IN THE MATTER OF

THE CRIMINAL CODE, 1892, SECTIONS 275–276, RELATING TO BIGAMY.

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*Mar. 17.
*May 1.

SPECIAL CASE REFERRED BY THE GOVERNOR GENERAL IN COUNCIL.

Constitutional law—Criminal Code ss. 275, 276—Bigamy—Canadian subject marrying abroad—Jurisdiction of Parliament.

Secs. 275 and 276 of the Criminal Code, 1892, respecting the offence of bigamy, are *intra vires* of the Parliament of Canada. Strong C.J. *contra.*

SPECIAL CASE referred by the Governor General in Council to the Supreme Court of Canada for hearing and consideration.

His Excellency, in virtue of the provisions of the Supreme and Exchequer Courts Act, as amended by the Act 54 & 55 Victoria, Chapter 25, intituled "An Act respecting the Supreme and Exchequer Courts," and by and with the advice of the Queen's Privy Council for Canada, is pleased to refer, and does hereby refer, the following questions touching the constitutionality of legislation of the Parliament of Canada, to the Supreme Court of Canada for hearing and consideration, namely:—

1. Had the Parliament of Canada authority to enact sections 275 and 276 of the Criminal Code, 1892?

2. If the said sections or either of them are *ultra vires* in part only, then (a) what portions of the said sections are *ultra vires;* (b) to what extent are the said sections, or either of them, *ultra vires?*

PRESENT:—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

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Sections 275 and 276 of the Criminal Code, 1892, are as follows:—

"275. Bigamy is—

"(*a.*) The act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or

"(*b.*) The act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or

"(*c.*) The act of a person who goes through a form of marriage with more than one person simultaneously or on the same day. R.S.C., c. 37, s. 10.

"2. A 'form of marriage' is any form either recognized as a valid form by the law of the place where it is gone through, or, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried. Every form shall, for the purpose of this section, be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

"3. No one commits bigamy by going through a form of marriage—

"(*a.*) If he or she in good faith, and on reasonable grounds, believes his wife or her husband to be dead; or

"(*b.*) If his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or

"(*c.*) If he or she has been divorced from the bond of the first marriage; or

"(*d.*) If the former marriage has been declared void by a court of competent jurisdiction. R.S.C., c. 161, s. 4.

"4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such a person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

"276. Every one who commits bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

"2. Every one who commits this offence after a previous conviction for a like offence shall be liable to fourteen years' imprisonment. R.S.C., c. 161, s. 4."

These enactments had been held *intra vires* by the Chancery Division of the High Court of Justice for Ontario, in *Reg* v. *Brierly* (1), Chancellor Boyd, Ferguson and Robertson JJ. constituting the court. In that case the bigamous marriage had been contracted outside of Canada, but the facts were within the saving clause of subsection 4 of section 275. Afterwards in the case of *Reg.* v. *Plowman* (2), the question was raised in the Queen's Bench Division of the High Court of Justice of Ontario as to the validity of a conviction for bigamy where the facts were substantially the same as in *Reg.* v. *Brierly* (1). The court, consisting of Armour C. J., and Falconbridge J., held the above sections *ultra vires* in so far as they constituted the acts of the defendant, as stated, an offence, and that the case was covered by the authority of *Macleod* v. *Attorney General for New South Wales* (3).

Newcombe Q.C., Deputy Minister of Justice, for the Government of Canada. Similar legislation by the Parliament of the United Kingdom would be valid;

(1) 14 O. R. 525. (2) 25 O. R. 656.
(3) [1891] A. C. 455.

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In re Tivnan (1); *The Queen* v. *Keyn* (2); and the Parliament of Canada has like authority by sec. 91 of the British North America Act. *Hodge* v. *The Queen* (3); *Riel* v. *The Queen* (4); *Valin* v. *Langlois* (5).

Macleod v. *Attorney General of New South Wales* (6) is distinguishable. In that case the prisoner had no domicile in New South Wales when the offence was committed. And see *Fielding* v. *Thomas* (7).

No counsel appeared to oppose the validity of the said sections.

THE CHIEF JUSTICE.—This reference comes before the court under an Order in Council bearing date the 25th day of April, 1896, and which is in the terms following:

His Excellency, in virtue of the provisions of the Supreme and Exchequer Courts Act, as amended by the Act 54 & 55 Victoria, Chapter 25, intituled "An Act respecting the Supreme and Exchequer Courts," and by and with the advice of the Queen's Privy Council for Canada, is pleased to refer, and does hereby refer, the following questions touching the constitutionality of legislation of the Parliament of Canada, to the Supreme Court of Canada for hearing and consideration, namely:—

1. Had the Parliament of Canada authority to enact section 275 and 276 of the Criminal Code, 1892?

2. If the said sections or either of them are *ultra vires* in part only, then (a) what portions of the said sections are *ultra vires*; (b) to what extent are the said sections, or either of them, *ultra vires*?

Sections 275 and 276 of the Criminal Code, 1892, are as follow:

275. Bigamy is—

(*a.*) The act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or

(*b.*) The act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or

(1) 5 B. & S. 679.
(2) 2 Ex. D. 152.
(3) 9 App. Cas. 117.
(4) 10 App. Cas. 675.
(5) 3 Can S.C.R. 1.
(6) [1891] A. C. 445.
(7) [1896] A. C. 600.

(*c.*) The act of a person who goes through a form of marriage with more than one person simultaneously or on the same day. R.S.C., c. 37, s. 10.

2. A "form of marriage" is any form either recognized as a valid form by the law of the place where it is gone through, or, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried. Every form shall, for the purpose of this section, be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

3. No one commits bigamy by going through a form of marriage—

(*a.*) If he or she in good faith, and on reasonable grounds, believes his wife or her husband to be dead; or

(*b.*) If his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or

(*c.*) If he or she has been divorced from the bond of the first marriage; or

(*d.*) If the former marriage has been declared void by a court of competent jurisdiction. R.S.C., c. 161, s. 4.

4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such a person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

276. Every one who commits bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

2. Every one who commits this offence after a previous conviction for a like offence shall be liable to fourteen years' imprisonment. R.S.C., c. 161, s. 4.

I am of opinion that paragraphs (*a*) and (*b*) of subsection one of section 275, so far as they apply to persons who, being already married, may go through a form of marriage with any other person, and to persons who may go through a form of marriage with a person whom he or she knows to be married, elsewhere than in Canada, are *primâ facie ultra vires* of the Parliament of the Dominion. And, I am further of opinion that the limitation imposed by subsection 4

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of section 275, that in order that a person may be convicted of bigamy in respect of having gone through a form of marriage, in a place not in Canada, such person must be a British subject, resident in Canada, and must have left Canada with intent to go through such form of marriage, has not the effect of so qualifying paragraphs (*a*) and (*b*) of subsection 1, as to bring the substantive enactment contained in (*a*) and (*b*) within the powers of Parliament.

The legal construction of these provisions is clear. The offence is made to consist in a marriage anywhere without the Dominion of Canada, and although the condition is imposed that the party must have left Canada with the intent of celebrating such a pretended marriage, yet the so leaving Canada is not the offence constituted by the Code, but the criminal act is the marriage without the territorial jurisdiction of Parliament. I cannot read the provisions in question as equivalent to a declaration that it shall be a criminal offence to leave Canada with intent to go through the form of a bigamous marriage contract with the condition superadded that such a marriage shall afterwards be celebrated, thus making the essence of the offence to consist in leaving the Dominion with the criminal intent, for such leaving the Dominion is not by itself declared to be any criminal offence. The criminal offence is the marriage, coupled with the intent in leaving the country to carry such marriage into effect. To transpose or invert the plain words of the enactment so as to make the substantive and principal act the leaving the Dominion with the intent, coupled with the condition that such intent shall be subsequently effectuated, is to make that a crime which the legislature has not contemplated.

So far as anything essential to constitute the offence is required to be done out of Canada, it is in my opinion

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entirely beyond the legislative powers conferred on the Dominion by the British North America Act.

By section 91 subsection 27 of that Act, power is conferred on the Dominion to legislate on the subject of the criminal law. It is to this power exclusively that the authority of Parliament to enact the Criminal Code must be referred. It is a principle as well of constitutional as of international law, universally recognized, that the power of legislation in constituting offences and enacting punishments and penalties for such offences is *primâ facie* local, limited to the territory over which the legislature has jurisdiction, and does not extend to offences committed beyond its confines. As the Lord Chancellor says in giving the judgment of the Judicial Committee in the case of *Macleod* v. *The Attorney General of New South Wales* (1), the rule of law is expressed in the maxim: *Extra territorium jus dicenti impune non paretur.*

In *Jefferys* v. *Boosey* (2), Baron Parke, in advising the House of Lords, says:

> The legislature has no power over any persons except its own subjects, that is, persons natural born subjects, or resident, or whilst they are within the limits of the kingdom. The legislature can impose no duties except on them, and when legislating for the benefit of persons must, *primâ facie*, be considered to mean the benefit of those who owe obedience to our laws, and whose interests the legislature is under a correlative obligation to protect.

I may say here that the legislation in question in the case of *Jefferys* v. *Boosey* (2), was beneficial, and not criminal legislation.

In the case of *Macleod* v. *The Attorney General for New South Wales* (1), already referred to, the question under appeal involved the legality of a conviction of the appellant for bigamy for having married without the limits of the colony, whilst a first wife by a legal

(1) [1891] A. C. 458.

(2) 4 H. L. Cas. 926.

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marriage was alive. The conviction had taken place under a Colonial Act which provides that—

> Whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage takes place, shall be liable to penal servitude for seven years.

The appeal was decided, not on the ground that the actual legislation, as it was finally interpreted, was beyond the powers of the legislature, but on the construction of the words "whosoever" and "wheresoever." It was held that inasmuch as the legislature had no power to make a bigamous marriage contracted beyond its jurisdiction an offence, that consideration made it necessary, in the opinion of the Judicial Committee, to construe the words "whosoever being married," as meaning—

> Whosoever being married, and who is amenable at the time of the offence committed to the jurisdiction of the colony of New South Wales.

And to restrict the words "wheresoever" as meaning—

> Wheresoever in this colony the offence is created.

The Lord Chancellor in adopting this construction reasons thus:

> There is no limit of person according to one construction of "whosoever," and the word "wheresoever" is equally universal in its application. Therefore, if their Lordships construe the statute as it stands and upon the bare words, any person married to any other person, who marries a second time anywhere in the habitable globe, is amenable to the criminal jurisdiction of New South Wales, if he can be caught in that colony. That seems to their Lordships to be an impossible construction of the statute. The colony can have no such jurisdiction, and their Lordships do not desire to attribute to the Colonial Legislature an effort to enlarge their jurisdiction to such an extent as would be inconsistent with the powers committed to a colony, and indeed inconsistent with the most familiar principles of international law.

Then, it is said in the same judgment as regards the constitutional question which would have arisen if

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the construction which was adopted had not been admissible:

> Their Lordships think it right to add that they are of opinion that if the wider construction had been applicable to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the bar, it would have been beyond the jurisdiction of the colony to enact such a law. Their jurisdiction is confined within their own territories, and the maxim which has been more than once quoted *extra territorium jus dicenti impune non paretur* would be applicable in this case. * * * * * All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever.

In the case of *Shields* v. *Peak* (1), decided in 1883, the same line of reasoning was adopted as conclusive in favour of a construction of the penal clause in an insolvency Act, which, without limitation in point of locality, made it an offence punishable with fine and imprisonment for an insolvent person to obtain credit. It was held that the statute did not apply to an act committed in England to which the statute would have applied if it had had extra-territorial force. In my judgment in that case I stated the reasons which led me to a conclusion in all respects the same as that arrived at in the case in the Privy Council, and cited several authorities, including some of those now referred to, in support of my decision. Mr. Justice Henry and Mr. Justice Taschereau also arrived at the same conclusion, and for the same reasons. I adhere in all respects to what was said in *Shields* v. *Peak* (1), on the subject now under consideration.

It follows from the authorities stated that standing alone paragraphs (*b*) and (*c*) of subsection 1 of section 275 would be *ultra vires* so far as they apply to the offence of bigamy committed by all persons without any qualification or condition of British allegiance, in any part of the world.

(1) 8 Can. S. C. R. 579.

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Subsection 4 of the same section 275, however, requires that in order to the constitution of the offence certain other conditions must concur. First, it is required that the accused person must, in order that he may be indicted for a marriage celebrated without the jurisdiction, have left Canada with intent "to go through such form of marriage." The bare intent by itself does not, according to the statute, constitute any offence. The crime must be a compound one, consisting in the going through the form of marriage without the jurisdiction, coupled with leaving the Dominion with that intent. Therefore, so far as this proviso goes, the objection pointed out in *Macleod* v. *The Attorney General* (1), that the legislature cannot make an act committed without the jurisdiction criminal, is just as much applicable to the present legislation as to that before the Privy Council in the case cited, as the celebration of the marriage abroad is a necessary ingredient in the crime.

There are, however, two other qualifications; the party indicted must be resident in Canada, and must also be a British subject.

First, as to residence in Canada. It is to be observed that what is required is not domicile, but mere residence within the Dominion. Residence is of course a very different thing from domicile; a subject of a foreign state may well be resident in Canada without having a domicile there; of course such a foreign resident is, so long as he is within the Dominion, as much subject to its laws as if he were a subject, but, upon well established principles of international law, one whose national character is that of a foreign subject or citizen, is not affected, as regards his acts or conduct outside the territorial jurisdiction of the country in which he may happen to be resident, by the criminal legislation of the latter state. Thus, according to the

(1) [1891] A. C. 455.

rules prevailing in the system of international law universally adopted by all civilized nations, a resident of a foreign country—by which I mean a country other than that to which he owes allegiance—cannot be criminally prosecuted for an act committed whilst absent from his residence, in another country, either in that of his own nationality or any other. Such extra-territorial legislation, though it might bind courts and judges amenable to the domestic law, would not be considered by foreign nations as having any extra-territorial force, and therefore all presumptions must be made against an intention on the part of the legislature to enact laws in contravention of this principle.

This is indeed recognized by the framers of the Code, for the fourth subsection does not make residence the only condition required to make a party amenable for the ex-territorial act, but conjoins it with another, namely, that in order to come within the enactment the party must be a British subject. This introduces a question of constitutional law common to the whole Empire, one which it was not necessary to decide in *Macleod* v. *The Attorney General* (1), and which is not directly touched upon in the observations which the Lord Chancellor added to the reasons of the Judicial Committee for its actual decision in that case.

This question may, therefore, be thus stated: Has the legislature of a dependency of the Crown of the United Kingdom the power which is undoubtedly possessed by the Parliament of the Empire, of so regulating the conduct of British subjects, resident within its local jurisdiction, as to constitute an act, committed without that local jurisdiction, a criminal offence?

The legislative authority of the Parliament of the United Kingdom to control the personal conduct of the Queen's subjects, irrespective of their locality,

(1) [1891] A. C. 455.

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depends altogether upon their allegiance, not upon their residence or domicile, and they remain subject to such legislation so long as they retain their national character as British subjects. Numerous instances of such personal legislation are to be found in the statute-book, such as the statutes of Henry the 8th and George the 4th, and that of the present reign, as regards murder committed by British subjects abroad, also the statute 43 George 3rd, ch. 11, section 6, relating to manslaughter by the same class of persons under like conditions, and enactments making piracy, slave trading and breaches of the Foreign Enlistment Acts criminal, though the offence may be committed on the high seas (even in a foreign vessel) or within the limits of a foreign territory. Such offences are, however, unless jurisdiction is specially conferred on colonial courts, indictable only in England.

As, however, the general rule already mentioned requires the presumption to be made in all cases that criminal legislation is intended to be local, it is essential to the constitution by statute, of personal, ex-territorial, criminal offences of the class mentioned, that they should even in England be made law by express enactment, as otherwise the presumption referred to will operate to restrain the statute by interpretation to the local jurisdiction. This being established as an elementary principle of the constitution by authorities so clear and indubitable that no one treating this question without prejudice can venture to deny it, we are brought to the ulterior question as to whether colonies or dependencies of the Crown, whose constitutions emanate from the Imperial Parliament, also possess this power of so legislating as to make British subjects resident within their jurisdiction criminally amenable for acts committed without their territorial limits. As the Imperial Parliament is a

sovereign legislature I do not for a moment dispute the proposition that it may confer upon a colonial legislature powers in this respect co-equal with its own, by granting it authority to enact the personal liability of all British subjects resident within its jurisdiction, or indeed of all British subjects generally, for crimes committed without the jurisdiction. The question to be dealt with here is not as to the power of Parliament in this respect, but as to whether such authority has actually been conferred.

The powers of the Canadian Parliament to legislate in matters of criminal law are, as has been said, to be found in the British North America Act. It is absurd to say that the recital in the preamble of that Act that the provinces had expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom, can have any influence upon the question of legislative jurisdiction involved in the case laid before us. In the first place this is a mere recital in the preamble, not carried out in any enacting clause, and next the words "similar in principle," even if there had been such an enacting clause would have been wholly insufficient to confer upon the Dominion Legislature, called into existence by the Act, the full and absolute sovereign powers of the Imperial Parliament. This is so apparent that it requires no demonstration.

The answer to the question to be resolved must therefore depend altogether on the construction to be placed upon the language of the 91st section, subsection 27.

The criminal law, except the constitution of the courts of criminal jurisdiction, but including the procedure in criminal matters.

Was it intended by this to confer the power to legislate regarding criminal responsibility for the acts of all

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British subjects, or of all British subjects resident in Canada, though committed without the territory of the Dominion ?

I am clearly of opinion that no such power was conferred.

No distinction can be made as regards this question of parliamentary jurisdiction between the Dominion and the smallest colony of the Empire whose constitution and powers of criminal legislation depend on a constitution conferred by the Parliament of the United Kingdom. Notwithstanding the great geographical extent of the Dominion, the number of its population and its importance relatively to other colonies and dependencies, powers of this kind must be interpreted in the same way for all alike. Therefore, if under this grant of power to enact criminal laws, the legislature of Canada can declare the acts of British subjects in a foreign country to be criminal and penal, any colony which possesses general powers of criminal legislation may do the same, subject only to its enactment not being repugnant to an Imperial Act of Parliament and so coming within the Act 28 & 29 Victoria, chapter 93.

That such a consequence could possibly follow a grant of the authority to legislate in criminal matters, expressed in the general and vague terms of section 91 of the British North America Act, is, in my judgment, entirely inadmissible.

It is out of the question to say that the legislature of a dependency created by an Imperial statute has sovereign powers of legislation in all personal and extra-territorial matters relating to British subjects resident within its limits irrespective of express grant. In the case of the national character of residents of alien origin it has no such power. Personal allegiance is a matter which has always been and always must be, in the absence of the statutory delegation of its powers,

dealt with by the Imperial Parliament. The acquisition of British nationality is a matter upon which the Imperial Parliament has the exclusive right of legislation, although the effect of alienage upon the local tenure of land may well be dealt with by a colonial legislature. I think it clear beyond question, therefore, that the power of legislation conferred, as regards criminal law, by section 91 is confined to local offences committed within the Dominion, and does not warrant personal jurisdiction as to matters outside it.

In interpreting an ordinary criminal law constituting a new statutory offence, upon the authorities referred to, English courts have always held that local jurisdiction was alone intended. In order that such a statute might operate upon the acts or conduct of British subjects without the Queen's dominions, an intention to create such personal liability must be actually expressed. If therefore the creation of a penal offence is by settled rules of interpretation to be restricted as regards locality, it would seem that on the same principles a grant of power to legislate on the subject of criminal law, to be exercised by a dependent legislature, should also be so construed. Indeed the argument in favour of the limitation is far stronger in the latter case than in the former, inasmuch as reasons of good policy, national safety and convenience all concur in favour of retaining all matters of legislation which may in any way tend to conflict with the rights or claims of foreign nations in the hands of the Imperial Government; and everything done within the jurisdiction of a foreign government must to some extent be a concern of that government which may give rise to international reclamations upon the Imperial Government.

The statute is no doubt less extensive in its terms than the New South Wales Act would have been if it

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had received the construction put upon it by the colonial court. I fail, however, to find anything either in that part of the judgment of the Judicial Committee which embodies the *ratio decidendi*, or in the additional observations of the Lord Chancellor, which gives any countenance to the suggestion that the law there in question would have been held *intra vires* if it had been confined to British subjects resident in the colony. On the contrary I think the following extract implies that the right of extra-territorial criminal legislation would, if the question had directly arisen under a statute identical with this, have been held to have been *ultra vires*. The Lord Chancellor says:

> All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever.

In Forsyth's book on Constitutional Law (1), a case is mentioned which was submitted to the law officers of the Crown, then Sir Robert Phillimore, Sir Fitzroy Kelly and Sir Hugh Cairns, as to the power of the Indian Legislative Council to enact a law making Indian native subjects of the Crown liable to indictment and punishment for certain offences committed beyond British jurisdiction.

The two great lawyers last named considered the legislation was *ultra vires*, whilst Sir R. Phillimore was of the contrary opinion. This opinion, though not of the same weight as a judicial decision, is still, considering the high professional reputation of the great law officers who subscribed it, of considerable authority and more than counterbalances anything which may be derived from the uncertain and indeterminate opinion of Sir J. Harding, Sir Alexander

(1) P. 17.

Cockburn and Sir Richard Bethell, given by the same author (1), where they say:

> We conceive that the Colonial Legislature cannot legally exercise its jurisdiction beyond its territorial limits—three miles from the shore—or at the utmost can only do this over persons domiciled in the colony who may offend against its ordinances beyond their limits but not over other persons.

Apart altogether from the hesitation to express any definite opinion as to ex-territorial Acts, the very reference to the term "domicile" in connection with the subject in question shows that this opinion was not fully considered.

"Domicile," so far as I have been able to discover, apart from local residence on the one hand and national allegiance on the other, has nothing to do with criminal law; its effects are altogether of either an international or civil character; its introduction into a question of English constitutional law seems to be confined to this opinion. Without pretending to give anything like a full definition of the consequences and legal effects of domicile, I may say that it is generally confined to questions of civil status, marriage, divorce, contract, civil wrongs, descent, testamentary power and civil jurisdiction, and I have never heard or read that it can be invoked in a question of public constitutional law.

In Hall's International Law (2), a case is referred to which is not without bearing on the present question. The author says in a note:

> It may be worth while to cite an illustrative instance of improper exercise of jurisdiction. An English sailor on board an American vessel stabbed the mate. On the arrival of the vessel at Calcutta the sailor was handed over to the police for safe-keeping. The commission of the crime having been thus brought to the notice of the authorities, they put the sailor on his trial under an Indian statute giving the courts of the Empire jurisdiction over crimes committed

(1) Forsyth, p. 24.

(2) 3rd ed. at p. 202.

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by British subjects on the high seas, even though such crimes should be committed on board a foreign vessel. The Government of the United States complained of this assumption of jurisdiction to the British Government, and the latter expressed its regret that the action of the authorities at Calcutta should have been governed by a view of the law which in the opinion of Her Majesty's Government cannot be supported, as a foreign merchant vessel on the high seas is in the position for legal purposes of foreign territory. This case would appear to have depended upon the incompetency of the Indian legislature to enact the law in question.

Had the offence created by the act been confined to leaving the Dominion with intent to go through a bigamous marriage in a foreign country, in which case an act committed in a foreign state or without the jurisdiction, would not have been essential to the completion of the offence, which would in that case have been wholly local, it would in my opinion have been within the jurisdiction of the Dominion Parliament, but as I have shown above, in the legislation before us the criminal act is the marriage without the jurisdiction preceded by the act of leaving the Dominion with intent to celebrate it.

In addition to those already cited, I refer to the following authorities which appear to have more or less bearing on the questions submitted. Halleck's International Law (1); Walker's Science of International Law (2); Wharton's Digest of International Law (3); Story's Conflict of Laws (4); Wharton's Conflict of Laws (5).

My answer to the question propounded must, therefore, agreeing with the judgment of the Ontario Queen's Bench Division in the case of *The Queen* v. *Plowman* (6), be that so much of section 275 of the Criminal Code as is contained in paragraphs (*a*) and

(1) 3 ed. by Baker, vol. 1, p. 207.
(2) P. 231 *et seq.*
(3) Sec. 33 a.
(4) 8 ed. sec. 620 *et seq.*
(5) 2 ed. sec. 823 *et seq.*
(6) 25 O. R. 656.

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(*b*) of subsection 1 standing by themselves is *ultra vires* and void, and that those provisions are not validated by anything contained in subsection 4 of section 275.

GWYNNE J.—The sole question which arises upon this reference is, whether or not the Dominion Parliament had jurisdiction to enact the provisions contained in sections 275 and 276 of the Criminal Code. What the sections in substance purport to enact is that, any person who being married and being a British subject resident in Canada leaves Canada with intent to go through a form of marriage in a place out of Canada shall be guilty of an indictable offence to which the Act gives the appropriate name of Bigamy, and upon conviction shall be liable to the punishment by section 276 attached to such offence. Now when we reflect that Her Majesty the Queen permitted her loyal subjects resident in the old provinces in British North America to devise a scheme for federally erecting these provinces into a wholly new creation, and to frame a constitution for such new creation to which the name of The Dominion of Canada has been given, a name theretofore unknown among the dependencies of the British Empire; and when we reflect that the constitution so framed after having been adopted by the legislatures of the provinces proposed to be so united, was in every clause thoroughly discussed and considered by and between delegates, at Her Majesty's gracious suggestion appointed by Her Majesty's Governments in the said provinces, and Her Majesty's Government in the United Kingdom; and that when so discussed and considered the terms were finally agreed upon as in the nature of a treaty before ever the constitution so agreed upon was presented by Her

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Majesty's Government to the Parliament of the United Kingdom for the purpose of legislative adoption; and when we see in the constitution so agreed upon that it is expressly declared, that such constitution is similar in principle to that of the United Kingdom, and further, that one object of the new creation, the constitution of which was so framed and agreed upon, was to promote the interests of the British Empire, and when we see that it is also therein expressly declared that our gracious Sovereign shall constitute, as she does in the Parliament of the United Kingdom, an integral component part of the Parliament of Canada, which, it is declared shall consist of The Queen, an Upper House styled a Senate and a House of Commons, I cannot fail to see the manifest intention of the framers of our constitution to have been to give to Her Majesty's subjects constituting the people of Canada, a political status infinitely superior to that of a colony—a national existence in fact as an integral portion of the British Empire—having a constitution similar in principle to that of the United Kingdom and a Parliament (of which our gracious Sovereign is a component part as she is of the Parliament of the United Kingdom) with sovereign jurisdiction over all matters placed by the constitution under their control.

Now among these matters so placed under the *sovereign* control of the Parliament we find "Criminal Law," and "Marriage and Divorce." I confess, it appears to me, that the whole of the proceedings adopted for the purpose of framing the constitution of this Dominion must be designated a sham and a farce—that the object and intent of the framers of that constitution would be completely frustrated, and the hopes of Her Majesty's loyal Canadian subjects who have regarded this new creation of the Dominion of Canada as a mode of introduction, as it were, into

the family of nations of a new born offspring of the British Empire, to be followed by a like introduction of others, and as a most important step taken towards the accomplishment of Imperial federation, will be utterly disappointed if the Parliament of this great Dominion now extending from ocean to ocean, and embracing within its limits half a continent, and having under its sovereign control all matters relating to marriage and divorce, and criminal law, especially, and to the peace, order and good government of Canada, generally, should be held not to have jurisdiction to exercise that control in the terms of sections 275 and 276 of the Criminal Code.

Bordering as Canada does upon several foreign States, in many of which the laws relating to marriage and divorce are loose, demoralizing and degrading to the marriage state, such legislation as is contained in the above sections of the Criminal Code seem to be absolutely essential to the peace, order and good government of Canada, and in particular to the maintenance within the Dominion of the purity and sanctity of the marriage state, and for my part I cannot entertain a doubt that the Parliament of Canada—that is to say, that Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada —can pass an Act as effectual to affect Her Majesty's subjects who being married and resident in Canada go through a form of marriage out of Canada, having left Canada with the intent of going through such form of marriage, fully to the same extent as an Act in like terms passed by the Parliament of the United Kingdom could affect Her Majesty's subjects resident in the United Kingdom, who being married should go through a form of marriage outside of the United Kingdom having left any part thereof for the purpose of so doing. If the courts of justice should hold other-

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wise they would, in my opinion, inflict a deadly stab upon the constitution of the Dominion.

SEDGEWICK J.—I am of opinion that the sections of the Criminal Code, 1892, referred to in the reference herein, are wholly *intra vires* of the Parliament of Canada, for the reasons stated by my brother King in his written judgment, reserving my right to consider hereafter the question whether any Act of the Parliament of Canada can be held to be *ultra vires* unless in terms repugnant to an Act of the Imperial Parliament or in conflict with the federal provisions of the Constitutional Act, that Act having expressly conferred upon this Dominion a "constitution similar in principle to that of the United Kingdom."

KING J.—The question is as to the validity of these clauses in their application to the case where the form of the alleged bigamous marriage is gone through outside of Canada. Unfortunately, the matter is before us *ex parte*.

When the law making power has drawn its lines around a defined combination of act and intent declaring a punishment therefor, it has created a specific crime. It may give the crime a name or not. Bishop, Criminal Law, sec. 776.

Sec. 275, after stating that bigamy is (*inter alia*) the act of a person who being married goes through a form of marriage with any other person in any part of the world, or the act of a person who goes through the form of a marriage in any part of the world with any person whom he or she knows to be married, declares (by subsec. 4), that "no person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada unless such person being a British subject resident in Canada

leaves Canada with intent to go through such form of marriage."

Sec. 276 imposes the punishment.

What is made punishable here, in the case of a form of marriage gone through abroad, is the combination of act and intent involved in having the intent in Canada to do a certain act outside of Canada, and leaving Canada for the purpose of carrying out such intent, and then actually carrying it out. The whole is a compound act, no part of which is an offence without the rest, and each part is an essential ingredient of it.

I assume as axiomatic that it would be valid to enjoin a British subject resident in Canada from leaving the country without a license, or with any particular intent, and to make the doing so an indictable offence. If it be said that this is the same question under another form, as the act of leaving a place is not complete until it is actually left, the answer is that, if so, it shews that the completion of an act outside of Canada does not prevent legislative jurisdiction in reference to the entire act, because it seems really beyond controversy that such an obligation might validly be imposed. But, as the leaving a place happens *eo instanti*, on the passing beyond the dividing line, the act may probably be regarded as an act done in the country which is left.

Then, does it differ in principle if the act of leaving the country with the particular intent is made an offence only if the intent is afterwards carried out, or (which, in a question of things and not of words, is substantially the same) if the combination of fact and intent involved in the whole is regarded, and if what is made the offence is the leaving this country with an intent to do something, and the doing of it afterwards ?

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If any reasonable construction can be placed upon an act to avoid invalidity, it is proper to do so.

In Bishop on Criminal Law it is said (sec. 116), that:

> If a material part of any crime is committed upon our soil, though it is the lighter part, legislation with us may properly provide for the punishment of the whole of it here.

In *Macleod* v. *Attorney General of New South Wales* (1), the alleged offence was one that was wholly committed in the foreign country. Further, the enactment in question there was one which, upon the construction unsuccessfully contended for, would have extended as well to the case of foreigners, and to British subjects who were not in the colony at any time before the passing of the Act or commission of the offence, and who in no view could be regarded as amenable to colonial jurisdiction. This was held to be beyond the power of the colonial legislature, and the language of the Act was held to be used

> subject to the well known and well considered limitation that the legislature were only legislating for those who were actually within their jurisdiction, and within the limits of the colony.

But it must be recognized that their Lordships did not merely treat it as a matter of construction:

> Their Lordships think it right to add that they are of opinion that if the wider construction had been applied to the statute, and it was supposed that it was intended thereby to comprehend cases so wide as those insisted on at the bar, it would have been beyond the jurisdiction of the colony to enact such a law. Their jurisdiction is confined within their own territories.

The report of the argument does not show what cases were insisted on at the bar as being comprehended by the Act. The following passage, however, from the judgment shows that, in order to sustain the indictment, a power to impose extra territorial obligations on persons not British subjects, or in any way amenable to colonial jurisdiction, was required.

(1) [1891] A. C. 455.

It appears to their Lordships that the effect of giving the wider interpretation to this statute *necessary to sustain this indictment* would be to comprehend a great deal more than Her Majesty's subjects, more than any person who may be within the jurisdiction of the colony by any means whatsoever.

Mr. Newcombe draws attention to the fact, appearing from the report of the case below, that the person there charged was at the time of the commission of the alleged offence (and probably at the time of the passing of the Colonial Act) a person not domiciled in the colony at all.

As to the propositions that crime is local, and that the jurisdiction over the crime belongs to the country where the crime is committed, these are not intended to be absolute and exclusive, as every state admittedly has a right to impose duties upon its own subjects in a foreign country, a right often exercised by the Imperial Parliament. And further, in the case before us, the crime is not wholly committed in the foreign country, as an act requisite to constitute it must be done in this country. Besides, the act forbidden may or may not be an offence in the other country.

It does not seem reasonable that a British subject who should change his domicile to different colonies should continue to be followed by the criminal law of each colony in which he was successively domiciled; but on the other hand it seems reasonable and in accordance with considerations of public convenience, and not, as it seems to me, covered by authority to the contrary, that, where a material part of a prohibited act is committed in this country, a British subject domiciled here, and only temporarily absent, might well continue to owe to Her Majesty in relation to her government of Canada an obligation to refrain from the completion of the prohibited conduct whilst absent without any *animus manendi*.

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To the extent that the Act covers such cases, I am inclined to think it valid.

GIROUARD J.—I am of opinion that the Parliament of Canada had authority to enact articles 275 and 276 of the Criminal Code, for the reasons given by Chancellor Boyd in *Reg.* v. *Brierly* (1). Dealing with similar enactments, which had been in force in Canada since 1841, (4 & 5 Vict. c. 27, s. 22; Ca. Cons. Stat. ch. 91, ss. 29, 30; 32 & 33 Vict. ch. 20, s. 58; R. S. C. ch. 161, s. 4), the learned judge held that the Canadian Parliament, when acting within the limits prescribed by the Constitutional Act, has and was intended to have plenary powers of legislation, as ample as those of the Imperial Parliament. Among the numerous authorities quoted in his exhaustive judgment, is a decision rendered by two eminent judges of the province of Quebec, Rolland and Aylwin JJ., in *Reg.* v. *McQuiggan* (2). Justices Ferguson and Robertson agreed with him, the former also embodying his views in an elaborate opinion. Since these decisions have been rendered, a different conclusion was arrived at in *Reg.* v. *Plowman* (3). Chief Justice Armour said:

> The Imperial Parliament could enact that it should be a crime for a British subject to go through a form or ceremony of marriage abroad, but it has not done so. The Dominion Parliament, being a subordinate legislature, has no such power; and that is the effect of the case of *Macleod* v. *Attorney General for New South Wales* (4), which covers this case. The second marriage is the offence, and the Dominion Parliament has no power to legislate about such an offence committed in a foreign country.

Falconbridge J. concurred.

It seems to me that *Macleod* v. *Attorney General for New South Wales* (4), is distinguishable from the one

(1) [1887] 14 O. R. 525.
(2) [1852] 2 L. C. R. 340.
(3) [1894] 25 O. R. 656.
(4) [1891] A. C. 455.

contemplated in the Canadian Code. Article 275 of the Code, par 4, says:

No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such a person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

So far as I can gather from the quotation of the New South Wales statute made by the judicial committee, that statute does not contain any such qualification. Section 54 enacts that:

Whosoever being married, marries another person during the life of the former husband or wife, *wheresoever* such second marriage takes place, shall be liable to penal servitude for seven years.

Their Lordships remarked that:

If they construe that statute as it stands, and upon the bare words, any person married to any other person, who marries a second time anywhere in the habitable globe, is amenable to the criminal jurisdiction of New South Wales, if he can be caught in that colony. That seems to their Lordships to be an impossible construction of the statute; the colony can have no such jurisdiction.

The decision of the judicial committee appears to have turned upon the construction of the words "whosoever" and "wheresoever." *Wheresoever* said their Lordships, "therefore may be read, wheresoever *in this colony* the offence is committed."

The concluding remarks of the judgment rather support the constitutionality of colonial legislation like the Canadian Code. Quoting Lord Wensleydale in *Jefferys* v. *Boosey* (1), they remark:

The legislature has no power over any persons except its own subjects, that is, persons natural-born subjects or residents, or whilst they are within the limits of the kingdom. The legislature can impose no duties except on them, and when legislating for the benefit of persons, must, *primâ facie*, be considered to mean the benefit of those who owe obedience to our laws, and whose interests the legislature is under a correlative obligation to protect. All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and, except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever.

(1) 4 H. L. Cas. 926.

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Chief Justice Armour observes that the Imperial Parliament has not yet enacted such a law as the one under consideration. It seems to me that a still more comprehensive statute has been passed by the British Parliament, in the early part of the present century. Section 22 of 9 Geo. IV, ch. 31, re-enacted in 24 & 25 Vict. ch. 100, s. 57, after declaring bigamy to be a felony "whether the second marriage shall have taken place in England or *elsewhere*," declares:

> Provided always that nothing herein contained shall extend to any second marriage, contracted out of England by any other than a subject of His Majesty.

The Canadian statute applies only to a British subject resident in Canada and leaving Canada *with intent to go through such form of marriage.*

The assumption by a state of legislative jurisdiction over certain crimes committed abroad by its subjects, is fully recognized in international law. Wheaton, International Law, sect. 113, says:

> By the common law of England, which has been adopted in this respect in the United States, criminal offences are considered as altogether local, and are justifiable only by the courts of that country where the offence is committed. But this principle is peculiar to the jurisprudence of Great Britain and the United States; and even in these two countries it has been frequently disregarded by the positive legislation of each, in the enactment of statutes, under which offences committed by a subject or citizen, within the territorial limits of a foreign state, have been made punishable in the courts of that country to which the party owes allegiance, and whose laws he is bound to obey. There is some contrariety in the opinions of different public jurists on this question, but the preponderance of their authority is greatly in favour of the jurisdiction of the courts of the offender's country, in such a case, wherever such jurisdiction is expressly conferred upon those courts by the local laws of that country. This doctrine is also fully confirmed by the international usage and constant legislation of the different states of the European continent, by which crimes in general, or certain specified offences against the municipal code, committed by a citizen subject in a foreign country, are made punishable in the courts of his own.

See also Bowyer's Universal Public Law, pp. 180-182; W. B. Lawrence in La Revue de Droit International, vol. 2, p. 256.

This extra-territorial jurisdiction has been asserted by the British Parliament not only in cases of bigamy, but also as to several other crimes which are recapitulated in Endlich on the Interpretation of Statutes, p. 234, n. c. ed. 1888, and has been recognized by high judicial authority. The recent case of *The Queen* v. *Jameson* (1), is a remarkable one. By s. 11 of the Foreign Enlistment Act, 1870,

if any person within the limits of Her Majesty's dominions, and without the license of Her Majesty, prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue: (1). Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence.

Held, that if there be an unlawful preparation of an expedition by some person within Her Majesty's dominions, any British subject who assists in such preparation will be guilty of an offence even though he renders the assistance from a place outside Her Majesty's dominions.

Lord Chief Justice Russell of Killoween, said:

It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are to be gathered from the language and purview of the particular statute. But there may be suggested some general rules; for instance, if there be nothing which points to a contrary intention the statute will be taken to apply only to the United Kingdom. But whether it be confined to its operation to the United Kingdom, or whether, as is the case here, it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom or in the Queen's dominions, as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And, according to its context, it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without. One other general canon of construction is this—that if any construction otherwise be possible, an Act will not be construed as applying to foreigners in respect to acts done by them outside the

(1) [1896] 2 Q. B. 425.

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dominions of the sovereign power enacting. That is a rule based on international law by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside of its own territory. Now apply those considerations to the present case. Sect. 2 provides that "This Act shall extend to all the dominions of Her Majesty." Therefore the preparations mentioned in s. 11 under which this indictment is framed, are preparations made either by subjects of the Queen or by foreigners in any part of the Queen's dominions. And it also seems clear that the provisions of that section were intended to apply to subjects of the Queen wherever they might be, for we must consider the mischief that was aimed at by the Act. I think the objections raised to the ninth and subsequent counts were based on a construction of the statute, both as to the area of its operation and as to the class of persons to whom it is applied, with which I cannot agree. It is no doubt clear that in order to bring a case within s. 11 there must have been a preparation in the Queen's dominions; but I think that, when you have got that fact established, there may be an assistance in such preparation, or an employment of the kind mentioned in the section, outside the Queen's dominions, which will amount to an offence against the Act, if the person rendering such assistance or accepting such employment be a subject of Her Majesty.

Pollock B. and Hawkins J. concurred.

It is contended that this power has been conceded to independent states only; in fact Chief Justice Armour admits that "the Imperial Parliament could enact that it be a crime for a British subject to go through a form or ceremony of marriage abroad;" but the learned judge adds that "the Dominion Parliament, being a subordinate legislature, has no such power." *Subordinate*, in the sense that it is subject to the special laws of the British Parliament, but *omnipotent*, so long as its legislation is not repugnant to that of the Empire. That is the only limit and it is hardly necessary to remark that, in the present case, the Canadian law is not repugnant to the statutes of the Empire; quite the reverse. A nation has undoubtedly the right to govern itself by one or more legislatures, and when acting within the constitutional limitations, it cannot be said that one is subordinate to the other.

All are necessary to secure peace, order and good government throughout the whole Empire. If the Imperial Parliament be silent, the colonial legislatures may pass such laws as the good government of that part of the Empire may require, and those laws are just as binding, at least upon British courts, as any statute of the British Parliament. It is not, therefore, surprising that all those laws are enacted in the name of Her Majesty and of the people immediately interested, and as represented in their respective parliaments.

The internal sovereignty of self-governing British colonies has often been recognized by most eminent Crown law officers and judges of the British courts, both in this country and in England. These opinions and decisions will be found collected in *Reg.* v. *Brierly* (1), and to these the following may be added: Opinions of Sir J. Harding, Queen's Advocate, Sir A. E. Cockburn, Attorney General, and Sir R. Bethel, Solicitor General, Forsyth Const. Cases, 24; Todd, Parliamentary Government in British Colonies, 159; Baron Parke in *Kielley* v. *Carson* (2); *Hodge* v. *The Queen* (3); Ritchie C. J. in *Valin* v. *Langlois* (4).

The opinion of the Secretary of State for the Colonies of the 17th December, 1869, respecting the validity of "an Act respecting perjury," passed by the Parliament of Canada, may be quoted as adverse to the extra-territorial jurisdiction of the Canadian Parliament in any case. But that Act, as well as the Canadian statute passed in 1861 to give jurisdiction to Canadian magistrates in respect of certain offences committed in New Brunswick by persons afterwards escaping to Canada, contain the same defect as the New South Wales statute. They purport to punish "every

(1) 14 O. R. 525.
(2) 4 Moo. P. C. 84.
(3) 9 App. Cas. 132.
(4) 3 Can. S. C. R. 16.

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person" committing the alleged offence or offences' whether a British subject residing in Canada or not.

The semi-sovereign position of the British self-governing colonies has been recognized even by authorities on international law. Eschbach, Int. à l'Etude du Droit, ed. 1856, p. 65, says :

> Un Etat n'est plus que mi-souverain, quand un autre a acquis contractuellement le droit de s'immiscer dans l'exercice de son gouvernement où de le déterminer dans une partie de ses actes intérieurs ou extérieurs. Pareille restriction affecte surtout la souveraineté extérieure, et le degré s'en détermine par les clauses du traité qui a créé cette semi-dépendance. Un Etat, quoique mi-souverain, n'en est pas moins un Etat ; il continue à pouvoir invoquer directement les principes du droit international, et conserve le droit de traiter, comme puissance indépendante avec les autres Etats, sur tous les points autres que ceux sur lesquels il est tenu à subordination.

Professor Bluntschli, Droit Int. ed. 1896, p. 97, says :

> Les colonies quoique dépendant politiquement de la métropole, peuvent cependant avoir un certain degré d'indépendance et faire certains actes rentrant dans le domaine du droit international. Le grand éloignement des colonies d'outre-mer rend souvent désirable, dans l'intérêt même de celles-ci, qu'elles aient un gouvernement spécial et jouissent d'une représentation distincte. Quoique à l'origine, la mère-patrie soit seule le siège de la souveraineté, le développement de la colonie exige une plus grande liberté de mouvements. C'est par ce moyen que les colonies arrivent à avoir une vie propre et à s'ériger même en Etats souverains. L'histoire de l'Amérique est très instructive sous ce rapport. Comme exemple de bonne politique coloniale, nous pouvons citer la conduite actuelle de l'Angleterre depuis les réformes de Lord Durham (1836) au Canada et en Australie.

The policy and conduct of the British authorities upon the Canadian legislation since the passing of the Confederation Act in different matters of international concern, and among others, extradition of criminals, Chinese emigration, trade tariff, reciprocity with the United States, and trade arrangements with foreign nations, patents and copyright, banking and currency, navigation and coasting trade, shipwrecks, sea-coast fisheries, admiralty, the confirmation of the treaty

of Washington by the Parliament of Canada, etc., demonstrate that Canada, in the eyes of British public law and international law, is no longer to be considered as a mere colonial possession or dependency, but as a component part of the British Empire. They mean that Canada is no longer submitted to the mere dictum of Downing Street, but only to the restrictions of the British Parliament. This clearly results from the language of the British North America Act. The preamble of the Act declares that the provinces now forming the Confederation of Canada

desire to be federally united into one *Dominion*, under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom.

Section 3 enacts that the provinces "shall form and be one Dominion under the name of Canada."

Section 91:

It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces, and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act), the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated.

That the word "Dominion" means something more than the word "colony," is made apparent by "the Colonial Habeas Corpus Act, 1862," where the Imperial Parliament uses the two expressions "colony" and "foreign dominion of the Crown."

Section 132 of the British North America Act also says:

The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any province thereof, as part of the British Empire, towards foreign countries, arising under the treaties between the Empire and such foreign countries.

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By the Confederation Act Amendment Act, 1871, the Parliament of Canada may establish new provinces and provide for their constitution, and even alter the limits of provinces already established, with their consent.

By the Amendment Act of 1875, the Parliament of Canada may confer upon the Senate and House of Commons of Canada "the privileges, immunities and powers" of the British House of Commons.

And finally, by "An Act to remove doubts as to the validity of Colonial Laws," (28 & 29 Vict. ch. 63) the Imperial Parliament enacts, sec. 2:

> Any colonial law, which is or shall be 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 or 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.

Section 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.