

in New Zealand is *ultra vires* the General Assembly. A similar decision was made in *Tagaloa v. Inspector of Police*, [1927] N.Z.L.R. 883. In this case the Court took the view that, under the New Zealand Constitution Act, our Legislature had no power to legislate for Samoa. The Constitution Act, 1852 (section 53) gave the Legislature power only to legislate for "the peace, order, and good government" of New Zealand, and the Legislature, therefore, could not under that source of authority legislate for territory outside the boundaries of the Dominion. A special Imperial Order in Council relating to Samoa and made under Imperial statutory authority was necessary to give New Zealand power to legislate in our own mandated territory. The decisions in *Croft v. Dunphy*, (1933) A.C. 156, and *Jolley v Mainka*, [1933] 49 C.L.R. 242, however, throws some doubt on the extent to which these decisions are likely to be followed.

22. Although the decision in *Croft v. Dunphy* indicates that the earlier decisions may not be as wide as they were formerly considered to be, paragraphs 38 and 39 of the report of the Conference on the Operation of Dominion Legislation remain an accurate statement of this limitation on the power of Dominions to legislate extra-territorially :—

38. The subject is full of obscurity and there is conflict in legal opinion as expressed in the Courts and in the writing of jurists both as to the existence of the limitations itself and as to its extent. There are differences in Dominion constitutions themselves which are reflected in legal opinion in those Dominions. The doctrine of limitation is the subject of no certain test applicable to all cases and constitutional power over the same matter may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. The practical inconvenience of the doctrine is by no means to be measured by the number of cases in which legislation has been held to be invalid or inoperative. It introduces a general uncertainty which can be illustrated by questions raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration. The state of the law has compelled Legislatures to resort to indirect methods of reaching conduct which, in virtue of the doctrine, might lie beyond their direct power but which they deem it essential to control as part of their self-government.

39. It would not seem to be possible in the present state of the authorities to come to definite conclusions regarding the competence of Dominion Parliaments to give their legislation extra-territorial operations; and, in any case, uncertainty as to the existence and extent of the doctrine renders it desirable that legislation should be passed by the Parliament of the United Kingdom making it clear that this constitutional limitation does not exist.

23. This uncertainty made it necessary for the United Kingdom Parliament to enact section 5 of the Emergency Powers (Defence) Act, 1939, and section 187c of the Army and Air Force Act, 1940. By section 5 the Parliaments of Australia and New Zealand—the only