PROFESSOR BERRIEDALE KEITH ON ADMIRALTY JURISDICTION.

In the last number of the *Journal of Comparative Legislation*,[1] Professor Keith reiterates his opinion that the Dominion Parliament is fully competent to increase the jurisdiction of its Admiralty Courts beyond the limits fixed by the Colonial Courts of Admiralty Act, 1890. It will be remembered that he originally based this opinion upon a single remark let fall by Lord Merrivale in the case of the *Yuri Maru* and the *Woron*,[2] to the effect that what should be from time to time added to or excluded from the jurisdictional authority of Colonial Admiralty Courts "is left for independent legislative determination." Professor Keith now admits Lord Merrivale's statement to be *obiter*, and he also admits that the obvious interpretation of the Colonial Courts of Admiralty Act, sec. 3, is to restrict the amount of jurisdiction which a Colonial legislature can confer upon local courts to the amount possessed in 1890 by the High Court in England—a point for which several Canadian writers have contended.[3] In spite of these concessions he refuses to admit that the power of the Dominion is curtailed.

To overcome the plain inconsistency of his position Professor Keith relies upon two arguments. The first may be briefly dismissed. It is that the *dictum* in the *Woron* case (*supra*) "forms part of a very carefully considered judgment arrived at after a very full consideration of all the relevant matter, and cannot be treated as inadvertent." It is sufficient to point out that by definition an *obiter dictum* does not "form part of a judgment," and that in fact the matter considered in the *Woron* case, while relevant to the judgment itself, was not relevant to the *dictum*, as sec. 3, of the Colonial Courts of Admiralty Act was not even mentioned by Lord Merrivale, and it is upon the interpretation of this section that the question must be decided. Secondly, Professor Keith tells us that the Colonial Courts of Admiralty Act is not exhaustive; that the restrictions contained in sec. 3 of the Act apply only to legislation passed under the authority of the Act, but not to legislation passed in virtue of the general authority which the Dominion Parliament, as a fully competent legislature, possesses apart from the

[1] Third series, vol. XI., part IV., pp. 262-3.
[2] [1927] A.C. 906.
[3] See 6 C.B.R. p. 787; *Law Quarterly Rev.* 1928, p. 422.

Act. This appears to mean that although the Act expressly forbids any Colonial legislature, by any law, to confer on its Admiralty Courts any greater jurisdiction than the Act permits, nevertheless Colonial legislatures may ignore the prohibition and proceed to override it by deciding for themselves that their legislation is made "outside and apart from" the Act. There are, it seems, two bases of legislative competency: one in virtue of the Act, and the other in virtue of the general legislative powers of the Dominion. The doctrine of repugnancy enunciated in the *Colonial Laws Validity Act*, 1865, could thus be overcome apparently by a simple declaration in the preamble of any local Admiralty statute saying that it was not to be considered as based upon the Colonial Courts of Admiralty Act.

This is truly a startling doctrine. Does it apply to every existing Imperial statute extending to the Dominions? If general legislative authority exists apart from and in spite of the Colonial Courts of Admiralty Act, why does it not exist apart from and in spite of, say, the Imperial Merchant Shipping Acts? If we can ignore the one restriction, why not the others? The Colonial Courts of Admiralty Act says nothing about inclusiveness or exclusiveness—it simply imposes a restriction on every Colonial legislature. It would be interesting to know whether Professor Keith would apply his doctrine to the British North America Act. Perhaps after all we can amend that statute ourselves without approaching the Imperial Parliament. If so, our conception of that cardinal tenet of British constitutional law, the legal sovereignty of the Imperial Parliament, will need radical revision.

F. R. Scott.

McGill University, Montreal.