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EXCERPTS FROM THE IMPERIAL CONFERENCES 1923, 1926 AND 1929.

The fundamental importance of the Reports of the Imperial Conferences of 1926 and 1929 can be fully appreciated only by gathering together their most significant sentences. Read the following (*Italics* are sometimes used in order to call attention to the more important words. Comments are between square brackets):

Status—"The group of self-governing communities composed of Great Britain and the Dominions . . . 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 tendency towards equality of status was both right and inevitable." "Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever." "Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations" (1926).

[The United Kingdom being a sovereign state, Canada is declared to be her "equal in status"].

"But the principles of equality and similarity, appropriate to status, do not universally extend to function. Here we require something more than immutable dogmas" (1926).

[Probably the Conference did not mean that the Dominions enjoy sovereignty as long as they remain inactive, and lose it as soon as they commence to do anything. Probably—but speculation is useless; nobody knows what the Conference meant].

The Governor General—"In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor General of a Dominion 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 Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government" (1926).

[The age-long connection of Canada with the Colonial Office on Downing Street is terminated].

Right to advise the Crown—"On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognised that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion" (1926).

[Henceforth, in connection with matters relating to Canada, the King will act solely on the advice of his Canadian ministers.]

British Legislation for Dominions—"We think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned" (1926).

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

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

"If the above recommendations are adopted, the acquisition by the Parliaments of the Dominions of full legislative powers will follow as a necessary consequence. 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" (1929).

Separate Treaties—A Canadian, and no British signature having been attached to the Halibut Treaty with the United States the whole subject of separate treaties was considered by the Conference of 1923. The following are excerpts from its report: "It is desirable that no treaty should be negotiated by any of the governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the government of that part. The Full Power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear. Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the governments concerned *The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the government of that part:* The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the govern-

ments of those parts of the Empire concerned. It is for each government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that government" (1923).

The following quotations are taken from the report of the 1926 Conference: "In the case of a treaty applying to only one part of the Empire it should be stated to be made *by the King on behalf of that part*. The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King . . . The plenipotentiaries for the various British units should have full powers, *issued in each case by the King on the advice of the Government concerned*, indicating and corresponding to the part of the Empire for which they are to sign" (1926).

Recognising that "practically all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders. . . . We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments" (1926).

[Whether the Dominions can now without their assent be involved, to any extent, is a debatable question. The present writer would answer in the negative].

Veto by Disallowance—"The present practice under which Acts of the Dominion Parliaments are sent each year to London, and it is intimated, through the Secretary of State for Dominion Affairs, that 'His Majesty will not be advised to exercise his powers of disallowance' with regard to them" (1926).

[The veto power of the British government by means of disallowance has for many years, been regarded as unconstitutional].

Veto by Reservation—"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*" (1929).

[The Conference overlooked the fact that the power of the British government to give instructions of any kind to the Governor General has ceased to exist].

"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*. . . . 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*" (1929).

The Colonial Laws Validity Act—"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. . . . 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.

. . . 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.*”

“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 principles 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” (1929).

Extra-territorial Power—“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. . . . We 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. . . . 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” (1929).

[The clause will terminate that limitation upon Canada's legislative authority].

Merchant Shipping—“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 inevitable, 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. Our general conclusions on the Operation of Dominion Legislation, including the recommendations regarding extra-territorial effect of Dominion laws, the Colonial Laws Validity Act, 1865, reservation and disallowance, are applicable to the constitutional position of legislation affecting merchant shipping. 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 Kingdom. The new position will be that each Dominion will, amongst its other powers, have full and complete legislative authority over all ships while within its territorial waters or engaged in its coasting trade; and also over its own registered ships both intra-territorially and extra-territorially.* Such extra-territorial legislation will, of course, operate subject to local laws while the ship is within another jurisdiction. . . . 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 Admiralty 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” (1929).

Colonial Courts of Admiralty Act, 1890—“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. 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. 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*" (1929).

Judicial Appeals to the Privy Council—"Another matter which we discussed, in which a general constitutional principle was raised, concerned the conditions governing appeals from judgments in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected" (1926).

[When the Colonial Laws Validity Act shall be repealed (and the repeal is now recommended) Canada will be at liberty to abolish the appeals].

Representation at Conference—"1. No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In the case of such conferences, all members of the League are invited, and if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I.1.(c) of the Treaty Resolution of 1923. 2. As regards international conferences summoned by foreign Governments, no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening Government. (a) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and, where necessary, efforts should be made to secure invitations which will render such representation possible. (b) Conferences of a political character called by a foreign Government must be considered on the special circumstances of each individual case. It is for each part of the

Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result" (1926).

[Separate representation of the Dominions dates back to the Versailles peace treaty].

Amendment of Constitution—"Canada alone among the Dominions has at present no power to amend its Constitution Act without legislation by the Parliament of the United Kingdom. . . . 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 make it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in this respect" (1929).

Nationality—Distinct Juristic Entities—"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. 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. . . . 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 recognized 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*" (1929).

The Throne and Royal Titles—A convention in the following terms ought to be put on record:

“Inasmuch 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” (1929).

[This is a limitation of the previous power of the British Parliament].

Work of Conference of 1929—The Conference of 1929 “considered their task to be merely that of endeavoring to apply the principles, laid down” by the previous Conference (the principles of freedom, equality and co-operation) “as directing their labors 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” (1929).

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