

UNIFORMITY OF LEGISLATION.

One of the objects of the Canadian Bar Association, as set forth in its Constitution, is to promote "uniformity of legislation throughout Canada as far as consistent with the preservation of the basic systems of law in the respective provinces."

The idea was borrowed from an American source, for the promotion of uniformity of legislation throughout the Union was among the purposes for which the American Bar Association was established in 1878. It was long before any special method was devised for carrying this purpose into effect, and finally it was due to the initiative of the State of New York that such a method was found. In 1890 the legislature of that state passed an Act authorising the Governor to appoint three commissioners by the name and style of Commissioners for the Promotion of Uniformity of Legislation in the United States, it being their duty to examine the subjects of marriage, divorce, insolvency, the form of notarial certificates and other subjects, to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and especially to consider whether it would be wise and practicable for the State of New York to invite the other states of the Union to send representatives to a conference to draft uniform laws to be submitted for the approval and adoption of the several states. It was decided that such a step would be both wise and practicable, and invitations were accordingly extended to the other states with such results that at present all the states, territories and possessions of the United States, are represented on what is called The National Conference of Commissioners on Uniformity of State Law.

The last report of this body shows that between 1892 and 1928 it drafted and approved forty-four measures, of which one, the Negotiable Instruments Act, founded upon the English Bills of Exchange Act of 1882, has been adopted in fifty-two jurisdictions, the Warehouse Receipts Act in forty-eight, the Sales Act, founded upon the English Sale of Goods Act of 1893, in twenty-nine, the Bills of Lading Act in twenty-seven and the Stock Transfer Act in twenty-one. The National Conference is affiliated with the American Bar Association, to which it reports annually, and the Bar Association approves its measures and recommends them to the legislatures of the States.

As the American Bar Association gave the hint for forming a Canadian Bar Association, having the same objects in view, so the National Conference suggested a similar organisation in Canada for harmonising the legislation of the provinces having the common law

for their basic system. Obviously the problem was not so acute nor was its solution so pressing here as it was across the border. There are forty-eight states in the American Union and four self-governing territories or dependencies, each making its own laws and dealing with many of the subjects which in Canada have been reserved to the central Parliament. Thus, it has been seen that the original impulse towards uniformity sprang from a desire to obtain some measure of agreement in the laws of marriage, divorce and insolvency, while the most successful of the model Acts is that dealing with negotiable instruments. The criminal laws also, both in substance and procedure, belong to the states. These are all topics which are outside the jurisdiction of the Canadian provinces.

The extensive powers assigned to Parliament by the British North America Act have saved us in a large measure from the confusion and hardships caused by the wide diversity of local legislation in the American states; nevertheless there remains a field within which such diversity may produce much inconvenience.

At the first annual meeting of the Canadian Bar Association held in 1915, the late Sir James Aikins gave an address in which he emphasized the insistent demand and urgent need of some codification of the local laws of the provinces where the common law prevails. Mr. Eugene Lafleur also made a strong plea for harmonising the law of all the provinces whose systems are derived from the common law of England, with regard to those portions of mercantile law not committed to the central Parliament. He illustrated the need for such action by citing the case of insurance. "Every Province," he said, "has an insurance law of its own; for the most part in the form of a statutory code, and while these systems are not differentiated by any fundamental principles they abound in minor diversities calculated to produce conflict and uncertainty. For instance, the statutory conditions prescribed for insurance policies vary in the several provinces, so that a great trans-continental railway is unable to get a uniform cover on its rolling stock throughout Canada, but must submit to a modification of its contract every time it crosses a provincial border line. . . . How much better it would be if we could standardise the policy conditions and have a uniform insurance law adopted by our Legislatures." He added that "Even as to Quebec the differences in the law on this subject are quite negligible."

In furtherance of the object set forth in the Constitution, committees of the Bar Association were appointed at the outset to deal with company law, insurance, conditional sales and succession duties, and in 1916 the Council recommended that sales of goods, chattel

mortgages, insolvency, bulk sales and the enforcement of extra-provincial judgments should be made subjects of investigation and report by special committees. The committees of the Association have done a great deal of work in the years that have intervened and many valuable reports have been prepared and presented at the annual meetings.

The most important step, however, towards advancing uniformity of law was the establishment in 1918 of the Conference of Commissioners to which reference has been made above. This body is composed of representatives of all the provinces, who give their services without reward and who meet annually.

Their usual practice is to assign to certain of their number a subject upon which it is proposed to frame a uniform measure and to obtain a report showing the existing state of the law. Directions may then be given as to the manner in which it is proposed to deal with the subject, the limits to be observed and features which are to be retained or rejected, and certain of the commissioners are deputed to prepare a first draft. The draft is distributed and brought before the annual meeting where it is criticised in detail by the full Conference. It is then assigned for revision, possibly to the same men who prepared it, possibly to others, who are required to revise it in the light of the views expressed in discussion. Most of the Acts drawn by the commissioners are subjected to several revisions before being approved. When approved they are recommended for adoption by the various provincial Legislatures.

Since the Conference was founded, twelve model Acts have been drawn and have been placed upon the provincial statute books. These deal with bulk sales, legitimation by subsequent marriage, warehousemen's liens, conditional sales, life insurance, fire insurance, reciprocal enforcement of judgments, contributory negligence, intestate succession, devolution of real property, bills of sale and assignments of book debts. As was to be expected, some of these Acts have met with greater favour than others. Thus, The Life Insurance Act has been adopted by all the provinces except Quebec and The Fire Insurance Policy Act by five provinces, while The Contributory Negligence Act has been adopted in only three provinces and The Conditional Sales Act in two.

Mention has been made of the work done by the committees of the Bar Association. Much assistance has been afforded the Commissioners by the Committee on Comparative Legislation and Law Reform. That Committee has for its objects the performance of such research work as the Conference suggests, acting as a medium of communication with the commissioners, co-operating with other

Committees of the Bar Association and keeping in touch with the provincial bar associations so as to inform itself of the varying local views with respect to the different matters under discussion.

As an example of the valuable aid given by this committee to the Conference, one case may be cited. In 1924 the Conference passed a resolution requesting the committee to present a report as to the law of the various provinces on the subject of trustees. The committee made an interim report in 1925, and asked for another year in which to complete its investigations. A completed report was presented in 1926 and submitted for the consideration of the Bar Association in that year. The report, with the accompanying memoranda, occupies pages 238 to 353, inclusive, of the proceedings of the Bar Association for 1926, and a perusal of those pages will show what an amount of labour was involved. Upon consideration of this report, the Commissioners asked the committee to carry on its work by preparing a model Trustee Act. Such a measure was accordingly drawn and placed before the commissioners in 1927, was examined and reported on by a special committee in 1928 and put down to be considered clause by clause in 1929.

The work of the Conference is becoming gradually better known to the public and better appreciated by the Legislatures. The annual meeting in 1928 was attended by the Attorneys General of all the prairie provinces, who took an active part in the proceedings, and it is hoped that the attendance of such officers will be increasingly common.

The desire for uniformity is a local expression of the need universally felt for certainty, clearness and availability in the laws by which we are governed, with as great a degree of simplicity as the subject matter permits of. A generation ago a project for constructing an imperial commercial code was brought before the Congress of Chambers of Commerce of the Empire; while, early in the present century, the subject of a uniform international negotiable instruments Act was considered at conferences called by the Dutch Government and held at the Hague, at which thirty-six nations were represented. *Misera est servitus ubi jus est vagum aut incertum.* It was the great mass of heterogeneous law, statutes, decrees of the Senate, edicts, rescripts and mandates which weighed heavily upon the people of the Empire and caused Justinian to appoint commissioners for the purpose of revising and codifying Roman law. It was the many different local customs and systems of law prevalent in France at the time of the Revolution which called for similar treatment and issued in the Code Napoléon.