

LAW-MAKING AND THE ONTARIO STATUTES FOR 1923.

The fourth session of the Fifteenth Legislature of the Province of Ontario was prorogued on May 8th last, the result of the session being that one hundred and twelve bills received the Royal Assent and have been added to our statute books. Many of these Acts are of a local or private nature, but more than fifty are Public Acts. A brief outline of the difficulties which beset the path of the draftsman of a bill, and confront the legislator when the bill is brought before the House, may be in order before commencing a review of some of these statutes.

The law is a progressive science unrelenting as it is unpausing in the direction of continual improvement, therefore the making of new laws is essential and the repealing or revising and changing of enactments which have outlived their usefulness, either in whole or in part, is necessary and wise, in order that the requirements of an ever changing age with its varying customs and advancing ideas may be satisfactorily and appropriately regulated. We are tempted, however, to regard the comment of King Solomon, "the wisest man the world e'er saw," as equally applicable to the making of laws as it was to the making of books.

The Canadian Law Times of 1918 (Vol. 38), contains an article entitled "Legislative Chaos in Canada," in which reference is made to the inexactness of legislation in Canada. The writer says: "it is an admitted fact that however well versed a person may be in that law, it is nevertheless a most difficult matter to advise a client with any degree of certainty as to his legal position," and, in discussing the drafting of legislation makes the following statement: "without a knowledge of the existing law it is practically impossible to draft a bill with any degree of accuracy. Very often no information is supplied as to the object of the legislation, and the law clerk is of necessity working in the dark. Legislation so prepared results in a chaotic condition of the law." That this is entirely true is apparent to any member of the profession who has attempted to arrive at a definite opinion in respect of a given enactment and the various amendments thereto—an addition here, a deletion there—the whole frequently consisting of a veritable maze of words, oftentimes so devoid of perspicuity as to make one part appear to contradict another part.

Sir Courtenay Ilbert, in his interesting and highly instructive

lectures, delivered on the Carpentier foundation of the Columbia University, entitled "The Mechanics of Law Making" (published in book form in 1914), refers to the necessity for an accurate knowledge of the existing law in respect of the subject upon which it is intended to legislate, but says "the composition and language of statutes is a subject which has been comparatively neglected by the authors of legal literature and on which not very much has been written."

It is regretted that limitation of space permits only a reference to Sir Frederick Pollock's essay on "Some Defects of Our Commercial Law" (Pollock's Essays in Jurisprudence, 1882, page 60).

An interesting quotation from this essay will be found in "The Mechanics of Law Making" (*supra*), pages 13 and 14.

There can be no doubt that it is much easier to conceive what would be useful law than to construct that law so that it may accomplish the design of the legislator. Consideration must also be given to the material difference in the view point of the lawyer and the legislator. The lawyer is concerned with the fundamental principle of the existing law—the foundation upon which it rests—and endeavours to apply it to the facts, whereas the legislator looks upon the existing law as *defective* or *insufficient* and considers how it should be changed to meet the requirements of the case. For this reason it is necessary that the parliamentary draftsman, in addition to an accurate acquaintance with the subject-matter, must have constructive imagination to do good work, as well as the power to visualize things in concrete form and picture what the effect of a paper scheme will be when that scheme is put in practice. In drafting legislation it is advisable that the bill be worded so as to permit of its being discussed in detail.

The style of a statute is a very important part as being the manner in which language is employed to express conceptions. One may have a perfectly clear conception in regard to a particular point, and yet express that conception in phraseology which is ambiguous and obscure.

It will be apparent, therefore, that there are many difficulties to be considered and overcome in enacting legislation and because of these difficulties great care should be exercised in the preparing of new laws or the revising and altering of existing ones. Helpful criticism is wise, but unfortunately much criticism is merely fault-finding with no attempt to point out a better method of procedure. The support of the laws and liberty of our country is essential, and any comment which may be made in reviewing the enactments will be offered

with a sincere desire to have Ontario set an example of safe, sane, clear and comprehensive legislation.

The first chapter of importance is ch. 3: "An Act respecting Elections and the Preparation of Provincial Voters' Lists." This Act makes various changes in The Ontario Election Act, R. S. O. 1914 (ch. 8), The Ontario Election Laws Amendment Act, 1920 (ch. 2), and The Ontario Voters' Lists Act, 1922 (ch. 4). Section 2 (1) enacts that: "Notwithstanding anything contained in The Ontario Election Act or the amendments thereto or in The Election Laws Amendment Act, 1920, or in The Ontario Voters' Lists Act, 1922, the list to be revised by the revising officer under the provisions of The Ontario Voters' Lists Act, 1922, shall be Part I. of the last list finally revised by the Judge of the county or district court, and Part III. of the said list prepared by the clerk of the municipality and filed with the clerk of the peace."

Sub-section 2: "Wherever through accident, fire or otherwise, a municipality has no assessment roll, voters' lists shall be prepared in the manner set forth in Part IV. of the Ontario Voters' Lists Act, 1922, with respect to territory without municipal organization."

Sub-section 3 enacts that voters' lists shall be prepared as provided by Part IV. of the Ontario Voters' Lists Act, 1922, where territory has been newly organized and no assessment roll has been prepared therefor.

Sub-section 4 enacts that where an alphabetical list has been prepared, but Parts I. and II. thereof have not been revised by the Judge, the Election Board may direct the use of Part I. and Part III., or of either Part in place of the lists mentioned in sub-section I.

[For The Ontario Voters' Lists Act, 1922, see Ontario Statutes, 1922, ch. 4. Parts I. and III. apply to towns, townships, villages, and except as varied by Part II., to cities.]

Part II. applies to every city in which a by-law shall have been passed for taking the assessment at any time prior to the 30th September, and fixing separate dates for the return and final revision of the assessment rolls for each ward or subdivision of a ward as defined in the by-law. Part IV. applies to every part of Ontario, including Indian Reserves, not comprised in an organized municipality.]

By sec. 15 the personnel of the election board is changed, sec. 20 (1) of The Election Laws Amendment Act, 1920, being repealed. Under this section the Board for the County of York shall be composed of seven members, "the six judges of the county court and the clerk of the peace." In every other county and provisional judi-

cial district the board shall be composed of five members; "the judge and junior judge of the county or district court, the local registrar of the Supreme Court, the sheriff, and the clerk of the peace, and where there is no junior judge, the local master of the Supreme Court, or if he is also a judge, the registrar of deeds or one of them, if more than one, to be designated by the others members of the Board." The Act consists of 24 sections, and came into force on the day upon which it received the Royal assent, except secs. 3 to 7 and 10 to 12, which amend The Ontario Voters' List Act, 1922, and came into force on 1st January, 1924. It is to be hoped that the Acts relating to Elections will soon be revised and consolidated.

Chapter 5, The Betting Information Act, 1923, is designed to prohibit the publication of betting information—except the publishing of information during a race meeting relating to races run or to be run on the premises of an incorporated association lawfully conducting races in Ontario—under a penalty not exceeding \$500. Imprisonment, for a period not exceeding six months may also be imposed.

The sale and distribution of papers published in the United Kingdom is not prohibited.

This Act came into force on July 16th, 1923, and shortly thereafter a case—*Rex v. Lichtman*—was tried before Judge Denton, who held that the Act was *ultra vires*, for since the Dominion Parliament had dealt with the publication of betting information as a matter of criminal law the Provincial Legislature could not deal with the same subject in an attempt to improve that law. On appeal¹ the Supreme Court of Ontario upheld this decision, the reasons for judgment being that the Dominion Parliament had made it an offence to publish betting information with intent to aid or assist in betting. The Ontario Legislature in effect amended that legislation by declaring that publication should be an offence without the intent.

The Act was therefore *ultra vires* of the Province.²

Chapter 13, An Act to Amend the Rural Hydro-Electric Distribution Act, 1921, provides that where a township or urban municipality is distributor of electrical power or energy in an adjoining township or within any such rural power district under sec. 24 of the Public Utilities Act, or any other general or special Act, such municipality may be paid a sum not exceeding 50 per cent. of the capital cost of constructing, in such adjoining township or district, primary transmission lines and cables, the payment to be made upon the

¹ 25 O. W. N. 83.

² The Dominion Legislation on the subject will be found in section 235 of the Criminal Code, 9-10 Edw. VII. ch. 10, sec. 3 and amendments. A recent amendment to this section will be found in 13-14 Geo. V. 1923, ch. 41, sec. 3.

recommendation of the Hydro-Electric Power Commission of Ontario and the order of the Lieutenant-Governor-in-Council.

[Section 24 of the Public Utilities Act (R. S. O. 1914, ch. 204) reads as follows: "A corporation possessing or intending to construct works under this Act may, under the authority of a by-law of an adjoining local municipality, exercise the like powers within the adjoining municipality as it may exercise within its own municipality upon such terms and conditions as may be agreed upon."]

Chapter 21 is entitled "An Act to Amend the Judicature Act." By this Act the High Court Division is to consist of nine judges instead of fourteen as heretofore.

Provision is made for the establishment of a Second Divisional Court to consist of a "Chief Justice and four Justices of Appeal."

The Act came into force, so far as any judicial appointments or changes were necessary, on the day upon which it received the Royal assent, and in other respects on the 1st day of January, 1924.

The creation of a permanent Second Divisional Court of the Appellate Division of the Supreme Court of Ontario supplies a long-felt need in the judiciary of the Province. By the Law Reform Act, 1909 (9 Edw. VII. Ont. ch. 28), the Second Divisional Court was created as a variable tribunal composed of Judges of the High Court Division, who served for a year. This Act came into effect on January 1, 1913, and after an experiment of ten years the Court has been established as a fixed tribunal.

Chapter 22 makes an amendment in the County Courts Act whereby the Lieutenant-Governor-in-Council may change the time and place of the sittings of the District Courts.

By ch. 24 the Coroners Act is amended in regard to the salaries of chief coroners, which may now be fixed by the Lieutenant-Governor-in-Council (sub-sec. 4 of sec. 4, R. S. O., 1914, ch. 92, repealed and new sub-section substituted), as well as by the addition of a new sec. 22a, which is as follows: "It shall not be necessary for a jury to view the body upon which an inquest is being held when the coroner, with the consent in writing of the crown attorney, directs that the viewing of the body shall be dispensed with."

This Act came into force July 1, 1923.

By ch. 25 the Trustee Act is amended, by enacting that: "To remove doubts it is declared that subject to the terms of any instrument creating a trust the sole trustee or the last surviving or continuing trustee appointed for the administration of the trust, has and always has had authority to appoint by will another person or other persons to be a trustee or trustees in the place of such sole or surviving or

continuing trustee after his death, but nothing in this section shall affect or render invalid any appointment of a trustee by the personal representatives of a sole or surviving or continuing trustee or otherwise heretofore made, but all such appointments shall be as valid and effectual to all intents and purposes as if this section had not been enacted."

This enactment might better have been made a definite part of the Trustee Act, sec. 27*a* for example, than an Act standing wholly by itself!

Chapter 26, provides for amendments to the Registry Act (R. S. O. 1914, ch. 124), the addition of a new section, 45*a*, and the amendment of sec. 100 being important. Section 45*a* enacts that every deed or conveyance, charge or mortgage registered under the Registry Act shall contain the full name and place of residence, giving the street number (if any), of the grantee or mortgagee.

Section 100 is repealed. The substituted section provides that the Registrar, upon request of the council of a municipality, shall furnish the Clerk or Assessment Commissioner with a list of conveyances including the names and places of residence of the grantor, grantee or mortgagee, the consideration shown in each instrument and a short definite description of the land conveyed or mortgaged, but shall not include leases for less than twenty-one years.

By ch. 28 a similar amendment, sec. 55*a*, is made in the Land Titles Act (R. S. O. 1914, ch. 126).

Chapter 27 is entitled "An Act respecting the Registry Office in the City of Toronto." By this Act the registry divisions of East and West Toronto are constituted one registry division to be known as the "Registry Division of Toronto."

The Act provides, sec. 9, that the Lieutenant-Governor-in-Council may make regulations respecting: (a) the registers, plans, instruments and other books, documents and records to be kept in the registry office; (b) prescribing the furnishing, equipment and accommodation to be provided; (c) for the organization of the office and appointment of deputies, officers, clerks and employees; (d) prescribing the method in which fees and other receipts of the office shall be collected, kept and accounted for; (e) respecting any matter arising out of the changes in the registry division effected by this Act not expressly provided therein; and (f) generally for the better carrying out of the provisions of this Act.

The Act came into force on the 1st day of June, 1923.

The provisions of the Registry Act (R. S. O. 1914, ch. 124), and

amendments thereto, when the same do not conflict with the provisions of this Act, shall apply.

"An Act respecting the Assignment of Book Debts," is the title of ch. 29. Under this Act "assignment" (saving certain exceptions), includes "every assignment by way of security and every mortgage or other charge upon book debts or accounts" and "good consideration" includes "past, present or future advance of money." Book debts due at the date of assignment from specified debtors or debts owing under specified contracts, or debts included in a *bona fide* transfer of business, or in any authorized assignment under the Bankruptcy Act shall not require to be registered. The Act provides that every assignment shall be absolutely null and void as against any creditors of the assignor and subsequent purchasers or mortgagees of such debts or accounts in good faith for valuable consideration unless such assignment is in writing and accompanied by an affidavit of the attesting witness thereto, and a further affidavit by the assignee or his agent, that the assignment is *bona fide* and for good consideration and not for the purpose of holding the debts against the creditors of the assignor. The assignment and affidavits must be registered within 21 days of the execution thereof in the office of the clerk of the county or district in which the person resides at the time of the execution of the assignment.

The legislation regarding Book Debts was prompted by a decision of the Supreme Court of Canada in *The Royal Bank of Canada v. Eastern Trust Co.*³ The Court held that an assignment of Book Debts was void as against the trustee in Bankruptcy under sec. 30 (1) of the Bankruptcy Act, even although provincial legislation requiring the registration of Book Debts did not exist.

By ch. 30 the Mechanics' and Wage-Earners' Lien Act has been revised and consolidated and the effect of the revision is to enlarge the general right of a workman or material-man to a lien. Section 4 provides that agreements, verbal or written express or implied, waiving application of the Act shall be null and void, except in the case of a manager, officer or foreman or any other person whose wages are more than \$10 a day. The exception was formerly \$5.

Section 6, sub-sec. 1, provides that the lien shall be upon the "estate or interest of the owner in" the erection, etc., and the following words are added at the end of the sub-section, "the placing or furnishing of such materials to be used, upon the said lands or such other place in the immediate vicinity of the said land designated by the owner or his agent shall be good and sufficient delivery for the

purpose of this Act, but delivery on the said designated land shall not make such land subject to a lien." This sub-section is very long and somewhat unwieldy, containing about 270 words. Bentham (Vol. 2, p. 355), says that paragraphs should in all cases be limited to one hundred words.

A new sub-section (2) is added to sec. 6, which reads as follows: " (2) The lien given by sub-sec. 1 shall attach to the lands as therein set out where the materials delivered to be used are incorporated into the buildings, erections or structures on such land, notwithstanding such materials may not have been delivered in strict accordance with the provisions of sub-sec. 1."

By sec. 7, the liability of the land of a married woman has been extended to that "in which she has any interest or inchoate right of dower."

Sub-section 2 of sec. 8 is new, and provides that a person otherwise entitled to a lien shall not be deprived thereof by reason of any forfeiture or attempted forfeiture, cancellation or attempted cancellation of a lease on the part of a landlord, except for nonpayment of rent, but the person entitled to the lien may pay the rent accruing and add it to his claim.

Sub-section 3 enacts that a mortgage or other charge "existing in fact before any lien arises" shall have priority over all liens to the extent of the actual value of such land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try the action. This sub-section is also new.

By sec. 12 (1) twenty per cent. of the value of the work shall be retained by the person primarily liable upon any contract for thirty days after the completion or abandonment of the work done or to be done under the contract "irrespective of whether the contract or sub-contract provides for partial payments or payment on completion of the work." Sub-sec. 2 provides that fifteen per cent. shall be retained if contract price exceeds \$15,000. Sub-section 3 makes the lien a charge upon this amount in favour of "lien-holders" instead of "subcontractors" as formerly.

Sub-section 5 provides that the percentage may be paid into Court if an action has been commenced before the thirty-day period has expired, such payment to constitute a valid discharge to the owner to the amount thereof.

Section 13 (2): "Every sub-contractor shall be entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or sub-contractor under whom he claims." New.

By subsection 2 of section 15, a wage-earner in enforcing a lien in respect of a contract not completely fulfilled, may now serve a notice of motion for judgment on his claim. Registered particulars of the claim must be certified by affidavit and accompany the notice.

Section 20 provides that the Registrar, upon payment of the proper fee (fee to be 25 cents, but if more than one person interested, an additional fee of 10 cents for extra person), shall certify the registration upon the duplicate which shall be filed in the office of the Master-in-Ordinary or the Clerk of the County or District Court in which the land is situate on or before the trial of the action.

By section 22, subsection 6, a "lienholder who does not register a claim for a lien, and whose lien is preserved by an action commenced by another lienholder," must, before the day of the trial, give written notice to the owner or his agent, the mortgagee or his agent, and the lienholder who commenced the action, and deposit with the proper officer particulars of his claim verified by affidavit.

Section 29, subsection 2, gives the lienholder the right to demand particulars of a mortgagee or unpaid vendor or his agent respecting the property upon which the lien attaches.

Sections 30 to 47 relate to the mode of realizing the lien, new trial and appeal, fees and costs, payments out of Court and "Rules and Procedure," and have been somewhat altered. The powers of the Judge have been considerably enlarged.

The Act contains fifty sections, several of which are quite long, and, were they divided, would be much easier to comprehend, but it is at least a satisfaction to have the law on this subject covered by one enactment. The Act came into force on September 1, 1923.

Chapter 31 amends the Workmen's Compensation Act by placing the minimum compensation payable to a "widow or an invalid husband and one or more children" at \$12.50 per week.

Chapter 34 amends the Landlord and Tenant Act by adding a sub-section to sec. 65 as follows:—" (2) Where it has been proved to the satisfaction of the Judge that the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may apply to the Judge to determine the matter so in dispute, and the Judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just." This Act came into force on September 1, 1923.

By Chapter 35 several sections are added to the Ontario Medical Act. Section 47d provides that any person who is practising as an osteopath, chiropractor or drugless healer and who files a statement in the office of the Provincial Secretary in the form to be furnished by

the Provincial Secretary, stating (a) his name in full; (b) his place of residence; (c) his degree or certificate of qualification or other document under which he claims to be qualified to practise; (d) evidence as to his character and good behaviour, and (f) the particular method which he is practising, shall not incur any penalty under this Act for the practice of medicine, under this Act so long as he continues to practise according to the method named by him in such statement.

By Chapter 37 the Ontario Companies Act (R. S. O. 1914, ch. 178) is amended. A new sub-section is added to section 45, sub-section 5, which provides that a copy of the directors' report shall be furnished forthwith to any shareholder on written application, and imposes a penalty not exceeding \$100 on any company who neglects or refuses to furnish such report.

Paragraph *b* of section 14 and sections 99, 101, 103, 104, 105, 107, 108, 109, 110, which deal with the company's prospectus and directors' liability are repealed, as are also sections 111, 112, 113, 114, 115, 117 and 117A, which deal with public companies offering shares to the public for subscription. The words "and disclosed in the prospectus and the commission paid or agreed to be paid does not exceed the amount or rate so authorized" are struck out of sub-section 1 of section 100.

By chapter 39 it is no longer necessary to secure the consent of the Attorney-General before commencing any action against the Hydro-Electric Power Commission of Ontario for damages arising through the negligence of any of its employees or servants in the construction, equipment or operation of any electric railway under its control.

By chapter 41 certain minor amendments are made in the Consolidated Municipal Act, 1922, of which the following are important:

A new section, 247A, has been added under which officers who have been in the employ of the Corporation for at least twenty years may be superannuated if they have become incapable through illness or old age, of efficiently discharging their duties.

Paragraph 2 of sec. 398A has been amended so that the exemption from taxation, except for local improvements and school purposes, for a period not exceeding ten years does not now apply to memorial homes and club-houses, lands or athletic grounds for nursing sisters, officers and men who were on active service, unless such buildings and lands are actually used and occupied for the purposes of a memorial home, club-house or athletic grounds.

Chapter 46 is entitled "An Act to amend the Municipal Arbitra-

tions Act" (R. S. O. 1914, ch. 199), a new section 2A, being added. Under this section the death of the official arbitrator or his ceasing to hold office from any cause pending a reference before him, before his award is made, shall not abate the proceedings, but such reference shall be continued and all proceedings therein already taken shall be adopted, and an award made therein by his successor in office.

The Lieutenant-Governor-in-Council may appoint a deputy official arbitrator, who, in the absence or inability to act of the official arbitrator, shall have all the powers and perform all the duties of the official arbitrator. The death of a claimant pending a reference shall not abate the proceedings, which may be continued by or against the legal representatives of the deceased or by or against the person or persons upon whom the estate or interests of the deceased devolves.

By Chapter 49 "The Public Vehicle Act, 1920" is repealed and a much more extended law is enacted under the same title. "Public highway" and "Public vehicle" are thus defined: (c) "Public highway" shall mean any highway under the jurisdiction of the Department or the Toronto and Hamilton Highway Commission; (d) "Public vehicle" shall mean a motor vehicle operated by or on behalf of a person carrying on upon the public highway, the business of a public carrier of passengers and express freight which might be carried in a passenger vehicle, and operating over a stated route or between fixed termini or at stated intervals, but shall not apply to the cars of electric or street railways operating on the public highway. Licenses, tolls, permits, tariffs, inspection of vehicles and many other matters are mentioned in the Act, which contains thirty sections.

Chapter 50, "The Standard Hotel Registration Act," is new legislation, which provides for keeping records of guests in standard hotels and imposes penalties for false registration.

By Chapter 52, sec. 90 of The Public Health Act (R. S. O. 1914, ch. 218), has been amended by the addition of the words "or for agricultural, domestic or industrial purposes" following the words "water supply" in the third line of the section. Four new sub-sections have also been added. These amendments give the Provincial Board supervision over streams, etc., in regard to purity, the power to enquire into and determine any complaint made by or on behalf of a riparian proprietor respecting pollution; to report upon such complaint, and if such report recommends the removal or degree of treatment of any polluting material, the riparian proprietor may apply to a Judge of the Supreme or County Court for an order for the removal or abatement of the injury and the Judge may make such order as he may deem meet, and on such terms and conditions as may be deemed proper.

By chapter 55, "The Adolescent School Attendance Act" (1919), ch. 78), is amended so as to exempt an adolescent residing in a rural section from obligatory school attendance whose services are required in the household or on the farm of his parents or guardians.

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THE STATUS OF THE FRENCH LANGUAGE IN CANADA.

NEW FRANCE—A NATION.

Before and at the time of the cession of Canada to the Crown of England, the French language was the only polished language spoken and written, over the territory, with much larger area, out of which have been carved the nine provinces of the Dominion.

The population of New France, not counting the Indians, was then about 60,000, all French with the exception of about 1,000 English-speaking people.

New France possessed in 1760 all the essential elements and attributes of a nation, its people having institutions, administrative, judicial, civil and educational, a religion, customs and usages of its own. All over this territory, extending from Hudson Bay to the Gulf of Mexico, and from the Atlantic to the Pacific, the French language alone held constant dominion for nearly two centuries. Outside of the territorial limits of the original thirteen American colonies, the whole of the North American continent had been traversed in every direction by the French pioneers and missionaries, bringing with them and implanting the civilization of France and the Gospel of Christ. They had founded towns and other establishments, such as Port Royal, Louisbourg, Quebec, Three Rivers, Montreal, Kingston, Detroit and many others, erected military defences, trading posts and missions along the St. Lawrence and the Ottawa and many other rivers, the Great Lakes, in the North-West, along the Mississippi as far as New Orleans. The colony was equipped industrially and commercially so as to meet all the needs of its inhabitants.

The people of New France constituted a separate and distinct nationality, inasmuch as they had community of origin, ambition and destiny, of territory, of race, of religion, of law, of customs and traditions, as well as an incipient literature of their own. They composed a natural society of men brought and clinging together by unity of territory, origin, customs, religion and language, worked into a community of political, religious, civil, social, industrial and com-