

1896.

—
LEGISLATIVE ASSEMBLY.
NEW SOUTH WALES.

STATUTE-LAW CONSOLIDATION COMMISSION.
(REPORT RESPECTING.)

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Statute-Law Consolidation Commission,
Sydney, June 4th, 1896.

To the Honorable the Chief Secretary,—

Sir,

At a meeting of the Royal Commission for the consolidation of the Statute Law of the Colony, held in the Supreme Court, on Wednesday, the 27th May, it was resolved that I, as Chairman of that meeting, should place before you the present position of the Commission.

At the initiation of the work of this Commission, having as its President the Chief Justice, the body of members was divided into eight Committees, seven of these being presided over by a Judge of the Supreme Court, with a District Court Judge as Vice-Chairman, and one Committee presided over by the President of the Land Court, with the ex-President as Vice-Chairman. A Revising Committee, comprising the greater number of the Supreme Court and District Court Judges, with the Chief Justice as its Chairman, was also appointed, its duty being to settle questions of dispute or doubt in the Divisional Committees, and to revise the work of these sections before its final submission to the Commission as a whole.

Of the seven Judges of the Supreme Court appointed Chairmen of the Divisional Committees, two have resigned office, viz., the Chief Justice, who was President of the Commission, and Mr. Justice Stephen; and two of them are absent in England on leave. There are thus left only three members of the Supreme Court now acting as Chairmen.

The positions of Vice-Chairmen, except in the case of one Committee, have been filled by the District Court Judges, whose judicial duties necessitate frequent and long-continued absences from Sydney.

The Revising Committee, being composed of Judges of the Supreme Court, the District Court, and leading Counsel, has suffered in a similar degree to the Divisional Committees through the resignations of members and the heavy demands made upon the time of those remaining upon its list.

The only hours available for meetings of the Revising and other Committees have been after the rising of the Court or Saturday mornings, and even with regard to those times the attendance of members, has necessarily been subject to the discharge of their public and professional duties.

Under such circumstances it has been found very difficult to secure the attendance of members at meetings, or to devote sufficient time and the close attention needed to the work of efficient consolidation.

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These matters having been fully considered at the meeting, the opinion was unanimously expressed that the Commission as at present constituted was cumbersome and inefficient. It was felt that work of the character committed to it could not be effectually carried out under conditions which did not allow of continuous attention being given to it. Not only was the intermittent attention of Committees, composed of busy men distracted by the calls of office or their professions, necessarily defective in itself, but it involved also extending the work of consolidating the Statutes over an indefinite period, and so adding considerably to the cost of the work.

The Commission also had to face a difficulty in the inability of the Government Printer, through the insufficiency of material at his command, to keep all the Bills required standing in type.

The Commission, having regard to all these circumstances, was unanimously of opinion that it would be undesirable to continue its existence in the present form, and that it was its duty to lay these matters before the Government without further delay.

At the same time, a great deal of very careful and important work has been carried out by the Commission, even under the unfavourable circumstances referred to, and it would be a serious loss if it were not utilised for the benefit of the community. Details of this work will be found set out in the Report attached hereto. From the statements contained therein it will be seen that the consolidation of the Statutes has been advanced a very considerable stage. The Statutes have all been classified and arranged under different heads or groups of subjects, and all the Statutes affecting each subject have been collected and arranged under each head, and a large number of Statutes have been consolidated by the Divisional Committees.

The Commission is of opinion that the completion of the work placed in its hands would be more efficiently, expeditiously, and economically effected if transferred to a smaller body of Commissioners. It suggests that the work at its present stage might be handed over to a Commission of one or more members, assisted by competent draftsmen, and that these gentlemen should be adequately remunerated so as to enable them to devote the whole of their time to the work. Were this done the Commission has little doubt that from the advanced point to which work has already been brought it could be carried on to completion in a comparatively short time, and without any great expense.

The Commission also considers that it would be desirable to give power to the new Commission to make such amendments as may be deemed necessary for the proper consolidation of the Statutes. Unless such power be given the errors and ambiguities of the present Statutes must be perpetuated, and it will be impossible to make the consolidated Statutes clear and harmonious as they ought to be.

A similar work—though covering a much shorter period—was carried out in Victoria by a Committee consisting of the Chief Justice and a staff of draftsmen acting under his sole control. By this means he was enabled to do the work much more quickly than could possibly have been the case with a more cumbersome body, such as our Commission. There were also, in this instance, facilities such as the purchase of special type provided, whereas in the case of our work not only has it been delayed by the circumstances already mentioned, but also by the fact that the Government Printer cannot meet the demands upon him without seriously encroaching on his stock of type.

I have the honor to be,

Sir,

Your obedient servant,

WM. OWEN,

Chairman.

STATUTE-LAW CONSOLIDATION COMMISSION.

REPORT.

At a meeting of the Revision Committee, held in the Supreme Court, on Monday, 27th April, to consider the course to be adopted in view of the resignation of the President, the Honorable the Chief Justice, it was resolved that the Secretary be directed to draw up a Report on the work of the Commission for submission to a meeting of that body, to be called by him at an early date, and that such Report should embrace suggestions for the utilisation of the material prepared by the draftsmen under the direction of their several Committees.

In accordance with the instructions contained in the above resolution, the following Report is now submitted :—

SCHEME OF WORK.

Although the Royal Commission to inquire into and consolidate the Statutes in force in the Colony was issued on December 29th, 1893, it was not till March 12th, 1894, that members were called together. At that meeting the President, the Honorable the Chief Justice, pointed out that the Commission authorised members :

- (1.) To make a diligent and full inquiry into the Statute law in force in this Colony.
- (2.) To submit proposals, in the form of Bills ready for presentation to Parliament, for the consolidation and for the amendment of the Statute law ; but, as to the amendment, only in so far as such amendment might be deemed necessary for effective and useful consolidation.

At this meeting a committee was appointed to consider and report as to the best mode of subdividing the work of the Commission, and upon the principles which should guide it in the work of consolidation. This Committee sat for the first time on the 19th March, and it was then resolved that the members of the Commission should be divided into seven (subsequently enlarged to eight) Committees, each to be presided over by a Judge of the Supreme Court, with a District Court Judge as Vice-Chairman. At the same time it was determined that a draftsman be nominated by each Committee to prepare work for its consideration ; each such draftsman to be paid at the rate of £300 per annum for his services, the engagement to be terminable at one month's notice. At a subsequent meeting, held on March 27th, it was resolved to recommend to the Commission the appointment of a Consulting and Revising Committee, consisting of two members of each Divisional Committee, to which should be referred any question upon which a Committee might require direction, and which should, in the event of any difference of opinion between two Committees upon any point arising out of their work, settle the matter in dispute, and to which also should be referred each Statute prepared by the Committees for revision and approval before submission to the whole Commission for its final approval. By this course being taken the work would pass through the hands of three bodies before being finally approved, namely, those of :—

- (1.) The Divisional Committee.
- (2.) The Revision Committee.
- (3.) The full Commission.

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On the 11th June the Committee brought up its Report to the Commission, having held six meetings at which details of the scheme submitted were discussed. The Report made the following recommendation :—

That the work of the Commission should be confined to the consolidation of the local Statutes, and that no attempt should be made to consolidate the Statutes in force (or supposed to be in force) in the Colony by virtue of the Act 9 Geo. IV, c. 83, but that all Imperial Statutes expressly enacted to be in force in the Colony should be appended to the Consolidated Statutes bearing on the same subject-matter. In order that consolidation may not be impaired by subsequent Amending Acts, progress reports should be presented to the Government as occasion may require, suggesting Acts to be passed prior to the consolidation of any Statute.

The general scheme of work outlined by the Committee was approved, and it was resolved to confine the consolidation within the lines recommended.

In accordance with the scheme adopted by the Commission, the following draftsmen were appointed to the several Committees :—

- No. 1 Committee, dealing with Constitution, General Government, Revenue and Services, J. Meillon, Esq.
- No. 2 Committee, dealing with Local Government and Regulating Acts, A. J. Kelynack, Esq.
- No. 3 Committee, dealing with Land, Mining, and Roads, G. H. Pike, Esq.
- No. 4 Committee, dealing with Real and Personal Property, J. M. Harvey, Esq.
- No. 5 Committee, dealing with Commercial and General Law, Wilfred Blacket, Esq.
- No. 6 Committee, dealing with Criminal Law, Divorce, and Marriage, P. J. Healy, Esq. (since deceased).
- No. 7 Committee, dealing with legal principles and procedure, D. G. Ferguson, Esq.
- No. 8 Committee, dealing with Bankruptcy, District Courts, Companies, &c., F. J. Bethune, Esq.

The initial work of the Commission, the preparation of an Interpretation Bill, was entrusted to No. 5 Committee. Simultaneously each of the eight Committees set about the preparation of a list of the general Statutes of the Colony apportioned to it. A skeleton list of the Public Acts of Parliament was prepared by the Secretary, and from this each draftsman appropriated the Statutes coming within his division. The appropriation having been made, meetings of the draftsmen were held to assure themselves of the placing of every Statute upon some one or other Committee list, and steps were then taken to classify the appropriations. Each Committee drew up, through its draftsman, three lists of the Statutes assigned to it, arranged in chronological order, and showing :—

- (1.) Statutes repealed, expired, or disallowed.
- (2.) Statutes the operation of which is exhausted, or which are obsolete or inapplicable to New South Wales.
- (3.) Statutes now in force.

These lists were further subdivided according to the subject-matter of the Statutes. A list was also prepared by No. 3 Committee of all the Imperial Statutes expressly enacting that they were applicable to the British possessions or to this Colony. Another special list by No. 2 Committee collated the local and particular Statutes of the Colony under the headings of the localities and particular institutions or bodies dealt with. By instruction of the Revision Committee, each of the lists was checked for accuracy by the draftsman of a Committee other than the one compiling it. By means of these lists, with their contents grouped under subject heads, the scattered Statutes dealing with any one subject were brought together, those repealed or exhausted being eliminated. The eight sets of lists in themselves thus form the nucleus of a valuable index to our Statutes.

The compilation of the lists being completed the several Committees gave instructions to the draftsmen as to the subjects first to be dealt with in consolidation.

The Interpretation Bill was, on the 12th November, 1894, submitted to the Revision Committee, presided over by the Honorable the Chief Justice. This Bill was not rigidly confined to a consolidation of the Acts Shortening Acts, but included such provisions of the Imperial Interpretation Act (1889) as the Committee thought it desirable should be embodied in the legislation of the Colony. It was not till
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after eleven meetings had been held that this measure was finally sent on to the Commission for approval. Having been approved, it was duly forwarded to the Honorable the Colonial Secretary, and draftsmen were instructed to draft the Consolidating Statutes in harmony with its provisions.

For the information of the Commission, the Secretary of the Statute Law Committee, House of Lords, H. C. Malkin, Esq., was communicated with, and through his courtesy a complete set of the papers and reports laid before the Imperial Parliament on the subject of the consolidation of the Statute law was obtained. The Committee, in forwarding these, stated that it would be much gratified if it should be in its power to render any further assistance to the New South Wales Commission.

As the work of the various Committees progressed numerous questions arising out of the consolidation were submitted to the Revision Committee. Among the principal of these, involving the application of a general principle, were the following:—

- (1.) The construction to be placed on the words contained in the Commission, and as applied to the Statutes to be consolidated “for the amendment thereof, in so far as amendment may be deemed necessary for effective and useful consolidation.”
- (2.) Where a section, or any words in a section, of any Act, had received a judicial interpretation, whether that interpretation ought to be embodied in the Consolidating Bill.

In connection with the first of these important points, not only did the question of substantially amending the law simultaneously with its consolidation present itself, but also the kindred one whether a draftsman might in the case of amending Acts supplement the intentions of the Legislature as therein expressed in such a way as to bring the amending provisions into line with previous legislation.

The Revision Committee having given this question its careful consideration, instructed your secretary to reply as follows:—

“This Committee is of opinion that draftsmen have no power to make the alterations they suggest in the enactments. Their proper course is to frame a Bill embodying the amendments they think desirable to make the law harmonious, and submit it to the Revision Committee in order that when it is approved of by that Committee, it may be passed by the Legislature, and be then embodied in the Consolidation Bill of the subject referred to. It is permissible to draft their Consolidation Bills on the assumption that the amendments will be passed into law.”

The second point whether the effect of a judicial interpretation of any words or part of a Statute should be embodied in the consolidating measure was brought before the Revision Committee on the following resolution, submitted by Committee No. 4, “That where a section of an Act has, or any words in a section of any Act have, received a judicial interpretation, that interpretation ought to be embodied in the Consolidating Bill.” Appended to this resolution was the following note by Mr. Justice Owen, “The attention of the Revision Committee ought to be specially directed by each draftsman to such inclusion, so that the Committee may take into consideration the nature of the decision and the circumstances under which it was given, as for example, if it were a decision given in Chambers, that of a single Judge, or the full Court, and so on.” This resolution and note were adopted by the Revision Committee, and made an instruction to draftsmen.

THE SCOPE OF CONSOLIDATION.

The scope of the work of the Commission was, in the light of the Report and resolutions quoted, confined to the consolidation of the local Statutes, such consolidation embodying any authoritative judicial interpretation that might have been placed on any section or words of any section in an Act, but excluding all amendments except such as were deemed to be absolutely “necessary for effective and useful consolidation.” Side by side with the work of consolidation was to be carried out the drafting of amending Bills for presentation to Parliament, with a view to their ultimate inclusion in the consolidating measures. As

As an additional check to those already imposed for securing the accuracy of the work, instructions were given by the Revision Committee that each Bill presented by a draftsman for the consideration of his own Committee should bear on its face a certificate from the draftsman of some other Committee that it had been checked by him. The object of the checking was not only to secure verbal accuracy, but also criticism, where a draftsman had to depart from the wording of the Acts consolidated. Should it happen that the draftsman of the Bill and the checking draftsman were not in agreement upon any point, it was provided that such point should be referred for settlement when the Bill was submitted to its Committee.

WORK COMPLETED AND IN PROGRESS.

The following tables show the work carried out, or in process of being carried out, at the date of the drafting of this Report:—

NOTE.—The letter P in brackets indicates that the Bill to which it is attached is in print.

COMMITTEE No. 1.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bills in hand.
3	Quarantine Bill (P.) Banks and Bank Holidays Bill. Stamp Duties Bill.			3	Navigation Bill. Shipping and Seamen (2 Bills).

Remarks.

The Navigation Bill and the Shipping and Seamen Bill, now in hand, together constitute a large and difficult piece of work. The former Bill consolidates five Acts, containing, in the aggregate, one hundred and ninety-five sections; and the latter, nine Acts of two hundred sections. The draftsman is working at them together, as the subjects are intimately connected; and further, because the Imperial Statutes on these subjects contain provisions binding on the whole of the British Dominions, so that care must be taken that these latter are not contravened.

COMMITTEE No. 2.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bills in hand.
4	Municipalities Bill (P.) Liquor Bill (P.) Adulteration of Food or Drink Bill (P.) Nuisances Prevention Bill (P.)	1	Distillation Bill (P.)	5	Public Entertainments Bill (<i>ready for Printer</i>). Cattle Driving Bill (<i>ready for Printer</i>). Bill to give effect to the Amendments of the Acts relating to Municipalities, suggested by this Committee (<i>ready for Printer</i>). Impounding Bill. Newspapers Bill.

Remarks.

The Municipalities Bill consolidates fourteen statutes. During the consideration of the above Bill in the No. 2 Committee it was resolved to recommend:—That the Act 19 Vic. No. 10 be repealed, and that the Act 40 Vic. No. 13 be transferred to the list of obsolete statutes. The above Bill, on being forwarded to the Revision Committee, was accompanied by a report suggesting (*inter alia*) certain amendments of the Acts consolidated by the said Bill. These suggested amendments have been put into the form of a Bill, as hereinafter mentioned.

The Acts consolidated in the Liquor Bill were:—45 Vic. No. 14, 46 Vic. No. 24, and 55 Vic. No. 5, section 25.

The Acts consolidated in the Adulteration of Food and Drink Bill were:—14 Vic. No. 14, 19 Vic. No. 19, and 42 Vic. No. 14. The No. 2 Committee did not consider the above Bill in detail, but sent forward a report thereon to the Revision Committee, suggesting that it was advisable to supersede the present Acts by fresh legislation.

The Nuisances Prevention Bill consolidates 39 Vic. No. 24 and 55 Vic. No. 20.

The Distillation Bill consolidates 13 Vic. No. 26, 13 Vic. No. 27, 14 Vic. No. 22, 16 Vic. No. 45, and 30 Vic. No. 15. This Bill is at present being revised by the No. 2 Committee.

The Acts consolidated in the Public Entertainments Bill are as follows:—14 Vic. No. 23 and 36 Vic. No. 8. This Bill has been revised, and is ready for submission to No. 2 Committee as soon as it is printed.

The Cattle Driving Bill consolidates 16 Vic. No. 23 and 24 Vic. No. 22. This Bill has been revised, and is ready for submission to No. 2 Committee as soon as it is printed.

The Acts consolidated in the Impounding Bill are the following:—29 Vic. No. 2, 32 Vic. No. 11, 42 Vic. No. 23, 45 Vic. No. 13, and 57 Vic. No. 31. This Bill is almost ready for the printer.

The Newspapers Bill consolidates 8 Geo. IV No. 2, 2 Vic. No. 20, 5 Vic. No. 19, 13 Vic. No. 47, and 16 Vic. No. 37.

COMMITTEE

COMMITTEE NO. 3.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bill in hand.
				1	Crown Lands Consolidation Bill.

Remarks.

The Crown Lands Consolidation Bill will consolidate the principal Act (48 Vic. No. 18) with twelve other Statutes.

COMMITTEE NO. 4.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bill in hand.
2	Trustee Bill (P). Registration of Deeds Bill (P).	4	Conveyancing and Law of Property Bill (P). Landlord and Tenant Bill. Married Women's Property Bill. Consolidating and Amending Equity Procedure Bill.	1	Real Property Act.

Remarks.

The Bill in hand and the Bills that remain will be little more than mere reprints of existing Statutes with verbal alterations, all the heavy work of this Committee, so far as the drafting is concerned, being now done. The draftsman has also prepared in manuscript, under instructions from the Revision Committee, an amending Trustee Bill. If this were passed by Parliament, it could be embodied in the Consolidating Bill with a few verbal alterations. The Consolidating Bills represent thirty whole Acts of Parliament and parts of eighteen Acts. The Equity Procedure Bill has been prepared under the instructions of the Chairman (the Chief Judge in Equity), although, strictly speaking, it is outside the scope of the Commission. It would, however, render any consolidation of the Equity Procedure Statutes unnecessary.

COMMITTEE NO. 5.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bills in hand.
2	Interpretation Bill (P). Employers' Liability Bill (P).	2	Contractors' Debts Bill (P). Lien on Crops ; Wool and Stock Mortgages (P).	2	Agreements Validating and Master and Servants' Bill (P). Trade Marks, Copyright, and Patents Bill.

Remarks.

The Agreements Validating and Master and Servants Bill is now being checked. The Trade Marks, &c., Bill cannot be completed pending the passing of an amending Bill introduced last Session.

COMMITTEE NO. 6.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bill in hand.
				1	Criminal Law Bill (P).

Remarks.

The work of this Committee is at a standstill, no appointment of a draftsman having been made since the death of Mr. P. J. Healy in September of last year.

COMMITTEE No. 7.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bills in hand.
				12	Supreme Court. Common Law Procedure. Evidence. Oaths. Juries. Sheriff. Legal Practitioners. Interpleader. Intercolonial Judgments. Creditors' Remedies. Arrest. Defamation.

Remarks.

The Bills in hand being intimately connected in their subject-matter are being prepared simultaneously. They embody the contents of over eighty Acts of Parliament, comprising almost all that have been allotted to this Committee.

COMMITTEE No. 8.

No.	Bills in Revision Committee.	No.	Bills in own Committee.	No.	Bills in hand.
		12	Lunacy Bill (P). Claims against Government Bill (P). Wills and Probate Bill (P). Companies Bill (P). District Courts (Amendment) Bill (P). Bankruptcy Bill. Bills of Sale Bill. Limitations Bill (2). Usury Bill. Partition Bill. Compensation to Relatives of Deceased Persons Bill.	1	District Courts (Consolidation) Bill.

Remarks.

Two District Court Bills, the one amending and the other consolidating, are being prepared. In like manner the subject of the limitation of actions and suits is being dealt with in a consolidating measure, and in an amending Bill adopting the provisions contained in certain English Acts of Parliament.

The District Court (Consolidating) Bill is completed, subject to the passing of the amending Bill, which it was thought expedient to submit first, but has not been set up in print pending the passing of the amending Bill, which contains some fifty sections. In the Bill to consolidate the law with regard to the limitation of actions and suits certain English provisions of a date prior to 9 Geo. IV, c. 83, have been inserted for the sake of completeness, and also certain sections of 19 and 20 Vic., c. 97, which have not been adopted in the Colony as yet, but which are now adopted by the amending Bill.

The draftsman has, so far, been unable to draft a Bill dealing with the law relating to Infants, as his Committee have not yet had the opportunity of considering the scope of such a Bill as distinct from Bills in preparation by the Committee dealing with Equity matters.

SUMMARY.

Number of Bills in Revision Committee.	Number of Bills in Divisional Committees.	Number of Bills in hand.	Total.
9	20	26	55

MEETINGS OF REVISION AND OTHER COMMITTEES.

It has been the course hitherto for all Bills passed by the Divisional Committees to be considered in detail by the Revision Committee. In other words, the whole of the work done by eight separate Committees will have eventually—under the present scheme—to pass through the hands of the Revision Committee for its endorsement. This, it need hardly be pointed out, will cast a burden of work upon the revising body that can only be met by almost daily meetings if the stream of work from the eight Divisional Committees is to be coped with. The summary of work in the Divisional Committees and in the hands of draftsmen indicates the pressure that will be put upon this central body. With the additional pressure must also be taken into consideration the fact that the Revision Committee is composed of the Judges of the Supreme Court and other members whose time is so fully occupied by professional duties that it is extremely difficult to secure frequent meetings. Under the present scheme, therefore, it cannot be hoped that the work of the Commission will be concluded under a very considerable time.

EXPENDITURE.

The expenditure of the Commission has been well within the Parliamentary supplies voted for its maintenance, as will be seen from the following statement:—

<i>Supplies—</i>						£	s.	d.
1894	By	Vote...	...	...	...	800	0	0
1895	„	Vote (6 months)	...	...	...	3,000	0	0
1895-6	„	Vote...	...	...	...	3,000	0	0
						<hr/>		
						£6,800	0	0
						<hr/>		
<i>Expenditure—</i>								
1894	To	Salaries, &c....	...	...	...	947	9	4
1895	„	„	(6 months)	...	...	1,373	2	6
1895-6	„	„	(to April 30th, 1896)...	...	...	1,974	18	10
						<hr/>		
						£4,295	10	8
						<hr/>		
<i>Cr.—Unexpended Balance</i>						2,504	9	4
						<hr/>		
						£6,800	0	0

In addition, however, to the expenditure in draftsmen's salaries and maintenance of a Board-room, as shown by the above figures, is the cost of printing. This, in round numbers, only amounts to £300 for the whole term of the Commission's existence, a fact due to the close check kept upon outlay in this direction, copy for the printers not being accepted by the Secretary until the work is brought well up to a point where the subsequent cost of revision will not be disproportionate.

The total cost of the work of the Commission to date is therefore £4,595 10s. 8d.

It may be useful, as a means of comparison, to state here the cost in 1890 of bringing up to that date the consolidation of the Victorian Statutes.

The cost of that work—which covered a far smaller area than that to be covered by the New South Wales Commission—involved the following expenditure:—

Professional services	...	...	...	...	...	£3,034
Printer's expenditure (including printing and binding of complete sets)	...	...	...	...	...	13,483
						<hr/>
Total cost	...	...	...	...	...	£16,517

In the Victorian Hansard of 11th June, 1890, an expenditure of about £7,000 for special type, imported from England, for this work is referred to, and it does not appear clearly that this sum is included in the printer's expenditure given above.

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The difficulty of locking up type in connection with the work of the New South Wales Commission has already presented itself. I am in receipt of a letter from the Government Printer directing my attention to the fact that there are about 500 pages of matter now locked up in printer's formes in connection with this work. Not only is a quantity of type thus left idle, but the printer's stock is seriously encroached upon. Mr. Potter informs me that in view of the increased strain upon his type resources during the Parliamentary Session he must either have means to purchase new type for our work, or must distribute some of the printed matter now standing.

It was hoped when the work of this Commission was undertaken that a crisis of this kind would be avoided, by sending on the Bills as they were completed to be passed through Parliament, instead of, as in Victoria, completing the whole work and passing it *in globo*. However, the completed work of eight Committees having to be passed through the one Revision Committee has necessarily tended to the accumulation of printed matter waiting its turn for revision.

In Victoria, as I have indicated, this difficulty was met by a large purchase of special type.

I might here point out how much greater the work involved in consolidating the Statutes is in the mother colony than it was in Victoria. In the latter colony the work was greatly facilitated by an existing consolidation carried out some twenty-five years before, whereas in New South Wales the whole body of our Colonial legislation had to be collated, sifted, and put in order, before any attempt at consolidation could be made. A further difficulty was encountered in giving effect to the powers of amendment entrusted to this Commission for the purpose of effective and useful consolidation. A simple compilation of the existing statutory provisions, as in Victoria, without material alteration of phraseology, would in all cases have been much easier, but in most cases less serviceable than the recasting of clauses so as to preserve the sense whilst getting rid of redundant and circuitous modes of expression.

MEETINGS.

Since the initiation of the Commission's work seventy-eight meetings have been held, of which number twenty-four are to be credited to the Revision Committee. In nearly every instance these meetings have had to be held after the rising of the Supreme Court, the only time available to their Honors the Judges.

Appended to this Report are statements kindly furnished to me by the draftsmen containing suggestions relative to the utilization of their work.

T. B. CLEGG,
Secretary.

APPENDICES.

REPORTS BY THE DRAFTSMEN OF COMMITTEES ON THE UTILISATION OF THEIR WORK.

The following Reports were prepared by the draftsmen attached to the several Committees, in reply to a request by the Secretary for suggestions as to the way in which the work accomplished in each case could be utilised in the event of the scheme of Consolidation not being carried out in its entirety.

COMMITTEE No. 1.

In the event of the Consolidation of the Statutes not being completed, it does not necessarily follow that the work done by this Committee should be altogether wasted. The Bills already passed could be taken advantage of, and, in particular, it would, in my opinion, be highly desirable to pass into law the Bill consolidating the enactments relating to Quarantine. These enactments in their present state are very unsatisfactory; the Principal Act is as early as 3 Wm. IV, and is largely characterised by the clumsiness of form, want of arrangement, and redundant verbiage found in Acts of that period. The latest amending Act is that of 58 Victoria, and it becomes an extremely difficult task to read the early Act in conjunction with this Act drafted in modern form. In the Consolidation Bill the phraseology of the Principal Act was largely retained (as this Act has always worked satisfactorily) and, consequently, the Bill lacks the conciseness of expression that should characterise a contemporary Statute, but having this Bill in hand it would be a very simple matter to prepare a Bill which would in no way alter the existing law, but would express it in a form far more concise and tangible than was possible in a Consolidation Bill in which any possibility of altering existing legislation had to be scrupulously avoided.

A valuable part of the work of this Committee (for present purposes) is the arrangement in lists of the Statutes to be dealt with by them. These Statutes embrace nearly one-third of the total legislation of New South Wales, and have been arranged in lists showing the history of each enactment. Thus an index to a large portion of our Statute law has been formed, which might, in my opinion, be profitably utilised, at least by the passing of a Statute Law Revision Act, clearing our Statute Book of the Acts which are clearly no part of existing law, but which for want of an express repeal cannot be disregarded, and which might perhaps in some cases, by the repeal of Acts superseding them, be inadvertently revived. These Acts could be included in a Schedule to the Act, and expressly repealed.

It may perhaps be acceptable if I here indicate the work yet to be done by this Committee. The list of Statutes to be dealt with numbers, as I have said before, about 230. Of these thirty-five have since been found to be exhausted, but recent legislation has added about twenty new ones. So there remain about 200. But of these 200 it has been discovered by careful analysis that some seventy-two only are susceptible of consolidation, the remainder being Acts either standing alone, or, for the most part, Acts both standing alone and undesirable of consolidation, as not being of sufficient permanency and of general public interest sufficient to warrant the undertaking, *e.g.*, Acts authorising the construction of different public works, and of railways.

The Acts susceptible and desirable of consolidation are included in the following:—Aliens, 2 Acts; Audit, 3 Acts; Banks, 4 Acts; Civil Service, 3 Acts; Constitution, 8 Acts; Defence, 7 Acts; Industrial Schools, 3 Acts; Navigation, 5 Acts; Parliamentary Elections, 3 Acts; Quarantine, 3 Acts; Shipping and Seamen (2 Bills), 9 Acts; Stamp Duties, 5 Acts; the Post Office, 2 Acts; University, 9 Acts; Weights and Measures, 2 Acts; Wharfage and Tonnage, 3 Acts, making a total of 17 Bills dealing with 72 Acts, of which 3 Bills dealing with 12 Acts are already passed, and 3 Bills dealing with 14 Acts are in hand, leaving 10 Bills dealing with 46 Acts yet to be done, and even of these, the Acts dealing with the subjects of Defence and of the University might be dropped as not being of sufficient general public utility to warrant the expense of consolidation. This course being adopted, there would remain 8 Bills dealing with 30 Acts to be drafted and considered.

J. MEILLON.

COMMITTEE No. 2.

The preliminary work of the No. 2 Committee consisted in the classification by that Committee in co-operation with the other Committees, of all Statutes passed in the Colony of New South Wales.

If the scheme for consolidating the Statute Law is not carried out in its entirety this preliminary work of classification could be utilised by passing a Statute Law Revision Act repealing the Statutes contained in the List of Statutes, the operation of which is exhausted, or which are obsolete, or inapplicable to New South Wales. There are seventy such Statutes on the lists prepared by the No. 2 Committee.

With regard to the work of actual consolidation accomplished by the No. 2 Committee, it will be seen from the progress return, that forty-two Statutes have been completely dealt with in Bills which are in various stages of revision. The Bills consolidating these forty-two Statutes could be utilised by being passed through Parliament.

The work of Consolidation has been carried out upon the assumption that the Interpretation Bill prepared under the supervision of the Revision Committee would be passed by Parliament before the passing of any Consolidating Bill. It has further been assumed that the sections of the Acts Shortening Acts which were omitted from the Interpretation Bill, *viz.*, sections 14, 15, and 16 of 16 Vic. No. 1, and sections 7 and 9 of 22 Vic. No. 12, would be dealt with in other Consolidating Bills, as mentioned in the table accompanying the Interpretation Bill. Any departure from the course above mentioned might involve alterations in the Consolidating Bills, but it is not probable that any such departure would involve any alterations which could not be readily made.

Of the 428 Statutes allotted to the No. 2 Committee, 253 Statutes have been more or less completely dealt with. A large number of the Statutes remaining to be dealt with are isolated Statutes in connection with which the work to be done is nominal, and will be dealt with last of all to avoid the expense of locking up type.

ARTHUR J. KELYNACK.

COMMITTEE

COMMITTEE No. 3.

The special duty was assigned to the Draftsman of this Committee of preparing a list of the Imperial Statutes, expressly enacting that they are applicable to the British possessions or this Colony. This list, which, apart from the work of consolidation, will be of great value, necessitated an expenditure of much care and time.

As the Crown Lands Consolidated Bill is now nearing completion, on my part I would strongly urge that it be carried forward, and when complete brought into operation, as the present state of the land laws leads to endless litigation. In the present state of the Bill I cannot suggest any scheme for its utilisation.

G. HERBERT PIKE.

COMMITTEE No. 4.

The Revision Committee has considered and passed, with certain alterations, the first twenty-eight sections of the Trustee Bill, with the exception of sections 4-8, which were left to be dealt with by an amending Bill. When the Revision Committee rose it was engaged in considering the second proviso to section 29; when this section is passed I am of opinion that there will be few matters calling for any lengthened consideration in the Bill. The amending Bill has been framed with a view of bringing the statutory law with regard to trustees in this Colony into line, so far as was practicable, with the recent legislation in England. In doing so it has appeared to me advisable to depart as little as possible from the language of the English Statutes, and discussion upon the Amending Bill would probably be limited mainly to consideration of the advisability of adopting the different provisions of the English Statutes. If it is decided to adopt any provision, the Commission would probably adopt the language of the English Statutes without alteration, except where alteration appeared imperative. If three members of the Commission could give two periods of two consecutive hours each to the Consolidating Bill and the Amending Bill, I believe they could be thoroughly dealt with. Any points upon which the three felt any doubt might be submitted to the Revision Committee. Failing this I would suggest that the Amending Bill be embodied in one draft with the Consolidating Bill, and the whole submitted to Parliament in the ordinary way.

The Registration of Deeds Bill has been passed by No. 4 Committee. This Bill also might, in my opinion, be dealt with by a sub-committee of three, of whom at least one if not two should be solicitors; any matter of doubt could be referred to the Revision Committee. It is a short Bill of eighteen sections collecting from five Statutes enactments relating to registration.

The other Bills prepared have not been before Committee No. 4; I would suggest that that Committee should consider them, and that the Revision Committee should in all cases be solely a Committee of reference to consider points submitted by the various committees.

If the Trustee Bill, and Trustee Amending Bill, the Registration of Deeds Bill, the Landlord and Tenant Bill, the Conveyancing and Law of Property Bill were passed by the Commission, the only subjects allotted to No. 4 Committee that really require consolidation will have been dealt with. I understand that the Equity Amending Bill will probably be proceeded with, whether the Commission decides to go on with the work already prepared or not.

J. M. HARVEY.

COMMITTEE No. 5.

The Interpretation Bill which has been finally passed by the Revision Committee and by the Commission is now ready to be submitted to Parliament; but if the consolidation scheme should not be carried out it would be necessary to provide in some way for the re-enactment or continuance of several sections of the Acts Shortening Acts, 16 Vic. No. 1 and 22 Vic. No. 12, omitted from the Interpretation Bill. These sections are 14, 15, and 16 of 16 Vic. No. 1, and 7 and 9 of the Act 22 Vic. No. 12. It was intended that the sections of the former Act mentioned should be included or dealt with in the Justices (Consolidation) Bill, and that section 7 of the Act 22 Vic. No. 12 should be dealt with in the Criminal Law (Consolidation) Bill, and section 9 should be included in the Common Law Procedure (Consolidation) Bill. These five sections relate respectively to the summary exercise by Justices of the Peace of their powers, the appropriation of penalties, the right to sue for penalties, the meanings of the words "statute" and "Act" in indictments and pleadings, and the plea of "not guilty" in actions against officers. It is submitted that if the work of consolidation is not completed these sections could be dealt with either (a) by limiting clause 2 of the Interpretation Bill so as to leave the sections mentioned operative in respect of all Acts; this might be done by inserting the words "except as to sections 14, 15, and 16 of the Act 16 Vic. No. 1, and sections 7 and 9 of the Act 22 Vic. No. 12," after the word "but" in the third line of that clause; or (b) by adding the sections as supplemental clauses in the last part of the Bill; or (c) by preparing a Bill to include these sections, and to be submitted to Parliament with the Interpretation Bill.

If the Interpretation Bill is passed, the Employers' Liability (Consolidation) Bill and Contractors' Debts (Consolidation) Bill could be submitted in their present form, or as passed by the Revision Committee. The Liens on Crops, Wool, and Stock Mortgages (Consolidation) Bill has been delayed pending the decision in the case of *Piper v. the Bank of New South Wales*, but that case having now been decided the Bill may be at once dealt with by my Committee. If the Interpretation Bill is not passed the other Bills mentioned will need careful revision and certain alterations before being submitted to Parliament.

Bills to repeal the Agreements Validating Act and the Masters and Servants' Act were introduced in the Legislative Assembly last Session, and, therefore, the Bill to consolidate these Acts must, I assume, be kept back for the present. Consolidation of the Copyrights, Trade Marks, and Patents Acts is also delayed pending the decision of Parliament in respect of a Bill introduced to amend the Patents Acts.

I would like to mention, further, that if the work of consolidation is not completed it is still possible that use may be made of the lists of Acts made out and checked by the draftsmen.

WILFRED BLACKET.

COMMITTEE

COMMITTEE No. 6.

The late draftsman, Mr. Healy, had the Criminal Law (Consolidation) Bill in type at the time of his death, and, I understand, a considerable quantity of material prepared for the Justices (Consolidation) Bill. The Criminal Law Bill consolidates 31 Vic. No. 25, 42 Vic. No. 9, 42 Vic. No. 13, 46 Vic. No. 17, 55 Vic. No. 5 (in part), and 57 Vic. No. 23.

The Bill, consisting of 478 clauses, is divided into twelve parts. In effect, it completes and brings up to date the Criminal Law Amendment Act of 1883, and, subject to the passing of the Interpretation Bill, could, when revised, be at once passed into law.

SECRETARY.

COMMITTEE No. 7.

An important part of the work done consists of a digest of all the Statutes allotted to the Committee, that is to say, all the Acts of the New South Wales Parliament dealing with the following subjects:—Supreme Court, The Judges, Barristers, Attorneys, The Sheriff, Common Law Procedure, Absent Defendants, Creditors' Remedies, Intercolonial Judgments, Payment of Debts out of Realty, Imprisonment for Debt, Oaths, Juries, Evidence, Trespass to Land, Defamation, Admiralty.

Over 120 Statutes have been thus treated, and the substance of them has been redistributed and put in order under the headings of the proposed new Bills, the effect of all repeals and amendments up to date being duly noted. The Bills themselves are in course of preparation.

Should it be thought desirable at any time to proceed with the consolidation of the Statutes relating to any one or more of the above subjects, the work could be taken up at its present stage.

Should an amendment of the law in any of these branches be contemplated, the digest would afford a ready guide to the provisions of the existing Statutes, and so facilitate the work of the draftsman and of the Legislature.

The mere collocation of the sections and parts of sections relating to the same subject-matter brings many of the defects of the existing law into prominence, and suggests the direction which amending legislation might usefully take. I refer here chiefly to defects in form—inconsistencies, omissions, and redundancies. There are very many obsolete and conflicting enactments which encumber the Statute Book, and which might easily be dealt with even if no comprehensive scheme of reform were undertaken. For instance, the lists prepared by this and the other Committees, of Statutes exhausted, obsolete, or inapplicable to New South Wales, supply the material for a simple repealing Act which would at once relieve the Statute Book of a great deal of useless and embarrassing matter. If to those lists were added the many parts of Statutes and single sections which come within the same category, the value of the repeal would, of course, be enormously increased.

It seems to have been the frequent practice of the Legislature in the past to adopt English Acts without taking care to ascertain whether the matters to which they related, or any of them, had already been dealt with by local Acts. This has naturally led to great confusion. Thus—to take one of many examples—there are five Acts making separate and distinct provision for the trial by a jury of questions of fact without formal pleading. One of these Acts (14 Vic. No. 9) is "An Act to amend the law concerning games and wagers," where one would hardly expect to find a section dealing with a matter purely of legal procedure. It would be easy to multiply instances of this sort. Then again, nearly all the old Statutes are full of provisions, obsolete in fact, and long displaced by the terms of later Statutes, but never expressly repealed. There is a section, for example, in an Act of 1841 (5 Vic. No. 4, s. 5) which enacts that civil cases in Circuit Courts are to be tried by a judge and two magistrates sitting as assessors. (See Oliver's Statutes, 1207.) This, of course, is no longer so. The present law requires a jury of four in such cases. Yet that section, and hundreds of other such sections, stand unrepealed, except by implication. In fact, that particular section substituted a new system for the system in force under an earlier enactment, providing for trials by a jury of twelve, which enactment itself stands also unrepealed. (See 4 Vic. No. 28, s. 1; Oliver, 1201.) Such defects as these could easily be dealt with at once by a simple measure of repeal.

If any considerable amendment of the system of procedure is to be proposed, no doubt it will be based to a large extent on the English Judicature Acts. In that case the digest of our Statutes should be of great service. It would enable the group of provisions of the local law dealing with any given branch of the subject to be readily compared with the corresponding provisions of the English law, and so help in determining whether it would be better to adopt the English procedure in that particular case, or retain our own procedure with or without modification.

DAVID G. FERGUSON.

COMMITTEE No. 8.

In my opinion it is hardly possible or necessary for the Revision Committee to go through each Bill line by line and clause by clause. Such a course would make their work interminable. If their work were confined to deciding points reserved for their consideration by the various Committees, no block would occur. That seems to me to be a matter within the powers of the Commission itself to rectify. It would be a matter of regret if the work already bestowed on the Statutes were to be thrown away, and I would suggest that the various Committees complete the Bills assigned to them, and that the work of the Revision Committee be confined to deciding points reserved. Let the various Committees then certify their work, or, if thought advisable, send the completed Bills on to certain persons to be appointed in the Commission for the purpose of checking the same. The Bills could then be returned to the Minister by the Commission, together with such report as they may think right.

With these Bills I would suggest that a short Bill be submitted, declaring the Statutes contained in the various lists of Statutes repealed, expired, &c., which have already been prepared by the Committees, to be no longer in force; such Statutes should be set out in a Schedule to the Bill. That would have the effect of clearing away a great deal of useless matter from the Statute Book.

If the course suggested be adopted, I think that the work of the Commission can be brought to a satisfactory conclusion in the near future; otherwise it will be interminable.

To stop the work now would cause great confusion in any attempt to use what has been done, and might result in many sections of Acts, which in the course of consolidation have been removed from their original context, being lost sight of.

FRANCIS J. BETHUNE.

