

Memorandum.

THE following Papers, contributed by His Honour Mr. Acting Justice James, are published, in the view of drawing attention to the useful labours of the Society of Comparative Legislation of the Empire, and of enabling West Australians to follow the course of the Legislation of their Colony. The Annual Journal of the Society, edited by Sir Courtenay Ilbert, is printed by Rivingtons, 34 King Street, Covent Garden, London.

G. RANDELL,
Colonial Secretary.

12th August, 1898.

MODES OF LEGISLATION.

I.—COMMON LAW AS THE BASIS OF STATUTE LAW.

QUESTIONS.

- (a.) What is the common law of the Colony?
- (b.) Is there any law applying exclusively to particular races or creeds?

ANSWERS.

- (a.) That of England. It was introduced on the foundation of the Colony in 1829.
- (b.) A portion of the statute law applies exclusively to the aborigines, their testimony, punishments, contracts, protection, and land reserves. Certain enactments control Indian and Chinese labour.

II.—STATUTE LAW.

- (a.) Of what does the statute or enacted law of the Colony consist? To what extent is it embodied in charters, regulations, Orders in Council, Ordinances, or Acts?
- (b.) To what extent do the statutes of the United Kingdom operate by virtue of either—
- (i.) Original extension of English law to the Colony;
- (ii.) Express provision of any Order in Council or Charter;
- (iii.) Express adoption by the Legislature of the Colony?
- (c.) Is the Statute law of any other Colony in force?
- (d.) Is any code or other body of enacted law of non-British origin in force?

- (a.) The enacted law consists of Ordinances, A.D. 1832-1871, Acts of Council onwards to 1890, and Acts of Parliament from that date. Charters, none. Regulations, some. Orders by the Queen in Council, and Orders by the Governor in Executive Council.
- (b.) (i.) (iii.) With the exception of those relating to usury, all statutes of the realm of a general nature in force on 1st June, 1829, take effect as far as applicable. The Legislature of the Colony has since that date enacted many statutes which embody the whole or parts of Imperial statutes, and has adopted others by reference, while others have been made applicable.
- (ii.) Not by charter, but certain Orders by the Queen in Council have expressly applied to the Colony certain Imperial Acts.
- (c.) No, unless Acts of the Federal Council of Australasia fall within the meaning of the question.
- (d.) None.

III.—METHOD OF LEGISLATION.

QUESTIONS.

- (a.) By whom are drafts of Legislative enactments prepared? Is there any official draftsman? If so, by whom is he appointed; to whom responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the Legislative body?
- (b.) What is the constitution of the Legislative Chamber or Chambers through which measures have to pass?
- (c.) Are draft measures published before introduction or before any other stage. If so, under what rules?
- (d.) Through what stages does a measure pass before it becomes law?
- (e.) Is any opportunity afforded for referring measures, while in course of passage through the Legislature, to any special officer or committee on points of form?
- (f.) Have any steps been taken to secure uniformity of language, style, or arrangement of statutes, either by means of a measure corresponding to "Brougham's" Act (13 and 14 Vict., c. 21), or to the Interpretation Act, 1889, or by official instructions or otherwise?
- (g.) Is there an annual session of the Legislature? Are there any fixed or customary periods of session?
- (h.) How are the Acts or Ordinances numbered or distinguished. Is it the practice to confer for convenience of citation, a "short title" on each Act or Ordinance. How long has this practice been followed?
- (i.) Are private Bills treated separately and under different conditions from public Bills? On what principle is the line drawn between public and private Bills? Are private Acts separately numbered?
- (j.) Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum.

ANSWERS.

- (a.) By various persons, viz., the Attorney General, a Minister, or by a private member. There is now an Official Draftsman appointed by the Governor in Council, on the recommendation of the Attorney General, to whom he is responsible. He has no staff, and his duties are indeterminate. They do not extend to measures introduced by private members.
- (b.) A double chamber system on the Imperial model. (Refer to Constitution Acts.) Measures may be introduced in either chamber, but those dealing with finance in the lower chamber only.
- (c.) No, not as a rule since the introduction of Responsible Government.
- (d.) Through the same stages as in the Imperial Parliament.
- (e.) None beyond those in use in the Imperial Parliament. The Governor can return a Bill for amendment as often as he likes (*see* Standing Orders 327, 328, 329).
- (f.) Yes, to the extent of two shortening ordinances, the later of which became law in 1853.
- (g.) Yes; these are not fixed. The customary periods are from July to November.
- (h.) By number of the regnal year, thus "60 Vict., No. 24." A short title is usually, though not universally, conferred.
- (i.) Yes, the Imperial practice and principle being followed. Private Bills bear no number.
- (j.) No.

IV.—PUBLICATION OF STATUTES.

- (a.) In what manner and under what authority are statutes promulgated? What evidence is accepted of a statute having been duly passed?
- (b.) In what form and under what authority are statutes printed for publication?
- (c.) Are the statutes of each session published in a collected form at the end of the session?

- (a.) By notification in the *Government Gazette*.
(1.) Under the hand of the Colonial Secretary on the assent of the Governor. (2.) Under the same hand on receipt of despatch from the Secretary of State conveying Her Majesty's assent. A copy purporting to have been printed by the Government Printer is accepted as evidence of the passing of a statute.
- (b.) In the form as attested by the Clerk of Parliaments.
- (c.) Yes, or shortly thereafter.

IV.—PUBLICATION OF STATUTES—*continued.*

QUESTIONS.

- (d.) Are the periodical volumes of statutes accompanied by (1) an index and table of contents; (2) a table showing the effect on previous legislation?
- (e.) What collective editions (if any) of the statute law of the Colony have been published, and whether by the Government or by private enterprise? Are these, or any of them, periodical? Do such editions comprise those Acts of the United Kingdom in force in the Colony?
- (f.) Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Practical Utility"?
- (g.) How are Private Acts published?

ANSWERS.

- (d.) (1) Yes. (2) Yes.
- (e.) Up to the year 1882 there was no collective edition. In that year a revised edition, arranged by subject-heads, was published under the direction of a committee. There is no periodicity in the issue of such editions. In 1896 a reprint or revised edition in chronological order of the unrepealed statutes, exclusive of those relating to appropriation and supply, together with a chronological table, was edited by the writer of this paper and published, under authority, by Spottiswoode and Co.; also, a volume containing the adopted Imperial statutes, these last never having been promulgated within the Colony save by reference of title.
- (f.) No.
- (g.) In like manner as Public Acts.

V.—REVISION OF STATUTES.

- (a.) Have any steps been taken for the revision and expurgation of the statute law, whether periodically or otherwise?
- (b.) Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition?

- (a.) The answer to Part IV. (e.) covers this question.
- (b.) The answers to Part IV. almost cover this question. The latest revised edition was published early in 1896. The whole of the unrepealed law is contained in that edition, and in the volumes of 60 Vict. (1896) and 61 Vict. (1897).

VI.—INDEXING OF STATUTE LAW.

Is there any general index to the statute law of the Colony? If so, on what principle is it arranged, and after what interval revised? Does it include both public and private Acts or ordinances, and the statutes of the United Kingdom which are in force in the Colony? Is it accompanied by any tables showing how each statute has been dealt with? What is the date of the latest edition?

Yes. It is arranged under alphabetical heads, revised at the end of each Parliamentary session, and bound up with the volume of the year. It is done gratuitously by the writer of this paper, and accepted. It includes both public and private Acts. Such tables are included within the same binding. The latest index accordingly is in the 1897 volume, published in 1898.

VII.—CONSOLIDATION AND CODIFICATION.

- (a.) What steps have been taken to consolidate the whole or particular parts of the statute law, or to codify any branches of the law?
- (b.) Does any machinery exist for this purpose? Is the work now in progress?
- (c.) What codes are now in force in the Colony?

- (a.) (b.) Consolidation of the whole law has not been attempted. A move has, however, been made in this direction of late by consolidatory measures relating to certain matters such as Customs, Companies, the law of Partnership, Municipalities, the many enactments relating to Coasting Vessels and Passengers, the law of Marriage, Registration of Births, Deaths, and Marriages, and the Transfer of Land Acts. Much, however, yet remains to be done on these lines; e.g., there are 11 several Railway Acts, the earliest of which is styled a Consolidating Act; 9 Licensing Acts; 8 Fishery Acts; and as many Supreme Court Acts. There is no express machinery for this purpose.
- (c.) None.

VIII.—SUBORDINATE LEGISLATION.

What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation, such as rules or orders made by the Governor, or a Minister or Department under the express authority of statute or ordinance? Is there any, and what collection of or index to such subordinate measures?

Such measures appear in the annual Blue Book, but are nowhere so as to be found collected together as a whole so as to be readily referred to. A table of Proclamations, Orders in Council, and Regulations up to the end of 1894 will be found in the Index Volume of the 1896 edition of the Statutes.

1897.—ACTS PASSED—PUBLIC 36, PRIVATE 1.

The two Parliamentary Sessions of 1897 added but little of importance to the Statute Book, the following measures only presenting features of interest from the point of view of the society.

ABORIGINALS.

No. 5.—The Aborigines Act, 1897, abolishes the Protection Board, to which, under The Constitution Act of 1889, an annual sum of £5,000 had been appropriated from out of the Consolidated Revenue Fund; and creates in its stead a sub-department of State, under the control of a responsible Minister, to promote the welfare of the native population, including half-caste, and their education.

PROHIBITED IMMIGRANTS.

No. 13.—Immigration on the part of

- (a.) Persons unable to satisfy a certain indicated test of proficiency in the English language, and to write their names in their own language
- (b.) Paupers or probable paupers
- (c.) Idiots or insane persons
- (d.) Those suffering from contagious diseases
- (e.) Unpardoned offenders who have been within two years last past convicted of felonies or misdemeanours involving moral turpitude, not being offences merely political
- (f.) Prostitutes or persons living on the prostitution of others

is prohibited by the Immigration Restriction Act, 1897, which also inflicts penalties upon those who introduce prohibited immigrants.

REGISTRATION OF FIRMS.

No. 14. The Registration of Firms Act, 1897, in order to assist creditors in ascertaining with what persons they are dealing, enforces the registration of the names of the partners for the time being in any business firm conducted under a firm-name other than that of the full or usual names of all the partners without addition.

WORKMAN'S LIEN.

No. 20. The object of the Workmen's Lien Act, 1897, is to assure to the employed a more complete security for their wages, though it does not interfere with the exercise of other remedies open to them outside the Act. It applies to works performed on contract, and, after judgment given or order made, enables workmen to obtain from the contractor payment of wages due to them by the contractor to the extent of the moneys lying in the hands of the contractee unpaid to the contractor, and this operates as an assignment of such moneys to the workmen. In the absence of any judgment or order, and where the contract exceeds £100, the contractee, before paying over any moneys to the contractor, must take care to obtain from him a statement, verified by declaration, of particulars of wages due, and must see that they are paid over, otherwise the contractee is liable to the workmen to the extent of the amount paid by him to the contractor.

BURIAL GROUNDS.

No. 23. The Cemeteries Act, 1897, provides for the setting apart of lands for burial places and their control, the property being vested in Trustees. It also empowers, under certain conditions, the discontinuance of cemeteries to which lands have heretofore been dedicated.

EMPLOYMENT BROKERS.

No. 24. The Employment Brokers Act, 1897, compels registration on the part of all who follow, for reward, the calling of agent for procuring engagements for persons seeking to be employed for reward, and no person can practice without license first granted by the Licensing Magistrate of the district. Persons by law empowered to engage seamen are excepted from the provisions of this Act.

ADULTERATION OF LIQUOR.

No. 25. The Sale of Liquors Amendment Act, 1897, provides for analysis by a public officer, in order to detect and punish adulteration.

INDUSTRIAL STATISTICS.

No. 26. The Industrial Statistics Act, 1897, establishes statistical agents in each magisterial district to compile returns and submit them to the Registrar General, who, after collating them, transmits to the Treasurer for laying before Parliament. Returns are in the first instance made by—

- (a.) Owners and occupiers of land
- (b.) Owners and custodians of live stock
- (c.) Managers of industrial establishments

Penalties are inflicted upon persons neglecting to comply with the requirements of the Act.

IMPORTED COLOURED LABOUR.

No. 27. The Imported Labour Registry Act, 1897, applies to certain coloured nationalities, imposing restrictions on their numbers and on the area into which they may be imported, viz., North of latitude 27° S. Labourers may be introduced only after contract made by persons other than apparent natives of India, China, Africa, or of the islands of the Indian or Pacific Oceans, or of the Malay Archipelago. Contracts under this Act are subjected to the provisions of the Masters and Servants Act, 1892.

CIRCUIT COURT.

No. 28. The Circuit Courts Act, 1897, enables the holding of Criminal Sittings of the Supreme Court in districts to be proclaimed by the Government.

METROPOLITAN TRAMWAYS.

No. 30. The City of Perth Tramways Act, 1897, confirms a provisional order of the Commissioner of Railways, empowering the making and maintenance of certain 3ft. 6in. gauge tramways, whereof the cars are to be driven by electric power.

MINING ON ALIENATED LANDS.

No. 33. The Mining on Private Property Act, 1897, provides for mining leases on private lands, either to the owner thereof or to any other applicant. There are three modes of acquiring such rights upon lands not being within municipalities or other excluded areas, viz. :—

- (1.) On resumption of private land by the Governor on behalf of the Crown
- (2.) On proclamation of private land as an alluvial goldfield
- (3.) In the case of compulsory mining leases.

FOREIGN COMPANIES.

No. 35. The Companies Act Amendment Act, 1897, provides for a local register of foreign companies.