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NOTEWORTHY CHANGES IN STATUTE LAW.[1]

The statutes available at the time of preparing this report are as follows:

Canada, to 1923; Alberta, to 1924; British Columbia, to 1923; Manitoba, to 1923; New Brunswick, to 1923; Nova Scotia, to 1923; Ontario, to 1924; Prince Edward Island, to 1923; Quebec, to 1924, and Saskatchewan, to 1924.

In dealing with the subject referred to your committee it will be convenient to begin with Federal legislation.

Appeals in Criminal Cases.

During the session of 1923 an important change was made in the Criminal Code by an amendment providing for appeals from convictions on indictment. Previously to this enactment there was a limited right of appeal by way of case stated. Either the prosecutor or the accused might apply to the court to reserve any question of law for the opinion of the Court of Appeal, and if the application were granted a case was stated accordingly, under which only questions of law could be raised. The trial judge might, however, refuse the application.

The new sections permit the person convicted to appeal on any ground which involves a question of law alone; or, with leave of the Court of Appeal or upon the certificate of the trial court, on any ground involving a question of fact alone or a question of mixed law and fact; and, with leave of the Court of Appeal, on any other ground which appears to the court to be sufficient. Further, either the Crown or the person convicted may, with leave, appeal against the sentence passed by the trial court unless that sentence is one fixed by law. The prerogative of mercy is not interfered with, and the Minister of Jus-

[1] Report of the Committee to the Canadian Bar Association.

tice may advise that the sentence be remitted or commuted or he may direct a new trial.

Under the former state of the law, the Court of Appeal might order a new trial, or the Minister of Justice might order a new trial on an application for the mercy of the Crown, or the Minister of Justice might recommend a pardon, but there was no means by which a conviction could be judicially set aside. An examination of the evidence in the Department of Justice by officials, without judicial responsibility and without the means of calling witnesses or hearing fresh evidence and the reasons for whose conclusions were not made public, was open to many obvious objections and unsatisfactory in result.

The new provisions are largely a transcript of The Imperial Act of 1907, 7 Edw. VII., c. 23, passed after and largely in consequence of the case of Adolf Beck, who had been imprisoned for many years for a crime which he had not committed, a case which was made the subject of parliamentary inquiry. But, while the Imperial Act established a Court of Criminal Appeal, the administration of the new sections of the Criminal Code is left with the Courts of Appeal of the various provinces.

The motives which prompted legislation in England were, no doubt, those expressed by Lord Denman in 1848 before a select committee of the House of Lords, namely, "the extreme horror which is justly felt at the bare possibility of a person suffering either death or any other punishment who may not be guilty." Similar reasons operated to some extent to bring about the change in our code, but there was also dissatisfaction with the occasional pardoning of persons found guilty after trial where the reasons for clemency were not apparent. Applications to the Minister of Justice should now become comparatively rare. In any event, the new sections will remove from Canada the bad pre-eminence of being the only country in the civilised world in which there was no appeal, in the usual sense, in criminal cases.

Anti-Combine Legislation.

An important measure passed in the session of 1923 is The Combines Investigation Act, which is intended to prevent certain practices considered detrimental to the public interest, such as mergers, trusts and monopolies, and contracts for limiting production, fixing prices, raising prices, preventing or lessening competition in production or "otherwise restraining or injuring trade or commerce." Provision is made for the appointment of registrars and commissioners, with extensive powers, who may investigate and report upon any case of an

alleged combine. The Minister is given the right to publish the report of a commissioner if he thinks fit, and provisions are also made for reducing or abolishing customs duties upon any articles supposed to be the subject of an illegal combine and for revocation of a patent which is being used for objects comprised in that term.

Section 498 of the Criminal Code enumerates a list of offences almost identical with those set forth in section 2 of the Act now under consideration, but the section proved ineffective in the absence of any means of discovering and proving the existence of the prohibited combinations. Accordingly, a statute was passed in 1910 for the investigation of combines, monopolies, trusts and mergers, only to give way in 1919 to The Board of Commerce Act and The Combines and Fair Prices Act of that year. These Acts came before the Privy Council and was declared *ultra vires,* (1922) 1 A.C., p. 191, as dealing with property and civil rights and thus trenching upon provincial jurisdiction. It was to fill the gap thus created that the statute of 1923 was passed. The substantial purpose of this measure is to make effective the provisions of section 498 of the Criminal Code by bringing to light through inquiry the practices there condemned; but section 26 creates a new offence, namely, knowingly assisting in the formation or operation of a combine in the comprehensive sense given to that word by the definition. The new Act has been severely criticised as involving an unwarranted interference with business, but so far as is known its constitutional validity has not been questioned. The Department of Justice, at all events, is satisfied that the pitfalls have been avoided in which earlier legislation was wrecked.

A Lien for Dominion Income Tax.

By section 10 of chapter 52 of the statutes of 1923 a new section was added to The Income War Tax Act, 1917, which, it is not too much to say, created consternation among those engaged in the investment business and met with the general condemnation of the legal profession. The amendment in question is in these terms:

"25. All taxes, interest and penalties payable under this Act shall constitute a lien upon the assets of the taxpayer both real and personal. This lien shall be deemed to attach or to have attached on the first day of May, immediately succeeding the taxation year in respect of which the tax is payable or to which the interest and penalty relate, and notwithstanding lack of notice, registration or publication, shall have priority over any mortgage, charge, lien or hypothec or any assignment or conveyance, including any security taken under section eighty-eight of The Bank Act, executed or created after the said first

day of May, save and except the liability to the Crown of any person, firm or corporation for payment of the excise taxes specified in The Special War Revenue Act, 1915, and amendments thereto; provided always, however, that the lien or charge hereby created shall not follow or attach to personal property sold *bona fide* to a purchaser for value without notice unless such property is disposed of in such a manner as to bring the sale within the provisions of any Bulk Sales Act or similar statute."

Resolutions were passed by law societies and bar associations throughout the country protesting against this enactment and calling for its radical amendment. The language of the statute lent itself to the construction that a lien was created having priority over existing mortgages and charges. Further, before an investor could safely lend money upon mortgage, he would require to ascertain that the income taxes of all persons who had owned the property since the Act came into operation had been paid, a fact not easy of ascertainment. Even if provision were made for the issue of certificates stating either that all income taxes had been paid or the amounts remaining unpaid, great delays in obtaining such certificates would be inevitable. At present, months usually elapse between the date of payment and the return of an assessment notice or official receipt.

In consequence of the objections taken a bill has been introduced into the House of Commons to alter section 25. Under the new arrangement the lien is to attach at midnight of the day when an assessment notice is mailed. Subsection (2) is in these terms:

" (2) Except as hereinafter provided the lien hereby created shall be deemed to attach at twelve o'clock midnight of the day of the mailing of the notice of assessment and shall rank for every purpose after any transfer or security validly executed on or prior to the day of mailing of the notice of assessment and before any transfer or security validly executed after the day of mailing of the notice of assessment."

And subsection (5) provides that the lien shall be void after the expiration of five years from the end of the taxation period in respect of which the tax is payable.

This amendment removes some of the obnoxious features of the legislation. Since the lien attaches only on the day of mailing the notice of assessment, the department is in a position to state immediately whether or not the tax has been paid, and, if it has not, how much remains due. Further, a proposed lender will only require to obtain information as to the taxes of all persons who have owned the land for five previous years. These are advantages, but if they are to be available, provision should be made for the prompt issue of certificates of

taxation, and it is essential that the statements in such certificates shall be binding upon the Crown. One awkward feature remains to be dealt with, namely, the difficulties thrown in the way of foreclosure. Can a mortgagee foreclose a charge in favour of the Crown which is subsequent in time to his security? "There is no foreclosure against the Crown" (Halsbury, Vol. 21, p. 272, note (*f*)). If a mortgagee cannot so foreclose, what will be the selling value of the land subject to a Crown lien? Even if the right to foreclose should be granted, must proceedings be taken in the Exchequer Court? It would seem necessary, if delay and embarrassment are to be avoided, to provide that the rights of the Crown under this statute should be subject to the same remedies and to be disposed of in the same way in the ordinary courts as the rights of a subject.

The Bank Act.

The Bank Act received its decennial revision in 1923. Although the Act was the subject of prolonged and at times heated discussion in Parliament, no further radical alterations were made in its terms. Noteworthy amendments are to be found in section 54, requiring a statement of the assets and liabilities of any corporation controlled by the bank to be included in the annual statement; section 59, making the directors jointly and severally liable for any division of profits, beyond eight per cent. unless the bank has a rest or reserve fund exceeding thirty per cent.; section 153, containing revised provisions as to the civil liability of an officer who knowingly or negligently prepares, signs, approves or concurs in any document containing a false or deceptive statement, or any return which does not set forth the true financial position of the bank; and section 156, enabling the Minister of Finance to investigate the business of any person who, without statutory authority, receives money on deposit or for transmission to a foreign country, and to require security to be given or the business discontinued.

The Patent Act.

The Patent Act, which had not been revised since 1903, was revised in 1923. The most important changes to be found in the new measure are in sections 40 and 41. The former gives to Commissioner of Patents power to compel the patentee to adequately manufacture the patented article or carry on the patented process within Canada so as to satisfy the reasonable requirements of the public. The latter provides for revocation of the patent if it is shown that the article or process is manufactured or carried on mainly outside of Canada for the supply of the Canadian market.

Marriage Legislation.

By chapter 19 of the statutes of 1923 a woman is permitted to marry her deceased husband's brother or such brother's son. This provision is the second piece of legislation upon the subject of marriage to the credit of Parliament since the Dominion was established in 1867, the other being a provision which allows a man to marry his deceased wife's sister or that sister's daughter. The Marriage Act with the latest addition, now contains six lines, which cannot be considered a very lavish use of the power of Parliament to legislate upon that subject.

Provincial Legislation—Marriage.

The provinces have been less sparing in legislating upon this subject. The solemnization of marriage having been placed under their jurisdiction, they have passed statutes, the most recent of which is The Marriage Act of Saskatchewan, 1924, requiring the consents of parents or guardians to the marriage of minors and in some cases forbidding the issue of licenses to or the marriage of persons under a certain age, "except," to use the language of several of the statutes, "where a marriage is shown to be necessary to prevent the illegitimacy of offspring." The minimum age in Ontario is fourteen, in Alberta and Saskatchewan fifteen, and in Manitoba and British Columbia sixteen. In general the consent of the father, if alive, or if not, of the mother or of a duly appointed guardian is required to the marriage of a minor, but in Alberta and Saskatchewan both father and mother must agree if the party to the proposed contract is under eighteen. In Manitoba and New Brunswick the minority for the purpose of consents ceases at eighteen, in British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia at twenty-one.

Legitimation by Subsequent Marriage.

Among the statutes affecting noteworthy changes in the law is one providing for the legitimation by the subsequent marriage of their parents, of children born out of wedlock. This reform, as is well known, was proposed at the Parliament of Merton held in 1235-36, in order to bring the law of England into line with what was the law of the church and the almost universal rule on the continent of Europe, but on the proposal being made all the barons present exclaimed with one voice that they would not change the laws of England,—"*nolumus mutare leges Angliae*," which has been described as an outburst of national pride and conservatism. Legitimation Acts have been passed, on the recommendation of the Commissioners on Uniformity

of Legislation, by the provinces of British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island and Saskatchewan. Alberta had such an Act as early as 1916. A bill for the purpose was introduced into the Imperial Parliament during the present session and passed on the twenty-seventh of last month, the seven centuries that have elapsed since the subject first came up having presumably given time for mature deliberation.

Adoption of Children.

A subject somewhat akin to the above is the adoption of children. Adoption, in the sense of the transfer of parental rights and duties in respect of a child to another person and their assumption by him, is not recognized by the law of England, but it has of recent years been generally introduced into the provinces of Canada. At the last session of the Quebec legislature an Act was passed providing that any person of the age of twenty-one years or over might petition a judge of the Superior Court to be allowed to adopt another person younger than himself. Certain consents are to accompany the petition, and after inquiry into the facts the judge may grant the prayer of the petitioner, if satisfied that the adoption is for the benefit of the child. When an order for adoption has been made the parents or persons having the guardianship of the child are relieved of their rights and obligations as such and the child becomes to all intents and purposes the child of the adopting parents.

Legislation similar in substance but differing in certain details is now in force in most of the provinces. In New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan the wife or husband of the petitioner, if alive, is required to join in the application. In Alberta and British Columbia any adult person or a husband and wife jointly may apply to the court. In British Columbia, in case one only of the spouses applies, the consent of the other must be obtained.

Guardianship and Custody of Infants.

By an amendment in 1923 to The Infants Act of Ontario, the father and mother of an infant are made joint guardians and equally entitled to its custody, control and education. Provisions are made for cases where the parents are divorced or separated. Joint guardianship is also the rule in Alberta and British Columbia. A bill to provide for joint guardianship has also been brought before the Imperial Parliament.

In Manitoba the father, if living, is sole guardian of his infant children, but after his death the Surrogate Court may appoint a guard-

ian, and may so appoint the mother, notwithstanding a testamentary disposition by the father to the contrary. The custody and control of children are vested in the father, but the court may give access to or sole control of her children to the mother. In Nova Scotia and Saskatchewan the father is sole guardian, and after his death the mother becomes guardian either alone or jointly with any guardian appointed by the father.

Maintenance of Children.

Except under the operation of the poor law, Halsbury says, there is no actual legal obligation on the father or mother to maintain a child unless the neglect to do so would bring the case within the criminal law. In Alberta, British Columbia, Manitoba and Ontario, the latest legislation being The Ontario Deserted Wives' and Children's Maintenance Act of 1922, amended in 1923, a father may be compelled by summary proceedings to maintain his children under the age of sixteen. On the other hand, in British Columbia, Ontario and Saskatchewan a destitute parent may obtain an order for maintenance against his son or daughter if these have sufficient means for the purpose, whereas at common law children were under a moral obligation only to maintain their parents. In Alberta a destitute grandparent may obtain an order for maintenance against his grandchild.

Social Legislation.

Another piece of social legislation is that which provides for the protection of the children of unmarried parents, adopted in Ontario in 1921, in British Columbia in 1922 and Alberta in 1923. The birth of every such child is to be registered, and an officer appointed for the purpose is to make inquiries into the circumstances connected with the birth, to advise the mother and to take such action on her behalf as may seem to be advisable in the interests of the mother and child.

Minimum Wage Acts for women are in force in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan, where minimum wage boards have been established for their administration. Quebec has placed this matter under the control of a commission. If, upon inquiry, the commission is of opinion that the wages paid in any industrial establishment are insufficient, it may convene a conference of persons representing the employers and the employees respectively, together with a number of disinterested persons, and such conference may after hearing the employer and employees decide by vote the minimum wages to be paid to women in that industry.

Liquor Legislation.

The traffic in intoxicating liquors has been the subject of a great deal of legislation in recent times. Most of the provinces have adopted stringent prohibitory measures, but several of them, after the experience of a few years, have found it desirable to refer the matter to the electors for their opinion, and in several cases the result has been a change of policy. Alberta, at the last session of the legislature, in consequence of an unfavourable vote on the subject, repealed its Liquor Act and established a system of Government liquor stores, to be administered by a liquor control board. The Government vendors are to have a monopoly of sale, with certain specified exceptions, and permits are to be issued entitling the holder to purchase liquor "for beverage, medicinal or culinary purposes" under certain conditions. Licenses may be issued to clubs for the sale of beer to members for consumption upon the club premises. Licenses may also be granted to individuals for the sale of beer upon licensed premises, and the owners of such premises may purchase supplies from brewers duly licensed by the Government of Canada. There are also the usual provisions allowing druggists, physicians, dentists, veterinary surgeons and hospitals to keep and sell or administer liquor under certain restrictions, and clergymen to purchase wine for sacramental purposes.

The Lieutenant-Governor in Council may, upon the petition of not less than twenty-five per cent. of the voters in any municipality or electoral division, create the municipality or electoral division a local option area in which a plebiscite may be taken for and against local option. If the affirmative of the question prevails, no beer or club license can be granted in that area.

A measure of substantially the same character was passed at the special session of the Manitoba legislature held in July, 1923, having been previously referred to the electors under a referendum Act. British Columbia established a liquor store system in 1921, and in 1923 amended the Act to provide for club and beer licenses. Quebec has had a liquor store system for some years, the present statute governing the matter being the Alcoholic Liquor Act of 1921 with amendments. Saskatchewan is to take a vote in July of the present year upon questions framed to test the opinion of the electorate upon the question of prohibition, and upon their views, in case a liquor system under Government control should be established, as to whether all spirituous and malt liquors should be sold by Government vendors in sealed packages, or whether in addition thereto beer should be sold in licensed premises. New Brunswick, Nova Scotia and Prince Edward Island still adhere to their prohibitory laws. Ontario, at the last session of the legisla-

ture, authorised the government to submit to the electors "any question or questions, as to the enactment of legislation repealing or amending this (the Ontario Temperance) Act, or as to prohibiting, regulating, controlling or otherwise dealing with the sale, keeping for sale, having in possession or transportation of liquor in Ontario," and half a million dollars appropriated for a plebiscite this year.

Sale of Securities.

The extensive frauds perpetrated upon the public by the sale of shares in wild cat or highly speculative undertakings led some years ago to the enactment of laws, which came to be known as "blue sky" laws, first in the State of Kansas and then in more than thirty other states, and this legislation in due time spread to Canada. Manitoba passed an Act of the kind in 1912, Saskatchewan in 1914, Alberta in 1916 and New Brunswick in 1923. Under these Acts a board is appointed to investigate companies whose securities are offered for public subscription, and the sale of stocks, bonds and other securities is forbidden unless a certificate authorising such sale has first been obtained. The company seeking the authority is required to file with the board documents showing the objects of the corporation, its financial condition, the plan upon which it proposes to transact business, the contracts it proposes to make with subscribers and such other information as the board may demand. If the board finds that the company is solvent, that its intended scheme of operations and contracts provide for a fair and equitable plan of transacting business—Manitoba and Saskatchewan also require the company to show the probability of a fair return on the securities sold—the board issues a certificate.

Western authorities are of opinion that this legislation has been of great service in protecting their people from exploitation by unscrupulous promoters, but in *The Ruthenian Farmers' Elevator Company* v. *Lukey and the Attorney-General for Saskatchewan*,[2] The Sale of Shares Act of that province was declared *ultra vires* in so far as it affected Dominion companies, and unless this decision is reversed that form of legislation will probably be abandoned.

The provinces of Ontario and Quebec deal with the subject in a different manner. The Ontario "Sale of Securities Act, 1924," requires the issuer of any security to file with the Provincial Secretary a prospectus containing complete details of every matter affecting the strength and solvency of the issuer and the value of the securities. Provision is made for delivery of copies of the prospectus to purchasers, for a statutory notice in all advertisements and circulars other than

[2] (1924), S. C. R. 56.

a prospectus that a copy of the prospectus can be obtained on application, and for the liability of the signatories to the prospectus to pay compensation to any person who suffers damage by reason of his reliance upon any untrue representation therein contained. Ontario has also provided for the registration of brokers, which will enable the authorities to keep a close supervision on persons dealing in securities.

The Quebec Act, chapter 64, of 1924, requires every company, whether provincial or extraprovincial, excepting Dominion companies, before offering stocks or bonds for sale to file with the Provincial Secretary documents setting forth full information as to its constitution, powers and financial position. Any company which sells or offers for sale its stock or bonds without the required formalities shall lose its recourse against the purchasers for the price or balance of the price, and directors who have by their vote participated in such illegal act are made personally liable for repayment of the price or balance, as the case may be. A separate Act, chapter 65, inflicts a fine upon all companies, howsoever or wheresoever incorporated, who sell their securities without previously furnishing to the Provincial Secretary the information required by the former Act, and in default of payment the directors are made liable to imprisonment.

Contributory Negligence.

By an Act passed at the last session of the legislature, Ontario has adopted the principle of apportioning damages in cases of contributory fault or negligence between the plaintiff and defendant, according to the respective degrees of fault, a practice which has long been the rule under the civil law of Quebec and has also been imported into admiralty law. The harshness and injustice of the common law rule, under which, although the damage done may be due to the concurrent negligence of both parties, the plaintiff alone must bear the whole loss, has frequently been commented upon and a preference for the more equitable rule of the civil law expressed. See the address of Mr. Justice Anglin to this association at Vancouver in 1922, and the judgments of Duff, Anglin and Mignault, JJ., in *G. T. P. Co.* v. *Earl.*[3] The whole subject was comprehensively discussed by Mr. Angus MacMurchy in a paper read before this association at its meeting in Montreal last year. The Ontario enactment requires the jury, or the judge in an action tried without a jury, to find "the degree in which each party is in fault and the manner in which the amount of damages found should be apportioned so that the plaintiff shall have judgment only for so much thereof as is proportionate to the degree of fault

[3] (1923), S. C. R. 397.

imputable to the defendant"; where it is not practicable to determine the respective degrees of fault, the damages are to be equally divided. It might be anticipated that difficulty would be found in measuring the respective degrees of fault, but this should prove quite as practicable in common law as in admiralty courts or in jurisdictions where the civil law prevails.

Taxation.

The needs of the provinces caused by growing expenditures are shown by the new subjects of taxation which appear upon the statute book. Provincial amusement taxes are levied in Alberta, British Columbia, Manitoba, Nova Scotia and Ontario. In Quebec and Saskatchewan these taxes go to the municipalities. Gasoline is taxed in Alberta, British Columbia, Manitoba and Quebec. British Columbia, Manitoba, Nova Scotia and Prince Edward Island have provincial income taxes. British Columbia and Prince Edward Island tax personal property.

Alberta in 1923 passed a Mineral Taxation Act, imposing upon every owner of mineral rights a tax of three cents per acre of the surface of the land in which the minerals lie. This Act was disallowed at Ottawa. Another Act passed during the same session requires mine owners to pay taxes upon the gross revenues of their mines.

Manitoba in 1923 passed a Grain Futures Taxation Act, placing a tax upon every contract of sale of grain for future delivery made on any exchange or similar place of business in Manitoba with certain exceptions. The province of Saskatchewan, having petitioned for the disallowance of the Act, it was referred by the Dominion Government to the Supreme Court of Canada and pronounced unconstitutional. It is understood, however, that this decision will be appealed to the Privy Council.

Labour.

British Columbia in 1923 passed an "Hours of Work Act," by which it is provided that, subject to certain exceptions, the working hours of persons employed in any public or private industrial undertaking other than one in which only members of the same family are employed, shall not exceed eight in the day or forty-eight in the week. The limitation does not apply to persons holding positions of management or supervision, nor to those employed in a confidential capacity. This is the only general enactment of the kind in Canada, but there are in some of the provinces limitations of the hours of work of persons engaged in certain occupations, such as mining, and in the factory

and other Acts of all the provinces restrictions for the protection of women and young persons.

General.

A uniform Life Insurance Act, prepared by the Commissioners on Uniformity of Legislation, and finally approved in 1923, has been adopted by every province whose legislation in the interval is available for reference at the time of writing.

A uniform Warehousemen's Lien Act, prepared by the Commissioners, has been adopted by Alberta, British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan.

The locomotive habits and customs of the people are reflected in current legislation, Alberta, Quebec and Saskatchewan having consolidated their laws with regard to motor vehicles in 1924, and Ontario having done so in 1923, when a comprehensive Highway Traffic Act was passed.

OUR CONSTITUTION OUTSIDE OF THE BRITISH NORTH AMERICA ACT.[1]

Ever since 1867 the discussions of the Canadian Constitution have centered around the British North America Act. For nearly sixty years now there have been many fights, not only in the Courts but in the political arena, over the interpretation of that Act. Sections 91 and 92, and of course sometimes 93, have been the battlefield, although at times there have been questions of Crown property come up; there have been other important questions too. But I think one of the rather unfortunate results of that long series of contests has been to lead to the impression, not only among the public at large but in the profession to some extent, that all our Constitution is contained in the British North America Act. In the May number of the CANADIAN BAR REVIEW, for instance, you will find these words:—"But it is a mistake to think that the Constitution of the Dominion of Canada, though a written one, is intended to be rigid"—a direct statement that our Constitution is a written one and contained in the British North America Act. Expressions of that kind are continually found, particularly in the public press, from which the public gain their impression of our Constitution; and you will find it conveyed continually

[1] From an address delivered to the members of the Saskatchewan Bar Association at Regina on 25th June, 1924.