

2. NOTES ON THE DOMINION STATUS

DOMINION STATUS

1. The Statute of Westminster to some extent lays down and codifies the law which regulates the constitutional relationship of these parts of the British Empire which is known as the British Commonwealth of Nations.

2. The Statute of Westminster applies to the Dominions and establishes for them what is called Dominion Status. Our inquiry will be directed to understand the meaning of Dominion Status. Before approaching the subject we must ask.

I. 1. What is a Dominion ?

A Dominion is a colony which is declared to be a Dominion by the Statute of Westminster.

2. What is a Colony ?

A Colony is a British Possession other than U. K. and India.

3. What is a British Possession ?

A British Possession is any part of the British Empire exclusive of the United Kingdom over which the King exercises sovereignty.

4. What is British Empire ?

(British Empire)* denotes the whole of the territories over which the King possesses sovereignty or exercises control akin to sovereignty. It includes therefore all the King's Dominions, over which he is sovereign, and the protectorates and Protected States whose foreign relations are controlled by the Crown.

It also includes the mandated territories.

II. What is Dominion Status ?

1. The subject could be better understood* if we compare the system of Government inaugurated by the Statute of Westminster with the system of Government which was in operation before it came into force.

2. The system which was in operation was known as Responsible Government. We must therefore grasp as a first step the characteristics of Responsible Government.

* Inserted these words are erased in the ms. either on account of being eaten by termites or by afflux of time.

3. Why Responsible Government came in some colonies and why it did not come in others ?

4. The Government of a colony differed according to the nature of the colony.

5. Colonies fall into two classes:

(1) Colony by settlement.

(2) Colony by Conquest or Cession.

(1) Colony by settlement

1. Thus in a colony by settlement there came up the inevitable conflict between an irresponsible executive and representative legislature, a conflict of mandates.

2. Responsible Government had to be introduced in these colonies by settlement in order to solve this conflict.

3. THE NATURE OF THE RESPONSIBLE GOVERNMENT.

The position of the King in relation to settled colonies differs from his position in relation to conquered colonies.

The King stands to possession acquired by settlement in a position analogous to his status in the United Kingdom. *10 App. Calls 692/(744)*. He is possessed of the executive power and has authority to establish Courts of law, but not celesiastical Courts [*3 Moo. P. C. 115, 1865 : 1 Moo P.L.C.C. 411, 1863*]. But he cannot legislate, and if laws are to be passed, this must be done—

(1) by a legislative body of representative character on the analogy of the U.K.

(2) where this form of legislation would be difficult to carry out, parliamentary authority must be obtained authorizing the establishment of a different form of Constitution.

(2) Colonies by Conquest

In these, the King possesses absolute power to establish such executive, legislative and judicial arrangements as he thinks fit, subject only to the condition that they do not contravene any Act of Parliament extending to all British Possession.

But this right is lost by the grant of a representative legislature unless it is expressly retained in whole or in part. If not so retained, power to legislature as to the Constitution or generally can only be recovered under the authority of an Act of Parliament. *1835 2 Kuapp. 130 (152) Jehson v/s Pura; 1932 A.C. 260.*

1. The Statute of Westminster applies to :

- (1) The Dominion of Canada,
- (2) The Commonwealth of Australia,
- (3) The Dominion of New Zealand,
- (4) The Union of South Africa,
- (5) The Irish Free State,
- (6) Newfoundland.

2. This statute calls these colonies as Dominions and confers on them what is called Dominion Status.

3. These Colonies had Responsible Government before the Statute of Westminster.

What is the difference between Responsible Government and Dominion Status ?

Mechanism of Responsible Government.—

(1) THE CLAIM BY THE COLONY TO COLONIAL AUTONOMY IN MATTERS WHICH AFFECTED THEM.

(2) THE CLAIM TO UNLIMITED SOVEREIGNTY BY THE IMPERIAL PARLIAMENT.

These two claims are contradictory. A self-governing colony is a contradiction in terms.

The solution of this question involved two questions :

(1) How was the division of authority to take place between the Colonial and Imperial Governments.

(2) How were the powers given to each were to be exercised by each.

The division proposed was not along the lines of imperial and colonial legislative competence.

All legislation was to be within colonial competence except what was barred by the colonial laws, but some of it would be liable to veto by the Imperial Government not on the ground that it was beyond the competence of the colonial legislature, but it affected some Imperial interest.

The matters of Imperial concern were not reduced to writing by enumeration. The Imperial Government was free to decide whether any particular matter was or was not of Imperial concern.

The following provisions were a feature of the Constitution of these colonies:

(1) The appointment of the G. and G.G.* by the Crown on the advise of the Imperial cabinet.

(2) The Right of the G. G. to act otherwise than the advice of his ministers.

(3) The power of the Governor to Reserve Bill for the pleasure of the King on the advice of the Imperial Government.

(4) The Power of Disallowance by the King on the advice of the Imperial Government.

The terms of the Statute of Westminster

I. It frees the Dominion Legislature from the overriding effect of the laws made by the British Parliament:

(1) It abrogates the Colonial Laws Validity Act.

(2) It gives the Dominion Legislature to repeal any U. K. Act in so far as the same is the part of the Dominion.

II. It puts limitations upon the legislative sovereignty of the British Parliament:

(1) No Act of Parliament passed after December 11, 1931 shall extend, or be deemed to extend to a Dominion as part of the law of that dominon unless it is expressly declared in the Act that the Dominon has requested and consented to the enactment thereof.

(2) Any alteration in the law touching the succession to the throne or the Royal Style and Tides requires the assent of the Parliaments of the Dominion as well as of the United Kingdom.

III. The Statute does not alter the other provisions :

(1) The appiontment of Governor General.

(2) The Reservation of Bills.

(3) The Disallowance of Bills.

But a great change has taken place in the exercise of these powers.

Right of advice to the Crown.

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Dominion Status does not mean sovereignty.

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2. Constitution of the United Kingdom has been dealt with.

* Means Governor and Governor General—ed.

* Portion missing—ed.

3. India will not be dealt with here. So also Protectorates and Mandated Territories.

4. Deal only with the Constitutional Organization of the Colonies.

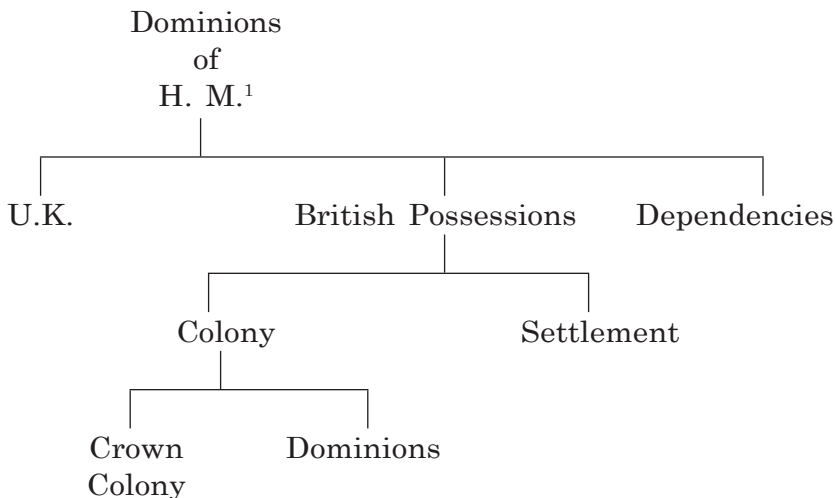
5. The Constitutional Organization of the Colonies differs according to the mode of the acquisition of the Colony.

6. Two methods.

(1) Settlement

(2) Conquest or Cession.

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Dominions

1. The Dominion Office was established in 1925 to take over Dominions' business from the colonial office.

2. At first the Secretaryships for the Dominions and for the colonies were held by the same minister, but in 1930 a separate S of S² for the Dominions was appointed.

3. The Dominion Office deals with business connected with the Dominions, Southern Rhodesia, the South African High Commission [i.e. Basutoland, Bechunaland, Protectorate Swaziland], Overseas settlement, and business relating to

¹ His Majesty—ed.

² Secretary of State—ed.

Imperial, Conferences. See Sir G. V. Fiddes—*The Dominions and Colonial Offices*.

Old Halsbury, I. p. 303.

662. The dominions of the Crown include—

(a) The U. K. and any Colony, plantation, island, territory or settlement within H M's dominions and not within the U.K.

(Naturalization Act, 1870, 33 Ne. c 14 s. 17)

(b) Places situated within the territory of a Prince, who is subject to the Crown of England in respect of such territory.

[*Crow and Ramsay (1670) Vaugh. 281*]

(c) British ships of war and other public vessels (*Parliament V/s. Belge. (1880)5 P.D. 197.*)

(d) British Merchantmen on the high seas [1870 S. R. 6Q. B. 31. *Marshall v/s Murgatroyd*] and probably even in the territorial waters of a foreign country [*Compare R v/s Carr and Wilson (1882) 10 Q.B.D. 76*].

Halsbury X. p. 503 para 856

1. "British Possession" means any part of H M's dominions exclusive of the U. K.; and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed to be one British Possession. [Interpretation Act 1889 (*52 & 53 Vict. c. 63*) S. 18 (2)].

2. A Colony is any part of H M's dominions exclusive of the British Islands and British India; and where, parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed one colony [*Ibid.* S. 18(3)].

3. A British settlement means any British Possession which has not been acquired by cession or conquest and is not for the time being within the jurisdiction of the legislature of any British possession. [British Settlements Act, 1887 (*50-51 Vic. C. 54*) S. 6].

4. The expression 'Dependencies' is used to signify places which have not been formally annexed to the British dominions, and are therefore, strictly speaking foreign territories, but which are practically governed by Great Britain, and by her represented in any

relations that may arise towards other foreign countries. Most of them are "Protectorates" that is territories placed under the protection of the British sovereign, generally by treaty with the native rulers or chiefs. Cyprus and Weihaiwei are foreign territories held by Great Britain under special agreements with their respective sovereigns, but administered under the Foreign Jurisdiction Act, 1890 [53-54 Vic. C. 37], on the same general lines as protectorates. India including both the Native States and the strictly British territory of that Empire, is frequently spoken of as our great dependency.

5. Crown colonies are those in which the Crown retains complete control of the public officers carrying on the Government, and the legislative power is either delegated to the officer administering the Government [S. S. Gibraltar, Ashanti, Virgin Islands, St. Helena and Basutoland] or is exercised by a Legislative Council which is nominated by the Crown either entirely or partly the other part being elected. In these colonies, with seven exception, the Crown has reserved to itself the power of legislating by Order in Council.

Protectorates although not parts of H M's Dominions are administered in much the same manner as Crown colonies.

Dominions are those colonies which possess elective legislatures to which the executive is responsible, as in the U. K. the only officer appointed and controlled by the Crown being the Governor or G. G.

Halsbury X, p. 521

885. There is no statutory or authoritative definition of the term "protectorate" although it appears in two recent Statutes. Protectorates are not British territory in the strict sense ; but it is understood that no other civilized power will interfere in their affairs. They are administered under the provisions of orders in Council issued by virtue of powers conferred upon H. M. by the Foreign Jurisdiction Act, 1890 "or otherwise vested in His Majesty" which latter phrase may be taken to be intended to bring in aid any exercise of the Royal prerogative that may be necessary to supplement H. M's statutory powers.

Halsbury XIV, p. 420

For a recent treatment of the meaning of “dominions” see *R v/s Crewe 1910 S. K. B. 576, 607, 622.*

Halsbury IX, p. 16

The authority of the King extends over all his subjects wherever they may be, and also over all foreigners who are within the realm. The jurisdiction of English Courts of Law, however, is limited, first, by the stipulations contained in the enactments by which the kingdoms of Scotland and Ireland were incorporated in the United Kingdom ; Secondly by the Charter of Justice, letters patent and statutes affecting particular colonies; and thirdly by the consideration that no English Court will decide any question where it has not the power to enforce its decree.

The jurisdiction of each particular Court is that which the King has delegated to it, and this delegation has been complete, for the King has distributed his whole power of prosecution to diverse Courts of Justice.

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Development of Dominion Status

1. There is first the claim to unlimited sovereignty by the Imperial Parliament and Government stated in its logical perfection by Lord John Russell.

2. There is second the claim to colonial autonomy an effective demand that, in matters which interested them, the colonies should manage their own affairs.

3. There is third, the contradiction between the two. A self-governing dependency is a contradiction in terms.

Solution

On the one hand, the Imperial Parliament granted to a colony a sphere of activity in which the colonial legislature, executive and judiciary had authority to exercise governmental power. In this sphere the colony was sovereign.

On the other hand, the Imperial Parliament had the authority and full legal power, as and when it saw fit, to withdraw or limit the rights of the Colony to exercise power within a prescribed sphere, either by repealing or amending the Constituent Act of the Colony or by passing an Imperial Act explicitly applying to some subject within the jurisdiction of the Colony.

Two Questions: (1) How was the division of authority to take place between the Colonial and Imperial authority? (2) The method of exercising the powers given to each.

(1) The division proposed was not along the lines of Imperial and Colonial legislative competence.

All legislation was to be within colonial competence, but some of it would be liable to veto by the Imperial authority, not on the ground that it was beyond the competence of the colonial legislature, but because it affected some specified Imperial interest.

(2) It was advocated that the possible matters of Imperial concern should be reduced to writing by enumeration of those matters which were deemed of Imperial concern. The British Government refused to bind itself specifically in this way [and the provisions were not allowed to stand in the Australian Bills].

(3) How were the activities of the Colonial and Imperial authorities to be adjusted and co-ordinated so that confusion and overlapping and conflict might be avoided? The solution was found in the following :

- (1) The Powers of Reservations.
- (2) The Powers of Disallowance.
- (3) The appointment of the Governor General.
- (4) The nature of responsible Government in the colonies.
- (5) Right of the British Government to tender advice to the Crown.
- (6) Colonial Laws Validity Act of 1865.

(4) The nature of responsible Government in the Colonies.

The executive Government was vested in the Governor, who was empowered to appoint to his executive council those persons whom he thought fit, in addition to those, if any, who by law were members of it. While in one or two cases it was

stipulated in the Constituent statute that ministers were to be members of the executive council or that members of the executive council were to be, or were within a given period, to become members of one or other house of the legislature. In no case is the executive council required by law to be composed of ministers and ministers alone.

The executive council includes but does not necessarily consist only of ministers. In certain cases there is no legal necessity for members of the executive council to be members of either house of legislature.

The Act prescribed a sphere of activity within which the colonial legislature had power to make laws for the peace, order and good Government of the colony. Thus far the statute.

The instructions to the Governor empowered him to govern with an executive council whose advice he might disregard if he thought fit.

Responsible Government was based, not upon a statutory basis, but on the faith of the Crown.

Character of Inter-Imperial Relations

In the Commonwealth Merchant Shipping Agreement, the Dominions appear in a position of complete equality, comparable with that of contracting states, and differences arising out of the agreement would seem suitable for reference to the inter-Imperial tribunal contemplated by the Imperial Conference 1930. [Cmd. 3994, Part VII].

But the relations are not governed by International Law. This was asserted clearly in 1924, when the Irish Free State registered with the Secretariat of the League of Nations, the Articles of agreement for a Treaty of December 6, 1921 on the score that it was a treaty within the meaning of Article 18 of the covenant of the League of Nations, and the British Government insisted that neither the covenant nor the conventions concluded under League auspices were intended to govern relations *inter se* of parts of the Commonwealth [Keeth. R.G. II. 884, 885.].

The Imperial Conference 1926, took this view, holding that it had been determined in this sense by the Legal Committee of the Arms Traffic Conference of 1925 [Cmd. 2768 p. 23.]

The Dominions save the Irish Free State as well as the United Kingdom, excluded inter-imperial disputes from those to be submitted to the Permanent Court of International Justice when accepting the optional clauses of the Statute of the Court in 1929 [Cmd. 3452 p. 415] and similarly when accepting the General Act of 1928 for the Pacific Settlement of International disputes [Cmd. 3930 pp. 14, 15],

The inter-Imperial preferences are a domestic issue, on which most favoured nation clauses of treaties with foreign states do not operate.

Allegiance

The bond of a common allegiance involving a common status as British subjects, and this bond is one which cannot be severed by the unilateral action of any part as follows from the formal declaration in the Preamble to the Statute of Westminster that 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, any alteration in the law touching the succession to the throne or the Royal style and titles, requires the assent of the Parliaments of the Dominions as well as of the United Kingdom.

While the Preamble does not make law, it expresses a convention of the constitution which would render it very difficult for the Crown or its representative to assent to a bill passed by any single part which violated this principle of the unity of the British Commonwealth of Nations on a basis of equality of its status.

Note.— In approving the report of the Conference of 1929, the Union Parliament recorded that the proposed Preamble “shall not be taken as abrogating from the right of any member of the British Commonwealth of Nations to withdraw therefrom”.

Journal of Parliament of Empire

XL 797 800

But this view has never been formally adopted by the Imperial Conference.

The equality of status of the Dominions and the U.K. necessitates the consideration of a mode of deciding inter-Imperial disputes [cmd. 3479 p. 41].

For this purpose, the imperial conference 1930 decided that such disputes should be dealt with along the line of *ad hoc* arbitration, on a voluntary basis. The procedure is to be limited to differences between Government and only such as are justiciable.

The Tribunal is to be constituted *ad hoc* for each dispute ; there are to be five members, none drawn from outside the British Commonwealth of Nations.

Each party shall select one from the States members of the Commonwealth of Nations, not parties to the dispute, being persons who have held or hold high judicial office or are distinguished jurists and one with complete freedom of choice. The chairman shall be chosen by these four assessors may be employed if the parties desire—expenses to be borne equally. Each party shall bear those of presenting its case.

External Sovereignty of the Dominions

They have autonomy. But not status. (They Have)* ceremonial status, but not *legal* ; *de facto* but *not de jure*

For many purposes the Dominions are endowed with a considerable amount of international personality independent of the United Kingdom. But the Common allegiance and the Common Crown interfere with the idea of each Dominion being a distinct sovereign state connected merely in a personal union.

The issue as to the possibility of neutrality in war has been discussed, but only claimed by the Nationalist Government in South Africa. [Kerth DGII 867 868 71, 72, *Sovereignty of Dominions of D. 300-304 463-471*].

It is open to serious doubt if the King could declare war without automatically involving the Dominions in the war.

* Inserted—ed.

The implications of Dominion Status

1. Does it imply sovereign status ?

They have the functions of a sovereign state. But they have not the status of sovereign states.

2. Does it imply the right to secede ?

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Law Quarterly Review

Vol. VI.

Right of aliens to enter British territory. p. 27

Subject—compulsion of, to leave the Realm p. 388

Citizenship and allegiance

Vol. XVII p. 270

Vol. XVIII p. 49

Law of citizenship in the United States

by

Prentiss Webster

Albany : 1891

Webster

“The distinction between citizens proper, that is, the constituent members of the political sovereignty, and subjects of that sovereignty who are not, therefore, citizens is recognized in the best authorities of the public law”. This distinction is true. The further question of who are and who are not citizens has its difficulties. Accept the definition of citizenship to be the enjoyment of equal rights and privileges at home and equal protection abroad, and consider the question from this standpoint, from which alone it should be treated, for we have no law in the U. S. A. which divides our citizens into classes or makes any difference whatever between them. We then discover the importance that the equal rights of citizens when at home should maintain when abroad, because questions as to citizenship are determined by municipal law in subordination to the law of Nations. Therefore, the value of citizenship should not be underestimated.”

Webster

View of Roman Law

1. It was by man that the body politic was organised, and in entering the organization with his fellow men, man followed the exercise of his natural rights and became an ingredient of the society of which he, with others, became members.

2. By the organization formed as of man and by man, man was so incorporated into the body politic that he could not depart.

3. Although in the early days of Rome, they alone could call themselves Roman citizens who were free born and born in Rome, yet very soon thereafter, foreigners were admitted to citizenship by authority of the legislative body. Later, as Rome advanced in her conquest of the neighbouring states, to these states the legislative authorities conferred charters by which the citizens of such states were admitted to Roman citizenship and their former citizenship was abolished.

4. Cicero lays down the rule, "that every man ought to be able to retain or renounce his rights of membership of a society," and further adds, "that this is the firmest foundation of liberty." Under this the Romans received all who came and forced none to remain with them.

5. This view of the Roman Law was based upon natural law.

Effect of Invasion

6. After the downfall of Rome this principle of natural law gave way to the principles of feudalism as introduced by the invaders.

7. The invaders having conquered both the people and their lands, organized their Government, as being in a prince who was all powerful over his subjects. The relation as between man and man and his relation to the Government was forced and involuntary. The natural rights of man as being in man were disavowed.