

somewhere call it—is in our constitutional law used as a symbol. When we wish to speak of the King, not as a man, but as a symbol, we usually employ the term “the Crown.”

We speak of a statute not binding “the Crown”—we do not say “the King”—except by express words or necessary intendment. “The Crown,” in such use of the expression, is the symbol of executive power.

And so in Halsbury's Laws of England, vol. 6, p. 425, it is said:—

“Where representative or representative and responsible government has been conferred upon a colony . . . the prerogatives in relation to government become assimilated to those exercisable by the Crown with regard to the Imperial Government, though delegated to the governors of the various colonies.”

And again, vol. 27, p. 166:—

“When we talk of the Crown being bound by the provisions of a statute, if directly or by necessary implication referred to, “the Crown” means not only the King personally, but, also, the officers of State when acting on behalf of the Crown in discharge of executive duties, whether in the United Kingdom or anywhere within British Dominions.”

Now a gift of legislative power carries with it a corresponding executive power, even where such executive power is of a prerogative character, unless there be some restraining enactment. The authorities are collected in Canada's Federal System, pp. 24, 25; and see *Donanza Creek* case, 20 D.L.F. 273, [1916] 1 A.C. 566. There is no such restraining enactment in the case of our provincial legislatures, except that they may not affect the office of Lieutenant-Governor: B.N.A. Act, s. 92, sub-sec. 1. Consequently our provincial legislatures can in the matters and within the territorial limits to which their legislative power extends, affect the executive power. In other words they can bind “the Crown” so far as it symbolizes provincial executive power, but no further. They cannot bind “the Crown” so far as it symbolizes executive power over the Dominion as a whole; or so far as it symbolizes executive power over the United Kingdom; or so far as it symbolizes executive power over the Empire as a whole, where there has been a reserve of such executive power in granting self-government to the Dominions, or where statutes of the Imperial Parliament extending to the Empire generally permit or require the exercise of such Imperial power.

As the Judges of the Exchequer Chamber say in *Phillips v. Eyre* (1870), L.R. 6 Q.B. 1, 20:—

“A confirmed Act of the local legislature lawfully constituted, whether in a settled or a conquered colony, has as to matters within its competence and the limits of its jurisdiction, the operation and force of sovereign legislation, though subject to be controlled by the Imperial Parliament.”

The Executive, of course, comprises the King and his Ministers, the chief of which form the Cabinet: Anson's Law and Custom of the Constitution, 11th ed., vol. 1, p. 41.

The question of the right of a Dominion or provincial legislature to interfere with the King's prerogative as the fountain of justice, to allow an appeal from the local courts to the Judicial Committee of the Privy Council, is subject to some special considerations. Is this a local or an Imperial exercise of prerogative?