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THE FEDERAL STATUTES—THEIR HISTORY
AND USE†

BY RALPH H. DWAN* AND ERNEST R. FEIDLER**

I. HISTORY

The First Congress in its first session passed the first law relative to publishing the laws of the United States enacted under the constitution. By section 2 of an Act approved on September 15, 1789, it was provided that whenever a bill, order, resolution, or vote of the senate and house of representatives became law, it should be received by the secretary of state, who should carefully preserve it. The secretary of state was directed, “as soon as conveniently may be,” to publish such law in at least three newspapers printed in the United States. He also was directed to deliver a printed copy to each senator and member of the House of Representatives, and to send two authenticated copies to the executive authority of each state.

Unless one were fortunate enough to have access to one of the authenticated copies sent to state executives, it was necessary to pay a fee as provided in section 6 of the Act of September 15, 1789, in order to secure an authenticated copy of a law. Unless one had such an authenticated copy or a copy delivered to a mem-

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†The statements made in this article represent only the personal views of the authors; they do not in any way reflect the official views of any government department or officer.

In an article of this length it is obviously impossible to treat either history or use of federal statutes in a complete manner; the authors do not purport to do so. It is hoped, however, that the discussion will be of some interest to the profession.

††Statutes were officially published in newspapers until March 4, 1875, when further publication in that manner was forbidden by statute. Act of June 20, 1874, 18 Stat. at L. part 3, 90, ch. 328.

†‡That provision was finally repealed by section 2 of the Act of December 28, 1874, 18 Stat. at L. part 3, 293, ch. 9.


†‖Section 5 of the Act of September 15, 1789, 1 Stat. at L. 69, ch. 14, provided that copies authenticated under seal should be evidence equally as the original paper.
ber of Congress, it was necessary to rely upon newspapers or private compilations in reading a particular statute.

The newspapers and private compilations must have been inaccurate, and the situation must have given rise to complaints, for in the third session of the First Congress, a resolution \(^6\) was approved giving permission to "Andrew Brown, or any other printer" of laws, resolutions, and treaties to collate with, and correct by, the original rolls materials to be printed. That was to be done under the direction of the secretary of state, and a certificate of the laws having been so collated and corrected was to be annexed to the edition of such laws.

There was no official index to the federal statutes at this point, and such statutes were not collected together in any one official book or set of books available to the public. But on March 3, 1795, there was approved an Act which directed the secretary of state to cause to have printed and collated a complete edition of the laws of the United States, including the constitution, public laws, and treaties, together with an index to such laws.\(^7\) Section 2 of the Act provided for distribution of such statutes among the states and territories, and section 3 provided that thereafter at the end of each session of Congress, all acts passed during such session and all treaties should be printed and distributed in the same fashion. That was a great step in advance, and the plan worked out was similar, in a general way, to that which has been followed since. That edition of the laws of the United States is known as the Folwell edition. It was continued into twelve volumes. Up to volume five, the text of private acts of Congress (that is, acts providing for the relief of particular individuals, etc.) was not included.

Congress from time to time passed other laws providing for publication of laws in newspapers and for the printing and distribution of laws.\(^8\) Particularly worthy of mention is the Bioren and Duane edition of the laws of the United States. By an Act

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\(^6\) Resolution of February 18, 1791, 1 Stat. at L. 224.

\(^7\) Act of March 3, 1795, 1 Stat. at L. 443, ch. 50.

\(^8\) Act of March 2, 1799, 1 Stat. at L. 724, ch. 30; Act of March 27, 1804, 2 Stat. at L. 302, ch. 60; Act of April 18, 1814, 3 Stat. at L. 129, ch. 69 (providing for the so-called Bioren and Duane edition of the laws of the United States); Act of November 21, 1814, 3 Stat. at L. 145, ch. 6; Act of April 20, 1818, 3 Stat. at L. 439, ch. 80 (this Act is interesting in that it appears from the provisions in section 3 that the government had had some difficulty with delays in newspaper publications of the statutes and with omissions in such publications); Act of May 11, 1820, 3 Stat. at L. 576, ch. 92; section 21 of the Act of August 26, 1842, 5 Stat. at L. 527, ch. 202.
approved April 18, 1814, it was provided that the secretary of state was to contract with John Bioren and W. John Duane of Philadelphia, and with R. C. Weightman of Washington, for a thousand copies of a proposed edition of the laws and treaties of the United States. The edition was to be executed on a plan and in a manner approved by the secretary of state and the attorney general, and the former officer was to appoint an editor for the publication. In section 4 of the Act of April 18, 1814, it was provided that future laws and treaties should be printed in the same form as the proposed edition. The Bioren and Duane edition of the laws continued up to the time of the publishing of the Statutes at Large, but under other publishers. It had then reached ten volumes. Many of the citations to statutes in the earlier cases are to the Bioren and Duane edition.

The "Statutes at Large" are today the basic federal statutes available to the public; they have continued in substantially the same form down to the present time and contain, in chronological order, all public acts, resolutions, private acts, and treaties. Publication of those statute books did not begin until 1845. On March 3 of that year, the president approved a joint resolution which provided in substance that the attorney general should contract with Messrs. Little and Brown of Boston, Massachusetts, for a thousand copies of their proposed edition of the laws and treaties of the United States. Numerous conditions as to form were stated in the resolution, and it was provided that the volumes should be submitted to the attorney general for his approval. Little and Brown completed their work in 1846. The first five volumes were devoted to public acts and to resolutions from the beginning of the government under the constitution. Volume 6 was devoted to

93 Stat. at L. 129, ch. 69.
10John B. Colvin was appointed editor. He made the serious mistake in volume 1 of including a thirteenth amendment of the constitution of the United States which had not been ratified, and which never was subsequently ratified. At the time of the error twelve states had ratified; thirteen were needed. The proposed amendment deprived of citizenship any citizen who accepted, without the consent of Congress, any title or emolument from a foreign power.
11It appears that Mr. Joseph Story, Associate Justice of the Supreme Court of the United States, had "inspected" an edition of the laws of the United States which was unofficial but widely used. It was published in Boston in 1827 by Wells and Lilly. It was originally in three volumes, but two additional volumes were issued in Philadelphia, 1837 and 1848, edited by George Sharswood.
12Stat. at L. 798.
private acts; volume 7, to treaties with the Indians; and volume 8, to treaties with foreign nations. The work through volume 8 was edited by Richard Peters, who had formerly been reporter of the decisions of the Supreme Court of the United States.  

An examination of the volumes of the Statutes at Large containing the public laws discloses that the chapter numbers are not consecutive. That is due to the fact that all statutes, public and private, were first arranged in chronological order, and then given chapter numbers in that order. Then the public laws were separated from the private, and they were printed in a separate place. That plan has been followed in the Statutes at Large down to the present time. It is understood that Peters objected to the plan, but the attorney general insisted that it was required by the 1845 joint resolution.  

By an Act approved on August 8, 1846, the Little and Brown edition of the laws and treaties of the United States was declared "to be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several states, without any further proof or authentication thereof." From the date of that Act on, in searching the statutes, one might accept as final, for practical purposes at least, that which was found in the first eight volumes of the Statutes at Large, unless it had been subsequently repealed, superseded, modified, or amended by another statute or by a treaty. So far as the writers have been able to ascertain, that was the first time that a provision of that kind was made with reference to any published volumes of the federal statutes.  

Little and Brown continued their work under the editorship of George Minot, and by joint resolution approved September 26, 1850, the secretary of state was directed to contract with Little and Brown to furnish their annual Statutes at Large to the government. The edition previously issued by the secretary's
order, pursuant to section 4 of the Act of April 20, 1818, was discontinued. During the preparation of volume 11, George P. Sanger became the editor, and the publication of the Statutes at Large was continued under his editorship by Little and Brown through 1873 and volume seventeen.

On June 22, 1874, Congress enacted a revision of the permanent public laws of the United States in force on December 1, 1873. Section 5595 of the revision directed that it be cited and designated as "The Revised Statutes of the United States." Since a second edition of books containing the revision was issued in 1878, the books of the first edition are often referred to as the Revised Statutes of 1874 (the revision having been enacted in that year) to distinguish them from the second edition. However, the revision purports to be only of laws enacted before December 1, 1873. Therefore, in making the distinction, it would seem more accurate to refer to the books of the first edition as the Revised Statutes of 1873. Such Revised Statutes of 1873 make up part 1 of the eighteenth volume of the Statutes at Large.

The 1873 revision is the only occasion on which Congress has enacted as law a complete revision of all the federal permanent public statutes. It will be remembered that seventeen volumes of the Statutes at Large had accumulated at that time. Much of the material in those volumes was obsolete, much repealed, much superseded, much modified. It was almost a practical impossibility to make a thorough search of the statutes on many subjects. As early as 1848 the House Judiciary Committee had strongly

183 Stat. at L. 439, ch. 80. That statute had directed the secretary of state to cause to be published, at the close of every session of Congress, the new laws in the same form as the Bioren and Duane edition.

19Joint resolution of March 31, 1866, 14 Stat. at L. 352, provided for the renewal of the contract with Little and Brown for the annual publication of the Statutes at Large.

20Between December 1, 1873, and June 22, 1874, many new statutes had been enacted. In so far as they were inconsistent with the revision, they took precedence over it although enacted before it. United States v. Auffmordt., (1887) 122 U. S. 197, 208, 7 Sup. Ct. 1182, 30 L. Ed. 1182.

21Part 2 of volume 18 of the Statutes at Large is the Revised Statutes relating to the District of Columbia. Part 3 is the public and private statutes enacted from December, 1873, to March, 1875, and treaties, postal conventions, and executive proclamations. Volume 18 is the only volume of the Statutes at Large printed in parts until volume 32 published in 1903. At that time the practice was commenced, which has continued until the present time, of publishing public statutes in part 1 and private statutes and treaties in part 2. Volume 44 of the Statutes at Large is published in three parts. Part 1 is the U. S. Code; part 2 contains other public laws; part 3 contains private laws, treaties, etc.
advocated revision. Finally, acting pursuant to the Act of June 27, 1866, President Johnson appointed a commission to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in nature.

The chairman of the commission was Caleb Cushing, previously Attorney General of the United States and Associate Justice of the Supreme Judicial Court of Massachusetts. The other members of the commission were William Johnston and Charles P. James. Mr. James was later appointed associate justice of the supreme court of the District of Columbia, where he served for many years. In 1868, Johnston and James reported progress on the revision, but pointed out that the task was so great that it could not be completed in the time allowed by the 1866 Act. By the Act of May 4, 1870, the time for completion of the work was extended three years, and the Official Register shows that the commissioners were Charles P. James, Victor C. Barringer, and Benjamin Vaughn Abbott. Abbott, of course, was one of the great compilers of digests and of statutes in American legal history. From a report made by the commissioners in 1871, it appears that, as a particular part of the revision was tentatively completed, it was sent to various distinguished lawyers who were particularly conversant with the material dealt with in that part for criticism and checking. Finally, in the early part of 1873 the commission made its report to a joint committee of Congress appointed pursuant to the Act of March 3, 1873. It was the opinion of the joint committee that the commissioners had so changed and amended the statutes that it would be impossible to secure the passage of their revision. The work was, therefore, handed over to Thomas Jefferson Durant, a District of Columbia attorney, so that he might expunge all changes in the

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22(1848) H. R. Rep. No. 671, 30th Cong., 1st Sess. That report is especially interesting in that it explained the difficulties which confronted one who wished to use the Statutes at Large. The difficulties seem to be much the same as those which trouble the practitioner today in that respect.
2314 Stat. at L. 74, ch. 140.
24The first appropriation to commence the work was made by the Act of March 2, 1867, 14 Stat. at L. 456, ch. 166. Whether the commissioners actually commenced work prior to that time is unknown.
25Cushing apparently acted with the Commission only until 1868. In that year he went to Colombia on a diplomatic mission relative to securing rights for a ship canal across the Isthmus of Panama. It does not appear that he later resumed his activities in regard to the revision of the statutes.
26Senate, 40th Cong. 2d sess., Mis. Doc. No. 101, June 26, 1868.
2716 Stat. at L. 96, ch. 72.
law made by the commission.\textsuperscript{30} He devoted about nine months to that work.\textsuperscript{31} His completed work was introduced as a bill in the House of Representatives on December 10, 1873. Copies of the bill were sent to many distinguished lawyers throughout the United States, so that the bill might be examined and made as nearly perfect as possible before it was reported to the House.\textsuperscript{32}

It can be seen from the foregoing that the work was carefully done by able persons, and that numerous precautions were taken to eliminate errors and inaccuracies. Nevertheless, after the revision had been enacted into law and while it was still on the press, sixty-nine errors were discovered. A statute was immediately enacted making corrections and supplying omissions,\textsuperscript{33} which was printed as an appendix in the same volume as the Revised Statutes of 1873. During the next few years one hundred eighty-three other errors plus one error in the corrections were discovered, and another statute correcting errors was enacted.\textsuperscript{34} As will subsequently be seen, that experience with errors made Congress reluctant to enact revisions of statutes as law.

The Revised Statutes of 1873 were declared to be legal evidence of the laws contained therein by section 2 of the Act of June 20, 1874.\textsuperscript{35} By section 908 of the Revised Statutes of 1873, the edition of the laws and treaties of the United States published by Little and Brown was declared to be competent evidence of the laws and treaties contained therein without further authentication or proof. That provision was drawn from section 2 of the Act of August 8, 1846,\textsuperscript{36} and it would seem to apply that rule to the Statutes at Large published between volumes 9 and 17, inclusive, as well as those from volumes 1 to 8, inclusive.

The Revised Statutes of 1873 also provided for the repeal of

\textsuperscript{30}(1924) 65 Cong. Rec. 639; Burdick, The Revision of the Federal Statutes (1925) 11 A. B. A. J. 178, 179.

\textsuperscript{31}Mr. Durant apparently made a report concerning the changes he made in the work of the commissioners, but the Superintendent of Documents says it cannot be found. 1 Checklist of United States Public Documents 1789-1909 (Superintendent of Documents, 3d ed. 1911) 969.

\textsuperscript{32}1 Checklist of United States Public Documents 1789-1909 (Superintendent of Documents, 3d ed. 1911) 969.

\textsuperscript{33}Act of February 18, 1875, 18 Stat. at L. part 3, 316, ch. 80.

\textsuperscript{34}Act of February 27, 1877, 19 Stat. at L. 240, ch. 69.

\textsuperscript{35}18 Stat. at L., part 3, 113, ch. 333. This statute was enacted before the Revised Statutes themselves were enacted.

In Wright v. United States, (1879) 15 Ct. Cl. 80, 87 (opinion by Richardson), it was said that the books containing the Revised Statutes of 1873 were prima facie evidence of the law, but that the original revision as enacted was conclusively the law.

\textsuperscript{36}9 Stat. at L. 76, ch. 100.
any statute enacted prior to December 1, 1873, any portion of
which was embraced in any section of the revision. It was pro-
vided, however, that no appropriation, local, temporary, or private
act was repealed when part thereof, being permanent and general,
was covered into the revision, except to the extent of the per-
manent and general part covered in. As a result, therefore, of the
Revised Statutes of 1873, an attorney today need not generally
investigate the seventeen volumes of the Statutes at Large ante-
dating the Revised Statutes. Those volumes have, however, great
value for interpreting the Revised Statutes when the latter are
ambiguous, for the search for treaties with foreign countries, and
for the search for temporary, private, local, and appropriation
acts.

By section 1 of the Act of June 20, 1874, the contract with
Little and Brown for the publication of the Statutes at Large was
terminated, and from that time, the federal government has printed
its own statutes in the Government Printing Office. Section 8
of the aforementioned act provided that the Statutes at Large
printed by the federal government should be legal evidence of the
laws and treaties contained therein. The 1874 Act directed that
at the end of each session of Congress, the secretary of state
should cause a pamphlet of the statutes enacted at such session to
be edited, printed, published, and distributed. At the end of the
Congress, the bound volumes of the Statutes at Large were to be
edited, printed, published, and distributed. The practice of pub-
ishing pamphlets of the session laws was discontinued by section
10 of the Act of June 20, 1936, and section 9 of the same Act
provided that commencing with the Seventy-fifth Congress, the
bound volumes of the Statutes at Large should be compiled, edited,
indexed, printed, and distributed at the end of each session.

Volume 50 of the Statutes at Large was so published.

37Section 5596 of the Revised Statutes of 1873. In that section the
reason for the repeal is explained in the following words: "all parts of
such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general and permanent in their
nature." That is not an enactment, but merely an expression of belief by
38Before leaving the Revised Statutes of 1873, it is interesting to note
that it has been said that the revision passed the Senate in about 40 minutes.
See statement by Roy G. Fitzgerald on the floor of the House of Represen-
40That system was continued by section 73 of the Act of January 12,
1895, 28 Stat. at L. 615, ch. 23.
41Ibid. The pamphlets were also declared to be legal evidence of the
law by section 8 of the 1874 Act and section 73 of the 1895 Act.
4249 Stat. at L. 1551, 1552, ch. 630 (U.S.C., Sup. III, title 1, sec. 30).
On March 2, 1877, a statute was approved authorizing the president to appoint a commissioner to prepare a new edition of the Revised Statutes, inserting the statutes amending, modifying, and affecting the Revised Statutes of 1873 which had been enacted since December 1, 1873. It was provided in the Act that, when published, the new edition should be legal and conclusive evidence of all the laws contained therein. George S. Boutwell, former Secretary of the Treasury and Senator from Massachusetts, was appointed commissioner.

The following year, on March 9, 1878, an Act was approved amending the provision in the 1877 Act which made the new edition (the edition brought the Revised Statutes up to January 1, 1878) legal and conclusive evidence of the law, and making the new edition only legal evidence. It was also provided that, in case of any discrepancy between the new edition and the original statutes passed since December 1, 1873, the latter should control. The history of that statute clearly reveals the reason for the amendment, and shows that Congress, after its experience with the Revised Statutes of 1873, was reluctant to enact as law even a consolidation and revision of the statutes in a restricted field passed during only a four-year period.

By the joint resolution of June 7, 1880, there was authorized

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4319 Stat. at L. 268, ch. 82.
45When the bill which was enacted as the statute was before the Senate, Senator Christiancy of Michigan, chairman of the committee that reported the bill and former Chief Justice of the supreme court of Michigan, made the following statement on the floor of the Senate (see (1878) 7 Cong. Rec. 1137):

"The bill was reported from the Committee on the Revision of the Laws. It is a unanimous report, after a conference with the same committee of the House of Representatives. The principle of the bill is this, which it is proper to explain: The Revised Statutes, the present edition, on their adoption repealed all the laws which were re-enacted in them, and it was found that there were a great many errors in the revision adopted, which altered the law contrary to the intention of Congress in the passage of them. We have been constantly correcting those errors, but the courts cannot look back to the original and be governed by that, because the original act has been repealed and the revision has made itself conclusive evidence. Now, to avoid any such result as that it has been thought best by the committees of both Houses that the revision should only be made evidence, but should not preclude the court from looking back at the original act as passed; that is, in regard to acts which have been embodied in the edition since the other revision took effect, since December 1, 1873. I think the committee were unanimous in that principle. I think it is a very proper act to be passed, and it is very essential that it should be adopted as soon as possible in order that the compiler may know what course he is to take."

4621 Stat. at L. 308.
to be published a supplement to the Revised Statutes embracing the statutes general and permanent in nature passed after the Revised Statutes. It will be noted that since December 1, 1873, there had been no general consolidation or codification of the laws of the United States. Boutwell's second edition merely inserted the laws that amended, modified, or affected the first edition of the Revised Statutes. The 1880 Resolution provided that the volumes when published should be only prima facie evidence of the law, and should not preclude reference to any original act in case of discrepancy. It appears that Judge Richardson of the Court of Claims (later Chief Justice)\(^47\) had, for his own use, kept voluminous notes on changes in and interpretations of the federal statutes, and was prepared to publish a supplement to the Revised Statutes. That work was the supplement authorized to be published by the joint resolution. It was published in 1881.\(^48\)

It appears that Chief Justice Richardson continued his work on the statutes, and by the Act of April 9, 1890,\(^49\) he was directed to prepare and edit a new supplement embracing the statutes of general and permanent nature enacted after the Revised Statutes, down to and including those enacted by the Fifty-first Congress. The Act provided that the supplement should be prima facie evidence of the law. In 1891, that supplement was published. In the preparation of it, Chief Justice Richardson secured assistance from George King and William King, District of Columbia attorneys.

Subsequent acts were passed which dealt with continuing the Supplement to the Revised Statutes, but no provision was made as to whether the volumes when published should be evidence of the law. Several editions of a so-called Volume 2 of the Supplement to Revised Statutes were published first under the editorship of Chief Justice Richardson and then under the editorship of George King and William King, with the cooperation of Edwin Brandenburg of the Department of Justice. There is nothing to show that the Supplement to the Revised Statutes, Volume 2, is

\(^{47}\)Richardson had formerly been Secretary of the Treasury. With Joel Parker he had consolidated and rearranged the statute law of Massachusetts.

\(^{48}\)The joint resolution of June 7, 1880, 21 Stat. at L. 308, was the result of a bill reported by the Senate Committee on the Revision of the Laws. The committee, consisting of Senator Matthews, later an Associate Justice of the Supreme Court of the United States, Senator Davis, former Associate Justice of the Supreme Court of the United States, Senator Wallace of Pennsylvania, and Senator Kernan of New York, had carefully examined Judge Richardson's work. (1890) Sen. Rep. No. 44, 51st Cong., 1st Sess.

\(^{49}\)26 Stat. at L. 50, ch. 73.
prima facie or otherwise evidence of the law, unless it is assumed that the provision in the 1890 Act making Chief Justice Richardson's second supplement prima facie evidence of the law carried over to the continuance of that supplement.

By a provision of the Act of June 4, 1897, the president was directed to appoint a commission to revise and codify, under the direction of the attorney general, the criminal and penal laws of the United States. The duties of that commission were extended by the Act of March 3, 1899, to include the revising and codifying of the laws concerning the jurisdiction and practice of the courts of the United States. By the Act of March 3, 1901, the duties of the commission were extended to include the revising and codifying of all the laws of the United States of a general and permanent nature. The commissioners were A. C. Thompson, later United States District Judge for the Southern District of Ohio, A. C. Botkin of Montana, and D. B. Culbertson of Texas. They were succeeded by D. K. Watson, former Attorney General of Ohio and former Congressman from that State, W. D. Bynum, former Congressman from Indiana, and John L. Lott of Ohio. The commission worked for over nine years, and its final report was presented to Congress on December 15, 1906. The Criminal Code and Judicial Code were adopted by Congress, but the remainder of the commission's work was never enacted as law although it was presented to Congress several times.

The Criminal Code and the Judicial Code repealed by express reference a large number of sections of the Revised Statutes and other statutes, which it was believed were superseded by those Codes. Those repealed provisions are collected in section 341 of the Criminal Code and 297 of the Judicial Code. In addition, there was included in both Codes, in those sections, a catch-all provision to the effect that all other acts or parts of acts in so far as they were embraced within or superseded by the codes were repealed, the remaining portions to continue in effect.

In 1919, Colonel Little of Kansas, Chairman of the House of

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50 30 Stat. at L. 58, ch. 2.
51 130 Stat. at L. 1116, ch. 424.
52 31 Stat. at L. 1181, ch. 853.
53 (1931) 74 Cong. Rec. 6316.
55 35 Stat. at L. 1153.
56 36 Stat. at L. 1168.
57 Note the difference between this repeal provision and that in section 5596 of the Revised Statutes of 1873.
Representatives Committee on the Revision of the Laws of the United States, commenced the work which eventually became the United States Code. He appointed as Reviser of Statutes William Burdick, who was Kansas Commissioner of Uniform State Laws and Professor of Law at the University of Kansas School of Law. Burdick was aided, during the course of his work, by Professors Joseph Beale and Austin Scott of the Harvard Law School and by Clinton Dunn, who had previously been official compiler of the statutes of Oklahoma and Nebraska and Oklahoma Commissioner of Uniform State Laws. Other persons who aided in the work were J. Wallace Bryan, a Maryland attorney and lecturer in law at the University of Maryland School of Law, John Lott of Ohio, who had been a member of the former commission for revising the Laws, G. K. Richardson of Massachusetts, and M. J. Keys of New York. During the progress of the work, the galley-proofs were distributed among the thirteen members of the House Committee for examination and criticism.

After eighteen months the compilation or codification was ready. It was introduced in the 66th Congress, passed the House of Representatives unanimously on December 20, 1920, but died in the Senate. The compilation was re-examined, and errors that had been discovered in the text of the work were corrected. The compilation was then introduced in the 67th Congress. It passed the House of Representatives unanimously on May 16, 1921. It again died in the Senate. The revisers then prepared a supplement to their work covering the statutes enacted by Congress since it was first introduced in the House of Representatives in the 66th Congress. The compilation and the supplement were introduced in the 68th Congress and unanimously passed the House on January 7, 1924. The Senate Committee on the Revision of the Laws of the United States apparently gave the compilation and supplement careful consideration. It reported it unfavorably on


60Burdick, The Revision of the Federal Statutes, (1925) 11 A. B. A. J. 178. In his article, Burdick gives a detailed explanation of the methods used by the revisers.

61(1924) 65 Cong. Rec. 641.

62H. R. 9389, 66th Cong. (1920) 60 Cong. Rec. 574.

63H. R. 12, 67th Cong. (1921) 61 Cong. Rec. 1479.

64(1924) 65 Cong. Rec. 639.

the ground that there were numerous errors, omissions, and inaccuracies in it. Despite the great care that had been exercised and the unquestionable ability of the revisers, the Senate Committee had discovered six hundred errors.66

The compilation or codification bills introduced in the 66th, 67th, and 68th Congresses had provided that the compilation should be enacted as law and, like the Revised Statutes of 1873, that any prior statute, any portion of which was embraced in the compilation, should be repealed.

Between the 68th and 69th Congresses, the House and Senate Committees on the Revision of the Laws devised a new plan for codifying the laws. West Publishing Company and Edward Thompson Company, who published the United States Compiled Statutes Annotated and the Federal Statutes Annotated (private compilations) respectively, were employed to undertake the work of codification.67 Those companies used Colonel Little's work as a basis.68 The work was checked by experts in the various government Departments and Commissions. Prof. Joseph P. Chamberlain of Columbia University, who had had great experience in the drafting of statutes, was employed to make a special check for accuracy and completeness. The codifiers had had, of course, the benefit of the work done by Boutwell, Richardson, King and King, the 1897 commission, and Little and his associates.

Despite all the care that had been taken, several glaring errors were discovered when the bill to enact the codification was before the Senate and the House of Representatives. For example, the statutory provision providing for a legislative counsel was omitted in the preparation of the Code, and the bill passed the House of Representatives with that omission. It was discovered in the Senate.69

The bill to enact the codification, as it passed the House of Representatives and was reported to the Senate, contained a provision that the Code should not at once repeal all former legislation of a general and permanent character embraced in the Code, but that until July 1, 1927, only prior statutory provisions substantially identical with the matter in the Code should be repealed.

68A discussion of the manner in which the work was done and the qualifications of the persons doing it can be found in (1926) H. R. Rep. No. 900, 69th Cong., 1st Sess.
69(1926) 67 Cong. Rec. 11970, 12075.
Thus, for a period of time, the Code, in cases of inconsistency, was to give way to the provisions in the Statutes at Large and the Revised Statutes of 1873. On July 1, 1927, all statutes of a general and permanent nature not contained in the Code and passed prior thereto were to be repealed. The purpose of that "twilight zone provision" was to allow time to discover and correct errors in the Code.

The Senate, however, after noticing several of the errors in the codification bill, decided that the "twilight zone" provision was not sufficient protection against error. It therefore amended the bill so that it was to be only prima facie the law. The Code was approved with that amendment on June 30, 1926. As finally passed, the bill provided specifically that the Code enacted no new law and amended or repealed no old law, and that in cases of inconsistency between the Code and original legislation, the latter was to rule.

The matter set forth in the books in which the United States Code (not the United States Code Annotated) was first published was declared by statute to establish prima facie the laws of the United States permanent and general in nature, which is exactly what the original act itself established. Those books, when printed at the Government Printing Office and bearing its imprint, were conclusive evidence of the original copy of the Code in the custody of the secretary of state.

In 1929, Congress enacted a statute providing that there should

21 The 1926 edition of the Code is part 1 of volume 44 of the Statutes at Large. Part 2 contains the other public laws, and part 3 contains private laws, treaties, etc.
Since its adoption in 1926, numerous errors have been discovered in the United States Code. Thus, at the time the first supplement to the Code was published, 537 errors had been discovered in the original code. Of those, 40 were errors of omission and 88 errors of substance. (1928) H. R. Rep. No. 1706, 70th Cong., 1st Sess.
22 Section 2 of the Act of June 30, 1926 (Public, No. 440), ch. 712.
23 Section 2 of the Act of June 30, 1926 (Public, No. 440), ch. 712.
24 Ibid.
be prepared and published, under the supervision of the House of Representatives Committee on Revision of the Laws, not more often than once in every five years, new editions of the United States Code, correcting errors and incorporating the current supplement. The books of such editions were declared to establish prima facie the laws of the United States general and permanent in nature. It will be noticed that the first edition of the Code was part of a bill enacted by Congress. That is not true of subsequent editions. The present edition is 1934.

Supplement I of the original edition of the Code was a bill enacted by Congress. In 1928, however, Congress provided that, beginning with the Seventieth Congress, there should be prepared and published, under the supervision of the House of Representatives Committee on Revision of the Laws, a cumulative supplement to the current edition of the Code at the end of each session of Congress. The books containing such supplements are conclusive evidence of the original on deposit with the secretary of state when they bear the imprint of the Government Printing Office. They too establish prima facie the law of the United States permanent and general in nature. The present supplement is number III of the 1934 edition of the Code.

While it is clear that all laws included in the Code and supplements are prima facie general and permanent and in force, the question has sometimes arisen whether the converse is true. Are all laws that do not appear in the Code either prima facie no longer in force or prima facie not general and permanent? In interpreting a similar provision in section 5595 of the Revised Statutes of 1873, Acting Attorney General Jenks took the view that the question under the Revised Statutes must be answered in the affirmative. Read literally, the provision that the books in which the Code is published establish prima facie the laws, general and permanent, would seem to justify a similar conclusion with respect

76 Section 3 of the Act of March 2, 1929, 45 Stat. at L. 1541, ch. 586.
77 Act of May 29, 1928, 45 Stat. at L. 1008, ch. 911.
78 Section 2 of the Act of May 29, 1928, 45 Stat. at L. 1007, ch. 910. Although the statute provides for a new supplement after the end of each session of Congress, a supplement may be deferred if the legislation enacted at a session is small. See Preface to U. S. C., Sup. III; section 1 of the Act of March 2, 1929, 45 Stat. at L. 1540, ch. 586 (U.S.C. title 1, sec. 51a (d)).
80 Section 3 of the Act of March 2, 1929, 45 Stat. at L. 1541, ch. 586.
to the Code. It should be noted, however, that section 1 of the statute which enacted the original Code\textsuperscript{3} says that the material in the Code is "intended" to embrace the laws general and permanent in nature. Section 5595 of the Revised Statutes of 1873 said flatly that the material in the revision did embrace the laws general and permanent in nature.

II. Technique

Tools. The most important tool in finding statutes, of course, is an index. Each volume of the Statutes at Large contains an index to the matter in that volume. At the end of volume 8 of the Statutes at Large is a splendid index to the acts, resolutions, and treaties included in volumes 1 through 8. There is also a functional index which collects in chronological order the laws on the following subjects: the judiciary, imports and tonnage, drawbacks, internal duties, register of vessels, public lands, and post-office. A parallel table of the chapters of the laws of the United States appears in volume 8 of the Statutes at Large. By using that table, it is possible for one having the chapter number of a statute in the Statutes at Large to find the corresponding chapter in Bioren and Duane's edition of the laws of the United States, in the continuation thereof, and in Story's edition, or vice versa.

In 1852, Little and Brown published a "Synoptical Index of the Laws and Treaties of the United States of America from March 4, 1789 to March 3, 1851." That index was published under the supervision of the secretary of the senate, and pursuant to a Senate Resolution dated April 10, 1850. The index is arranged in alphabetical order by subjects. All acts dealing with a particular subject are arranged in chronological order. The date, the page at which it can be found in the Statutes at Large and in the Bioren and Duane edition of the laws of the United States, and a very brief résumé of each statute are given.

The Revised Statutes of 1873 contain at the end of the volume an extensive subject index which gives both page number and section number of matter contained in the revision. In the margins of the Revised Statutes of 1873 are notations giving the original statutes from which each section of the Revised Statutes was drawn, a short statement of the subject matter of each section, and refer-

\textsuperscript{3} Section 3 of the Act of March 2, 1929, 45 Stat. at L. 1541, ch. 586.
\textsuperscript{4} Act of June 30, 1926 (Public, No. 440), ch. 712.
ences to cases interpreting the original statutes. The Revised Statutes of 1878 contain a revised subject index. In addition, the marginal notes were corrected, and at the end of the volume appears a table of such corrections. There is also included a parallel table, so arranged that if one has the citation to the original statute, he can find the corresponding section in the Revised Statutes, and the page number thereof. Each of the Supplements to the Revised Statutes contains a subject index.

The 1934 edition of the United States Code contains an extensive subject index, much improved over the index to the original edition of the Code. Another feature of the Code is a parallel table by which, if one has the citation in the Revised Statutes or in the Statutes at Large, subsequent to volume 17, he can find the citation to the corresponding matter in the Code. At the end of each section in the Code is a reference to the original statutes from which the Code provision is drawn. The Supplements to the 1934 edition of the Code are indexed in the same fashion.

By far the best index to the Federal statutes is the two-volume index of "Scott and Beaman." It is well cross-indexed, and the nature of each statute under each subject-heading is briefly analyzed. The first volume covers all statutes of permanent and general nature from 1789 through 1873 (the date of the Revised Statutes). It was prepared by M. G. Beaman of the District of Columbia Bar, and A. K. McNamara of the New York Bar under the direction of the Librarian of Congress. It was published in 1911. It contains a subject index and a popular name index. By this latter device the Statute at Large citation of an Act can be found if one knows the popular name (such as the Sherman Antitrust Act). One of the most valuable features of that volume is a table which shows what statutes have been repealed or otherwise affected by subsequent legislation, with citations to such subsequent legislation by section and page in the Statutes at Large.

The second volume of this index was originally prepared by G. W. Scott and M. G. Beaman under the direction of the Librarian of Congress. It covered the years from 1874-1907, inclusive. A new revised volume has been prepared, however, by W. H. McClenon and W. C. Gilbert of the Legislative Reference Service of the Library of Congress, covering the years from 1874-1931, inclusive. The general and permanent laws contained in the Revised Statutes of 1873 and volumes 18 to 46, inclusive, of the Statutes at Large are indexed. The revised volume was published
in 1933, and contains all the features of the first volume plus some others. In the repeals and amendments table, for example, it includes an explanation of the effect of each subsequent statute amending, repealing, modifying, or superseding an earlier one. It also notes in that table all statutes held unconstitutional by the United States Supreme Court. A list of various definitions included in federal statutes, and a list of treaties and conventions are included.

The Frank Shepard Company publishes some valuable tools. The United States Citator gives all express amendments, substitutions, reenactments, and repeals of federal statutes. In volume 1 of the Citator, which runs to 1915, the statute may be "cited" either under the original Statute at Large citation or the Revised Statutes citation. In volume 2 of the Citator, which runs to 1930, and in the 1930-1935 and current supplements, the Revised Statutes citator has been abandoned and a United States Code citator substituted. In Shepard's United States Citators can be found all cases in the United States Supreme Court and in the Federal and Federal Supplement Reporters in which any particular federal statute has been cited. To be certain that all cases relative to a statute have been found, the statute should be "cited" under its Statute at Large citation, its United States Code citation (if any), and its Revised Statutes citation (if any). Sometimes a case will be found under the Statutes at Large list that does not appear under the corresponding Code list or Revised Statutes list.

The Frank Shepard Company also publishes a Popular Names or Short Titles index, which gives the corresponding Statutes at Large and Code citations.

In searching for cases that have construed a statute, Shepard's United States Citator will cite one to all Federal, Federal Supplement, and United States Supreme Court cases. The Citator, of course, makes no pretense of giving any brief résumé of the holdings of the cases cited. The West Publishing Company, however, in its United States Code Annotated, collects under each Code section relevant cases from both state and federal courts and relevant opinions of the attorney general, with brief summaries thereof. There is also included at the end of each section a brief historical note concerning the section.

Valuable annotations can be found, among other places, in Gould and Tucker, Notes on the Revised Statutes of the United States and Subsequent Legislation of Congress, in two volumes,
published by Little Brown and Company of Boston in 1889 and 1898; Mason's United States Code Annotated; and Edward Thompson Company's old Federal Statutes.

The digest of the United States Supreme Court Reports published by the Lawyers Co-operative Publishing Company has a statute index which gives the United States Supreme Court cases citing particular statutes. A similar statute index for opinions of the attorney general can be found in the digests of the Opinions of Attorney General of the United States and in each volume of such opinions.

Often various Government Departments and agencies prepare compilations or codifications of laws dealing with their respective duties, powers, functions, etc. While those compilations and codifications are usually no evidence of the law, they are extremely useful.

Legislative History. While this article does not concern itself generally with questions of statutory construction, legislative history is so closely related to the other matters discussed that a brief comment upon the more formal aspects of the subject is included. Others have treated adequately the more fundamental question of the extent to which the process is rational and realistic. In any event, legislative history is constantly used in the interpretation of federal statutes.

The materials themselves are readily available. Unlike the legislatures of some states, Congress keeps a printed record, open to all, of its proceedings—bills introduced, hearings before committees, committee reports, and debates. Of course, the form in which a statute was in operation before its amendment or

--8See, for examples, Federal Laws Relating to Veterans of Wars of the United States Annotated, (1932) prepared in the Veterans' Administration pursuant to Senate Resolution 412, 71st Cong., 3d Sess; The Interstate Commerce Act together with Text or Related Sections of Certain Supplementary Acts (1935) published by the Interstate Commerce Commission; Laws Applicable to the United States Department of Agriculture (1935) compiled by J. P. Wenchel and Morrow H. Moore, Attorneys, Office of the Solicitor of the Department of Agriculture; Supplement to the last-mentioned compilation (1936); Postal Laws and Regulations (1932) revised and edited in the Post Office Department; The Federal Reserve Act, as Amended (1935) compiled under the direction of the Board of Governors of the Federal Reserve System; Military Laws of the United States Annotated (1929) prepared in the office of the Judge Advocate General of the Army; Supplement to last-mentioned compilation (1936); The Copyright Law of the United States of America (1937); Federal Laws Affecting National Banks (1936) compiled and published by the office of the Comptroller of the Currency.

--8See Radin, Statutory Interpretation, (1930) 43 Harv. L. Rev. 863; Landis, A Note on "Statutory Interpretation," (1930) 43 Harv. L. Rev. 886.
revision appears in the Statutes at Large. That is part of its "legislative history" in the broad sense, although the term is sometimes used more narrowly.\textsuperscript{86}

An amendment must be construed in view of the original statute as it stands after the amendment, i.e., as if the amendment were part of the original statute.\textsuperscript{87} Less obvious is the significance of prior statutes in the interpretation of a revision. As pointed out above,\textsuperscript{88} the United States Revised Statutes of 1873 expressly repealed most previous statutes. Nevertheless, in cases of ambiguity in the revision, the Supreme Court has resorted to the earlier statutes as an aid to construction.\textsuperscript{89}

Turning now to legislative history in the narrower sense, the legislative record on a particular bill finally enacted, i.e., the bill itself (or bills) together with changes proposed or adopted in the process of enactment, may be resorted to as an aid to construction where the act is ambiguous.\textsuperscript{90} However, the Supreme Court has denied that such aid could be derived from such changes in the history of another similar (Revenue) act passed nearly six years after the one in question.\textsuperscript{91} The Supreme Court frequently\textsuperscript{92} has sanctioned the use of committee reports to clarify a federal statute of doubtful meaning. Treated by the Court as similar to committee reports is exposition of the bill on the floor of Congress by those in charge of or sponsoring the legislation.\textsuperscript{93}

\textsuperscript{86}See Radin, Statutory Interpretation, (1930) 43 Harv. L. Rev. 863, 873, n. 21.

\textsuperscript{87}Blair v. Chicago, (1906) 201 U. S. 400, 475, 26 Sup. Ct. 427, 50 L. Ed. 801.

\textsuperscript{88}Pages 1014, 1015.


\textsuperscript{91}Penn Mutual Life Insurance Company v. Lederer, (1920) 252 U. S. 523, 537-538, 40 Sup. Ct. 397, 64 L. Ed. 698.


\textsuperscript{93}Richbourg Motor Company v. United States, (1930) 281 U. S. 528, 536, 50 Sup. Ct. 385, 74 L. Ed. 1016; Wright v. Vinton Branch of Mountain
The Court, however, has been less hospitable to general debates on the floor. Only a limited use of such debates is recognized even in recent cases. In the leading case of Federal Trade Commission v. Raladam Co., Mr. Justice Stone said:

"It is true, at least generally, that statements made in debate cannot be used as aids to the construction of a statute. But the fact that throughout the consideration of this legislation there was common agreement in the debate as to the great purpose of the act, may properly be considered in determining what that purpose was and what were the evils sought to be remedied."

More recently Mr. Justice Brandeis, after discussing the use of other kinds of legislative history, succinctly stated that resort may be had, where the meaning of legislation is doubtful or obscure, "to the debates in general in order to show common agreement on purpose as distinguished from interpretation of particular phraseology."

Even less use of committee hearings would be expected, and there is authority in lower federal courts against the use of such hearings. However, use has been permitted of the testimony of a witness before a committee to show the reason for a change in a bill in view of the fact that the witness was himself the person chiefly responsible for the prosecution of the new functions about to be conferred by the bill upon an administrative agency. In a

In Duplex Printing Press Company v. Deering, (1921) 254 U. S. 443, 475, 41 Sup. Ct. 172, 65 L. Ed. 349, the Court said that the rule as to committee reports "has been extended to include explanatory statements in the nature of a supplemental report made by a committee member in charge of a bill in course of passage."


"This conclusion is made still more apparent by an examination of the hearings on the amendment before the House Naturalization Committee. While congregational debates and committee hearings cannot be resorted to in order to determine the intent of Congress by a consideration of the opinions of individual legislators as to the meaning of certain provisions of the act, reference to them is proper, where a statute on its face is ambiguous, to ascertain the history of the times and the evil intended to be rectified,
Supreme Court case,\textsuperscript{98} the Court referred, without comment as to admissibility, to certain testimony presented before committees of Congress as showing the evil sought to be remedied.

The extent to which the exclusionary rules are honored in the breach rather than the observance would make an interesting study in itself, but one beyond the scope of this article.\textsuperscript{99}

However, a few remarks will be ventured with respect to the significance of such rules in the administration of Acts of Congress outside of courts. Government lawyers are called upon to construe many statutes for the observance of which there is no judicial sanction. Nevertheless, it is the clear duty of administrative officers and their legal advisers to carry out the will of Congress. Indeed, it may well be that the duty, with reference to such statutes at least, is to look to all indications of Congressional intent, unhampered by the exclusionary rules which the courts have stated. The relation between administrative and legal officers and Congress is not the same as that between the courts and Congress. Thus, it is not, under ordinary circumstances, proper for such officers to question the constitutionality of statutes enacted by Congress.\textsuperscript{100}

Of course, the reasoning of the courts furnishes some guide to the weight to be given particular evidence of Congressional intent even though such evidence is not altogether excluded from consideration.

In any event, enough has been said to show the importance, for both Government and private attorneys, of legislative history in interpreting Acts of Congress of doubtful meaning.


\textsuperscript{99}See Landis, A Note on "Statutory Interpretation," (1930) 43 Harv. L. Rev. 886, 890, n. 17.