

Need of Uniformity in Provincial Legislation

Synopsis of Address by C. F. Campbell, of Campbell & Singer, Barristers, Vancouver, Before the Credit Men's Association, April 27, 1916.

The movement for uniformity at present is strong and growing in popular interest. The two great classes who are active in support are, first, the financial men, manufacturers and jobbers whose business necessarily extends over several provinces, and second, the legal profession. The first class is, of course, actuated mainly by ordinary commercial interests, but the lawyers, I am reluctantly driven to admit, are actuated solely by public spirit—that "noblesse oblige" which has for the most part characterized the legal profession.

Let us consider the history of the movement, some of the difficulties, what has been achieved, and the outlook. So far as modern times are concerned, we find that France and Germany have achieved great success on the system of centralization, while the United States, which, like Canada, believes in less centralization and more local autonomy, has achieved great success along these lines. France has successfully unified Roman law, Teutonic customary law, 60 provincial customs, and about 300 local customs having the force of law, into one code Napoleon. Germany has harmonized four different systems of different origin and an infinity of local customs, sometimes differing on opposite sides of the street. Although at the present time we discredit things "made in Germany," we have to admit a wonderful achievement in this respect.

In the United States, conditions are more like those in Canada, although the difficulty there was more acute than here, partly because they have forty-eight states to our nine and also because of their different system of government. The American constitution gives far less powers to the central government than the B. N. A. Act does to the Dominion Government. Notwithstanding this handicap, they have achieved great results. About twenty-six years ago a few leading public spirited lawyers started the movement through the American Bar Association. The efforts of the Association resulted in the creation of a commission on uniform state laws.

We find that the "Negotiable Instruments Act," adopted by them, is now the law of forty-seven jurisdictions. The "Warehouse Receipts Act," in thirty-one; the "Sales Act," in eleven; the "Bills of Lading Act," in twelve; the "Stock Transfer Act," in nine; the act relating to sales executed outside the state in ten, and the "Family Deserction Act" in eight.

In Canada we are working along the same lines. When the Canadian Bar Association was formed some two or three years ago, one of its main objects was at once laid down as being "To promote the uniformity of legislation throughout Canada so far as consistent with the preservation of the basic systems of law in the respective provinces."

Now let us look at the difficulties in the way. Our country is widespread, embracing peoples of vastly different interests and ideas.

For example, P. E. I. only seven or eight years ago solemnly enacted that no motor vehicles of any kind should be permitted in the province, solemnly reciting, "Whereas it has become necessary in the public interest and for the safety of the travelling public to prohibit the use and operation of motor vehicles, etc." How would that go in B. C.? It is true that P. E. I. has modified this lately and about a year ago enacted that the Government of Canada might run auto trucks on certain stage lines except on Sunday.

In Quebec the mere mention of uniformity arouses alarm.

The French civil code has been the rule there for nearly 300 years and any movement which seems to aim at its submergence in the rising tide of English law around its borders is regarded with suspicion.

There is, however, in this movement no thought of compulsion. It is a matter of suggestion and education of the various Legislatures (if it is possible to educate Legislatures).

Perhaps the greatest difficulty of all is the pernicious habit that Legislatures have of legislating in a haphazard way on every possible occasion on the slightest provocation. The smaller the Legislature the more the legislation as a result. In two years the Parliament of Canada passed 116 Acts, British Columbia 166, Manitoba 244, Ontario 144, Quebec 125, and so on in all the provinces to a total of 1,178 public acts in two years. Many of such acts are often ill-drawn, ill-considered and containing disturbing provisions. The average legislator knows little and cares less about the general fitness of things and the way his act or amendment will suit conditions at large. I greatly fear that many of those 1,178 acts were passed with more careful consideration of their vote-getting power than their uniformity or general usefulness, and we have the consequent spectacle of amendment after amendment being made, only to be repealed at the next session, perhaps even at the same session. A good illustration of what I mean can be found in the "Alberta Insurance Act" of 1914. One of the statutory conditions in that province provided that the insurance companies should be liable for all damage resulting from lightning, whether fire ensued or not. The Legislature, in a sudden inspiration, apparently without consulting anybody concerned, amended by inserting the words "or tempest" after the word "lightning," so as to make the companies liable for damage resulting from tempest whether fire ensued or not. Of course, the companies immediately took the position that if they had to issue insurance against the weather generally they must raise rates all over the province, and the further fact soon was discovered that many companies operating under Dominion charters did not have the power to issue such weather insurance. The Legislature had to repeal their amendment at the following session.

And so I plead for more carefully considered legislation, and surely nothing can better conduce to this than such a Dominion-wide commission as is found in the United States.

Let us now consider the field for such effort in Canada. Take, first, company law: We have nine Provincial Companies Acts and one Federal Act, besides many special acts regulating trust companies, insurance companies, etc. We have been litigating for years in order to ascertain the scope and meaning of various jurisdictions. All this involves uncertainty and expense. In this connection, let me refer briefly to what is called Blue Sky Law. It originated in Kansas and has been adopted by some other states and was enacted verbatim in Manitoba in 1912. The name arose in this way: Kansas, being a wealthy state, composed largely of the farming population, having some money and little experience in the ways of company flotations, mining schemes, etc., was found to be a happy hunting ground for all sorts of fraudulent schemes, and the evil became so great that the Legislature found it necessary to attempt to protect the public. These promoters became so daring that it was said they would sell building lots in the blue sky—of course, we have no such schemes in Van-