

85. In view of the continued growth of the Dominions, it was inevitable that there should be doubts and difficulties as to the extent of the powers of the Dominions with respect to merchant shipping legislation, and this occasioned differences of opinion from time to time. The decisions of the Courts, however, indicate in some of the Dominions that, because of the operation in those Dominions of the Colonial Laws Validity Act, 1865, the legal position is that statutes in respect of merchant shipping passed by the Parliament of the United Kingdom, both before and after the date of the respective Constitutions, override any repugnant legislation passed by a Dominion Parliament. In the Commonwealth of Australia the Act of the Parliament of the United Kingdom in relation to shipping has been construed by the High Court of Australia as intending to deal with the subject of merchant shipping as a single integer, subject only to specific exceptions, so that repugnancy in legislation of the Parliament of the Commonwealth of Australia to that central and commanding intention is repugnancy to the Act of the Parliament of the United Kingdom.

86. An examination of the legislation passed by the Parliament of the United Kingdom before the year 1911 in respect of merchant shipping shows that it applies to a large extent to all the Dominions and to all British ships. The principal Acts now in force are the Merchant Shipping Acts, 1894 to 1906.

87. Under these Acts, combined with the operation in the Dominions of the Colonial Laws Validity Act, 1865, the present legal position of such Dominions as Canada and Australia, as interpreted by their Courts, may be summarized generally as hereinafter mentioned. We refer particularly to Canada and Australia, because the Courts of these Dominions have been called upon more frequently than those of other Dominions to pronounce upon the constitutional questions involved.

(a) The Parliament of the Dominion, under the authority contained in section 735 of the Merchant Shipping Act, 1894 (which is a re-enactment of section 547 of the 1854 Act), may repeal any provisions of the 1894 Act or its amendments (other than those of the third part thereof, which relates to emigrant ships), relating to ships registered therein. The Dominion Parliament is then in a position to substitute its own laws.

(b) The Act providing for the repeal must be confirmed by His Majesty in Council, and does not take effect until the approval has been proclaimed in the Dominion.

(c) As registration under Part I of the 1894 Act may be held to be a condition which must be in existence before section 735 can operate, it has apparently been assumed that there is no power under section 735 to repeal certain of the provisions of Part I which provide the machinery for registration. Neither Canada nor Australia has included in its shipping legislation any provisions for registration, except that the Canadian Act provides for recording a mortgage on a ship about to be built, or being built.

(d) Under section 265 of the 1894 Act, if there is any conflict of laws on the subject of the second part of the Act (which relates to masters and seamen), the case is apparently to be governed by the provisions of the 1894 Act, and not by the laws of the Dominion.

(e) The authority of the Parliament of a Dominion to enact legislation having extra-territorial operation in respect of shipping, except where specifically authorized under legislation of the Parliament of the United Kingdom, has been questioned. An example of such authorization is found in section 264 of the 1894 Act, which relates to masters and seamen, and authorizes the operation of extra-territorial legislation by a Dominion, but only when such legislation applies or adapts provisions which are similar to those of the 1894 Acts. Another example of such authorization is found in the Commonwealth of Australia Constitution Act, 1900, which provides that "The laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth." This provision has been held not to confer any new subject-matter of power, but merely to define the extent of operation of laws enacted within a subject-matter granted. In effect, it establishes that on the ships comprised within its terms Australian law operates outside the three-mile limit as well as within that limit, but it is far from being a provision extending to all Australian shipping. The High Court of Australia has held that it applies only to