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Some Reasons Why North Dakota Should Adopt the Uniform Sales Act.

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A. PLAN OF THIS ARTICLE

THE purpose of this article is to recommend the Uniform Sales Act for adoption in North Dakota. As the Uniform Sales Act is a codification of the American common law on the subject of sales it seems appropriate, before dealing at large with the present defects in our law, to make a few preliminary remarks on the subject of codification, and to suggest why the Uniform Sales Act, as a piece of codification, accords well with our North Dakota legal system and history. After this preliminary explanation an examination is made of some of the shortcomings of our present North Dakota Law of Sales. Lastly follows the inquiry how these shortcomings may be mesurably remedied by the adoption of the Uniform Sales Act, and why the objections usually urged against its adoption are unsubstantial.

B. PRELIMINARY SURVEY OF CODIFICATION

Codification is the act or process of reducing all the law upon one or more general subjects to a code. It is a new, systematized statement of the law, enacted as one statute.[1]

I. THE ANCIENT WORLD

A thousand years of legal development in Ancient Rome beginning with the twelve tables culminated in an epoch-making period of codification.[2] The most thoro work of codification which this period produced is that which bears the name of Justinian. Justinian's codification has stood the test of time, has preserved to the modern world the laws of ancient Rome, and has thus furnished to much of the modern world a large part of the foundation upon which its present day law rests.[3] It is said to be a master-

1. From Anderson's Dictionary of Law. Also see Bouvier's Law Dictionary.
2. Hadley's Introduction to Roman Law, p. 1. For a systematic account of this development see Muirhead's Historical Introduction to the Private Law of Rome. For a shorter concise account see Sohm's Institutes of Roman Law, (Ledlie's translation) sections 9-22 incl.
3. Sohm's Institutes of Roman Law, sec. 22, sec. 28.

piece of legal achievement, whose superiority over the heterogeneous mass of law which preceded it is universally recognized.[4]

II. CONTINENTAL EUROPE

Further codification of the law has in more recent times taken place in Continental Europe. The old German Code goes back to Frederick the Great. The Code Napoleon[5] framed a little over a hundred years ago has been widely followed in Europe outside of France, as well as where it originated, and forms the basis for the law of South America, Central America, Mexico, and Louisiana.[6] In recent years the new German Code,[7] the most thoro work of general codification that has yet appeared,[8] was adopted in the German Empire and has become the basis for legislative codification in Russia, Switzerland, and Japan.[9] It is apparent, therefore, that practically all the advanced nations of the world, the English-speaking excepted, live now under some form of codified law, the history of which goes back to Justinian's codification of the law of ancient Rome.

III. ANGLO-AMERICAN EXPERIENCE

1. ARCHAIC CODES. At the dawn of English political history we have some "laws" which were general enactments to sum up what had preceded, based on man's memory, custom, etc., but not on any records of either legislation or court proceedings.[10] These old laws still exercise the antiquarian and the legal historian, but have long since become obsolete as rules of law by which to settle any controversy between litigants.

2. UNSUCCESSFUL PROJECTS. Apart from these ancient laws, based on mere oral tradition, which have now been antiquated for a thousand years, the Anglo-American system of law has never in its entirety been systematically codified. Instead of codified law we have had a heterogeneous body of law consisting of the common law, so-called, a mass of decided cases occurring in litigation, and the statute law, a mass of separate statutory enactments. There

4. See, for example, Jenks: Edward I. in Select Essays in Anglo-American Legal History, vol. 1, p. 160.
5. See Wright's French Civil Code.
6. Pound's Outlines of Lectures on Jurisprudence (1914).
7. See Wang's German Civil Code.
8. Ames' Lectures on Legal History, p. 368.
9. Pound's Outlines of Lectures on Jurisprudence (1914).
10. See Thorpe's Ancient Law and Institutions of England: Schmid, Gesetze der Angelsachsen; Lieberman, Gesetze der Angelsachen. A convenient collection illustrating the character of these laws may be found in the earlier part of Stubb's Select Charters.
Also compare these laws with the archaic law of the German tribes, for which see the "Leges Barbarorum," and with archaic Irish Law, in the Brehon Laws.

have been accessible court records since the time of the "Year Books,"[11] but no systematic general codification has yet resulted. From the time of Henry VIII to our own day various projects for codification of the whole law have been undertaken,[12] but without the indispensable culmination in statutory enactment as law of the codes proposed.

3. THE FIELD CODES. The most important attempt to codify the whole law was made in the United States a little more than fifty years ago. The result was the Field Codes, drawn up by a little group of New York lawyers of which Mr. Field was the leading member, as a codification of the American common law. As a complete system these codes failed of legislative enactment in New York, as they did in most of the other states. One of them, the Code of Civil Procedure, has been widely adopted, while in four states, of which North Dakota was one,[13] all the Field Codes were adopted in their entirety. The failure of the Field Codes to secure legislative enactment into law is attributed mainly to two causes, the crudeness of the codes themselves, and the conservatism of the bar trained under the English common law system toward any such innovation as codification of the whole law.[14]

4. PRIVATE CODIFICATION. In recent times we have had, both in England and in this country, some attempts by various individuals, frequently law professors, to state some branch of the law in definite propositions compiled in one book. Such is, for example, Wigmore's Pocket Code of Evidence.[15] These attempts at codification by individuals, on their own responsibility, of course have not the binding force of statutory enactment. They serve the purpose, however, of reducing the law to definite statements as guides to courts and practitioners, and in a mesure pave the way for more thoro codification.

5. COMMISSIONERS ON UNIFORM STATE LAWS. The most important practical steps in the direction of codification in recent years in the United States have been taken by the Commissioners on Uniform State Laws. They act for the American Bar Associa-

11. I.e., Since the time of Edward I. See Year Books edited by Horwood in the Rolls Series. See also, Reeves History of English Law, Pollock & Maitland's History of English Law.

12. Pound's Outlines of Lectures on Jurisprudence (1914). The project under Henry VIII, Bacon's Project (1614), Lord Westbury's plan (1860-1863).

13. See prefaces to Compiled Laws, 1913.

14. Williston, in Pennsylvania Law Review, vol. 63, p. 197.

15. Other examples may be given, as Wigmore's Summary of Torts, in Wigmore's Cases on Torts, vol. II. A similar tendency appears in the black letter propositions in the West Publishing Company's Hornbook series.

tion in drawing up codes for certain branches of the law, and recommending the draft codes to the legislatures of the various states for adoption. Some of the draft codes recommended by the Commissioners are the Negotiable Instruments Law, the Uniform Sales Act, the Partnership Act, the Warehouse Receipts Act, etc.[16] So far the Negotiable Instruments Act has met with widest approval, having been adopted in most of the states.[17] Some have only recently been agreed upon and recommended, while others are still in preparation.

The Uniform Sales Act, which it is the purpose of this article to recommend for adoption in North Dakota, is one of these Acts of partial codification originating with the Commissioners on Uniform State Laws. It was drawn up by a recognized authority on the law of Sales, Professor Samuel Williston of the Harvard Law School. His drafts were for several years submitted to elaborate examination and criticism, and several revisions were made. The final draft was agreed upon by the Commissioners in the year 1906 and recommended to the states for adoption.[18] The Uniform Sales Act has, up to the present time, (1915) been adopted in fourteen American jurisdictions: Arizona, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Wisconsin, and Alaska.[19] It will be seen by the geographical location of most of these states, that the older and more highly developed commercial section of the country has, for the most part, already adopted the Uniform Sales Act, and that among the states which have adopted it is New York, whose court decisions are, with us, such persuasive precedents on account of our living under the Field Code which was drafted in New York.

C. WHY CODIFICATION ACCORDS WITH OUR NORTH DAKOTA LEGAL SYSTEM AND HISTORY

I. The Field Codes the Basis of Our Law and Practise.

In recommending the Uniform Sales Act for adoption in North Dakota the arguments for and against general codification need not be repeated. We are in North Dakota committed, so to speak, to

16. For a complete list of the Uniform Acts recommended, and the states where each has been adopted, see Report of American Bar Association for 1915, p. 913. The Commissioners on Uniform State Laws also publish copies of their proceedings containing this information together with much other valuable material. Copies may be obtained on application to the secretary, George B. Young, Newport, Vermont.
17. Report of American Bar Association for 1915, p. 913. Also see Brannon's Negotiable Instruments Law, or the fourth edition (1915) of Crawford's Negotiable Instruments Law.
18. See preface to Williston on Sales.
19. Report of American Bar Association for 1915, p. 913.

the principle of codification by having adopted the Field Codes under which we now live. Even tho it were granted, for the sake of argument, that uncodified law is a better system of law in application than codified law can continue to be, yet the desirability of revision of the codified law which we have must be conceded when thru such revision its improvement can be secured. Since territorial days we have lived under the Field Codes, and with these codes our legislature has in minor ways been constantly tinkering.[20] As lawyers we have become habitual code-readers on every legal question that arises, and as a people we have had more than the usual occasion for becoming imbued with the idea, however mistaken, that the answer to every disputed question of law is to be found in the statute book. Seldom indeed, in the trial court, does either lawyer or judge attempt to go much deeper into the question of law involved if they can find a specific code provision in point.[21] The work of harmonizing and piecing out the code provisions is generally left to our State Supreme Court on appeal, and even that court often dismisses its discussion of the merits of a case by a curt reference to a code section as controlling.[22] As a people, and as a legal profession, we are therefore far from being averse to codification. On the contrary, we are so thoroly imbued with it that in the face of a code provision we are rather prone to forget that law exists, not as an end in itself, but as a means to the end that justice may be administered.

II. Modifications by Legislative Enactment

As we are not averse to codification but rather emphatically committed in its favor, so we are committed to revisions of the codes we have if it seems that improvement can thereby be secured. It is axiomatic that a complete and final code is impossible.[23] As conditions change and development takes place in the world about us, to which the law is to be applied, new conclusions must be worked out from old principles, and, from time to time, these new developments must be worked into the Code by revisions.[24] Such, indeed, has been the practise so far as our legislative history is con-

20. See the frequent notations of amendments to Code sections in Compiled Laws, 1913, and the fequent recurrence of the terms, "An Act to amend" sections of the Code, in every volume of Session Laws.

21. Even the most casual attention, in observing the trial of cases in court, will sustain the accuracy of this remark.

22. A few instances of such dealing with a case are here cited at random.

7 N. D. 388, at p. 396; 75 N. W. 772
10 N. D. 120, at p. 122; 85 N. W. 226
10 N. D. 601; 88 N. W. 710
24 N. D. 152; 139 N. W. 104

23. Terry's Leading Principles of Anglo-American Law, sec. 609.

24. Ibid.

cerned. Never a legislative session passes that there is no amendment to our Codes,[25] nor are these amendments always confined to mere details. We early adopted the Negotiable Instruments Law,[26] the first and most defective piece of partial codification recommended by the Commissioners on Uniform State Laws.[27] Lately we adopted another of the Uniform Acts, the Family Desertion Act.[28] We have modified the presumption of fraud in case of retention of possession by the seller of personal property.[29] We have modified the provisions relating to warranty in the sale of goods.[30] Numerous other examples of legislative changes in our Code might be cited. Even a casual examination of our Code will reveal, thru its notation of references to legislative years, the frequency of such amendments and changes. At the last session of the legislature (1915) the amendments or repeals of Code sections numbered upward of three hundred and fifty, more than fifty of which consisted of minor changes in the Civil Code alone.[31] These legislative changes which have been made in North Dakota's history, have from time to time been worked into the Code at each periodical revision.[32] We have not as yet had, however, any attempt systematically to incorporate in the Code the development of law which has been going on at the same time thru judicial decision. Starting with a Code which is based upon the common law, derived from judicial decisions, we have made legislative changes in it and incorporated these changes in code revisions, but have in our code revisions ignored the corresponding development in the law which is derived from judicial decision.

So far as we have proceeded, therefore, in the development of our law, we are committed to the principle of codification, and we are committed to the propriety of legislative changes in our codified law whenever such changes can remedy defects and secure substantial improvement. Our Code revisions have, however, up to the present time, been partial only in their character, taking no account

25. See note 20.
26. Session Laws, 1899, ch. 113, now appearing in the Compiled Laws, 1913, as secs. 6884 et seq.
27. See the Ames-Brewster controversy, in Brannon's Negotiable Instruments Law.
28. Session Laws, 1911, ch. 138, now appearing in the Compiled Laws, 1913, as secs. 9595 et seq.
29. Session Laws, 1893, ch. 78. The effect now appears in the Compiled Laws, 1913, as section 7221.
30. Session Laws, 1913, ch. 218, now appearing in the Compiled Laws as secs. 5991-5993.
31. This enumeration for the last legislative session is derived from the sticker pamphlet issued by the Lawyers Cooperative Publishing Company for pasting in the margin opposite the appropriate sections in the statute book the numbers of the sections amended or repealed by the last legislature.
32. For illustrations, see notes 26-30.