

GENERAL RECOMMENDATIONS.

50. We have therefore proceeded on the basis that effect can only be given to the principles laid down in the Report of 1926 by repealing the Colonial Laws Validity Act, 1865, in its application to laws made by the Parliament of a Dominion, and the discussions at the Conference were mainly concerned with the manner in which this should be done. Our recommendation is that legislation be enacted declaring in terms that the Act should no longer apply to the laws passed by any Dominion.

51. We think it necessary, however, that there should also be a substantive enactment declaring the powers of the Parliament of a Dominion, lest a simple repeal of the Colonial Laws Validity Act might be held to have restored the old common-law doctrine.

52. It may be stated in this connection that, having regard to the nature of the relations between the several members of the British Commonwealth and the constitutional position of the Governor-General of a Dominion, it has not been considered necessary to make any express provision for the possibility, contemplated in section 4 of the Colonial Laws Validity Act, of colonial laws assented to by the Governor being held void because of any instructions with reference to such laws or the subjects thereof contained in the Letters Patent or instrument authorizing the Governor to assent to laws for the peace, order, or good government of the colony.

53. We recommend that effect be given to the proposals in the foregoing paragraphs, by means of clauses in the following form:—

“ (1) The Colonial Laws Validity Act, 1865, shall cease to apply to any law made by the Parliament of a Dominion.

“ (2) No law and no provision of any law hereafter made by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament, or to any order, rule, or regulation made thereunder; and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation in so far as the same is part of the law of the Dominion.”

54. With regard lastly to the problem which arises from the existence of a legal power in the Parliament of the United Kingdom to legislate for the Dominions, we consider that the appropriate method of reconciling the existence of this power with the established constitutional position is to place on record a statement embodying the conventional usage. We therefore recommend that a statement in the following terms should be placed on record in the proceedings of the next Imperial Conference:—

“ It would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that no law hereafter made by the Parliament of the United Kingdom shall extend to any Dominion otherwise than at the request and with the consent of that Dominion.”

We further recommend that this constitutional convention itself should appear as a formal recital or preamble in the proposed Act of the Parliament of the United Kingdom.

55. Practical considerations affecting both the drafting of Bills and the interpretation of statutes make it desirable that this principle should also be expressed in the enacting part of the Act, and we accordingly recommend that the proposed Act should contain a declaration and enactment in the following terms:—

“ Be it therefore declared and enacted that no Act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof.”

56. The association of constitutional conventions with law has long been familiar in the history of the British Commonwealth; it has been characteristic of political development both in the domestic government of these communities and in their relations with each other; it has permeated both executive and legislative power; it has provided a means of harmonizing relations where a purely legal solution of practical problems was impossible, would have impaired free development, or would have failed to catch the spirit which gives life to institutions. Such conventions take their place among the constitutional principles and doctrines