AMERICAN LAW INSTITUTE.

On February 23d, at Washington, D. C., a corporation was organized under the laws of the District of Columbia, the influence of which will be felt in every state of the Union before another ten years shall have passed. The name of the corporation is the "American Law Institute" which was conceived and brought into being by a group which Hon Elihu Root described as the "most distinguished and capable" gathering of bench and bar which he had witnessed in his 56 years of legal experience. This distinguished group was made up of the chief justice of the United States and the associate justices of the Supreme Court; the senior judge of each Federal Circuit, and Federal Court of Appeals; the attorney general and solicitor general of the U. S.; the chief justice of the highest court of each state; the president and ex-presidents of the American Bar Association; and the members of the executive committee and general council; the president of each State Bar Association; the dean of each school belonging to the Association of American Law Schools; the president of each of the learned legal societies; the chairman of Commissioners on Uniform State Laws in each State; the president of the National Uniform State Laws; and between one and two hundred other persons selected because of their knowledge and high professional standing and their known interest in constructive work for the improvement of the law. Michigan's representatives bring this message to the lawyer and layman of Michigan.

"There is today general dissatisfaction with the administration of justice. The opinion that the law is unnecessarily uncertain and complex, that many of its rules do not work well in practice, and that its administration often results not in justice but in injustice, is general among all classes."

Object.

The Constitution of the American Law Institute declares the object of the Institute to be: "To promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice and to encourage

and carry on scholarly and scientific legal work." This will be accomplished by what is to be known as a *restatement of the law.* By restatement is meant a reforming and harmonizing of the fundamental principles of substantive and procedural law of the 48 States, not with the idea of having such restatement adopted as a national code (which is impossible on its face because of the form of government under which we live), but rather that such restatement should take the form of a legal encyclopedia which "may be adopted by the state legislatures with the proviso that it shall have the force of principles enunciated as the basis of the highest court of the state."

To illustrate, American law is made, expounded, and administered by 48 different states and by the Federal Government. Each state legislature and each state court of last resort is an independent source of law. Our law is expressed, changed, developed, and more or less adapted to our needs and sense of justice mainly by judicial decision and legislative enactment. Much of our law is not expressed in statutory form. Important parts of almost all subjects, and all, or nearly all, of the law on many subjects is expressed with binding authority only in the recorded decisions of the courts. When a case is presented to a court for decision, previous decisions in cases involving more or less similar questions are precedents from which rules for guidance of court may possibly be derived. A rule thus repeatedly recognized through its frequent applications by courts becomes a principle of the common law.

Our recent social and economic development has been of a character constantly to increase both the number and difficulty of novel legal questions on which the community desires information. Thus the growth in the variety and in the relative and absolute amount of business carried on by private corporations has thrown on the courts in the past fifty years the task of developing with occasional direction from legislative action a large and important part of our commercial law. Thus the conflict in principles of common law of adjoining states can be accounted for because of the different social experiences and theories of the people. One state may recognize many causes for divorce, others only one cause, and the state of South Carolina does not recognize any cause. Variations in the law be-

tween peoples having contact with each other are always at least a potential source either of uncertainty or of complexity or of both. The amount of uncertainty and complexity depends not only on the extent of the business and social intercourse between the two peoples and on the number of variations between their respective laws, but also on how far the variations relate to matters on which the two peoples come in contact with each other. If the commercial law of two countries whose people have considerable business but no social contacts, is the same, variations in the marriage laws or other laws affecting persons create few difficulties.

Within the last decade much progress has been made by way of the majority of the states adopting statutes uniform in nature covering the various commercial subjects, for instance negotiable instruments, sales, and partnerships.

Method.

The Institute's adopted program provides for the restatement of three branches of law which are of supreme importance because of the need for clarifications as born by experience throughout the various states. The recommended work for first consideration includes: 1. Conflict of laws. 2. Torts (dealing first with negligence). 3. Business corporations. The necessity for working harmony on the subject of conflict of laws may best be understood by considering the problem presented to the Supreme Court of the United States in a case where a husband, whose matrimonial domicile was New York, left his wife in New York and acquired a domicile in Connecticut, where he was granted a divorce by the Connecticut court, the wife not having been personally served with process or entering an appearance in the suit. Subsequently the New York court refused to recognize the validity of the Connecticut decree, and the husband sought aid of Supreme Court of the U. S. to compel the New York court to give "full faith and credit" to the decree of the Connecticut court. The Supreme Court, while assuming that the divorce was valid in Connecticut, by the rule of law there prevailing, decided that its validity was determinable in New York, the domicile of the wife, by a different rule existing there. In short, the couple were married in New York but divorced in

Connecticut. What a third and fourth state might declare to be their relations to each other, could only be a matter of conjecture.

To illustrate the complexity that is present in law of different states relative to recovery for personal injuries suffered because of negligence, for example, of a common carrier. Take a person travelling on an urban trolley car. When this mode of conveyance was first established the law was in first sense simple,—the passenger could not recover for an accident caused by the negligence of the company if he himself was not at the time exercising due care to avoid injury. The test of this due care was the care required under all the circumstances of the particular case. Owing partly to the tendency of courts to be governed by previous similar cases, and partly to the fact that certain acts, as getting off or on a moving car, are ordinarily dangerous, this general rule has been almost buried under numerous special rules as to the care which should be exercised by a person boarding, travelling on or alighting from an urban trolley car, etc., ad infinitum.

The complexity of the law as it exists in case of business corporations presents an economic as well as a legal problem. By way of illustration such corporations as the Underwood Typewriter Co. and the National Cash Register Co. wish to sell their goods to purchasers in every state on conditional sales contracts. The requisites for a valid conditional sale vary widely, and in a few states no conditional sale can be made which is effective against the conditional buyers, creditors, or against the purchaser for value without notice. A heavy burden is thus cast upon the seller to ascertain the law of each state with which he deals. Boiler manufacturers have made similar complaints with reference to the great variety of inspection laws and similar regulations in the different states. This last illustration also indidates that if it be true, as it probably is, that varying laws in different states on matters of private substantive law is more likely to increase the uncertainty and complexity of the law than variations in procedural and administrative and other public law, nevertheless variations in administrative regulations are an increasing burden on industry and therefore on progress.

You may ask why is it necessary to create an organization to accomplish this program which every right minded member of the community concedes to be desirable. As the sponsors of this program have put it—"the restatement must, from its inception, be generally recognized as a work carried on by the legal profession in fulfillment of an obligation to the American people, to promote the certainty and simplicity of the law, and its adaptation to the needs of life." In order that the responsibility of the legal profession for the restatement of the law may be generally recognized, the organization undertaking this must adequately represent it. "The body must be of so high a character that it will command the confidence of judges, lawyers, and the public and their respect for its findings."

Today there is no association to which all judges and lawyers belong. There are more than 400 bar associations in the U. S. beside the American Bar Association. With approximately 125,000 lawyers in the U. S., the American Bar Association has between 17 and 18 thousand members or about 14½%. According to the 1920 census, there were 18,473 lawyers in New York state; 3,271 of these, or about 18%, bleonged to the State Bar Association. By the same census there were 1,978 lawyers in Wisconsin, of whom 766, or about 39%, belonged to the State Bar Association. From these figures you can readily see that there is no "adequately representative" body in existence.

This program of restating the law has been actually undertaken by the American Law Institute. "It is the contribution of the legal profession toward the solution of a really grave problem, and if it succeed in any large measure, it should effect great and direct improvement in the conditions of American life." But it cannot succeed unless it has the sympathy and support of an active public opinion.

H. I. Carrier, '23.