present Conference have therefore considered their task to be merely that of endeavouring to apply the principles laid down as directing their labours to the special cases where law or practice is still inconsistent with those principles, and to report their recommendations as a preliminary to further consideration by His Majesty's Governments in the United Kingdom and in the Dominions.

16. The three heads of the terms of reference to the Conference, apart from the question of merchant shipping, which is dealt with separately, may be classified briefly as dealing with:—

- (i) Disallowance and reservation;
- (ii) The extra-territorial operation of Dominion legislation;
- (iii) The Colonial Laws Validity Act, 1865.

17. It seems convenient to give some indication of the origin and nature of the questions which arise in each case, and then to state the recommendations of the Conference under each head.

PART III.—DISALLOWANCE AND RESERVATION.

(1) DISALLOWANCE.

Present Position.

18. The power of disallowance means the right of the Crown, which has hitherto been exercised (when occasion for its exercise has arisen) on the advice of Ministers in the United Kingdom, to annul an Act passed by a Dominion or Colonial Legislature.

19. The prerogative or statutory powers of His Majesty the King to disallow laws made by the Parliament of a Dominion, where such powers still subsist, have not been exercised for many years, and it is desirable that the position with regard to disallowance should now be made clear.

20. Whatever the historical origin of the power of disallowance may have been, it has now found a statutory expression in most of the Dominion Constitutions, and accordingly the power of disallowance in reference to Dominion legislation exists and is regulated solely by the statutory provisions of those Constitutions.*

21. Section 58 of the New Zealand Constitution Act, 1852, and section 56 of the British North America Act, 1867, empower the King in Council to disallow any Act of the Parliament of either Dominion within a period of two years from the receipt of the Act from the Governor-General. In section 59 of the Constitution of the Commonwealth of Australia (1900) and section 65 of the South Africa Act, 1909, the period prescribed is one year after the assent of the Governor-General has been given. The Irish Free State Constitution contains no provision for disallowance.

22. A distinction must, of course, be drawn between the existence of these provisions and their exercise. In the early stages of responsible government cases of disallowance occurred not infrequently merely for the reason that the legislation disallowed did not commend itself on its merits to the Government of the United Kingdom. This practice did not, however, long survive, for it was realized that under the conditions of self-government the power of disallowance should only be exercised where grave Imperial interests were concerned, and that such intervention was improper with regard to legislation of purely domestic concern. In fact, the power of disallowance has not been exercised in relation to Canadian legislation since 1873, or to New Zealand legislation since 1867; it has never been exercised in relation to legislation passed by the Parliaments of the Commonwealth of Australia or the Union of South Africa.

Recommendations.

23. The Conference agree that the present constitutional position is that the power of disallowance can no longer be exercised in relation to Dominion legislation. Accordingly, those Dominions who possess the power to amend their Constitutions

* This does not apply to Newfoundland, where the Constitution is based on Letters Patent and not on statute.