

1909.

THE MARINE INSURANCE BILL,

DRAFTSMAN'S MEMORANDUM,

The Parliament, subject to the Constitution, has power to make laws for the peace, order, and good government of the Commonwealth with respect to "insurance other than State insurance; also State insurance extending beyond the limits of the State concerned." [Constitution, sec. 51 (xiv).]

This Bill, which deals only with Marine Insurance, is an adaptation of the English *Marine Insurance Act* 1906 (6 Edw. 7 ch. 41), which codified the law on the subject.

The Bill on which the English Act is founded was drafted by Sir M. D. Chalmers, K.C.B., C.S.I., the eminent draftsman of the *Bills of Exchange Act* 1882 (45 and 46 Vict. ch. 61), which has proved itself to be a most successful piece of work in the direction of the codification of the law.

The English Bill was first introduced into the House of Lords in 1894. It was again introduced in 1895, 1896, 1899, 1900, and lastly in 1906, when it was passed into law. During the time it was before Parliament it was carefully considered by two Committees, one appointed by Lord Herschell and the other by Lord Halsbury. Lord Herschell's Committee met first under the presidency of the then Attorney-General (Sir R. T. Reid, Q.C.), and afterwards under the presidency of Lord Herschell. It consisted of Mr. John Glover and Mr. Milburn, representing the ship-owners, Mr. McArthur (Chairman of the Liverpool Chamber of Commerce) and Mr. Hogg, representing the average adjusters, and Mr. J. E. Street (Deputy Chairman of Lloyds), Mr. Douglas Owen (of the Alliance Marine and General Insurance Company), Mr. William Walton (legal adviser to Lloyds), representing the underwriters and insurance companies, Mr. C. B. Dallence (Chairman of the Liverpool Underwriters' Association), and the draftsman of the Bill, then Mr. Chalmers. Lord Halsbury presided over his Committee, on which the underwriters, ship-owners, and average adjusters were represented, and went through the Bill clause by clause. In the House of Commons the Bill was sent to Grand Committee. It passed both Houses, and was assented to on the 21st December, 1906

The information relating to the history of the English Bill is taken from Sir M. D. Chalmers and Mr. Douglas Owen's work on the *Marine Insurance Act* 1906.

The English Act, in view of the fact that it is a codifying measure and was drafted by a very eminent and learned draftsman, who is specially skilled in the work of codification, and received the most careful consideration during its passage through Parliament, may be safely accepted as accurately expressing, in a clear and concise form, the present law relating to Marine Insurance.

In adapting the Act to Australia, very few departures from the text have been necessary, and very little difference has been made in the arrangement of the clauses.

The departures are as follows :—

Bill, clause 4 English Act, s. 91	Provisions of sub-clause (1) of English Act omitted as inapplicable.
Bill, clause 5 English Act, s. 92	Section 92 of the English Act repeals certain old Imperial Acts. These Acts apparently apply to Australia. As it is doubtful whether the Parliament can directly repeal them the clause is drafted to prevent their application. Several State Acts are dealt with in the clause in the same manner.
Bill, clause 27 English Act, s. 21	The words "although it be unstamped" in the English section have been omitted from clause 27 of the Bill.
Bill, clause 95 English Act, s. 89	The section in the English Act is considerably modified in the Bill, but it is suggested that the effect is the same. The reason for the difference is that there is no stamp duty under Commonwealth law.

The differences as to arrangement are as follows :—

- (a) The short title, commencement, saving clause, and interpretation clause have been moved from the end of the Act to the commencement of the Bill.
- (b) The Bill is divided into Parts and Divisions in order to facilitate reference. The Act is not, but is divided into groups of clauses with a headnote printed over them. Each group of clauses in the Act has been adopted as a Division of the Bill, and the headnote as the Division head, so the difference is not material.

One new provision has been introduced into the Bill. It is as follows :—

"6. (1) This Act shall apply to marine insurance other than State marine insurance and to State marine insurance extending beyond the limits of the State concerned.

"(2) This Act does not apply to contracts of marine insurance made before the commencement of this Act.