

regard, and so when the conference on the operation of dominion legislation considered the question they considered it under three heads:

(1) The existing position with all its uncertainties was reviewed, and those who remember the report presented to the house a year or more ago will recall that review.

(2) Any limitation of extraterritorial power to particular persons—Canadian nationals, for example—or to legislation ancillary to peace, order and good government, was considered objectionable.

(3) It was recommended that a declaratory enactment should be made by the United Kingdom parliament in this form: "It is hereby declared and enacted that the parliament of a dominion has full power to make laws having extraterritorial operation."

I am not one of those who does not realize that the exercise of that power is fraught with very many possibilities of danger, but the fact that the possibility exists does not militate against the conferring of the power. The mere exercise of it, as I have said, may at some time or another prejudicially affect our own interests, but we must trust the common sense and good judgment of our own parliament not to exercise that power in such a manner as will cause either irritation or difficulty to others or evil consequences to ourselves.

Then came the other subject, the Colonial Laws Validity Act. I take it that there is no member of this house who has not heard of the Colonial Laws Validity Act of 1865. It is amazing, however, how much misapprehension there is with respect to it. The Colonial Laws Validity Act was originally passed as a measure of relief to the colonies, and not to subordinate them. It is rather odd that at this late day there should be those amongst our people who believe that the Colonial Laws Validity Act was to force something upon Canada or upon other parts of the colonial empire. Such was not the case. The fact is that the great judges of England held that the English law governs in certain parts of the world where England founded colonies; that is, an Englishman founding a colony took with him the laws of England, and that law was the supreme law of that particular locality. This became rather inconvenient. I think perhaps some members will recall the judgment of Lord Mansfield, if my memory serves me right—I have not had time to look it up—in which he dealt with that matter very, very exhaustively. The Colonial Laws Validity Act of 1865 was an act passed by the parliament of Great

Britain to declare that colonial legislatures could pass laws at variance with the laws of England. Strange as it may sound, it conferred a power which was not previously possessed. Then came the second part, over which so much difficulty has arisen. It was provided in the second part of that act that if any statute passed by a parliament or legislature of the British Empire should be found to be repugnant to the provisions of a British statute, then the British statute governed. That sounds very strange in these days.

Mr. BOURASSA: May I interject on this very point, because it is very interesting and very important, if it was repugnant to a British statute dealing with matters concerning that part of the empire, not a general statute.

Mr. BENNETT: It might be if it was repugnant to a statute that was general in its terms, and that is one of the difficulties, as I shall presently point out. It was my good or ill fortune to be associated in a case in which the matter last came before the privy council. A man, by name of Nadan, was travelling from Fernie to Montana with a Cadillac car laden with liquor. He passed through the province of Alberta. The car was seized. He was taken before a magistrate. He was fined because he had in his possession liquor that did not have upon it the stamp of the liquor commission of Alberta. He was fined for having liquor illegally in his possession, and the car was confiscated. The case then went to the court of appeal in the province of Alberta; that is, Mr. Nadan appealed to that court. The conviction, on a divided court, was affirmed. The case was then taken to the privy council. I appeared for the province. When leave to appeal was granted I raised the question whether there was any appeal to the privy council, this being a criminal case, and it having already been decided by our court and approved by the privy council, that a conviction for a breach of the liquor laws of Alberta in essence constituted a criminal offence. The court directed that the matter stand over until the main case was argued, and directed that the attorney general of England be advised. Accordingly when the case came on for argument in the fall, the then attorney general, Sir Douglas Hogg, the present Lord Hailsham, at one time a Lord Chancellor, appeared on behalf of the British government, it having been directed by the court that notice be given to him. The question was this: Did a section of the Criminal Code of Canada, passed when Sir John Thompson was Minister of Justice, prohibit