

lying question, not touched upon in the judgment nor in the editorial, present themselves.

The gist of the judgment is that the Dominion statute assuming to direct deportation is ultra vires, as attempting to authorize extra territorial restraint, the act of deportation in any conceivable case involving the use of such extra territorial restraint. The arguments used in support of the judgment do more than uphold the conclusion that the colonial statute is ultra vires, for they would, it seems, apply equally to an act of the Imperial Parliament; and if, as the learned judge concludes, the return of the alien to the United States in the case at bar necessarily involves an assumption of extra territorial jurisdiction, it must follow that deportation is impossible of authorization alike by the Imperial as by the Dominion Parliament.

In determining that the act of deportation does necessarily involve the use of extra territorial constraint, the reasoning is that even when the prisoner is taken to the actual boundary line the application of force by the Canadian officer, himself wholly within Canadian territory, operating upon the person of the alien while even partly within the foreign territory is an extra territorial constraint of such alien by the Canadian officer.

If that be so, will it not follow that a criminal by taking his position astride of the boundary line will render himself safe from lawful apprehension by the officers of either country, whether of the one for punishment or of the other for extradition? For if the force that would eject him, even when applied wholly within one country, necessarily operates partly at least in the other, so also does the force that would draw him into one country even when applied wholly within that country; and the latter is no less unlawful than the former, and thus is as well beyond the power of the Imperial Parliament or of Congress to authorize as of the Dominion Parliament.

Again, if the deportation of a contract labourer be unlawful so also is the deportation of a criminal or of one suffering from a loathsome and contagious disease, who, in violation of the laws of a country has entered its territory; and society is thus without power to protect itself from physical and moral contagion because powerless to prevent by force the breach of the laws it makes for its own preservation.