

36. As regards Dominions that need the co-operation of the Parliament of the United Kingdom in order to amend the provisions in their Constitutions relating to reservation, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

PART IV.—THE EXTRA-TERRITORIAL OPERATION OF DOMINION LEGISLATION.

THE PRESENT POSITION AS TO THE COMPETENCE OF DOMINION PARLIAMENTS TO GIVE THEIR LEGISLATION EXTRA-TERRITORIAL OPERATION.

37. In the case of all Legislatures territorial limitations upon the operation of legislation are familiar in practice. They arise from the express terms of statutes or from rules of construction applied by the Courts as to the presumed intention of the Legislature, regard being had to the comity of nations and other considerations. But in the case of the legislation of Dominion Parliaments there is also an indefinite range in which the limitations may exist not merely as rules of interpretation, but as constitutional limitations. So far as these constitutional limitations exist there is a radical difference between the position of Acts of the Parliament of the United Kingdom in the United Kingdom itself and Acts of a Dominion Parliament in the Dominion.

38. The subject is full of obscurity, and there is conflict in legal opinion as expressed in the Courts and in the writings of jurists both as to the existence of the limitation itself and as to its extent. There are differences in Dominion Constitutions themselves which are reflected in legal opinion in those Dominions. The doctrine of limitation is the subject of no certain test applicable to all cases, and constitutional power over the same matter may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. The practical inconvenience of the doctrine is by no means to be measured by the number of cases in which legislation has been held to be invalid or inoperative. It introduces a general uncertainty which can be illustrated by questions raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration. The state of the law has compelled Legislatures to resort to indirect methods of reaching conduct which, in virtue of the doctrine, might lie beyond their direct power but which they deem it essential to control as part of their self-government.

39. It would not seem to be possible in the present state of the authorities to come to definite conclusions regarding the competence of Dominion Parliaments to give their legislation extra-territorial operation, and, in any case, uncertainty as to the existence and extent of the doctrine renders it desirable that legislation should be passed by the Parliament of the United Kingdom making it clear that this constitutional limitation does not exist.

RECOMMENDATIONS.

40. We are agreed that the most suitable method of placing the matter beyond possibility of doubt would be by means of a declaratory enactment in the terms set out below, passed, with the consent of all the Dominions, by the Parliament of the United Kingdom.

41. With regard to the extent of the power so to be declared, we are of opinion that the recognition of the powers of a Dominion to legislate with extra-territorial effect should not be limited either by reference to any particular class of persons (*e.g.*, the citizens of the Dominion) or by any reference to laws “ ancillary to provision for the peace, order, and good government of the Dominion ” (which is the phrase appearing in the terms of reference to the Conference).

42. We regard the first limitation as undesirable in principle. With respect to the second, we think that the introduction of a reference to legislation ancillary to peace, order, and good government is unnecessary, would add to the existing confusion on the matter, and might diminish the scope of the powers the existence of which it is desired to recognize.

43. After careful consideration of possible alternatives, we recommend that the clause should be in the following form :—

“ It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.”