2) Bericht der Konferenz von 1929 über die Gesetzgebung der Dominien und die Handelsschiffahrtsgesetze.[1])

(Cmd. 3479.)

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PART I.—INTRODUCTION.

Preliminary.

1. The proceedings of the Conference opened in London on the 8th October, 1929, and were continued until 4th December. During that period 17 plenary meetings were held which were normally attended by the following:—

(*Folgt Liste der Anwesenden etc.*).

PART II. Origin and Purpose of Conference.

General.

6. The present Conference owes its origin to a recommendation contained in the Report of the Imperial Conference of 1926. The Inter-Imperial Relations Committee of that Conference made a recommendation, which was approved by the full Conference, that a Committee should be set up to examine and report upon certain questions connected with the operation of Dominion legislation, and that a Sub-Conference should be set up simultaneously to deal with merchant shipping legislation. This recommendation was approved by the Governments concerned, and the present Conference was established to carry out those tasks.

7. The Report of the Imperial Conference of 1926, in addition to setting forth the problems which required further examination, contained first and foremost a statement of the principles regulating

[1]) Engl. Titel: Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929.

the relations of the members of the British Commonwealth of Nations at the present day. It is desirable to recall these principles as they establish the basis and starting-point of the work of the present Conference.

8. The Report of the Imperial Conference declared in relation to the United Kingdom and the Dominions that

> "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

The Report recognised, however, that existing administrative, legislative and judicial forms were admittedly not wholly in accord with the position as described, a condition of things following inevitably from the fact that most of these forms dated back to a time well antecedent to the present stage of constitutional development.

9. With regard to the position of the Governor-General, it was placed on record in the Report that it was an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in the United Kingdom, and that he is not the representative or agent of His Majesty's Government in the United Kingdom or of any Department of that Government.

10. With regard to certain points connected with Dominion legislation—disallowance, reservation, the extra-territorial operation of Dominion Laws, and the Colonial Laws Validity Act—the Imperial Conference of 1926, while recognising that there would be grave danger in attempting in the limited time at their disposal any immediate pronouncement in detail on issues of such complexity, set forth certain principles which were considered to underlie the whole subject. As regards disallowance and reservation it was recognised that, apart from provisions embodied in Constitutions or in specific statutes expressly providing for reservation, it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs; and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the view of the Government of that Dominion. It was also suggested that the appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned; and it was stated that, with regard to the legislative competence of members of the British Commonwealth of Nations other than the United Kingdom,

and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, the constitutional practice is that legislation by the Parliament of the United Kingdom applying to a Dominion would only be passed with the consent of the Dominion concerned.

11. It was, however, considered that there were points arising out of these considerations, and in the application of these general principles, which required detailed examination. In the first place, there remains a considerable body of law passed by the Parliament of the United Kingdom which still applies in relation to the Dominions and at present cannot be repealed or modified by Dominion Parliaments; secondly, under the existing system His Majesty's Government in the United Kingdom retains certain powers with reference to Dominion legislation; and, thirdly, while the Parliament of the United Kingdom can legislate with extraterritorial effect, there is doubt as to the powers in this respect of Dominion Parliaments. The Imperial Conference accordingly recommended that steps should be taken by the United Kingdom and the Dominions to set up a Committee with terms of reference on the following lines:—

> "To enquire into, report upon, and make recommendations concerning—
>
> " (i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorising the disallowance of such legislation.
>
> " (ii) (*a*) The present position as to the competence of Dominion Parliaments to give their legislation extraterritorial operation.
>
> " (*b*) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government oft the Dominion.
>
> " (iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of existing relations between the various members of the British Commonwealth of Nations as described in this Report" (*i.e.*, the Report of the Imperial Conference).

Merchant Shipping.

12. The Imperial Conference of 1926 also considered the general question of Merchant Shipping legislation. On this subject the Conference pointed out that, while uniformity of administrative practice was desirable and, indeed, essential as regards the Merchant Shipping legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal statute relating to Merchant Shipping, viz., the Merchant

Shipping Act, 1894, with the present constitutional status of the several members of the British Commonwealth of Nations. The Conference came finally to the conclusion that the general question of Merchant Shipping legislation should be remitted to a special Sub-Conference which it was thought might most appropriately meet at the same time as the Committee already mentioned.

13. On further examination of the problems involved, it appeared more convenient that the Committee and the special Sub-Conference should be organised as a single Conference. After consultation between the respective Governments this view received general acceptance, and the terms of reference to the present Conference accordingly include, in addition to those set out above, a reference—

> "To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to Merchant Shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted."

Position of India.

14. The Imperial Conference of 1926 recommended that arrangements should be made for the representation of India at the Sub-Conference on Merchant Shipping questions; but did not suggest that India should be represented on the proposed Committee. As a result, however, of preliminary examination of the matters falling within the scope of the terms of reference to the proposed Committee, it appeared that, while the position of India was a special one, some of the matters likely to come up for detailed discussion at the present Conference might be of interest to that country. It was consequently agreed that arrangements should be made for the representation of India at the present Conference for the discussion of the subject of Merchant Shipping and of such other particular subjects arising at the Conference as might be of direct interest to India.

The Questions before the Conference.

15. In approaching the inquiry into the subject referred to them, the present Conference have not considered it within the terms of their appointment to re-examine the principles upon which the relations of the members of the Commonwealth are now established. These principles of freedom, equality, and cooperation have slowly emerged from the experience of the selfgoverning 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 [2]).

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 respon-

[2]) Note.—This does not apply to Newfoundland where the Constitution is based on Letters Patent and not on Statute.

sible 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 realised 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 in this respect can, by following the prescribed procedure, abolish the legal power of disallowance if they so desire. In the case of those Dominions who do not possess this power, 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.

Special Position in Relation to the Colonial Stock Act, 1900.

24. The special position in relation to the Colonial Stock Act, 1900, may conveniently be dealt with in this place. This Act empowers His Majesty's Treasury in the United Kingdom to make regulations governing the admission of Dominion stocks to the list of trustee securities in the United Kingdom. One of the conditions prescribed by the Treasury which at present govern the admission of such stocks is a requirement that the Dominion Government shall place on record a formal expression of its opinion that any Dominion legislation which appears to the Government of the United Kingdom to alter any of the provisions affecting the stock to the injury of the stockholder or to involve a departure from the original contract in regard to the stock would properly be disallowed. We desire to place on record our opinion that, notwithstanding what has been said in the preceding paragraph, where a Dominion Government has complied with this condition and there is any stock (of either existing or future issues of that Government) which is a trustee security in consequence of such compliance, the right of disallowance in respect of such legislation must remain and can properly be exercised. In this respect alone is there any exception to the position as declared in the preceding paragraph.

25. The general question of the terms on which loans raised by one part of the British Commonwealth should be given the privilege

of admission to the Trustee List in another part falls naturally for determination by the Government of the latter, and it is for the other Governments to decide whether they will avail themselves of the privilege on the terms specified. It is right however to point out that the condition regarding disallowance makes it difficult and in one case impossible for certain Dominions to take advantage of the provisions of the Colonial Stock Act, 1900.

(2) Reservation.

Present Position.

26. Reservation means the withholding of assent by a Governor-General or Governor to a Bill duly passed by the competent Legislature in order that His Majesty's pleasure may be taken thereon.

27. Statutory provisions dealing with reservation of Bills passed by Dominion Parliaments may be divided into (1) those which confer on the Governor-General a discretionary power of reservation and (2) those which specifically oblige the Governor-General to reserve Bills dealing with particular subjects.

28. The discretionary power of reservation is dealt with in Sections 56 and 59 of the New Zealand Constitution Act, 1852, Sections 55 and 57 of the British North America Act, 1867, Sections 58 and 60 of the Constitution of the Commonwealth of Australia (1900), Sections 64 and 66 of the South Africa Act, 1909, and Article 41 of the Constitution of the Irish Free State.

29. Provisions requiring Bills relating to particular subjects to be reserved by the Governor-General for the signification of His Majesty's pleasure exist in the Australian, New Zealand, and South African Constitutions. By Section 65 of the New Zealand Constitution Act, 1852, the General Assembly of New Zealand is given power to alter the sums allocated by the Schedule to the Act for the Governor's salary, the Judges, establishment of the general government and native purposes respectively, but any Bill altering the salary of the Governor or the sum allocated to native purposes must be reserved. By Section 74 of the Constitution of the Commonwealth of Australia (1900), it is provided that the Commonwealth Parliament may make laws limiting the matters in which special leave to appeal from the High Court of Australia to His Majesty in Council may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure. The South Africa Act, 1909, contains three sections relating to the reservation of Bills dealing with particular subjects. Section 106 contains provisions similar to those in Section 74 of the Constitution of the Commonwealth of Australia. Section 64 provides that all Bills repealing or amending that section or any of the provisions of Chapter IV of the Act under the heading "House of Assembly" and all Bills abolishing provincial councils or abridging the powers conferred on them under Section 85 shall be

reserved. By paragraph 25 of the Schedule to the Act, which lays down the terms and conditions on which the Governor in Council may undertake the government of native territories if transferred to the Union under Section 151, it is provided that all Bills to amend or alter the provisions of this Schedule shall be reserved. There is no provision requiring reservation in either the Canadian or Irish Free State Constitutions.

30. Provisions relating to compulsory reservation are also to be found in the Colonial Courts of Admiralty Act, 1890, and in the Merchant Shipping Act, 1894. These provisions are dealt with in another section of this Report.

31. The power of reservation had its origin in the instructions given by the Crown to the Governor of a Colony as to the exercise by him of the power to assent to Bills passed by the colonial legislative body. It has been embodied in one form or another in the Constitutions of all the Dominions and may be regarded in their case as a statutory and not a prerogative power. Its exercise has involved the intervention of the Government of the United Kingdom at three stages,—in the instructions to the Governor concerning the classes of Bills to be reserved, in the advice tendered to the Crown regarding the giving or withholding assent to Bills actually reserved, and in the forms in use for signifying the Royal pleasure upon a reserved Bill. Reservation found a place naturally enough in the older colonial system under which the Crown exercised supervision over the whole legislation and administration of a Colony through Ministers in the United Kingdom. In the earlier stages of self-government supervision over legislation did not at once disappear, but it was exercised in a constantly narrowing field with the development of the principles and practice of responsible government. As regards the Dominions, it gradually came to be realised that the attainment of the purposes of reservation must be sought in other ways than through the use of powers by the Government of the United Kingdom. The present constitutional position is set forth in the statement of principles governing the relations of the United Kingdom and the Dominions contained in the Report of the Imperial Conference of 1926; and we have to apply these principles to the power of reservation and its exercise in the conditions now established.

Recommendations.

Discretionary Reservation.

32. Applying the principles laid down in the Imperial Conference Report of 1926, it is established first that the power of discretionary reservation if exercised at all can only be exercised in accordance with the constitutional practice in the Dominion governing the exercise of the powers of the Governor-General; secondly, that His Majesty's Government in the United Kingdom will not advise His Majesty the

King to give the Governor-General any instructions to reserve Bills presented to him for assent, and thirdly, as regards the signification of the King's pleasure concerning a reserved Bill, that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned.

Compulsory Reservation—Principle Governing the Signification of the King's pleasure.

33. In cases where there is a special provision requiring the reservation of Bills dealing with particular subjects, the position would in general fall within the scope of the doctrine that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

34. The same principle applies to cases where alterations of a Constitution are required to be reserved.

Abolition of the Power of Reservation (Discretionary or Compulsory).

35. As regards the continued existence of the power of reservation, certain Dominions possess the power by amending their Constitutions to abolish the discretionary power and to repeal any provisions requiring reservation of Bills dealing with particular subjects, and it is, therefore, open to those Dominions to take the prescribed steps to that end if they so desire.

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 Parliament 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 extraterritorial 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 exsit.

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 recognise.

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."

44. In connection with the exercise of extra-territorial legislative powers, we consider that provision should be made for the customary extra-territorial immunities with regard to internal discipline enjoyed by the armed forces of one Government when present in the territory of another Government with the consent of the latter. Such an arrangement would be of mutual advantage and common convenience to all parts of the Commonwealth, and we recommend that provision should be made by each member of the Commonwealth to give effect to such customary extra-territorial immunities within its territory as regards other members of the Commonwealth.

PART V.—Colonial Laws Validity Act.

Present Position.

45. The circumstances in which the Colonial Laws Validity Act, 1865, came to be enacted[3]) are so well known that only a brief reference to them is necessary in this Report.

46. From an early stage in the history of Colonial development the theory had been held that there was a common law rule that legislation by a Colonial Legislature was void if repugnant to the law of England. This rule was apparently based on the assumption that there were certain fundamental principles of English law which no Colonial law could violate, but the scope of these principles was by no means clearly defined.

47. A series of decisions, however, given by the Supreme Court of South Australia in the middle of the nineteenth century applied the rule so as to invalidate several of the Acts of the Legislature of that Colony. It was soon realised that, if this interpretation of the law were sound, responsible Government, then recently established by the release of the Australian Colonies from external political control, would to a great extent be rendered illusory by reason of legal limitations on the legislative power which were then for the first time seen to be far more extensive than had been supposed. The serious situation which thus developed in South Australia led to an examination of the whole question by the Law Officers of the Crown in England, whose opinion, while not affirming the extensive application of the doctrine of repugnancy upheld by the South Australian Court, found the test of repugnancy to be of so vague and general a kind as to leave great uncertainty in its application. They accordingly advised legislation to define the scope of the doctrine in new and precise terms. The Colonial Laws Validity Act, 1865, was enacted as the result of their advice.

[3]) The Act is reprinted as an Annex to this Report (*see page 441*).

48. The Act expressly conferred upon Colonial Legislatures the power of making laws even though repugnant to the English common law, but declared that a Colonial law repugnant to the provisions of an Act of the Parliament of the United Kingdom extending to the Colony either by express words or by necessary intendment should be void to the extent of such repugnancy. The Act also removed doubts which had arisen regarding the validity of laws assented to by the Governor of a Colony in a manner inconsistent with the terms of his Instructions.

49. The Act, at the time when it was passed, without doubt extended the then existing powers of Colonial legislatures. This has always been recognised, but it is no less true that definite restrictions of a far-reaching character upon the effective exercise of those powers were maintained and given statutory effect. In important fields of legislation actually covered by statutes extending to the Dominions the restrictions upon legislative power have caused and continue to cause practical inconvenience by preventing the enactment of legislation adapted to their special needs. The restrictions in the past served a useful purpose in securing uniformity of law and co-operation on various matters of importance: but it follows from the Report of the Imperial Conference of 1926 that this method of securing uniformity, based as it was upon the supremacy of the Parliament of the United Kingdom, is no longer constitutionally appropriate in the case of the Dominions, and the next step is to bring the legal position into accord with the constitutional. Moreover, the interpretation of the Act has given rise to difficulties in practice, especially in Australia, because it is not always possible to be certain whether a particular Act does or does not extend by necessary intendment to a Dominion, and, if it does, whether all or any of the provisions of a particular Dominion law are or are not repugnant to it.

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 authorising 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 recommond 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 harmonising 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 which are in practice regarded as binding and sacred whatever the powers of Parliaments may in theory be.

57. If the above recommendations are adopted, the acquisition by the Parliaments of the Dominions of full legislative powers will follow as a necessary consequence. We then proceeded to consider whether in these circumstances special provision ought to be made with regard to certain subjects. These seemed to us to fall into two categories, namely, those in which uniform or reciprocal action may be necessary or desirable for the purpose of facilitating free co-operation among the members of the British Commonwealth in matters of common concern, and those in which peculiar and in some cases temporary conditions in some of the Dominions call for special treatment.

58. By the removal of all such restrictions upon the legislative powers of the Parliaments of the Dominions and the consequent effective recognition of the equality of these Parliaments with the Parliament of the United Kingdom, the law will be brought into harmony with the root principle of equality governing the free association of the members of the British Commonwealth of Nations.

59. As, however, these freely associated members are united by a common allegiance to the Crown, it is clear that the laws relating to the succession to the Throne and the Royal Style and Titles are matters of equal concern to all.

60. We think that appropriate recognition would be given to this position by means of a convention similar to that which has in recent years controlled the theoretically unfettered powers of the Parliament of the United Kingdom to legislate upon these matters. Such a constitutional convention would be in accord with and would not derogate from and is not intended in any way to derogate from the principles stated by the Imperial Conference of 1926 as underlying the position and mutual relations of the members of the British Commonwealth of Nations. We therefore recommend that this convention should be formally put on record in the following terms:—

> *"In as much as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom."*

61. We recommend that the statement of principles set out in the three preceding paragraphs be placed on record in the proceedings of the next Imperial Conference, and that the constitutional convention itself in the form which we have suggested should appear as a formal

recital or preamble in the proposed Act to be passed by the Parliament of the United Kingdom.

62. The second subject which we considered concerns the effect of the acquisition of full legislative powers by the Parliaments of the Dominions possessing federal Constitutions.

63. Canada alone among the Dominions has at present no power to amend its Constitution Act without legislation by the Parliament of the United Kingdom. The fact that no specific provision was made for effecting desired amendments wholly by Canadian agencies is easily understood, apart from the special conditions existing in Canada at the time, when it is recalled that the British North America Act, 1867, was the first Dominion federation measure and was passed over sixty years ago, at an early stage of development. It was pointed out that the question of alternative methods of amendment was a matter for future consideration by the appropriate Canadian authorities and that it was desirable therefore to to make it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in this respect. It was also pointed out that for a similar reason an express declaration was desirable that nothing in the Act should authorise the Parliament of Canada to make laws on any matter at present within the autority of the Provinces, not being a matter within the authority of the Dominion.

64. The Commonwealth of Australia was established under, and its Constitution is contained in, an Act of Parliament of the United Kingdom, the Commonwealth of Australia Constitution Act, 1900. The authority of the Constitution, with its distribution of powers between Commonwealth and States, originated in the first instance from the supremacy of Imperial legislation; and it was pointed out that the continued authority of the Constitution is essential to the maintenance of the federal system. The Constitution of the Commonwealth, though paramount law for the Parliament of the Commonwealth, is subject to alteration by the joint action of Parliament and the Electorate. To that extent the Commonwealth need not have recourse to any authority external to itself for alterations of its instrument of government. But "the Constitution," though the main part, is not the whole of the Commonwealth of Australia Constitution Act; and the eight sections of that which precede the section containing "the Constitution" can be altered only by an Act of the Parliament of the United Kingdom. It will be for the proper authorities in Australia in due course to consider whether they desire this position to remain and, if not, how they propose to provide for the matter.

65. The Constitution of New Zealand is to a very considerable extent alterable by the Parliament of New Zealand; but the powers of alteration conferred by the Constitution are subject to certain qualifications, and it is apparently a matter of doubt whether these qualifications have been removed by Section 5 of the Colonial Laws Validity Act. It appears to us that any recommendations in relation to the

Constitution of the Dominion of Canada and the Commonwealth of Australia should also be applied to New Zealand; and it will then be for the appropriate authorities in New Zealand to consider whether, and, if so, in what form, the full power of alteration should be given.

66. We are accordingly of opinion that the inclusion is required in the proposed Act of the Parliament of the United Kingdom of express provisions dealing with the matters discussed in the three preceding paragraphs, and we have prepared the following clauses:—

(1) *Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand, otherwise than in accordance with the law and constitutional usage and practice heretofore existing.*

(2) *Nothing in this Act shall be deemed to authorise the Parliaments of the Dominion of Canada and the Commonwealth of Australia to make laws on any matter at present within the authority of the Provinces of Canada or the States of Australia, as the case may be, not being a matter within the authority of the Parliaments or Governments of the Dominion of Canada and of the Commonwealth of Australia respectively.*

67. Similar considerations do not arise in connection with the Constitutions of the Union of South Africa and the Irish Free State. The Constitutions of both countries are framed on the unitary principle. Both include complete legal powers of constitutional amendment. In the case of the Union of South Africa the exercise of these powers is conditioned only by the provisions of section 152 of the South Africa Act, 1909. In the case of the Irish Free State they are exercised in accordance with the obligations undertaken by the Articles of Agreement for a Treaty signed at London on the 6th day of December, 1921.

68. The Report of 1926 dealt only with the constitutional position of the Governments and Parliaments of the Dominions. In recommending the setting up of the present Conference it did not make any specific mention of the special problems presented by federal Constitutions, and accordingly the present Conference has not been called on to consider any matter relating to the legislative powers of the Provincial Legislatures in Canada or the State Legislatures in Australia. The federal character of the Constitutions of Canada and Australia, however, gives rise to questions which we have not found it possible to leave out of account, inasmuch as they concern self-government in those Dominions.

69. The Constitution of Australia presents a special problem in respect to extra-territorial legislative power. The most urgently required field of extra-territorial power is criminal law, which, in general, is within the State power in Australia. In Australia the Parliaments of the States are not subject to any specific territorial restrictions; they differ from the Commonwealth Parliament only in this, that their laws have not the extendent operation specifically given to the laws of the

Commonwealth Parliament by Section 5 of the Commonwealth of Australia Constitution Act, and that the Commonwealth Parliament has power over certain specific matters which look beyond the territory of the Commonwealth. The question whether the power of enacting extra-territorial laws over matters within its sphere, to be enjoyed by the Commonwealth Parliament in common with the Parliaments of other Dominions, should be granted also to State Parliaments is a matter primarily for consideration by the proper authorities in Australia.

70. The Australia Constitution also presents special problems in relation to disallowance and reservation. In Australia there is direct contact between the States and His Majesty's Government in the United Kingdom in respect of disallowance and reservation of State legislation. This position will not be affected by the report of the present Conference.

71. The question of the effect of repugnance of Provincial or State legislation to Acts of the Parliament of the United Kingdom presents the same problems in Canada and in Australia. The recommendations which we have made with regard to the Colonial Laws Validity Act do not deal with the problems of Provincial or State legislation. In the absence of special provision, Provincial and State legislation will continue to be subject to the Colonial Laws Validity Act and to the legislative supremacy of the Parliament of the United Kingdom, and it will be a matter for the proper authorities in Canada and in Australia to consider whether and to what extent it is desired that the principle to be embodied in the new Act of the Parliament of the United Kingdom should be applied to Provincial and State legislation in the future.

72. We pass now to the subject of nationality, which is clearly a matter of equal interest to all parts of the Commonwealth.

73. Nationality is a term with varying connotations. In one sense it is used to indicate a common consciousness based upon race, language, traditions, or other analogous ties and interests and is not necessarily limited to the geographic bounds of any particular State. Nationality in this sense has long existed in the older parent communities of the Commonwealth. In another and more technical sense it implies a definite connection with a definite State and Government. The use of the term in the latter sense has in the case of the British Commonwealth been attended by some ambiguity, due in part to its use for the purpose of denoting also the concept of allegiance to the Sovereign. With the constitutional development of the communities now forming the British Commonwealth of Nations the terms "national," "nationhood," and "nationality," in connection with each member, have come into common use.

74. The status of the Dominions in international relations, the fact that the King, on the advice of his several Governments, assumes obligations and acquires rights by treaty on behalf of individual members of the Commonwealth, and the position of the members of the Commonwealth in the League of Nations, and in relation to the Permanent Court of International Justice, do not merely involve the recognition

of these communities as distinct juristic entities, but also compel recognition of a particular status of membership of those communities for legal and political purposes. These exigencies have already become apparent; and two of the Dominions have passed Acts defining their "nationals" both for national and for international purposes.

75. The members of the Commonwealth are united by a common allegiance to the Crown. This allegiance is the basis of the common status possessed by all subjects of His Majesty.

76. A common status directly recognised throughout the British Commonwealth in recent years has been given a statutory basis through the operation of the British Nationality and Status of Aliens Act, 1914.

77. Under the new position, if any change is made in the requirements established by the existing legislation, reciprocal action will be necessary to attain this same recognition the importance of which is manifest in view of the desirability of facilitating freedom of intercourse and the mutual granting of privileges among the different parts of the Commonwealth.

78. It is of course plain that no member of the Commonwealth either could or would contemplate seeking to confer on any person a status to be operative throughout the Commonwealth save in pursuance of legislation based upon common agreement, and it is fully recognised that this common status is in no way inconsistent with the recognition within and without the Commonwealth of the distinct nationality possessed by the nationals of the individual states of the British Commonwealth.

79. But the practical working out and application of the above principles will not be an easy task nor is it one which we can attempt to enter upon in this report. We recommend, however, that steps should be taken as soon as possible by consultation among the various Governments to arrive at a settlement of the problems involved on the basis of these principles.

80. There are a number of subjects in which uniformity has hitherto been secured through the medium of Acts of the Parliament of the United Kingdom of general application. Where uniformity is desirable on the ground of common concern or practical convenience we think that this end should in the future be sought by means of concurrent or reciprocal action based upon agreement. We recommend that uniformity of the law of prize and co-ordination of prize jurisdiction should agreeably with the above principle be maintained. With regard to such subjects as fugitive offenders, foreign enlistment and extradition in certain of its aspects, we recommend that before any alteration is made in the existing law there should be prior consultation and, so far as possible, agreement.

81. Our attention has been drawn to the definition of the word "Colony" in Section 18 of the Interpretation Act, 1889, and we suggest that the opportunity should be taken of the proposed Act to be passed

by the Parliament of the United Kingdom to amend this definition. We have accordingly prepared the following clause:—

In this Act and in every Act passed after the commencement of this Act the expression "Dominion" means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State or any of them, and the expression "Colony" shall, notwithstanding anything in the Interpretation Act, 1889, not include a Dominion or any Province or State forming part of a Dominion.

82. In making the recommendations contained in this part of our Report, we have proceeded on the assumption that the necessary legislation and the constitutional conventions to which we have referred will in due course receive the approval of the Parliaments of the Dominions concerned.

PART VI.—Merchant Shipping Legislation and Colonial Courts of Admiralty Act, 1890.

(1) Merchant Shipping Legislation.

Present Position.

83. The general position is that the Dominions are empowered by their Constitutions to enact laws relating to merchant shipping subject to varying limitations. For instance, in the constitutions of Canada and Australia [4]) "Navigation and Shipping" is expressly mentioned as one of the matters in respect of which their Parliaments may legislate, but under legislation extending to the Dominions, or to the territories which now constitute the Dominions, which was enacted by the Parliament of the United Kingdom before 1911, and which is still the controlling legislation in respect of merchant shipping, the legislatures of the Dominions are treated as subordinate legislatures. The reason for this is not difficult to understand when it is explained that the Merchant Shipping Act, 1854, which was made for the situation existing at that date, is substantially the legislation which continues to be applicable to the Dominions. The Merchant Shipping Act, 1894, which with its amendments is now the governing Act, was merely a re-enactment of the 1854 Act, with the insertion of amendments made during the intervening years. In the year 1854 none of the Dominions as such was in existence, and it is obvious that legislation cast in a form appropriate to the constitutional status of the British possessions over half a century ago must be inconsistent with the facts and constitutional relationships obtaining in the British Commonwealth of Nations as that system exists to-day.

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[4]) Note.— In the case of Australia, this is qualified by the fact that "navigation and shipping" is itself comprised within the matter of trade and commerce with other countries and among the States, so that intra-state shipping belongs not to the Commonwealth Parliament but to the States. The consequences arising from this division of power within Australia itself lie outside the consideration of this Conference.

84. Since the year 1911 the practice has been established that enactments of the Parliament of the United Kingdom in relation to merchant shipping and navigation have not been made applicable to the Dominions. In general, all shipping legislation passed by the Parliament of the United Kingdom since that date has been so framed as not to extend to the Dominions.

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, over-ride 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 repugnacy 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 summarised 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 theirein. 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 1 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 1 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 authorised under legislation of the Parliament of the United Kingdom, has been questioned. An example of such authorisation is found in Section 264 of the 1894 Act, which relates to masters and seamen, and authorises 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 authorisation 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 cases where the beginning and the end of the voyage are both in the Commonwealth. While, therefore, the extraterritorial operation of Commonwealth laws is not ousted merely because the ship's itinerary includes some foreign port, provided that there is a single round voyage beginning and ending in the Commonwealth, it does not include cases where the ship is making separate foreign voyages out and home, and her home port is in Australia.

(*f*) The Parliament of the Dominion has not authority to enact legislation repugnant to the legislation of the Parliament of the United Kingdom in relation to ships coming into the harbours or territorial waters of the Dominion, if such ships are registered in other parts of the British Commonwealth of Nations, or are foreign ships.

(*g*) The Parliament of the Dominion has not authority to enact legislation repugnant to the provisions of the third part of the 1894 Act in relation to emigrant ships registered in the Dominion.

(*h*) The Parliament of the Dominion, under Section 736 of the 1894 Act (which is a re-enactment of Section 4 of the Merchant Shipping (Colonial) Act, 1869), may enact legislation to regulate the coasting trade of such Dominion. This legislation, however, must contain a

suspending clause providing that the Act shall not come into operation until His Majesty's pleasure thereon has been publicly signified in the Dominion; the legislation must treat all British ships (including ships of any other British possession) in exactly the same manner as ships of such Dominion; and, where by treaty made before 1869 "Her Majesty has agreed to grant to any ships of any foreign State any rights or privileges in respect of the coasting trade of any British possession, those rights and privileges shall be enjoyed by those ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or Ordinance to the contrary notwithstanding".

88. Further, the legal situation appears, to be confused because of the fact that, as already explained, legislation of the Parliament of the United Kingdom in relation to shipping continued to be made applicable to the Dominions from 1854 until 1911, but after that date such legislation was expressed not to extend to the Dominions; the restrictions, however, imposed by the Merchant Shipping Acts, 1894 to 1906, were not removed; and in view of the provisions of the Colonial Laws Validity Act, 1865, legislation passed by a Dominion Parliament on the subject of merchant shipping might be held to be void and inoperative on the ground of repugnancy.

89. What, therefore, the Parliament of such a Dominion as Canada or Australia is required to do since the year 1911 is, by means of its own legislation, to endeavour to work into the existing shipping legislation of the Parliament of the United Kingdom, applicable to such a Dominion, certain modifications and additions embodied in international conventions to which the Dominion may be a party, or which may otherwise be desired. This it must do, avoiding repugnancy to any legislation of the Parliament of the United Kingdom, and avoiding also the field of legislation into which the Parliament of a Dominion cannot enter by reason of restrictive provisions in the Merchant Shipping Act, 1894, and in such Acts as the Colonial Courts of Admiralty Act, 1890. This in some cases may be impossible. For instance, the Brussels International Maritime Conference of 1926 agreed upon certain rules of law relating to maritime mortgages and liens, and other rules relating to the limitations of the liability of owners of seagoing vessels. If a Dominion Parliament desired to confer upon its courts jurisdiction and authority to enforce these rules of law, it might find it impossible to enact legislation fully implementing the conference agreement in respect of foreign ships or ships registered outside the Dominion, as these fields of jurisdiction appear to be partially, if not wholly, reserved for the Parliament of the United Kingdom. In respect of mortgages and liens there may even be difficulty for the same reason in regard to ships registered in the Dominion itself.

90. In the Report of the Imperial Conference of 1926, it was pointed out that existing legislative forms are admittedly not wholly in accord with the constitutional status of the United Kingdom and the Dominions as described in the Report. It was also pointed out that this was ine-

vitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. This is obviously the case in connection with merchant shipping legislation, and the need for immediate remedy is quite apparent.

The New Position.

91. Our general conclusions on the Operation of Dominion Legislation, including the recommendations regarding extraterritorial effect of Dominion laws, the Colonial Laws Validity Act, 1865, reservation and disallowance, are applicable to the constitutional position of legislation affecting merchant shipping.

92. When these conclusions are given effect to, and the restrictions imposed on Dominion Parliaments by Sections 735 and 736 of the Merchant Shipping Act, 1894, are removed by the Parliament of the United Kingdom, which we recommend should be done, there will no longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor will Dominion laws be liable to be held inoperative on the ground of repugnancy to laws passed by the Parliament of the United Kindom.

93.—96. (*Vgl. oben S. 393*).

97. *Common Status.*—(*a*) There should be agreed uniform minimum qualifications for ownership to govern the admission of ships to registry in all parts of the British Commonwealth of Nations. The provisions of Section 1 of the Merchant Shipping Act, 1894, would appear to form a suitable basis for that purpose.

(*b*) Ships complying with these agreed qualifications for ownership and registered in any part of the British Commonwealth of Nations will possess a common status for all purposes and will be entitled to the same recognition as is now accorded to British ships.

98. *Standards of Safety.*—(*a*) It is desirable in the interests of all parts of the Commonwealth that uniform standards should be observed in all matters relating to the safety of the ship and those on board, so that the substantial uniformity which at present prevails in these matters on all ships of the British Commonwealth of Nations should be maintained and their reputation preserved.

(*b*) With regard to the means for securing this uniformity, it is to be observed that the tendency is for matters relating to the safety of the ship and those on board to be regulated by international agreements such as the International Convention for the Safety of Life at Sea, 1929, which deals with the construction of passenger ships, life-saving appliances on passenger ships, radiotelegraphy, and certain matters relating to the safety of navigation including proposed amendments to the International Regulations for Preventing Collisions at Sea. Where there is such international regulation the observance of uniform standards is secured by the general adoption of the appropriate conventions.

(*c*) In those matters in which standards of safety have not yet

been settled by international agreements, there is at present, in fact, substantial uniformity throughout the Commonwealth. Under the new position each part of the Commonwealth will be free to adopt its own standards for its own ships and for all ships within its jurisdiction, but for practical reasons it is desirable that each part should inform the others of any modifications of substance which it may make or propose to make in those standards, together with the reasons for the modification, in order that uniformity of standards may, so far as possible, be maintained.

99. *Extra-territorial Operation of Legislation.*—(*a*) Each part of the British Commonwealth, in the exercise of the power to legislate with extra-territorial effect with regard to ships, should accept the principle that legislation with extra-territorial effect passed in one part of the Commonwealth should not be made to apply to ships registered in another part without the consent of that latter part.

(*b*) This recommendation is not intended to limit the power of any part of the British Commonwealth over its coasting trade.

100. *Uniform Treatment.*—(*a*) At present all British oceangoing ships are treated alike in all ports of the British Commonwealth and, as stated in the Resolutions of the Imperial Economic Conference of 1923, it is the established practice to make no discrimination between ocean-going ships of all countries using ports in the Commonwealth. In view of the importance that is attached to uniformity of treatment, it is recommended that the different parts of the Commonwealth should continue not to differentiate between their own ocean-going ships and similar ships belonging to other parts of the Commonwealth. Such uniformity of treatment is regarded as an asset of very considerable importance, especially for the purpose of negotiations with foreign Governments who may seek to discriminate in favour of their own ships and against British Commonwealth ships.

(*b*) Under the new position, each part of the Commonwealth will have full power to deal with its own coasting trade. We recommend that the Governments of the several parts of the Commonwealth might agree, for a limited number of years, to continue the present position, under which ships of any part of the Commonwealth are free to engage in the coasting trade of any other part.

(*c*) These recommendations are not intended to affect the right of any part of the Commonwealth to impose conditions of a general character on all ships engaged in its coasting trade, or to impose customs tariff duties on ships built in other parts of the Commonwealth or outside it, or to give such financial assistance as it thinks fit to its own ships.

(*d*) These recommondations are also not intended to include any reference to questions affecting fisheries or the fishing industry, which were not considered to be within the scope of the Conference.

(*e*) It is recommended that no part of the British Commonwealth should give more favourable treatment to foreign ships than to ships of other parts of the Commonwealth.

(*f*) The precise manner of giving effect to these recommendations, if they are approved, will, we assume, be determined by the Governments of the British Commonwealth. So far as we are concerned, we suggest that an agreement might be made between the several parts of the Commonwealth for a limited term of years, containing a provision that the principles would not be departed from after the expiration of the agreed term without previous notification to the other members of the Commonwealth and consideration of their views.

101. *Internal Discipline and Agreements with the Crew.*—Each part of the British Commonwealth in the exercise of its right to legislate for all ships within its territorial jurisdiction should, for practical reasons, accept the principle that, in matters relating to the internal discipline of the ship and in matters governed by the agreement with the crew, the law of the country of registration should follow the ship, but this principle should be subject to the following exceptions:—

(*a*) If a ship registered in one part of the British Commonwealth is engaged wholly or mainly in the coasting trade of another part, the law of that latter part should govern matters relating to the internal discipline of the ship and matters relating to the agreement with the crew.

(*b*) In the case of a ship registered in one part of the Commonwealth, if an agreement with the crew is opened in another part of the Commonwealth, the law of that latter part as regards the agreement with the crew should apply.

102. *Certificates of Competency and Service.*—Subject to any special arrangement as to the coasting trade, certificates granted by one part of the Commonwealth should be recognised as valid troughout the Commonwealth for all ships registered in that part. It is recommended that there should be such uniform qualifications throughout the Commonwealth for certificates of competency as will facilitate a mutual recognition of such certificates for all purposes.

103. *Courts of Inquiry.*—(*a*) Investigations with regard to casualties to ships registered in any part of the Commonwealth will be held by that part of the Commonwealth in which the ship is registered, no matter where the casualty takes place, if that part so desires. Each part of the Commonwealth will, if it so desires, hold investigations into casualties to any ships no matter where registered if the casualty occurs on or near the coasts of that part or while the ship is engaged in the coasting trade of that part. With regard, however, to casualties to ships registered in one part of the Commonwealth which take place elsewhere than on or near the coasts of another part of the Commonwealth or while the ship is engaged otherwise than in the coasting trade of that other part, it is recommended that an agreement be made based upon the general principle (from which agreed exceptions may be necessary) that no enquiry should be held by any part other than the part in which the ship is registered except with the consent or at the request of that part. It is also recommended that an agreement be made that the principles governing the constitution and procedure of Courts of

Formal Investigation should be uniform throughout the Commonwealth and should provide such safeguards as are at present furnished by Part VI of the Merchant Shipping Act, 1894. It is also recommended that a right of appeal from a Court of Formal Investigation should exist and that such appeal should lie to the appropriate Court in that part of the Commonwealth in which the Investigation takes place.

(*b*) Every Court of Formal Investigation constituted under the authority of one part of the Commonwealth should have power to cancel or suspend a certificate granted by any other part of the Commonwealth. Such cancellation or suspension will have effect only within the jurisdiction of that part of the Commonwealth under whose authority the Court was constituted, but will, if adopted by the granting authority, have the effect of a cancellation or suspension by that authority.

(*c*) With regard to Courts which deal with questions of misconduct and incompetency other than would be ordinarily dealt with by Courts of Formal Investigation, it is recommended that the procedure of these Courts and the principles upon which such Courts should be constituted and on which certificates should be dealt with should be those recommended above with regard to Courts of Formal Investigation.

104. *Naval Courts.*—Naval Courts are *ad hoc* Courts summoned under the authority of the Merchant Shipping Act, 1894, by a Naval or Consular Officer in a foreign port to deal with casualties and other matters relating to a ship, her owners, master or crew. The position of these courts does not, having regard to their constitution, seem to be one in which any question of reciprocal agreement arises. Under the new position each part of the Commonwealth will be able to take steps if it so desires either to continue the facilities at present offered by these Courts or to discontinue them with regard to its own registered ships and substitute other facilities.

105. *Distressed Seamen.*—It is recommended that reciprocal arrangements be made between all parts of the Commonwealth to provide for and facilitate in proper cases the return to each part of the Commonwealth of distressed seamen of that part and also, so far as is practicable, to enable the authorities of each part to recover the reasonable cost of repatriation from the owner of the vessel in which the seamen served.

106. *Mutual Enforcement of Law.*—(*a*) We have examined very carefully the question as to how far, if at all, it would be practically possible to make provision for the enforcement in one part of the Commonwealth of the law of another part with regard to offences occurring on ships registered in that other part of the Commonwealth. At first sight it would appear that some such provision could be made to work satisfactorily but upon consideration it seems clear that the practical and other difficulties in the way of such mutual enforcement of laws are so great as to make it impossible to recommend any general arrangement of this kind. The position which obtains at present is only possible because the system of law which is applied is a unitary

system and when that system comes to an end a solution of the difficulties which arise will have to be sought in other directions.

(*b*) Thus with regard to ordinary crimes committed on ships it is thought that the remedy will be to provide some workable scheme based upon reciprocal agreement and legislation enacted by each part of the Commonwealth, whereby the system which operates at present under the Fugitive Offenders Act 1881 may be continued.

(*c*) Again, with regard to offences against merchant shipping legislation it is suggested that the difficulties will to a great extent disappear if uniformity is agreed upon by all parts of the Commonwealth in matters relating to safety of the ships and persons on board. If there is such uniformity, the result will, in most cases, be that if an offence is committed with regard to a ship when she leaves one part of the Commonwealth it will be found on her arrival in another part of the Commonwealth that she has therein contravened the local law, with the result that proceedings in respect of that offence may be taken there.

(*d*) With regard to offences against discipline committed on the high seas, it will probably be found that the law of that part in which the vessel is registered makes provision for disciplinary action by the master of the ship. If, however, the offence is such as to necessitate legal proceedings those proceedings will be available when the offender returns to that part of the Commonwealth in which the ship is registered.

107. *Forfeiture.*—(*a*) Proceedings for forfeiture for contravening the common qualifications for ownership will be taken in the Courts in that part of the Commonwealth in which the ship is registered. Proceeding of this kind, however, may be taken with regard to ships registered in one part of the Commonwealth in the Courts of another part if the authorities of the part where the ship is registered so request. The forfeiture will be for the benefit of the Exchequer of the part in which the ship is registered.

(*b*) With regard to an unregistered ship wrongly assuming the character of a registered ship, proceedings may be taken in any part of the Commonwealth into which the ship is taken.

108. *Carriage of Goods by Sea.*—This is a subject on which in our opinion uniformity of legislation is highly desirable throughout the British Commonwealth and in this connection attention is drawn to the Resolution passed by the Imperial Conference of 1926 in the following terms:—

> "The Imperial Conference, having considered the steps taken to bring into force the Rules relating to Bills of Lading which were embodied in the International Bills of Lading Convention signed at Brussels in October, 1923, and were recommended by the Imperial Economic Conference of 1923 for adoption by the Governments and Parliaments of the Empire, notes with satisfaction that there is good prospect of the general adoption of these Rules throughout the Empire and also welcome the progress which had

been made towards the achievement of international uniformity upon the basis of these Rules".

109. *General Statement.*—(*a*) We have, after describing the present position with regard to merchant shipping legislation and outlining the general nature of the new position which will take its place, indicated a number of matters connected with merchant shipping in which, in our view, uniformity of laws throughout the British Commonwealth is of great importance in the interests of all, but those who may be entrusted with the duty of preparing the terms of agreements and the form of legislation to implement those agreements may find it desirable to include other matters besides those which have been specifically mentioned.

(*b*) For instance, we recommend that there should be uniformity with regard to the qualifications for ownership, but we consider that uniformity is also desirable in such matters as transfer, mortgage, measurement of ships and tonnage which are ancillary to the question of qualifications for ownership. It is quite probable that uniformity in such matters will be found to be practicable. The co-ordination of the various registers is also a matter which might well be considered with a view to an arrangement being made.

(2). Colonial Courts of Admiralty Act, 1890.

110. At the present time, Admiralty Courts in all the Dominions, except in the Irish Free State, are constituted under the provisions of the Colonial Courts of Admiralty Act, 1890, passed by the Parliament of the United Kingdom. In the Irish Free State, Admiralty laws are administered under the provisions of the Courts of Admiralty (Ireland) Act, 1867, and accordingly different considerations apply there.

111. Prior to the enactment of the Colonial Courts of Admiralty Act, 1890, Admiralty law was administered in the Dominions or in the territories now forming the Dominions, other than Ireland, in Vice-Admiralty Courts which were established in the early days under the authority of the Admiralty, and in later years under the authority of enactments passed by the Parliament of the United Kingdom. The Colonial Courts of Admiralty Act, 1890, which repealed all previous enactments in relation to Vice-Admiralty Courts, provided that every court of law in a British possession, which is for the time being declared in pursuance of that Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty and that the jurisdiction of such Colonial Court of Admiralty should, subject to the provisions of the Act, be the same as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute, or otherwise. The Act also provided that any Colonial law "shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty." Apparently the intention was that the provisions of the Act should cover the whole field of Admiralty jurisdiction to

the exclusion of any legislation by a Dominion. Rules for regulating the procedure and practice in the Court were authorised to be made by a Colonial Court of Admiralty, but such rules should not come into operation until approved by His Majesty in Council. Any Colonial law made in pursuance of the Act, which affects the jurisdiction of, or practice or procedure in the Courts, in respect of the jurisdiction conferred by the Act, must, unless previously approved by His Majesty through a Secretary of State, either be reserved for the signification of His Majesty's pleasure thereon or contain a suspending clause providing that such law shall not come into operation until His Majesty's pleasure thereon has been publicly signified in the Dominion in which it is passed.

112. Under a recent decision of the Judicial Committee of the Privy Council, it was held that the jurisdiction of an Admiralty Court established under the Act does not march with the Admiralty jurisdiction of the High Court in England but was fixed by the Admiralty jurisdiction of the High Court as it existed when the Act was passed in 1890.

113. Since the year 1890, important additions have been made to the Admiralty jurisdiction of the High Court in England and this jurisdiction has not been added to the Court of Admiralty in the Dominions. The jurisdiction is, therefore, not uniform at the present time throughout the United Kingdom and the Dominions. Doubts have been expressed as to whether a Dominion, in which the Act is in force, has legislative authority to increase the jurisdiction of Admiralty Courts in such Dominion or whether this must be done by an Act of the Parliament of the United Kingdom.

114. The existing situation of control in the United Kingdom of Admiralty Courts in the Dominions is not in accord with the present constitutional status of the Dominions, and should be remedied.

115. Our recommendation is that each Dominion in which the Colonial Courts of Admiralty Act, 1890, is in force should have power to repeal that Act.

116. Our general conclusions on the operation of the Colonial Laws Validity Act, 1865, and reservation and disallowance are applicable to the Colonial Courts of Admiralty Act, 1890. As soon as the legislation necessary to give effect to these recommendations is passed, each Dominion will be free to repeal if and when desired the Colonial Courts of Admiralty Act, 1890, in so far as that Act relates to that Dominion, and may then establish Admiralty Courts under its own laws.

117. We think it highly desirable to emphasise that so far as is possible there should be uniform jurisdiction and procedure in all Admiralty Courts in the British Commonwealth of Nations subject, of course, to such variations as may be required in matters of purely local or domestic interest.

118. His Majesty's Government in the United Kingdom have recently signed the International Conventions with regard to mort-

gages and liens and limitation of liability which were prepared at Brussels, and in this connection we would point out that the following Resolution was passed by the Imperial Conference of 1926:—

> "The Imperial Conference notes with satisfaction that progress which has been made towards the unification of maritime law in regard to the limitation of shipowners' liability and to maritime mortgages and liens by the preparation at Brussels of draft International Conventions on these subjects, and, having regard particularly to the advantages to be derived from uniformity, commends these Conventions to the consideration of the Governments of the various parts of the Empire."

119. To enable these Conventions to be ratified considerable changes will be necessary in the existing law in the United Kingdom with regard to Admiralty matters. We think it desirable that all Dominions should consider the changes proposed by the Conventions, and, if the Dominions or any of them adopt them, the opportunity might be taken, having regard to the fact that the new legislation will be necessary, of endeavouring to come to some agreement that uniformity should exist upon all matters of Admiralty jurisdiction and procedure, and for this purpose it would seem that the law of the United Kingdom might form a useful basis for such an agreement.

(3). Recommendations as to Legislation to be enacted by the Parliament of the United Kingdom with respect to Sections 735 and 736 of the Merchant Shipping Act, 1894, and the Colonial Courts of Admiralty Act, 1890,

120. The clauses which we have recommended to be enacted by the Parliament of the United Kingdom with relation to the extra-territorial operation of Dominion legislation and the Colonial Laws Validity Act, 1865, are intended to be applicable to Merchant Shipping legislation and the Colonial Courts of Admiralty Act, 1890, as well as to other legislation of the Parliament of the United Kingdom.

121. The Merchant Shipping Act, 1894, by Section 735, now confers upon the Parliament of a Dominion a limited power of repeal. The power of repeal with regard to Merchant Shipping Acts under the new position will, however, be covered by the wider power of repeal contained in the general clause which we have recommended.

122. Moreover, Sections 735 and 736 of the Merchant Shipping Act, 1894, and Sections 4 and 7 of the Colonial Courts of Admiralty Act, 1890, contain provisions for reservation which should no longer be applicable to legislation passed by a Dominion Parliament.

123. In order to make the above position clear and to remove any doubts which may exist, we recommend that a clause in the following terms should be inserted after the above-mentioned general clauses in the Act to be passed by the Parliament of the United Kingdom:—

> *Without prejudice to the generality of the foregoing provisions of this Act—*

(1) *Sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act,* 1894, *shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.*

(2) *Section four of the Colonial Courts of Admialty Act,* 1890 (*which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause*), *and so much of Section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.*

(4) India.

124. Subject to certain special provisions of the Merchant Shipping Acts, the legislative powers of the Indian Legislature are governed by the Government of India Act, and general statements regarding the position of the Dominions in matters of merchant shipping and Admiralty Court legislation may therefore not be entirely applicable in the case of India. At the same time, as the position of India in these matters has always been to all intents and purposes identical with that of the Dominions, it is not anticipated that there would be any serious difficulty in applying the principles of our recommendations to India, and we suggest that the question of the proper method of so doing should be considered by His Majesty's Government in the United Kingdom and the Government of India.

PART VII.—**Suggested Tribunal for the Determination of Disputes.**

125. (*Vgl. oben S. 391*).

PART VIII.—**Conclusion.**

126. It will, we trust, be apparent from the recommendations of our report that we have endeavoured to carry out the principles laid down by the Imperial Conference of 1926. The recommendations submitted have been framed with the object of carrying into full effect the equality of status established as the root-principle governing the relations of the members of the Commonwealth, and indicating methods for maintaining and strengthening the practical system of free co-operation which is its instrument.

127. We have sought to the best of our ability to perform our task and we commend our proposals to His Majesty's Governments.

128. (*Dank an das Sekretariat d. Konferenz.*)

folgen die Unterschriften: .....

4th December, 1929.

ANNEX.

Colonial Laws Validity Act, 1865.

(28 & 29 Vic. c. 63.)

An Act to remove Doubts as to the Validity of Colonial Laws.

[29th *June*, 1865.]

Whereas Doubts have been entertained respecting the Validity of divers Laws enacted or purporting to have been enacted by the Legislatures of certain of Her Majesty's Colonies, and respecting the Powers of such Legislatures, and it is expedient that such Doubts should be removed:

Be it hereby enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—

Definitions: "Colony:"

(1) The Term "Colony" shall in this Act include all of Her Majesty's Possessions abroad in which there shall exist a legislature, as hereinafter defined, except the Channel Islands, the *Isle of Man*, and such Territories as may for the Time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of *India*:

"Legislature." "Colonial Legislature:"

The Terms "Legislature" and "Colonial Legislature" shall severally signify the Authority, other than the Imperial Parliament or Her Majesty in Council, competent to make Laws for any Colony:

"Representative Legislature:"

The Term "Representative Legislature" shall signify any Colonial Legislature which shall comprise a Legislative Body of which One Half are elected by inhabitants of the Colony:

"Colonial Law:"

The Term "Colonial Law" shall include Laws made for any Colony either by such Legislature as aforesaid or by Her Majesty in Council:

Act of Parliament, &c. to extend to Colony when made applicable to such Colony:

An Act of Parliament, or any Provision thereof, shall, in construing this Act, be said to extend to any Colony when it is made applicable to such Colony by the express Words or necessary Intendment of any Act of Parliament:

"Governor:"

The Term "Governor" shall mean the Officer lawfully administering the Government of any Colony:

"Letters Patent."

The Term "Letters Patent" shall mean Letters Patent under the Great Seal of the United Kingdom of *Great Britain* and *Ireland*.

Colonial Law when void for Repugnancy.

(2) Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such

Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

Colonial Law when not void for Repugnancy.

(3) No Colonial Law shall be or be deemed to have been void or inoperative on the Ground of Repugnancy to the Law of *England*, unless the same shall be repugnant to the Provisions of some such Act of Parliament, Order or Regulation as aforesaid.

Colonial Law not void for Inconsistency with Instructions.

(4) No Colonial Law, passed with the Concurrence of or assented to by the Governor of any Colony, or to be hereafter so passed or assented to, shall be or be deemed to have been void or inoperative by reason only of any Instructions with reference to such Law or the Subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any Instrument other than the Letters Patent or Instrument authorizing such Governor to concur in passing or to assent to Laws for the Peace, Order, and good Government of such Colony, even though such Instructions may be referred to in such Letters Patent or last-mentioned Instrument.

Colonial Legislature may establish, &c. Courts of Law. Representative Legislature may alter Constitution

(5) Every Colonial Legislature shall have, and be deemed at all Times to have had, full Power within its Jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the Constitution thereof, and to make Provision for the Administration of Justice therein; and every Representative Legislature shall, in respect to the Colony under its Jurisdiction, have, and be deemed at all Times to have had, full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature; provided that such Laws shall have been passed in such Manner and Form as may from Time to Time be required by any Act of Parliament, Letters Patent, Order in Council, or Colonial Law for the Time being in force in the said Colony.

Certified Copies of Laws to be Evidence that they are properly passed. Proclamation to be Evidence of Assent and Disallowance.

(6) The Certificate of the Clerk or other proper Officer of a Legislative Body in any Colony to the Effect that the Document to which it is attached is a true Copy of any Colonial Law assented to by the Governor of such Colony, or of any Bill reserved for the Signification of Her Majesty's Pleasure by the said Governor, shall be *primâ facie* Evidence that the Document so certified is a true Copy of such Law or Bill, and, as the Case may be, that such Law has been duly and properly passed and assented to, or that such Bill has been duly and properly passed and presented to the Governor; and any Proclamation purporting to be published by Authority of the Governor in any Newspaper in the Colony to which such Law or Bill shall relate, and signifying Her Majesty's Disallowance of any such Colonial Law, or Her Majesty's Assent to any such reserved Bill as aforesaid, shall be primâ facie Evidence of such Disallowance or Assent.

And whereas Doubts are enterained respecting the Validity of certain Acts enacted or reputed to be enacted by the Legislature of *South Australia*: Be it further enacted as follows:

Certain Acts enacted by Legislature

(7) All Laws or reputed Laws enacted or purporting to have been enacted by the said Legislature, or by Persons or Bodies of Persons for the Time being acting as such Legislature, which have received the

Assent of Her Majesty in Council, or which have received the Assent of the Governor of the said Colony in the Name and on behalf of Her Majesty, shall be and be deemed to have been valid and effectual from the Date of such Assent for all Purposes whatever; provided that nothing herein contained shall be deemed to give Effect to any Law or reputed Law which has been disallowed by Her Majesty, or has expired, or has been lawfully repealed, or to prevent the lawful Disallowance or Repeal of any Law. of South Australia to be valid.

3) Indische Verfassungskonferenz.

November 1930/Januar 1931. (Cmd. 3772 [1931]). [1])

(Berichte der Unterausschüsse; Beschluß der Konferenz; Schlußrede des engl. Premierministers.)

Indian Round Table Conference.

Introductory Note.

The Indian Round Table Conference was inaugurated by His Majesty the King-Emperor at a public session in the Royal Gallery of the House of Lords on 12th November, 1930.

After the opening ceremony the Conference devoted five days in plenary session to a debate "on the question whether the future constitution of India should be on a federal or unitary basis." This general debate ranged over a wide field, but its most striking feature was declarations from delegates from the Indian States opening the way to the consideration of a new federal constitution for India, embracing both British India and Indian States.

On the conclusion of the general debate the Conference decided to set up a "Federal Relations Committee to consider the structure of a federal system of government in India as regards relations between Indian States and British India, and relations between Provinces of British India and the Centre, including the question of responsibility at the Centre, and to recommend the main principles to be applied."

It was, however, found more convenient to work through a Committee of the Whole Conference, instead of through this Committee, and the Committee of the Whole set up nine sub-Committees to consider the following questions: —

No.	*Name of sub-Committee.*	*Subject or terms of Reference.*	*Page*[2])
I	Federal Structure ..	1. The Component elements of the Federation.	447
		2. The type of Federal Legislature and the number of Chambers of which it should consist.	447

[1]) Ein Gesamtverzeichnis d. engl. Regierungsdrucksachen zur Reform d. Indischen Verfassung von 1927 und ff. vgl. unten S. 500.

[2]) Anstelle der Seitenzahlen von Cmd. 3772 sind hier wie im folgenden die Seiten der Zeitschrift eingesetzt.