

The provision of the Colonial Laws Validity Act to which reference should be made is section 2, which reads :

2. Any colonial law which is or shall be in any respect 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 and 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.

15. The Colonial Laws Validity Act affects several New Zealand statutes where they deal with matters covered by United Kingdom statutes. The outstanding example arises from the combined effect of the Merchant Shipping Act, 1894, and the Colonial Laws Validity Act. Until section 2 of the Statute of Westminster is adopted and section 2 of the Colonial Laws Validity Act is thereby rendered inapplicable, New Zealand legislation will remain liable to be defeated by any repugnancy to any provisions of the Merchant Shipping Act.

16. The Merchant Shipping Act of 1894 is largely a re-enactment of the Act of 1854. This fact is stressed in paragraph 83 of the report of the Conference on the Operation of Dominion Legislation, which, after pointing out that the Merchant Shipping Act is still the controlling legislation in respect of merchant shipping and that under it the legislatures of the Dominions are treated as subordinate legislatures, went on to say :—

The reason for this is not difficult to understand when it is explained that the Merchant Shipping Act, 1854, which was made for the situation existing at that date, is substantially the legislation which continues to be applicable, to the Dominions. The Merchant Shipping Act, 1894, which with its amendments is now the governing Act, was merely a re-enactment of the 1854 Act, with the insertion of amendments made during the intervening years. In the year 1854 none of the Dominions as such was in existence, and it is obvious that legislation cast in a form appropriate to the constitutional status of the British possessions over half a century ago must be inconsistent with the facts and constitutional relationships obtaining in the British Commonwealth of Nations as that system exists to-day.

17. The field within which New Zealand may legislate with respect to shipping is determined by the Merchant Shipping Act. The scope of that legislative capacity is much more restricted than is usually supposed. The merchant shipping legislation of the United Kingdom permits Dominion legislatures to legislate on certain topics of navigation and shipping, but subject to the conditions laid down in the United Kingdom statutes. If legislation is enacted which transgresses the boundaries fixed by the United Kingdom legislation, it will be deemed repugnant to the Merchant Shipping Act and therefore, by reason of the Colonial Laws Validity Act, invalid. An examination of sections 735