

REPORT

(17).

Of the Commissioner to Collect, Examine and Classify the Statutes passed by the Parliament of the Dominion of Canada, since Confederation.

OTTAWA, 30th December, 1882.

Sir,—The Commissioner appointed by a Commission issued under the Great Seal of Canada on the fifteenth day of November, in the year of Our Lord one thousand eight hundred and eighty-one, to collect, examine and classify in the manner set forth in said Commission, the Statutes passed by the Parliament of the Dominion of Canada, since the first day of July, one thousand eight hundred and sixty-seven, and unrepealed, and the Statutes in force in the several Provinces of Canada at the time of their respectively becoming members of Confederation, relating to subjects which under the British North America Act of 1867, are within the exclusive jurisdiction of the Parliament of Canada, has the honor to report as follows:—

The Commission recites in substance "that whereas it has become necessary to revise and consolidate the Statutes of Canada, and whereas each of the Provinces of Canada before Confederation possessed Legislative authority over and passed laws in respect to matters now within the exclusive Legislative control of the Parliament of Canada ;"

"And whereas the British North America Act continued these laws in force until repealed or altered by the Parliament of Canada, some of which have been so repealed or altered, some remain still laws of the Province in which they were enacted, some are local in their nature, not capable of being extended to the whole of the Dominion of Canada, while others might properly be extended to the whole, or other parts of Canada, and it is probable that some of them should be entirely repealed ;"

"And whereas certain schedules of Acts requiring examination have already been prepared, and whereas for the proper revision and consolidation of the Laws of the Dominion of Canada, it is necessary that further examination, collection and classification of the several Statutes of Canada should be made."

The Commission then proceeds to define substantially in the language following, what is required to be done by the Commissioner, that is to say:—

1. "He is to complete the Schedules already prepared as above mentioned."
2. "To examine the Statutes passed by the Parliament of Canada since the first day of July, in the year of Our Lord one thousand eight hundred and sixty-seven."
3. "To collect therefrom all those enactments which are still in force."
4. "To note the enactments of the old Provincial Statutes which have been repealed or altered."
5. "To classify all unrepealed enactments according to subjects care being taken to distinguish those applying to the whole Dominion from those applying to one or more of the Provinces only."

6. "And generally to make such examinations, classifications and collections of the said Statutes as may be necessary and preliminary to the proper revision and consolidation thereof, and in accordance with such instructions as may be given from time to time in that behalf by the Honorable the Minister of Justice of Canada."

The schedules referred to as having been prepared before the issue of the Commission, and which were received by the Commissioner from your Department, were nine in number, eight of them containing lists of the Public General Statutes of each of the Provinces passed before the dates of their respectively entering Confederation, except as regards the Provinces where consolidation of the Provincial Statutes had

taken place, in which cases the consolidated enactments and the Statutes passed subsequent to such consolidation only are set forth in said schedules, and the ninth schedule containing a list of all the Public General Statutes of the Dominion of Canada, from the first day of July, one thousand eight hundred and sixty-seven, down to and inclusive of the Parliamentary Session of one thousand eight hundred and seventy-seven.

The lists of the Statutes of the several Provinces are contained in the first eight schedules as follows:—

1. The Consolidated Statutes of Canada.
2. The Consolidated Statutes of Upper Canada.
3. The Consolidated Statutes of Lower Canada.
4. The Statutes of the Province of Canada.
5. The Revised Statutes of Nova Scotia (3rd edition), and subsequent Statutes of that Province down to the first July, one thousand eight hundred and sixty-seven.
6. The Revised Statutes of New Brunswick, of the year 1854, and subsequent Statutes of that Province down to the 1st day of July, 1867.
7. The Revised Statutes of British Columbia of 1871, when that Province entered Confederation.
8. The Statutes of the Province of Prince Edward Island, down to the year 1873, when that Province entered Confederation.

In each Province of the Dominion except one, there had been at least one general consolidation of the Provincial Statutes prior to such Province becoming a portion of the Dominion, but in the Province of Prince Edward Island there never appears to have been any such consolidation, although the Statutes of that Province have at different times prior to the entry thereof into Confederation, been revised, collected, classified and reprinted.

The first eight schedules already mentioned, in addition to containing lists of the consolidated and subsequent Provincial Statutes passed prior to the Confederation of the Provinces respectively purported to show which of these Statutes were of a purely Provincial character, and which of them related wholly or partially to subjects now within the jurisdiction of the Parliament of Canada, and also which of them had been repealed, superseded or amended either by subsequent enactments of the same Provinces passed prior to Confederation or by Legislation of the Parliament of Canada in any Session thereof between the 1st day of July, 1867, and the 1st day of July, 1877.

In order to carry out the requirements of the Commission the first work devolving upon the Commissioner was the completion of the schedule already mentioned as the ninth, containing a list of all the Public General Statutes of Canada down to and inclusive of the last Session of Parliament which he accordingly completed.

The Commissioner, as the second branch of the work required under said Commission to be done, then examined the Statutes set forth in the last-mentioned schedule so completed and prepared as the result of such examination, a new schedule indicating in the proper columns thereof (in addition to its being a list of all the Statutes passed in each year between 1867 and 1882 inclusive.)

1. Those of which were of a public general character.
2. Those which had been repealed and the Statutes by which they had been repealed.
3. Those which had become effete.
4. Those which had been passed for only a temporary purpose.
5. Those which had been amended and by what Statutes the amendments were made.
6. And, lastly, the Provinces of the Dominion to which the said Statutes were respectively applicable.

The third requirement of the Commission was complied with as incidental to the preparation of the schedule last mentioned, indicating as it does which of the Statutes so examined remain in force.

The schedule last mentioned containing what has just been described and complying with the second and third requirements of the Commission, involved neces-

sarily the examination of over seven hundred Acts of Parliament, or, in other words, of all the legislation of a public general character passed by the several Parliaments of the Dominion of Canada which have existed at any time between the 1st day of July, 1867, and the dissolution of the last Parliament.

The fourth branch of the work to be done under the Commission was carried out by the Commissioner concurrently with the examination of Dominion Statutes directed to be made as the second requirement, consisting as said fourth branch did of annotations made in the proper columns of each of the eight schedules first mentioned, indicating which (if any) of said Provincial Statutes therein-mentioned had been repealed, superseded or amended by Dominion legislation, and by which of such Statutes they were so repealed, superseded or amended.

The first, second, and fourth branches of the work having been so dealt with they formed the basis or material for "the collection and classification of all unrepealed enactments" required as the third and fifth branches of the Commissioner's work, and these latter requirements, as well as the one last mentioned in the Commission, were partially complied with by the Commissioner in the following manner:—

1. By the preparation of an analytical digest or "classification of all unrepealed Acts of a public general character, passed by the Parliament of Canada, and of Acts of the Provinces of Canada, Nova Scotia, New Brunswick, British Columbia, and Prince Edward Island, passed by the Legislatures of these Provinces prior to their respectively joining the Confederation, and relating to matters subject under the British North America to the Legislative authority of the Dominion of Canada," arranged so far as the order of subjects therein is concerned as nearly as practicable in accordance with the plan of arrangement or classification adopted in the Consolidated Statutes of Canada.

This collection, classification, or digest contains eleven chief titles and two hundred and fifty-seven subjects or titles of chapters, indicating all the subjects of legislation which, in the Commissioner's opinion, should be consolidated in order to form the Consolidated Statutes of the Dominion of Canada, and each and every Statute or portion of a Statute affecting these subjects necessary to be considered and taken into account in carrying out the said Consolidation.

In respect of some subjects of Dominion legislation, the Provincial Statutes passed before Confederation have not been repealed, no laws having been passed by the Parliament of Canada in respect of such subjects, and as a result according to the British North America Act of 1867 the Provincial laws remain in force.

In respect of other subjects, although Acts have been passed by the Parliament of Canada, the old Provincial laws have not been expressly repealed, the enactments either superceding in effect the Provincial laws, or enacting that said Provincial laws are thereby repealed only so far as inconsistent with the new enactments.

In some of the Provincial Statutes passed before Confederation, the main subjects of which are still within Provincial legislative jurisdiction, clauses were enacted constituting felonies or misdemeanors, or otherwise affecting the criminal law, or affecting some other subject, which is now exclusively one of Dominion legislation, and although the Statutes themselves may have since Confederation been repealed by other Provincial enactments, as in some cases is the fact, so far as could thereby be done, these particular sections or clauses still remain law in these Provinces, and should be dealt with in carrying out the general consolidation.

In preparing, therefore, the said classification or digest, and in order to call attention to all the enactments required to be considered in carrying out the Consolidation, the plan adopted by the Commissioner was to indicate in the digest opposite to each subject therein and on the same page thereof,—

First, in black ink, all the Statutes or portions thereof which clearly had to be consolidated under that particular subject and when they applied to only one or more Provinces that also was indicated in the same colored ink.

Second, in red ink, all those statutes or portion of statutes relating to the same subject, but as to which it was uncertain whether they had been impliedly repealed

or superseded, and which the Commissioner considered should be carefully examined in the course of the actual consolidation, mentioning also the Provinces to which the same were applicable.

Second, after making the collection and classification in the form of an analytical digest of the unrepealed Statutes of the Dominion of Canada and the Provinces before their respectively entering Confederation, on subjects now under the legislative control of the Parliament of Canada, under their respective subjects, as already at length described, the Commissioner having being provided by your Department with the requisite number of the printed volumes of the Statutes, and also with suitable blank books for that purpose, took from the printed volumes all the Statutes and portions of Statutes in each particular subject, and indicated opposite to each subject in the said classification or digest, and placed them in the blank books, so as to exhibit in these books not only the subjects of legislation to be consolidated and the chronological order and description of the Statutes relating thereto, but also the actual Statutes as amended from time to time, omitting, where any repeal had taken place, any clauses so repealed, and inserting the new clauses substituted therefor, or when the original clauses were amended only by subsequent legislation, then leaving the original clauses in the body of the Statute so transferred to the blank book and placing in the opposite or subsequent pages thereof the amending clauses or enactments with a reference in the margin of each page of the book identifying the amendments with the original Act, in the margin; also, of the page at the beginning of each Statute so embodied in said books, the names of the Provinces to which these Statutes apply are annotated, as well as the amendments thereto, and the extension thereof, by any Statute to other Provinces.

The Statutes, or portions of Statutes, indicated in red ink, in the classification or digest which require to be considered in the course of the consolidation, are also either taken bodily from the printed volumes containing the same and placed on the pages of these blank books opposite to those pages showing the Statutes to be consolidated, or else only the caption, chronological description and Province to which these Statutes, requiring to be investigated relate, are so placed on the opposite pages already described, when as was the case in respect to some of the Provincial Statutes it was impossible to procure any copies of the said printed volumes.

The books just described are thirteen in number, of about three hundred and fifty pages each, containing "in extenso" as already set forth, all the legislative enactments indicated in the digest or classification on the subjects mentioned therein which constitute the matter for consolidation and consideration in the course of such consolidation.

Each of said books is properly indexed by subjects and pages, so as to afford a ready means of reference to the Statutes relating to each subject contained in the said books respectively.

The British North America Act of 1867, and the amendments thereto, are placed on the first pages of the first of said books, as these Acts will doubtless be frequently referred to in the course of the consolidation, and will, no, doubt, be published in the opening portion of the first volume of the Consolidated Statutes of the Dominion.

In consequence of the impossibility already referred to of procuring any copies of the printed volumes containing some of the Provincial Statutes requiring to be referred to, with the exception of the volumes in the Parliamentary Library, the Commissioner, in accordance with authority received from your Department, procured written copies to be made of some of said Provincial Statutes, which are required for reference or otherwise in the course of said consolidation.

The Commissioner has the honor, therefore, to submit the above as the result of his labors up to this date under the Commission, to him directed, as before mentioned, that is to say:—

1. The nine schedules completed as directed by the Commission.
2. The new schedule already described of the Statutes of the Dominion of Canada.
3. The classification or analytical Digest also fully described.

4. And lastly, the thirteen books containing the material to be consolidated as the Statutes of the Dominion of Canada, or which requires to be referred to in the course of such consolidation.

There remains still to be performed a very important portion of the work directed to be done under the Commission before the contemplated revision and consolidation take place, that is to say, the preparation and arrangement of the actual Statute law so collected and placed in the said books into the form of new chapters as nearly as possible, as the same will appear in the completed volumes of the proposed Consolidated Statutes.

This last branch of the work, which will require great care and consideration, is just being entered upon, but when it is completed, the actual revision and consolidation can then proceed without delay and with all the material therefor, in a complete state of preparation.

I have the honor to be, Sir, your obedient servant,

JAMES COCKBURN, *Commissioner.*

A. FERGUSON, *Secretary.*

Hon. Sir ALEXANDER CAMPBELL, *Minister of Justice.*