

conferring of marks of distinction, whatever they may be, by the crown is a prerogative of the crown.

Secondly, what is a prerogative of the crown? It has always been difficult to explain or to define, but in article 511, second edition, volume 6, of Halsbury, it is defined in this way:

The royal prerogative may be defined as being that preeminence which the sovereign enjoys over and above all other persons by virtue of the common law, but out of its ordinary course, in right of his regal dignity, and comprehends all the special dignities, liberties, privileges, powers, and royalties allowed by the common law to the crown of England.

The third proposition is this, that the prerogative of the crown extends to all parts of the British dominions. It is hardly necessary in this connection to refer to a decision, but there was a decision in the courts in England, and the words of the vice chancellor in 1873 were these:

I cannot hesitate to say and to decide, that the queen's prerogative is as extensive in New South Wales as it is here, in this county of Middlesex. It has been contended that the title of the crown by forfeiture was confined to this soil—the soil of England. But the queen is as much the queen of New South Wales as she is the queen of England, and I must hold that every right which the queen possessed by forfeiture extended as much to the colonies as to this country.

So I think we have it clearly established that the prerogative extends to this country.

The next question is, how can that prerogative be parted with? Some of those with whom I have discussed this question in days long since past seemed to have the impression that the prerogative of the crown was something operating in favour of the crown or representing something protecting the crown from the people. On the contrary, the prerogative of the crown is usually the bulwark between aggression on the one hand by those who are aggressors and, on the other hand, the rights of the people. That prerogative of the crown is exercisable, as was very properly said yesterday, upon the advice of the ministry of the day. In the king's commission to his governor general in this country, the prerogative of mercy is referred to. It may not be known but is a fact that under the early commissions of governors general of Canada the prerogative of mercy was exercised by the governor general after he had made his own inquiries and without recommendation of his ministry. To-day the prerogative of mercy is exercisable in accordance with the terms of the patent by which His Excellency is appointed. According to his commission that prerogative is exercised on the instructions and advice

[Mr. Bennett.]

of his ministers. Hence, from time to time, when the Minister of Justice has indicated, it is our unhappy experience to have these circumstances in connection with capital cases brought before us for decision as to whether the prerogative of mercy shall be exercised on our advice or otherwise. That prerogative of mercy pertaining to the crown by right of kingship is exercised in this country upon the advice of the ministers of the day.

It has been said, and properly so—it is pointed out in Halsbury—that the medium of communication between the sovereign and the ministry is the Prime Minister, and the recommendations made by the Prime Minister to the crown with respect to honours and awards is something that is now well understood. I believe Halsbury points out that the sovereign still retains the exclusive right without reference, although as a matter of fact it is referred to those in whom he has confidence. He has the supreme control over the Order of Merit and the Victorian Order. However, that is entirely beside the question.

In 1902 the late Sir Wilfrid Laurier's order in council, to which reference was made yesterday, frankly recognized that the prerogative of the crown was in existence and that it was operative in the Dominion of Canada. He suggested, as has been later established, that that right or prerogative should be exercised upon the advice of the ministry. As I have said, in this country that is the Prime Minister. In England—to finish the historical side of it—as soon as a government comes into power a committee of the privy council composed of three privy councillors is set up to determine what action shall be taken with respect to recommendations to the sovereign, that is, to decide the adequacy or inadequacy of the award for services rendered and matters of that kind. Lord Macmillan, who was here quite recently, is a member of one committee in Great Britain which deals with these matters. Another committee deals with awards of a different character. A committee of the treasury may make recommendations as to awards and honours that shall be received by the public servants of the country. Since this matter has arisen I think it is well that I should state frankly what the position is in the old country with respect to these matters.

In 1919 a motion was made in this chamber with respect to honours and awards. May I point out that yesterday the right hon. gentleman opposite read from the Winnipeg Tribune and stated that Mr. Bennett had defied parliament. That is the difficulty in connection with these matters. Those who write about them do not take the trouble to ascertain that parliament does not consist of the House of