# PROCEEDINGS

OF THE

# SECOND ANNUAL MEETING

OF THE

# CONFERENCE OF COMMISSIONERS

ON

# UNIFORMITY OF LEGISLATION

## IN CANADA

HELD AT

## WINNIPEG

**AUGUST 26TH, 27TH, 28TH, 29TH, 1919**

# Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE, 1919-1920 .

*President* .....Sir James Aikins, K.C., Winnipeg, Man.

*Vice-President* ..... Mariner G. Teed, K.C., St. John, N.B.

*Treasurer* .....Frank Ford, K.C., Edmonton, Alta.

*Corresponding Secretary* Matthew Wilson, K.C., Chatham, Ont.

*Recording Secretary* ... John D. Falconbridge, 22 Chestnut Park, Toronto, Ont.

*Local Secretaries.*

*(For the purpose of communication between the commissioners of the different provinces.)*

*Alberta* ..... Frank Ford, K.C., Edmonton.

*British Columbia* ..... Avard V. Pineo, Parliament Buildings, Victoria.

*Manitoba* .....Herbert J. Symington, K.C., Merchants' Bank Building, Winnipeg.

*NewBrunswick*..... J.D Pollard Lewin, St. John.

Nova *Scotia* ..... Stuart Jenks, K.C., Halifax.

*Ontario* ..... John D. Falconbridge, 22 Chestnut Park, Toronto.

*Prince Edward Island* . . W. E. Bentley, K.C., Charlottetown.

*Quebec*.... ..... E Fabre Surveyer. K.C., 160 St. James Street, Montreal.

*Saskatchewan* .....Robert W. Shannon, K.C., Regina.

## Commissioners or Representatives from the Provinces of Canada for the Purpose of Promoting Uniformity of Legislation in the Provinces.

*Alberta:*

FRANK FORD, K.C., Edmonton, Alta.
A. H. CLARKE, K.C., Calgary, Alta.
WALTER S. SCOTT, Calgary, Alta.
(Commissioners appointed under the authority of the Statutes of Alberta, 1919, c. 31).

*British Columbia.*

J. N. ELLIS, K.C., 470 Granville Street, Vancouver, B.C.
H. E. A. COURTNEY, Pemberton Building, Victoria, B.C.
AVARD V. PINEO, Parliament Buildings, Victoria, B.C.
(Commissioners appointed under the authority of the Statutes of British Columbia, 1918, c. 92.)

*Manitoba:*

ISAAC PITBLADO, K.C., Winnipeg, Man.
WILLIAM J. TUPPER, K.C., Winnipeg, Man.
HERBERT J. SYMINGTON, K.C., Winnipeg, Man.
(Commissioners appointed under the authority of the Statutes of Manitoba, 1918, c. 99).

*New Brunswick:*

WILLIAM B. WALLACE, K.C., St. John, N.B.
MARINER G. TEED, K.C., St. John, N.B.
J. D. POLLARD LEWIN, St. John, N.B.
(Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5).

*Nova Scotia:*

HECTOR MCINNES, K.C., Halifax, N.S.
STUART JENKS, K.C., Halifax, N.S.

*Ontario:*

SIR JAMES AIKINS, K.C., Winnipeg, Man. (Honorary Commissioner.)
MATTHEW WILSON, K.C., Chatham, Ont.
FRANCIS KING, Kingston, Ont.
JOHN D. FALCONBRIDGE, 22 Chestnut Park, Toronto, Ont. (Commissioners appointed under the authority of the Statutes of Ontario, 1918, c. 20).

*Prince Edward Island:*

WILLIAM E. BENTLEY, K.C., Charlottetown, P.E.I.
JAMES D. STEWART, K.C., Charlottetown, P.E.I.

*Quebec:*

EUGENE LAFLEUR, K.C., 107 James Street, Montreal, Que.
E. FABRE SURVEYER, K.C., 160 St. James Street, Montreal, Que.

*Saskatchewan:*

THE HON. W. F. A. TURGEON, K.C.; Attorney-General, Regina, Sask.
ROBERT W. SHANNON, K.C., Regina, Sask.
PHILIP E. MACKENZIE, K.C., Saskatoon, Sask.

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TEMPORARY CONSTITUTION.

1. The Conference of Commissioners on Uniformity of Legislation in Canada shall be composed of the commissioners appointed from time to time by the different provinces of Canada or under the statutory or executive authority of such provinces for the purpose of promoting uniformity of legislation in the provinces.

2. The object of the Conference shall be to promote uniformity of law throughout Canada or in such provinces as uniformity may be found practicable, by such means as may appear suitable to that end, and in particular by facilitating (1) the meeting of the commissioners of the different provinces in conference at least once a year, (2) the consideration by the commissioners of those branches of the law with regard to which it is desirable and practicable to secure uniformity of provincial legislation, and (3) the preparation by the commissioners of model statutes to be recommended for adoption by the various provincial legislatures.

3. The officers of the Conference shall be a president, a vice-president, a treasurer, a corresponding secretary and a recording secretary. It shall not be necessary that the corresponding secretary shall be a commissioner.

4. It shall be the duty of the commissioners from each province to choose one of themselves as local secretary in order to facilitate communication between the commissioners of the different provinces.

5. The president may appoint such committees as he may think proper for the purpose of carrying on the work of the Conference.

6. The president may from time to time fill vacancies in the offices of the Conference or in any committee as they may occur between meetings of the Conference by reason of death or resignation or otherwise.

## MEMORANDUM.

It has long been generally recognized that the independent action of the various provincial legislatures has resulted in a diversity of legislation which, especially with regard to commercial law, raises a serious obstacle to commercial intercourse between different parts of the Dominion and is a source of embarrassment to British and foreign merchants doing business in Canada. In the United States, where a similar but perhaps more complicated situation exists, work of great value has been done by the National Conference of Commissioners on Uniform State Laws. For the past twenty-eight years these commissioners have met annually and have drafted various uniform statutes, and the subsequent adoption by many of the state legislatures of these statutes has secured a substantial measure of uniformity on various subjects.

The obvious benefits resulting from the meetings of the state commissioners in the United States suggested the advisability of similar action being taken in Canada, and on the recommendation of the Council of the Canadian Bar Association several of the provinces passed statutes providing for the appointment of commissioners to attend a conference of commissioners from the different provinces for the purpose of promoting uniformity of legislation in the provinces.

The first meeting of the commissioners appointed under these statutes and of representatives from those provinces in which no provision has been made for the formal appointment of commissioners, took place in Montreal on the 2nd day of September, 1918, and at this meeting the Conference of Commissioners on Uniformity of Legislation in Canada was organized. Although the work of the commissioners at their first meeting was necessarily of a tentative and preliminary character, provision was made for the consideration 'of various subjects by committees during the ensuing year.

The second annual meeting of the Conference took place in Winnipeg on the 26th, 27th, 28th and 29th days of August, 1919.

Several sessions were devoted to the consideration of drafts of model statutes relating to the following subjects:

(1) Legitimation by subsequent marriage.
(2) Bulk sales.

(3) Conditional sales.
(4) Fire insurance policies.

The Conference also considered and adopted the reports of committees on the following subjects:-

(1) Legislative drafting.
(2) Sales of goods and partnership.

As noted in the last mentioned report, the English Sale of Goods Act, 1893, has been adopted in New Brunswick and Prince Edward Island, as a result of the first meeting of the Conference. This statute is now in force in all the provinces of Canada except Ontario and Quebec. The English Factors Act, 1889, has also been adopted in New Brunswick, and is now in force in provinces.

The report on legislative drafting contains a carefully prepared selection of extracts from books written by the leading authorities on the subject, and directs attention to many important rules which ought to be observed by draftsmen of statutes. It contains also a summary of the result of the committee's comparison of the Interpretation Acts of the various provinces.

Statutes have been passed in some of the provinces providing both for contributions by the provinces towards the general expenses of the Conference and for payment by the respective provinces of the travelling and other expenses of their own commissioners. It- is hoped that similar statutes will be passed by the other provinces. The commissioners themselves receive no remuneration for their services.

It seems desirable to direct attention to the fact that the appointment of commissioners does not bind any province to accept any conclusions arrived at by the Conference and that such uniformity of legislation as may be secured by the labours of the Conference will depend upon the subsequent voluntary acceptance by the provincial legislatures of the recommendations of the Conference.

# PROCEEDINGS.

PROCEEDINGS OF THE SECOND ANNUAL MEETING OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

Tuesday, 26th August, 1919.

The Conference assembled at 10 a.m. at the Royal Alexandra Hotel, Winnipeg. At this session or at some of the later sessions the following commissioners and representatives of the provinces were present :—

*Alberta:*

FRANK FORD, K.C.
WALTER S. SCOTT.

*British Columbia: J. N.*

Emirs, K.C. H. E. A.
COURTNEY.
AVARD V. PINED.

*Manitoba:*

ISAAC PITBLADO, K.C.
WILLIAM J. TUPPER, K.C.
HERBERT *J.* SYMINGTON, K.C.

*New Brunswick:*

WILLIAM B. WALLACE,K.C.
MARINER G. TEED, K.C.
J. D. POLLARD LEWIN.

*Ontario:*

SIR JAMES ATKINS, K.C.
MATTHEW WILSON, K.C.
FRANCIS KING.
JOHN D. FALCONBRIDGE.

*Prince Edward Island:* W. E.
BENTLEY, K.C.

*Saskatchewan:*

THE HON. W. F. A. TURGEON,
ROBERT W. SHANNON, K.C.

Sir James Aikins read the presidential address, which was ordered to be published as part of the proceedings.

*(Appendix A).*

The minutes of the first annual meeting were taken as read and approved as printed, subject to the striking out of the words "conditional sales " in the list of subjects stated to have been referred to committees in 1918.

It was ordered that the following resolution, adopted in 1918 :

That the members of the Committee on Uniform Legislation of the Canadian Bar Association may attend this Conference and participate in the discussion, but without the right to vote.

should be communicated to the Canadian Bar Association, together with an invitation to all members of the Association to attend any meetings of the Conference.

Mr. Ellis presented the report of the Committee on Legislative Drafting (British Columbia Commissioners). The report was adopted. It was further ordered that copies should be sent to the Attorney-General and the Law Clerk in each province by the Commissioners for such province, and that copies should be furnished to the members of the Canadian Bar Association.

*(Appendix B.)*

It was resolved that the British Columbia Commissioners, together with Mr. Shannon and Mr. Falconbridge, should be re-appointed as a Committee on Legislative Drafting, with instructions also to consider the question of the revision or consolidation of statutes, and the indexing of statutes, including a cumulative index of amendments in each annual volume of statutes.

Dr. Wallace presented the report of the Committee on Legitimation by Subsequent Marriage, and the draft of a model Act appended thereto (New Brunswick Commissioners).

*(Appendix C.)*

The Conference resolved itself into committee of the whole for the purpose of considering the draft clause by clause.

After discussion of the draft the committee of the whole reported progress and asked leave to sit again.

The Hon. T. H. Johnson, Attorney-General of Manitoba, was present during part of the session.

At 12.45 p.m. the Conference adjourned.

## AFTERNOON SESSION.

Tuesday, 26th August, 1919.

At 2.40 p.m. the Conference again resolved itself into committee of the whole to continue the discussion of the draft of the model Act respecting Legitimation by Subsequent Marriage.

After further discussion the committee of the whole rose and reported that it had considered section by section the draft of the proposed model Act on the subject of Legitimation by Subsequent Marriage, and recommended that the draft Act be recommitted to the Commissioners from New Brunswick for further consideration in the light of discussion in committee of the whole and for re-drafting, and that the committee be requested to report again at the present meeting.

The Conference adopted the report.

*(For revised draft, see Appendix D).*

Dr. Scott stated that there was no report of the Committee on Wills.

It was resolved that the Commissioners from Alberta should be continued as a committee with instructions to prepare and to submit to the Commissioners from the other provinces a draft of a model Wills Act and report thereon to the Conference at its next meeting.

Mr. Symington presented the report of the Committee on the Bulk Sales Act and a draft of a model statute on the subject (Manitoba Commissioners).

*(Appendix E).*

The Conference resolved itself into committee of the whole for the purpose of considering the draft clause by clause. The committee of the whole rose and reported that it had. considered section by section the draft of the model Bulk Sales Act and recommended that the principle of the draft be approved and that the draft be recommitted to the committee having the matter in charge for further consideration, and that a draft be again presented for consideration at the next annual meeting of the Conference, and that the committee be authorized to submit the draft to all interested parties.

The Conference adopted the report.

(Note.—At a later session at the request of the Manitoba commissioners the subject of Bulk Sales was referred to a committee consisting of the British Columbia commissioners).

The Hon. J. R. Boyle, Attorney-General of Alberta, was present during part of the session.

At 5.30 p.m. the Conference adjourned.

## EVENING SESSION.

Tuesday, 26th August, 1919.

At 8.30 p.m. the Conference reassembled.

Mr. Palconbridge presented the report of the Committee on Sale of Goods and Partnership (Commissioners from New Brunswick, Ontario and Prince Edward Island).

*(Appendix P).*

The Conference resolved itself into committee of the whole for the purpose of considering the report clause by clause.

After discussion the committee of the whole rose and reported that it had considered the report clause by clause and had amended it in various particulars, and recommended that the report as amended be adopted.

The Conference thereupon adopted the report of the committee of the whole, and the Ontario Commissioners were appointed a committee for the purposes mentioned in the report.

After some discussion of the subjects to be taken up next year, the Conference adjourned at 10 p.m.

## SECOND DAY.

Wednesday, 27th August, 1919.

The Conference re-assembled at 11:15 a,m.

Although no committee of the Conference was appointed in 1918 on the subject of Conditional Sales, the Conference began a preliminary consideration of the draft of a model Conditional Sales Act submitted to the Canadian Bar Association in 1918.

*(Appendix G).*

The Conference resolved itself into committee of the whole for this purpose.

After discussion the Committee rose and reported progress and asked leave to sit again.

At 1 p.m. the Conference adjourned.

AFTERNOON SESSION,

Wednesday, 27th August, 1919.

At 3.30 the Conference re-assembled.

The Conference resolved itself again into committee of the whole to continue the consideration of the draft of a model Conditional Sales Act.

After discussion the committee of the whole rose and reported that it had considered section by section the draft of a model Conditional Sales Act, and recommended that the draft should be referred to the New Brunswick Commissioners with instructions to re-draft the statute and submit it to the Commissioners from the other provinces, and subsequently to report thereon to the Conference.

The Conference adopted the report.

Mr. Falconbridge presented an oral report of the Committee on the Constitution, recommending that the preparation of *a* permanent constitution and by-laws should be deferred.

The report was adopted.

It was resolved that it be made a standing rule of the Conference that every committee in charge of the drafting of a model Act be instructed to have its draft printed and copies thereof distributed to the Commissioners from the other provinces at least three months prior to the time set for the meeting of the Conference at which the draft is to be considered.

It was resolved that the Treasurer be requested to write to each provincial Board of Commissioners asking it to obtain from its Government a contribution of $200 to the general expenses of the Conference, and to write to the Attorney-General of each province which has not appointed Commissioners, asking for a similar contribution.

It was resolved that the name of the Conference be changed to read as follows:

*The Conference of Commissioners on Uniformity of Legislation in Canada.*

Some of the provincial Boards of Commissioners having already adopted separate forms of letter head for their own use it was resolved that for the general correspondence of the Conference, the Conference should adopt a form of letter paper

headed by the name of the Conference and setting out the names o E the officers of the Conference, and that such letter paper should be distributed among the Commissioners of the various provinces.

Mr. Shannon then gave an explanation of the contents of the draft of a model Fire Insurance Policy Act prepared by the Saskatchewan Commissioners (Appendix H.) by way of information preliminary to the discussion by the Canadian Bar Association of the draft of a model statute prepared by a committee,of the Association.

- At 4.50 p.m. the Conference adjourned.

THIRD DAY.

Thursday, 28th August, 1919.

At 10 a.m. the Commissioners attended the meeting of the Canadian Bar Association for the purpose of participating in the discussion of the draft of a model Fire Insurance Policy Act prepared by a committee of the Association.

At 12.20 p.m. the Conference re-assembled.

The officers of the Conference were re-elected for the ensuing year as follows :-

*President*—Sir James Aikins, K.C.
*Vice-President*--Mariner G. Teed, K.C.
*Treasurer*—Frank Ford, K.C.
*Corresponding* Secretary—Matthew Wilson, K.C.
*Recording Secretary*—John D. Falconbridge.

The Conference commenced a discussion as to unfinished business and as to the subjects to be taken up next year.

It was resolved that in view of the probability that the question of a warehouseman's lien upon goods stored with him and the enforcement of such lien will be the subject of proposed legislation in some provinces in the near future, each provincial Board of Commissioners be invited to forward to the Commissioners from' the other provinces any bills or drafts on this subject which may come to the notice of such board in order that the other Commissioners may, if possible, have an opportunity of considering such bills or drafts before legislation based thereon is enacted.

At 12.50 p.m. the Conference adjourned.

## AFTERNOON SESSION.

Thursday, 28th August, 1919.

At 2.45 p.m. the Conference re-assembled.

After further consideration it was resolved to defer the discussion of the subjects to be taken up next year.

It was resolved that it be made a standing rule of the Conference that every draft of a model Act to make uniform the law should begin in the following form :—

*Bill.*

An Act to make uniform the law respecting

His Majesty by and with the advice and consent of the Legislative Assembly of the Province of enacts as follows:—

1. This Act may be cited as *The* *Act.*

[If an interpretation section is required].

2. In this Act, unless the context otherwise requires,

and, as far as practicable, there should be appended to each section of the draft an explanatory note referring to the statute, if any, from which the section is derived, and giving such other information as may seem desirable.

Dr. Wallace then presented the revised draft of the model Act on Legitimation by Subsequent Marriage.

The Conference resolved itself into committee of the whole for the purpose of considering the revised draft clause by clause.

After discussion the committee of the whole reported that it had considered section by section the revised draft of the model Act respecting Legitimation by Subsequent Marriage, and had amended it in various particulars.

*(Appendix D.)*

At 5 p.m. the Conference adjourned.

## FOURTH DAY.

Friday, 29th August, 1919.

The Conference re-assembled at 9.30 a.m.

Mr. W. H. Trueman, K.C., convenor of the Committee on Uniform Legislation of the Canadian Bar Association, addressed the Conference, and some discussion ensued as to the relations between the Association and the Conference. In order to facilitate effective co-operation between the Association and the Conference, it was agreed that it was advisable that a substantial number of the Commissioners should also be members of the Committee on Uniform Legislation of the Association, that that committee should be consulted by the committees of the Conference and should report to the Association on the work of the Conference.

The recording secretary reported that as instructed by the Conference he had arranged with the Canadian Bar Association to have the report of the proceedings of the Conference published as an addendum to the report of the proceedings of the Association, the expenses of the publication of such addendum to be paid by the Conference.

The secretary was also directed to have the report of the proceedings published in pamphlet form and to send copies to the other Commissioners.

It was resolved that the draft of a model Fire Insurance Policy Act submitted by the Saskatchewan Commissioners, as well as the draft prepared by a committee of the Canadian Bar Association, be referred to the Saskatchewan Commissioners for further consideration in the light of the discussion which took place in the Association, and that they be instructed to prepare a draft designed to meet the objections raised to the draft submitted to the Association and to report thereon at the next meeting of the Conference. -

*(Appendix H.)*

It was resolved that the third annual meeting of the Conference should begin at 10 a.m, on the second day preceding the first session of the next annual meeting of the Canadian Bar Association and that it be an instruction to the committee in charge of the programme of the meeting of the Conference to arrange for morning, afternoon and evening sessions of the Con-

ference during two successive days, as well as for such further sessions on the following days as may be practicable, and that the Ontario Commissioners be a committee to prepare a draft programme and submit it to the other Commissioners in advance of the meeting.

It was resolved that the Manitoba Commissioners be requested to consider the question of a uniform Companies Act and to report at the next meeting of the Conference upon any matters of principle which in their opinion should be decided before the drafting of a uniform At is undertaken, with the suggestion that they should confer with the Committee of the Association on Uniform Legislation.

It was resolved that the Ontario Commissioners be requested to consider the question of attempting to make uniform the law relating to devolution of estates and to report thereon at the next meeting of the Conference, with summary of existing statutes on the subject.

It was resolved that the Commissioners from Prince Edward Island be requested to prepare a draft of a model Act respecting the reciprocal enforcement of judgments, and to consult with the Committee on Uniform Legislation of the Canadian Bar Association, and to report on this subject at the next meeting of the Conference.

*(See Proceedings of the Canadian Bar Association, 1918, pp. 28, 29, 178.)*

It was resolved that the revised draft of the model Act respecting Legitimation by Subsequent Marriage be printed and that copies be sent to all members of the Conference who have attended the present meeting, and that if within two months the draft is not disapproved by one-fourth of such members it shall be deemed to be approved by the Conference and shall be recommended to the legislatures of several provinces of Canada for enactment.

*(Appendix D.)*

It was resolved that it should be a standing rule that at each meeting of the Conference it should be the duty of the Commissioners from the province in which the Conference meets to provide the statutes of all the provinces for the use of the Commissioners during the sessions of the Conference.

The Conference expressed by a vote of thanks its appreciation of the generous hospitality provided for the visiting Commissioners and their wives by the Manitoba Commissioners and by Lady Aikins and Mrs. Pitblado.

At 11 a.m. the Conference adjourned.

## APPENDICES

## TO THE REPORT OF THE PROCEEDINGS OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

A. President's Address.

B. Report of Committee on Legislative Drafting.

C. Report of Committee on Legitimation by Subsequent Marriage.

D. The Legitimation Act, as revised by the Conference.

E. Report of Committee on model Bulk Sales Act.

F. Report of Committee on Sale of Goods and Partnership.

G. Draft of model Conditional Sales Act.

H. Report of Committee on model Fire Insurance Policy Act.

## APPENDIX A.

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### THE PRESIDENT'S ADDRESS.

"A general proposition of some value," says Sir Henry Maine, "may be advanced with respect to the agencies by which law is brought into harmony with society. These instrumentalities seem to me to be three in number, legal fictions, equity and legislation. Their historical order is that in which I have placed them. Sometimes two of them will be seen operating together, and there are legal systems which have escaped the influence of one or other of them, but I know of no instance in which the order of their appearance has been changed or inverted."

The three agencies or instrumentalities mentioned by Maine are said to proceed in constantly recurring cycles. These have been criticized by Jenks, who would trace all systems from caste to contract through progressive stages, while Roscoe Pound speaks of the stage of primitive law as followed by strict law, equity, maturity of law, and a fifth stage upon which Europe and America are now entering. These criticisms do not categorically challenge the correctness of Maine's statement. Another writer suggests that there should be inserted either at the beginning or at the end of his lists " codification," which means a crystalization of the law into definitely stated hard and fast rules. Thus he concludes that the cycle is codification, fictions, equity, legislation, He interprets legal fiction to mean any assumption which conceals or affects to conceal the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified.

It is quite true that history of law shows that codification in the past produced a very technical construction of the written law, an adherence to the letter of it, and a disregard of its spirit, and that legal fiction had to be introduced to relieve the harshness of verbal interpretation. Modern ideas and methods are likely to prevent such a result. One preventive is the facility afforded for modifications of the law by annual sessions of legislative bodies to which every person and class may apply, as well those who are influenced by a desire to improve the law as to those who have a grievance, real or fancied, or a fine theory to try, or a cure-all for social hypochondria to exploit. Hence the mass of enactments, sometimes sane, but too often ill-digested, capricious, confused and useless. Much of such legislation will

be discarded as soon as tried, much of it modified, the balance battered into shape as useful rules of conduct suitable for present conditions.

The old common law was created by customs and usages being stabilized by judicial decision. The common law of the Canadian provinces is growing in the endeavour to meet popular requirements by legislative enactments. These are being interpreted and commented on by the courts. The principles of the law thus being formed and meriting continuance need to be defined, articulated with older established principles and from time to time restated, so that the whole well put together can be easily understood by the people and applied by the courts. Such an assimilation of the conventional law of the provinces relating to business, such as a re-statement and stabilization of them is one of the purposes of this Conference. The people of the several provinces doing business throughout Canada well understand the desirability of having uniformity or standardization of the business laws.

One of the objects for which the Canadian Bar Association was formed was to promote uniformity of legislation throughout Canada. It was soon found that the task the Association had thus set for itself was large, that while it could in respect of that subject be efficient in suggesting, deliberating upon and advising, it was not well suited to do the needed executive work. Therefore, to attain the object mentioned and make definite advance, the Association approved of the appointment by each province of Commissioners whose endeavour would be to secure the uniformity of law referred to. Acting on this suggestion, most of the provinces appointed such Commissioners. An organization meeting was held in Montreal in September, 1918; its second meeting is now being held. It is the intention that though the two organizations are distinct, they will cordially co-operate to effectuate one purpose which they have in common. To this end, they will meet at about the same time and in the same place. This plan has been found to work well with the American Bar Association and the Conference of Commissioners on Uniformity of Law in the United States. Of their long experience and progressive methods, the Canadian Bar Association and the Conference of Canadian Commissioners will have the benefit.

The governments of the several provinces no doubt will unhesitatingly make such contributions as will be necessary to pay, not for the service of the Commissioners, which are without, reward save such as comes from helping the state, but for the assistance required by the Commissioners, such as compensation

for clerical assistance, printing, and fees for those who may be employed by the Conference professionally to draft the Acts creating such uniformity. Not only must the legal learning and experience of the Commissioners be brought into the work, but efficient methods in arranging it and care in the selection of those who will be employed to assist as just pointed out. Moreover, it cannot be expected that the proposed Acts will be perfected in a hurry or without patient and persistent effort.

The method which I understand has been adopted in the United States is for the Conference to divide itself into committees, to which are assigned for consideration the proposed subjects upon which uniformity of legislation is desired. In Canada it has been suggested that for the purpose of facilitating the work, the committees should be formed with a regard to locality as the distances are great which separate the several bars of Canada. The committees so formed then consider the principles to be embodied, and employ a draftsman expert in the subject. In the United States, professors in law schools are frequently appointed to do the work. Upon receiving the report of the draftsman, that is, the Act as drafted, the committee discusses it section by section, and when finally approved, it is submitted to the whole of the Conference of Commissioners for final scrutiny and revision. The Act so resulting is then recommended by the Commissioners to the legislatures of the several provinces for adoption. In order to meet the wishes of those who may be affected by the several Acts, they should be frequently consulted. Not only will this assist in having the Act suitably framed for present requirements, but it will create a body of public opinion needed for the passing of the Act as recommended and for its observance after it is passed.

The subjects which are to come before you at this session are uniform principles of legislative drafting, statutory fire insurance policy clauses, wills, legitimation *per subsequens matrimonium,* Acts relating to sales of goods, bulk sales and conditional sales. In respect of the latter, your attention is called to the Uniform Act drafted by the Commissioners of the several United States on Conditional Sales, and to the article relating to it which appears *in 18 Columbia Law Review,* p. 103, and *Cornell Law Quarterly,* p. 1, and other magazines.

There will be a report on a uniform Partnership Act for your consideration. The Act adopted by the Commissioners in the United States is commented on by Crane in an article intituled "Uniform Partnership Act Criticism," which appears in *28 Harvard Law Review,* pages 762 and 766, and the reply to it

is in *29 Harvard Law Review,* pages 158 and 838; also an Act relating to Limited Partnerships, the form adopted in the United States, is referred to in *65 American Law Register,* p. 715, and probably other magazines.

This system of limited partnerships in so far as it has been used in Canada is derived from the Code de Commerce of France. The system was extensively and most profitably used there and by the Mediterranean cities in the middle ages.

At the meeting of the Canadian Bar Association in Toronto in 1916, reference was made to the enforcement in the several provinces of judgments of the Federal Court or of a provincial jurisdiction. The Chamber of Commerce of the Province of Quebec in that year passed a resolution as follows:-

"That it is desirable that judgments rendered in one province of Canada, including probates, be recognized in the other provinces provided they are rendered under conditions reciprocally accepted by two or more provinces and the assistance of the Canadian Bar Association is required."

It was proposed to introduce a Judgments Extension Bill into the Imperial' House. More recently the several provinces of Canada have been asked their opinion concerning the reciprocal enforcement of judgments against husbands for the support of their wives and children. Undoubtedly, if the reciprocal enforcement of judgments throughout the British Empire is desirable, the reciprocal enforcement of judgments in Canada outside of the Canadian jurisdictions which pronounce them is more urgently needed.

The portion of the constitution of the United States which bears more immediately on the problem of the enforcement in one state of orders and judgments of the court in another state is the full faith and credit clause-

"Full faith and credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other state. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof."

Acting in pursuance of their powers Congress provided the manner in which these public acts, records and judicial proceedings were to be authenticated, and prescribed their effect as follows :-

"And the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every

court within the United States as they have by law or usage in the courts of the state from which they are taken."

The United States Courts have held that by virtue of the grant of judicial power in Article III. of the constitution and of the power to make all laws " necessary and proper " to carry out the powers vested in the federal Government, Congress may by law require the state courts to give full faith and credit to judgments of federal courts of all kinds.

After the Australian Governments had studied the American constitution and judicial decisions on it, the following provisions were inserted in the Australian federal constitution :—

"Sec. 51. The Parliament shall have power to make laws-with respect to : (XXIV) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the states; (XXV.) The recognition of the laws, the public Acts and Records, and the judicial proceedings of the states."

"Section 118. Full faith and credit shall be given throughout the Commonwealth to the laws, the Public Acts and Records, and the judicial proceedings of every state."

In pursuance of the clear power thus granted, the Australian Parliament enacted the "Service and Executions of Process Act," the substance of which is that civil and criminal processes of each state can be served throughout Australia. If in the civil process the defendant does not appear and it is shown to the court from which the writ issued, or a judge of that court, that the writ was personally served or that reasonable efforts had been made to effect personal service on the defendant and that it came to his knowledge, the court may on the application of the plaintiff order that the plaintiff shall be at liberty to proceed in the suit and that a judgment thus rendered in one state may be enforced in any other state without suing on it and obtaining a new judgment. Provision is made for the registration of the judgment with courts of similar jurisdiction in other states in which execution is desired. After such registration, the judgment has the force and effect of a judgment of the court in which it is so registered. Due provision is, however, made to guard against abuses.

In the making and consolidation of the law steady progress may not be satisfactory to restless classes, but is much more to be desired than impulsive plunging. The right direction is more important than the length of the stride. There is much pressing work to be done for the good of Canada, and it requires all citizens to do their share according to their several talents and capacities.

## APPENDIX B.

CONTENTS.



### REPORT OF THE COMMITTEE ON LEGISLATIV H. DRAFTING.

*To the Conference of Commissioners on Uniformity of Legislation in Canada:*

At the meeting of the Conference held in Montreal in September, 1918, a committee was appointed under the following resolution:—

"That the Commissioners from British Columbia be requested to prepare and to submit to the Commissioners from the other Provinces a set of general rules or suggestions for use in the drafting of uniform Statutes, and to report to the next meeting of the Conference with regard to such rules or suggestions and with regard to the interpretation Acts of the various Provinces." The purpose of this pamphlet is to place before the Commissioners, in compliance with this resolution, a set of rules or suggestions which may be found of assistance in the drafting of uniform Statutes.

## INTRODUCTORY.

The improvement of methods of legislative drafting and the training of men for the work of drafting Statutes have in no country received the attention which their importance merits.

It is only within comparatively recent years that marked improvement has taken place in England in the methods of drafting and the form of Statutes. In 1869 the office of Parliamentary Counsel was established, and it is to the efforts of the able men who have filled that office that the improvement of the English statute law is largely due. The books written by two of these men, the late Lord Thring and Sir Courtenay Ebert, based on their experience as Parliamentary Counsel, afford to-day the most practical directions for those in need of assistance in taking up the work of drafting Statutes.

The movement in the United States of America for more uniform, consistent, and better drafting of Statutes is of still more recent *origin. This movement has now attained considerable importance, largely through the efforts of various associations and conventions, and by reason of the establishment in a number of the States of bureaux for legislative reference work and the drafting of Bills.

In 1913 the American Bar Association appointed a special committee on legislative drafting. This committee has since then been working on the preparation of a legislative manual or code of instructions to draftsmen "containing a collection of directions or suggestions for drafting laws, and model clauses for constantly recurring statutory provisions." Tentative drafts of parts of this proposed manual have been completed, and may be found in the annual reports of that Association for the years 1914, 1915, and 1916.

The National Conference of Commissioners on Uniform State Laws in 1916 instructed its Committee on Legislative Drafting to "prepare a set of general rules or suggestions to be observed as far as practicable in the drafting of legislation by draftsmen of uniform laws." The report of the Committee, contained in the Proceedings of that Conference for 1917 at page .299, presents ten recommendations for the observance of draftsmen of uniform laws.

We in Canada have, with marked advantage, followed the English practice as to arrangement and division of Acts, including the subdivision of sections and other aids to the visualization of Statutes. While thus profiting to some extent by the improvement in the English statute law, too little attention is given in

Canada to the technical or mechanical side of legislative drafting. For this reason it is desirable that the Conference of Commissioners on Uniformity of Legislation in Canada should, at its inception, give some consideration to this important subject.

A very brief consideration should suffice to convince us of the importance of careful draftsmanship in the preparation of the model Statutes which will be recommended to the different Provinces for enactment. As. these Statutes will be prepared with ample time for careful scrutiny and revision, it will naturally be expected that in form as well as in substance they should surpass in quality the work which in the preparation of our Provincial Statutes is often done in the hurry of the legislative session. The uniform laws recommended by the Conference should be framed in the best possible manner before they are submitted to the scrutiny and criticism of the different Provincial officials. Time spent in perfecting our draft Bills in this way will well repay the cost, as no defect of form should be allowed to endanger the favourable consideration of laws otherwise meritorious.

The committee in preparing this pamphlet has not presumed to formulate rules for the guidance of the Conference in drafting Statutes, but is placing before the Commissioners certain suggestions in the form of extracts from the writings of those who from their long experience and acknowledged ability are best able to speak with authority on this subject. The work of the committee has been directed to the selection of the material most likely to be found useful by those who may be engaged in the drafting of uniform Statutes.

In a brief pamphlet such as this the space which can be devoted to any one matter is necessarily limited. It is hoped that the extracts are presented with sufficient fullness to appeal to the inexperienced draftsman. They will certainly be appreciated by all those who from experience in drafting know the very great difficulty of expressing the intent of even a comparatively simple law in exact words.

It is to be regretted that the number of text-books of practical value to draftsmen is so limited. As more than one writer has pointed out, great care and effort have for years been expended in the gathering of judicial experience for the guidance of Courts in construing Statutes, but comparatively little has been done to provide guides for the drafting of legislation.

A list of the text-books from which extracts are taken is appended. In many cases the points dealt with are more

fully elaborated in the text. The draftsman is recommended not only to familiarize himself with the rules for good drafting contained in the extracts, but to make a careful study of the books from which the extracts are taken, and always to remember that even the best draftsman cannot dispense with careful and repeated scrutiny and revision of his work.

## INTERPRETATION ACTS.

The provisions of the general interpretation Acts of the different Provinces should be carefully borne in mind by the draftsman of uniform Statutes. The proper observance of these provisions will materially shorten the language of statutory enactments and contribute to uniformity of expression.

It should be remembered in the drafting of Statutes that these interpretation Acts do much more than define terms in common usage. They also state explicitly a number of convenient rules which settle important problems in construction. A careful study of these rules will be found indispensable to draftsmen in the wording of uniform Statutes.

Your Committee, in discharge of its duty to report with regard to the interpretation Acts of the various Provinces, has examined the Act of each Province, except that of Prince Edward Island, of which they were unable to obtain a copy. From a comparative analysis made of these Acts there was found to already exist a large degree of uniformity, the chief differences being in arrangement of provisions and in certain definitions of a local significance which would necessarily differ even if a uniform Act were adopted.

In a few cases provisions inserted in one Act do not appear in some of the others, but these are principally rules of construction which under the decided cases would be followed by the Courts in every Province irrespective of the provisions of the interpretation Act of that Province. Attention is directed, however, to one or two matters in this connection, a consideration of which may prove useful to those engaged in the drafting of uniform laws.

In the British Columbia, Nova Scotia, and Ontario Acts a provision is found that the interpretation section of the Supreme Court or Judicature Act shall extend to all Acts relating to legal matters. The British Columbia and Ontario Acts also provide that the interpretation section of the Municipal Act shall extend to all Acts relating to municipal matters. The effect of these provisions is quite material, and should be kept in

mind by the draftsman of uniform laws. No similar provisions are found in the interpretation Acts of the other Provinces.

Quite frequently in drafting Provincial Statutes it is found desirable to have some appropriate word interpreted to mean " His Majesty the King acting in right of the Province." In the Statutes of British Columbia the word "province" has been used in a number of instances with this meaning, although that word is defined in the Interpretation Act (R.8.B.C. 1911, ch. 1, s. 26 (9)) to mean the Province of British Columbia territorially. In the Interpretation Act of Alberta (Stat. 1906, ch. 3, s. 7, subsec. (7) ) and in that of Manitoba (R.S. 1913, ch. 105, s. 27 *(f))* the word " Government " is defined as meaning His Majesty the King acting for the Province, while in the Nova Scotia Act (R.S. 1900,- ch. 1, s. 23 (7)) and that of Quebec (R.S. 1909, art. 36, 13) the word "Government" is defined as meaning the Lieutenant-Governor acting in conjunction with the Executive Council of the Province.

In most Provinces the expression "Lieutenant-Governor in Council " is used to mean the Lieutenant-Governor acting in conjunction with the Executive Council. This appears to be an apt expression for the purpose, and at the same time sufficiently concise. It is suggested that the word "Govern-' ment" might with advantage be uniformly adopted in all the Provinces to mean His Majesty the King acting in right of the Province.

Another matter of more general interest to the draftsman of uniform laws, and one which tends to the shortening of legislative expression may be mentioned. In numerous Acts in all the Provinces are to be found instances where, for the purpose of sectional reference or reference to a certain part of the same Act, expressions similar to the following occur: "subject to the provisions of section 2 *of this Act," "* within the scope of this Part *of this Act,"* or " as provided in Part IV. *of this Act."* It is suggested that in all these instances it should be possible to eliminate the words "of this Act." In some of the Provinces the interpretation Act makes partial provision for this (e.g., R.S. Man. 1913, ch.. 105, s. 26 (3), and R.S. N.B. 1903, ch. 1, s. 13 (1), which provide that where in any Act reference is made by number to a section it shall be deemed a reference to the section bearing that number in the Act in Which the reference occurs, unless there is something to indicate that a reference to some other Act is intended. In a number of the Provinces the drafting practice appears to be to eliminate the words "'of

this Act " in this connection, and it is hardly conceivable that any serious question of construction can arise by so doing, even where the interpretation Act contains no provision relating to the matter.

In the same way a reference to a schedule or to a form by letter or number without the use of further words clearly indicates a reference to the schedule or to the form of like description in the Act in which the reference occurs. Thus the expression "in the Schedule to this Act" might well be shortened by eliminating the last three words, and the expression " in Form A in the Schedule to this Act " shortened to " in Form A."

If the Conference is of the opinion that legislation is necessary to confirm this practice, it is suggested that a uniform clause be drawn and recommended to the several Legislatures for enactment as part of the interpretation Act.

## INTERPRETATION SECTIONS.

Sections defining certain words to be used in a special sense throughout an Act should be placed at the beginning of the Act, as is the usual practice now in all the Provinces.

"Special definitions should be sparingly used, and only for the purpose of avoiding tedious repetitions, or of explaining terms which would be ambiguous without them. A definition is a very dangerous tool to use, especially if it gives a word a non-natural sense, i.e., makes it include something which is not included in its ordinary acceptation. Indeed, a word should never be defined in a non-natural sense. . . .

" It should be made clear whether the definition is intended to be explanatory, restrictive, or extensive. The expression ' shall mean' is explanatory and *prima facie* restrictive. The expression ' shall include' is extensive (see *Corporation, of Portsmouth v. Smith,* L.R. 13 Q.B. 184; *Pound v: Plumstead Board of Works,* L.R. 7 Q.B. 194). Therefore the combination ' shall mean and include,' though not uncommon, should be avoided, as it raises a doubt whether the definition is intended to be restrictive or extensive." (Ilbert's Legislative Methods and Forms, p. 281.)

## MARGINAL NOTES.

Marginal notes to all uniform Statutes should be prepared by the draftsman. His knowledge of the subject-matter enables him readily to put them into proper form, and this attention on his part is necessary to ensure their uniformity.

"Marginal notes should receive more attention than is usually given to them. Each note should express in a concise form the main object of the section on which it is made, or should at least indicate distinctly its subject-matter; and all the notes, when read together in the Arrangement of sections,' should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act." (Thring, p. SO.)

"Attention should be paid to the framing of marginal notes. A marginal note should be short and distinctive. It should be general and usually in a substantival form, and should describe, but not attempt to summarize, the contents of the clause to which it relates. For instance, a marginal note should run: ' Power of [local authority] to, &c.,' and not ' Local authority may, &c.'

"The marginal note often supplies a useful test of the question whether a subject should be dealt with in one or more clauses. If the marginal note cannot be made short without being vague or distinctive without being long, the presumption is that more clauses than one are required." (Ilbert's Legislative Methods and Forms, p. 246.)

## GENERAL ARRANGEMENT or ACTS.

The following directions to draftsmen are recommended for consideration

"His first step must be, in the case of a simple Act, to settle the principle or leading motive, and in the case of a complex Act the several principles or leading motives of the Act on which he is engaged. . . .

"In a simple Act, the principle when selected must be enunciated ,in its most concise form at the very outset of the Act either in one section or in two or more consecutive sections, as the subject may require. In a complex Act, the principles should be arranged in different parts of the Act, and each part of the Act should be treated as a simple Act, and contain its principle enunciated in the most concise form at the outset of the part. . . ,

"This arrangement is to be recommended both for Parliamentary and for practical reasons. It enables Parliament to decide at once on the principle of an Act unembarrassed by the consideration of details, and it places before the reader at the outset a clear view of the law intended to be enacted., without the confusing intermixture of the conditions under which and the mode in which that law is to be administered. The principle thus

being settled, the conditions can be considered separately, and no confusion arises between objections of principle and objections of detail." (Thring, pp. 28, 29, 30.)

"If formal details precede, the debate may bring out minor differences of opinion which split the support of the bill and make difficult a later agreement as to general policy. If the main object is agreed upon first, the adjustment of details will seldom offer serious difficulties." (Jones, p. 108.)

"So far as parliamentary exigencies will admit, the subject-matter of a Bill should be arranged with reference to administrative convenience; in other words, its arrangement should be orderly and logical.

"Normal and general provisions should be placed first. Special, exceptional, and local provisions should be placed towards the end. . .

"Temporary and transitional provisions should be placed at the end of the Bill, because when they are spent they can be repealed without making gaps in the main body of the Act.

"As a general rule, it is convenient to lay down first the rules of law to be observed, and then to state the authorities by which they are to be administered and the procedure to be followed in administering them.

"The framework of a Bill may be made more intelligible by dividing it into parts and by grouping clauses under italic headings. But excessive subdivision should be avoided. As a rule a Bill should not be divided into parts unless the subjects of the parts are so different that they might appropriately be embodied in separate Acts. The division of an Act into parts may effect its construction by indicating the scheme of arrangement." (Ilbert's Legislative Methods and Forms, pp. 245, 246.)

## NUMBERING OF SECTIONS.

While it is the uniform practice in Canada to number sections consecutively throughout the Act, the method of numbering subsections is not so uniform. It is suggested that the numbers of subsections should be in parentheses, and that the first paragraph of a section should be numbered as subsection " (1)," immediately following the section number, this being the prevailing practice in a majority of the Provinces. The use of letters in parentheses instead of figures for enumerating conditions or for tabular purposes in a section or subsection will avoid confusion with the subsection numberings.

## LENGTH OF SECTIONS.

"It is desirable to cut up the matter of enactment into short sections for several reasons: 1. The person preparing the statute will compel himself to detach and lay out clearly his ideas and finish up one thing at a time. 2. The sense of the statute will be more easily grasped if it is made easy to proceed step by step than if it is seemingly or actually made necessary to assimilate much matter at once. 3. Parts of the statute will be more easily referred to and designated in discussion. 4. The statute can be more easily amended in parts which may need amendment without disturbing other parts or reprinting long paragraphs." (Willard, Sec. 278.)

"A long and complex clause should be cut up into sub-sections." (Ilbert's Legislative Methods and Forms, p. 246.)

"Each proposition of a statute that is separable from other propositions should be placed in a separate section.

"This will compel the draftsman to detach and lay out clearly his ideas and finish up one thing at a time. It will also aid very considerably in the discussion of the measure in the legislative body and facilitate amendments before final passage." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 299.)

"The one thing needful is to make each distinct subject the matter of a separate section, or, if necessary, a separate series of sections, and not at the commencement to aim at conciseness when conciseness is placed in competition with or in antagonism to clearness of expression, or fullness in working out the details of the law." (Thring, pp. 47, 48.)

## FORMATION OF A LEGISLATIVE SENTENCE.

" Each sentence should be as short and simple as possible.

"The rules to be laid down will be either general or special, and either absolute or qualified.

Where a rule is to apply only to a particular case or set of circumstances, it is usually most convenient to state the case or set of circumstances first and let the rule follow. But where the rule is to apply to several cases or sets of circumstances, it is often convenient to state the rule first and enumerate the cases afterwards.

"Where the rule is to be subject to qualifications, exceptions, or restrictions, these should follow the statement of the rule. But it is often convenient to prefix to the rule words indicating that it is to be so qualified.

" Enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion, in accordance with the maxim '*expressio unius est exclusio alterius.*'

"Each rule should be stated in general terms, but so far as practicable its application to particular cases should be tested for the purpose of seeing how it will work in each case." (Ilbert's Legislative Methods and Forms, p. 247.)

"Sentences ought to be and can be made as short and simple as desired. Indeed, any long-winded sentence can be broken up and recast into many short sentences, which would very much enhance the clearness of statutory expression. Frequently a long series of subjects is followed by many predicates and by many dependent clauses of co-ordinate value. If the subject were repeated with each predicate, the length of the statute would be appreciably increased, but in all such cases it is possible to use the detached form of statement, that is, paragraph each predicate, every dependent clause, and the parts of the sentence upon which these clauses depend." (Statute Law-making in Iowa, p. 383).

" There is a difficulty in the way of making sentences short in statutory expression which arises from the necessity of joining many predicates to one subject or many subjects to one predicate or many dependent clauses of co-ordinate value to one leading statement. In such cases European statute-writers have resorted to the expedient of detaching these co-ordinate expressions by the manner of setting out the law on the written or printed page. The attempt is made by a system of paragraphing to more clearly indicate the equivalent value of what is co-ordinate, also to indicate what is dependent and upon what it depends, when the same end could not be reached by any system of mere punctuation, and when the matter could not be broken up into a number of separate sentences without much repetition." (Willard, Sec. 285.)

"Where it is deemed desirable to cover by one section a number of contingencies, alternatives, or conditions, it will add to the clearness of thought and expression and to the facility of discussion if the section is broken up into a number of distinct paragraphs distinguished by figures or letters." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 299.)

The arrangement of sentences in detached or tabular form and the use of mechanical devices for graphic presentation of enactments are common in English and Canadian Statutes.

Clearness is materially increased by these expedients. They enable the reader to readily distinguish between the main and the dependent clauses, and to see the relation of the subject to its various predicates.

Coode in his analysis of a legislative expression considers it as consisting of four elements: First, the description of *the legal subject;* second, the enunciation of *the legal action;* third, the description of *the case* to which the legal action is confined; and, fourth, *the conditions* on performance of which the legal action operates. (Coode, p. 6.)

The analysis presented by this writer and the rules which he develops from that analysis are strikingly clear and logical. The following brief extracts only can be presented here, but his entire book will well repay a careful study by every draftsman :—

"The purpose of the law in all: cases is to secure some benefit to some person or persons. . . .

" It is only possible to confer a Right, or Privilege, or Power, on one set of persons, by imposing corresponding Liabilities or Obligations on other persons, compelling these to afford the benefit conferred, or to abstain from invading it. …

"Now no Right, Privilege, or Power, can be conferred, and no Obligation or Liability imposed, otherwise than on some person.

"The person who may or may not or shall or shall not do something or submit to something is *the legal subject* of the legal action.

"The importance of a just discrimination and correct expression of the legal subject cannot easily be exaggerated. The description of the *legal subject* determines the *extent* of the law. On this portion of every legal sentence it depends whether a right or privilege shall be limited to too few persons or extended to too many; whether an obligation is imposed on more persons than is necessary or is not extended to sufficient persons in order to secure the correlative right: whether powers are reposed in-right or wrong persons; whether sanctions are or are not made to fall on the proper ,subjects." (Coode, pp. 7, 9.)

"The *legal action* is that part of every legislative sentence in which the Right, Privilege, or Power, or the Obligation or Liability, is defined, wherein it is said that a person may or *may not* or *shall* or *shall not* do any act; or shall submit to some act.

"As the *legal subject* defines the *extent* of the law, so the description of the *legal action* expresses the *nature* of the law it expresses all that the law effects, as law. The selection of the legal subject is important; but it is on the description of the *legal action* that the whole function of legislation exercises and exhausts itself." (Coode, pp. 9, 10.)

"The rules of most effect as to 'the expression of the legal subject are :-

"First, to keep the *legal subject* distinct in form and in place from other parts of the legal sentence.

" Secondly, not to permit it to be withdrawn from view, or disguised by the non-description of *persons,* or by the substitution of *things* instead of persons, or by the use of impersonal forms of expression." (Coode, p. 14).

" Not one Case can be imagined in which it is necessary or convenient to use any other than permissible or imperative language in the enacting verb ; and these two rules, therefore, ought never to be allowed to be infringed :-

"1st. That the copula, which joins the *legal subject* and the *legal action,* is to be may, or may *not,* or *shall,* or shall not, as, ' any person may,' no person may,' every person *shall,'* or ' no person *shall.'*

"2nd. That the whole of the enacting verb is always to be an active verb, excepting only where the legal subject is to submit or suffer, as where executory force, or punishment (sanctions), are directed to be submitted to by the person described in the legal subject. .

"There could arise no difficulty if these rules were observed

"Whenever an act is allowed *as a right,* or as *a privilege,* that is to all the members of the community, or to certain persons for their own benefit, the proper *copula* is *may.'*

" Whenever the act is authorized *as a power,* that is to certain persons to perform, not for their own benefit, but for the benefit of others on whose behalf the power is given, the proper *copula is shall."* (Coode, pp. 16, 17.)

" As on the due expression of the *legal subject* the *extent* of the law depends, and as on that of the *legal action* the *nature o*f the law depends; so on the expression of *the case,* and of *the conditions,* do the clearness, precision, and form of our statute law mainly depend.

" The rule to be observed is of such simplicity as to make its utterance appear almost an absurdity; but, simple as it is, it is the most frequently neglected of any rule of composition.

" It is, that *wherever the law is intended to operate only in certain circumstances, those circumstances should be invariably described* BEFORE *any other part of the enactment is expressed.*

" If this rule were observed, nine-tenths of the wretched provisoes and after-limitations and qualifications with which the law is disfigured and confused would be avoided, and no doubt could ever possibly arise, except through the bad choice of terms, as to the occasions in which the law applied, and those in which it did not. . . .

"It would add much to the facility of discovering *the case* immediately in every legal sentence, if it invariably commenced with the words ' when' or ' where' or in case." (Coode, pp. 22, 24.)

"A law universal as to its *subjects,* and restricted or not restricted to certain occasions *(cases),* may still operate only upon the performance by some person of certain *conditions. it* is not till something has been done that the right can be enjoyed, or that compliance with the obligation can be enforced, or that the liability can be applied.

"These *conditions* are invariably conditions precedent. The action of the law never takes place till these are complied with. . . .

"For the reason that the legal action is postponed, and cannot act upon the legal subject, until these conditions are all complied with, *the expression of the conditions ought immediately to precede that of the legal subject."* (Coode, pp. 28, 29, 31.)

" Every form of every possible legislative enunciation resolves itself into two or more of these four elements, of which *the legal subject* and *the legal action* are essential, and must necessarily be present, while *the case* or *the condition* may or may not be present.

"If the enactment is to operate on its subject universally, constantly, and unconditionally, the sole elements are the *legal subject* and the *legal action.*

"If the enactment is only to operate on its subject in certain circumstances, *the case* must express these circumstances in *the first words of the sentence,* and not in a subsequent phrase inserted parenthetically in the description of the subject or the action, nor in a separate proviso.

" If the enactment is only to operate on its subject after performance by somebody of certain precedent conditions, these *conditions should be all expressed immediately before the legal subject, and in the order in which, they must be executed;* that is, in their chronological order.

"Next comes the *legal subject,* immediately followed by the appropriate modal *copula,* introducing the *legal action."* (Goode, pp. 33, 34.)

"Parliamentary considerations favour the accumulation of materials into one clause. But as a question of composition and interpretation, there can be no doubt that the more strictly each clause is limited to one class of *cases,* one class of *legal subjects,* and one class of *legal actions,* the better; and that it is a mischief to confer in one sentence two distinct species of rights, to impose two distinct kinds of obligations, to confer two distinct kinds of powers, and so on: where parliamentary convenience does not prevail, no good draftsman ever does so." (Goode, p. 42.)

"It will perhaps seem to be a great waste of care to make all these distinctions, as to the elements, the method of distribution, and the expression of a *single legislative sentence. . . .*

"But it is of these simple elements that the whole law consists. If these be not well discriminated and well marshalled in each sentence, there is no hope for their being well combined in the whole law." (Goode, p. 68.)

## USE OF WORDS.

"Different words should not be used to express the same thing." (Ilbert's Legislative Methods and Forms, p. 247.)

"The same words should not be used with different meanings." *(Ibid,* p. 248.)

"It is common in Acts of Parliament to use ' such' as a demonstrative, equivalent to ' the ' or ' that.' But this departure from the English of ordinary life seems unnecessary, and often causes confusion where the expression ' such . . as ' has to be Used in the same context." *(Ibid.)*

"An unnecessary use is made of the words ' said' and `aforesaid'. They are rarely essential to exactness of expression. In many of the cases where ' said' is used the definite article will answer the purpose equally well. In other cases, its place may be supplied by another word, or it may, be omitted altogether. Overuse of these terms reduces statutory expression to the level of the common-place products of legal drudgery." (Willard, Sec. 350.)

"Pairs of words often needlessly pad the laws. Examples of some of frequent occurrence are the following : Authorize and empower '; each and every '; each and all' ; by and with the authority'; order and direct '; desire and require '; full and complete '; from and after.' The word such appears *ad nauseam* in hundreds of our laws, otherwise examples of good draftsmanship. It is unnecessary, probably nine times out of ten; each' and any' are usually unnecessary, and the same,' aforesaid,' and before mentioned' can usually be avoided by slight changes in phraseology." (Jones p. 126.)

"Brevity and simplicity and good style might have been further cultivated by Iowa draftsmen if they had avoided the use of such clumsy and archaic words as said," aforesaid," such,' and the same'; no words in the English language have been so terribly abused in law-writing." (Statute Law-making in Iowa, p. 352.)

"The legislator is tempted to make an extravagant use of broad-sounding words, multiplying the word ' any' and adding whatsoever ' and wheresoever ' where a simpler expression. would answer the purpose. The multiplication of these words serves in many cases only to give to the statute a pretentiousness of expression without increasing the breadth of its application. There need be no forced avoidance of the use of the word any' where it is the natural expression, or of the other words where their use is needed to show a sweeping intent in a statute liable to receive strict construction. But it is a good plan after a statute is put in its first form to look it over and prune out the extravagances when they are perceived to be clearly such." (Willard, Sec. 352.)

" The drafters of statutes have always indulged in the use of synonyms for fear that a single word would not cover all possible contingencies This practice, as well as the constant repetition of the same series of words, has conducted to the formation of rambling sentences and sections. . . .

"Repetition or redundancy is the bane of so many legislative utterances that it takes but a few lines of a long sentence in a single enactment to render the reader dizzy." (Statute Law-making in Iowa, pp. 354, 355.)

" Attention is particularly called to the needless employment and cumulation of the words said,' aforesaid," such," whatsoever,' or whatever.' It is obvious that in many cases these expressions add nothing to the sense or clearness of the matter." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 300.)

" The one quality absolutely essential to a statute, as it is to an attorney's pleading, or a court's opinion, is clearness. This can be attained in exactly the same way as in any other form of composition. Long and involved sentences, useless repetitions the insertion of superfluous words, or phrases without a definite meaning, render a statute obscure or ambiguous. Whenever possible, ordinary language should be used, but with careful precision and accuracy. In many cases, however, the use of technical terms cannot be avoided for the reason that these are the only means of expressing definitely the intended sense.

Technical terms may be either of a legal kind, or those pertaining to the subject-matter with which the statute deals, as, for instance, a trade or profession. Care should of course be taken to use such words with scrupulous correctness.". (California State Library Legislative Reference Bulletin No. 1, p. 4.)

The attention of draftsmen is also called to the well-established rules, found in practically all interpretation Acts, that the singular number includes the plural, and the masculine gender includes the feminine. These rules apply unless the context or the character of the law calls for an exception, and their observance will obviate many needless repetitions. In the same way " person " is used to include corporations as well as individuals.

In the use of the auxiliary verb " may," it is well to bear in mind the following advice given by Lord Thring in his Practical Legislation :—

" The inclination of the Courts to construe ' may' as sometimes imperative in an Act of Parliament requires that in doubtful cases the draftsman should add words such as ' The Court may in *its discretion,'* or `may *if it thinks it expedient,'* and so forth." (Thring, p. 62.)

## USE OF PRESENT TENSE.

A rule of construction, common to all our interpretation Acts, which is too frequently overlooked by draftsmen, is that dealing with the application of expressions in the present tense. This rule is that the law is considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise.

"The future conditional (` if he shall ') should be avoided. The future ' shall' is apt to be confused with the imperative.. .

" An Act of Parliament should be treated as always speaking. The idea on which this rule is based is, according to Lord Bowen,

that a code on some particular subject is being constructed, and so, when the present tense is used, it is used, not in relation to time, but as the present tense of logic." (Ilbert's Legislative Methods and Forms, p. 248.)

" All laws in theory act in the present even though their actual operation be suspended till some future time. On the statute books they stand as continuing commands. The tense favoured, therefore, for describing the cases in which they are to operate is the present. The future form is especially to be avoided. It is easily confused with the imperative which is needed for the statement of the legal action. In fact, the use of the future form in statement of the case is logically absurd. In statements as ' whenever any deer shall be shot,' and ' in case a county shall lie partly in two senatorial districts,' the future form is evidently meaningless. The careless use of ' shall' is objected to because, *on first reading,* it makes .it difficult to distinguish language meant to be descriptive, from that meant to be imperative. In many cases even careful study will still leave a doubt as to whether the law meant to express command or merely to state a condition." (Jones, p. 98.)

" The prevailing practice in uniform laws, as in other well-drawn statutes, seems to be to reserve the word ' shall' for statutory directions and prohibitions. Thus the Limited Partnership Act says in Section 16 : A limited partnership *shall* not receive from a general partner,' etc., but says in Section 17, ' A limited partner *is* liable,' etc., and not ' A limited partner *shall* be liable.'

" It is suggested that in penal clauses the use of the word 'shall' in the description of forbidden acts is unnecessary, and should be reserved for the specification of the penalty as follows:

"A person who *shall* do such an act' " (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 300.)

" An Act of Parliament should be deemed to be always speaking, and therefore the present or past tense should be adopted, and ' shall' should be used as an *imperative* only, and not as a *future.* ' If ' should be followed by the indicative where it suggests a case; for example, `If any perpon commits, &c., he shall be punished as follows.' " (Thring, p. 83.)

" The auxiliary ' shall' may well be omitted in all dependent clauses as in the following

" Any person who shall drink intoxicating liquors as a

beverage on any passenger railway car or street car in service or who shall use profane or indecent language on such railway or street car shall be guilty of a misdemeanor'

" This proposition is more naturally stated and less artificial if ' shall' is deemed superfluous in the first two places. The future tense should give way to the present tense, and the future perfect to the perfect in all such dependent clauses." (Statute Law-making in Iowa, p. 352.)

" It is supposed sometimes that it is necessary to describe *the case* and *the conditions* in the future or perfect future, for fear that if it were expressed in the present tense, as, ' when any person *is* aggrieved,' the law would operate only upon cases existing at the moment of the passing of the Act; or that if it were expressed, `when any person *has been* convicted,' &c., the law would be retrospective, and apply only to convictions previous to the passing of the Act. But this apprehension is entirely founded on a mistake. The rule of interpretation is never to give a retrospective effect to a statute, except when a retrospective intention is manifested by clear words; accordingly there are multitudes of instances existing, in the statutes, of cases, including many descriptions of offences, where the construction of the statute would be most strict in which the verbs are in the present or past tense. . . .

" If the law be regarded while it remains in force as *constantly speaking,* we get a clear and simple rule of expression, which will, whenever a case occurs for its application, accurately correspond with the then state of facts. The law will express in the present tense facts and conditions required to be concurrent with the operation of *the legal action;* in the perfect past tense, facts and conditions required as precedents to the *legal, action."* (Coode, p. 63.)

" This mode of expression, assuming the law to be always *speaking,—reciting facts concurrent with its operation, as if they were present facts,* and *facts precedent to its operation, as if they were past facts,—lias* two very considerable advantages :—

" First, it avoids the necessity of very complicated grammatical construction in the statement of cases and conditions, often involving the use of futures, perfect futures, and past conditionals--

> "If a person *shall* be convicted of, &c.; and if he *shall have been* before convicted of the same offence; and if he *shall* not have undergone the punishment which he *should have undergone* for the offence of which he *shall have been so before convicted.*

" Secondly, keeping the description of *cases* and *conditions* in the present and in. the perfect tenses, it leaves the imperative and potential language of *the legal action* clearly distinguished, by the broadest and most intelligible forms of expression. Narration will appear in narrative language, instead of being allowed, as now, to usurp imperious language, and thus to confound *the facts* and *the law."* (Coode, p. 66.)

## USE OF ACTIVE AND IMPERSONAL FORMS OF EXPRESSION.

" Do not use the passive mood when the active will serve. Expression in the active mood is apt to be much clearer. For instance, it is better to say : The proper officer shall give notice' than notice shall be given by,' etc." (California State Library Legislative Reference Bulletin No. 1, p. 6.)

" An Act of Parliament is intended to confer rights and impose duties. It should be made clear on whom the rights are conferred and the duties are imposed. For this purpose, as a rule, the active form (` may do' or shall do ') should be used, and the passive form (` may be done' or shall be done ') should be avoided." (Ilbert's Legislative Methods and Forms, p. 248.)

" The expressions It shall be lawful,' It is the duty,' and similar impersonal forms should not be used when the auxiliary verbs shall,'. ' shall Lot,' or may' will do equally well. Sometimes it is useful to substitute It shall be lawful' for the auxiliary form of expression, in order that verbs in the infinitive mood may be used in the dependent sentences." (Thring, p. 62).

" It may sometimes be convenient, instead of naming the legal subjects, to use an impersonal form, as, it shall be lawful' where it is intended to confer a right, privilege, or power on many undefined persons, but not universally on all persons. The form, however, has no advantage, but is needlessly indefinite where the persons on whom the right, power, or privilege is to be conferred are easily denoted ; thus, it shall be lawful for any two justices' may be better expressed by any two justices *may'* it *shall* be lawful for any person to,' or it *shall not* be lawful for any person to,' are more clearly expressed by ' every person may,' no person *shall.' "* (Coode, p. 14.)

" If a right, privilege, or power is conferred, the appropriate *copula is may* or may *not;* if a right, power, or privilege is to be abridged, the appropriate *copula is may not;* if an obligation is imposed to render any duty 'the appropriate *copula* is *shall;*

if the obligation is to abstain, the appropriate *copula is shall not;* again, if the purpose is to affect the legal subject with a liability or sanction, the appropriate *copula is* still ' *shall* '; only when the subject is to be active, the whole enacting verb will be active, *shall* forfeit,' &c., and where the subject is to submit, or be passive, the whole enacting verb will be passive, as ' *shall* be imprisoned,' &c.

"All such descriptive and narrative expressions as ' it is hereby allowed, authorized, and permitted,' instead of may ; is hereby commanded and required to,' or ' shall, and is hereby required to,' instead of simply *shall';* and all such passive expressions where the legal subject is intended to be active, as ' notice *shall* be given,' leaving the person to give it unascertained, instead of ' the surveyor ( ?) *shall* give notice '; the rates *shall* be made, allowed,' &c., leaving it impossible to ascertain by whom, as in the 4 & 5 Wm. DT., c. 76, s. 35;
instead of `the Guardians ( ?) or the Overseers ( ?) *shall* make the rates "; `the allowances *shall* be examined and audited'
instead of ' the chief constable *(p.* the treasurer ?) *shall* account for the allowances, and the justices *shall* examine and audit such account,' &c., are at the best weak and inexpressive, and are very frequently, as in. some of the above instances, wholly unintelligible." (Goode, pp. 15, 16.)

## IMPROPER USE OF PROVISOES.

The Committee on Legislative Drafting of the National Conference of Commissioners on Uniform State Laws recommends that the proviso be avoided as far as possible in uniform laws. (Proceedings, 1917, p. 301.)

" Provisoes should never be used to define the case or the condition or the legal subject; their proper function is to make a special exemption from a general statutory declaration, and they should be exclusively confined to that function." (Thring,
P. [80].)

" A proviso properly so called is something engrafted on a preceding enactment for the purpose of taking special cases out of the general anactment and providing specially for them. In its abuse it contains all unconnected matters and disposes of whatever is incapable of combination with the rest of any clause.' . . .

"_An exception, like a proviso, restrains the enacting clause to particular cases, but unlike the proviso it does not provide special rules for the cases it includes." (Jones, pp. 201, 202.)

" Invariably, however, the reader is introduced to a complex sentence at the conclusion, perhaps, of an already overloaded section. Nothing contributes more to stretch out the contents of a law than the use of these provisoes for which the legislature has entertained such remarkable affection: nothing contributes more to make the law unintelligible. . . .

" The use of *' Provided '* makes enactments stilted and pompous very often when the substitution of the word ' but ' or ' and ' will produce the thought in plain English." (Statute Law-making in Iowa, p. 367.)

" Sometimes the usual *'Provided '* breaks into the thought of an act and the reader is led to think that all which follows belongs to the proviso, only to discover upon close examination that the proviso ends somewhere with a comma, and that the main body of the act rambles on, to be followed perhaps by another proviso at the end of the section. If a proviso is used at all, it should end with a period and to that extent at least respect the reader's patience." *(Ibid.,* p. 368.)

" Statutes are often disfigured by the multiplication of provisoes at the end of sections. They are engrafted frequently in debate as a convenient and easy form of amendment. In the original preparation of a statute it is rarely necessary to resort to this form of expression. And in amendment the words provided that' are often unnecessarily used or might be replaced by ' but.' The conspicuous words of exception are rarely necessary when the controlling statement is to be placed side by side with the statement which is to be controlled. If the section to which it is proposed to add a qualifying statement or proviso is already too long, the matter of the proviso may usually be embodied in a separate section or sections (to follow the section which will govern) without any- sacrifice of definiteness in its application." (Willard, Sec. 360.)

" The insertion of provisoes in the body of sections may create confusion unless care is taken to show clearly where the proviso ends, and where the main statements of the section re-commence. When the word ' provided' appears in a section the first inference is that all the following matter is dependent upon it, or is included within the exception. It often is unnecessary to use the word where a clause is interpolated. Here, as in other cases, the conjunction ' but' will usually answer the purpose equally well and will not confuse the construction." *(Ibid.,* Sec. 363.)

" It is most desirable that the use of provisoes should be kept within some reasonable bounds. It is indeed a question whether

there is ever a real necessity for a proviso. At present the abuse of the formula is universal. Formerly they were used in an intelligible manner ;—where a general enactment had preceded, but a special case occurred for which a distinct and special enactment was to be made, different from the general enactment, this latter enactment was made by way of proviso. For instance, the 43 Eliz. c. 2, having made dispositions for the relief generally of the poor in all parishes in England, proceeds by way of proviso to make a special enactment for the Island of Foulness, in Essex, adapted to its special circumstances. The proviso might still be legitimately used on the same plan, of taking special cases out of the general enactments, and providing specially for them.

" Nothing has inflicted more trouble on the judges than the attempt to give a construction to provisoes. The Courts have generally assumed, in accordance with the old practice just described, that a proviso was a mode of enactment by which the general operation of .a statute was excluded in favour of some case. There are, therefore, in their decisions various distinctions propounded between mere exemptions, or exceptions, or salvoes and proper provisoes. But it is admitted by all writers to be impossible to make any general application of the doctrines laid down by the Courts to the multitude of cases in which the formula of a proviso has been adopted. Where the form of a proviso in fact serves only to make a mere exception, how can a doctrine which distinguishes a proviso from an exception apply? And what common doctrines of interpretation can possibly be applied to the innumerable provisoes used in our statutes only as formula for heaping together matter wholly unconnected, or only so remotely connected as to be incapable of being combined with the rest, by the use of any form of speech of a settled Meaning ?

" The present use of the proviso by the best draftsmen is very anomalous. It is often used to introduce mere exceptions to the operation of an enactment, where no special provision is made for such exceptions. But it is obvious that such exceptions would be better expressed as exceptions ; if particular cases were excepted to be expressed in *the case;* if particular conditions were dispensed with, to be expressed in *the condition;* if certain persons were to be excluded from the operation of the enactment, to be expressed in *the subject.* In fact, where the enunciation of the general provision is merely to be negatived in some particular, the proper place for the expression of that negation is by an exception expressed in immediate contact with the general words by which the particular would otherwise be included. This would

make, in all cases, the definition of the case, condition, subject, or action complete at once, that is to say, it would show in immediate contact all that is included and all that is excluded. . . .

" Another common use of provisoes is to introduce the several stages of consecutive operations. In such cases the words ' provided always' are mere surplusage, or should be replaced by the conjunction ' and'

" Worse than all the above anomalies, however, is the use commonly made by ordinary draftsmen of the proviso. Wherever matter is seen by the writer to be incapable of being directly expressed in connection with the rest of any clause, he thrusts it in with a proviso. Whenever he perceives a disparity, an. anomaly, an inconsistency, or a contradiction, he introduces it with a ' provided always.' " (Coode, pp. 50-54.)

## EJUSDEM GENERIS RULE.

" The general terms of an enumeration are restricted by the particular words which just precede or follow.

" If a statute is to apply to a class generally, it is safest to name the class in general terms rather than to mention particular cases, followed by general language. Thus, in the clause `if a baker, brewer, distiller, or other person shall sell, offer, or expose to sale any unwholesome bread, beer, or liquor whatsoever,' the words ' other person' might be taken to mean some one engaged in a pursuit similar to those of the persons named. Similarly, where ' articles of food' are described to include ' fresh meat . . . fresh fruit, fish, game, poultry, eggs, butter, and other articles intended for human consumption,' do the last words refer to all kinds of food other than those specifically named or only to similar kinds ? If the former, articles of food would have been sufficiently defined as `food intended for human consumption.' Accordingly, enumerations that seem to be, perfectly clear are really uncertain." (Statute Law-making in Iowa, p. 382.)

"An enumeration of special cases is liable to be construed as narrowing the application of a following sweeping term. Passages are not infrequently met with in statutes where several special terms are followed by a general one. It is rarely the purpose, in inserting the special enumeration, to narrow the application of the general terms. The special cases are inserted because they present themselves to the mind of the legislator preparing the bill and by the specific mention the application of the statute to them is thought to be more sure. It is sometimes the better plan to omit the specification of cases entirely. In other instances any

undue inference may be controlled by a statement at the end of the section to the effect that all cases included in the general term are embraced within its meaning whether ' of the same sort as the cases specified or not." (Willard, Sec. 312.)

" Any question of limitation of the force of the bill to the cases specifically mentioned may properly be removed by a statement at the end of the section that the general term shall include all cases within its meaning and not be limited to the cases specifically stated. The purpose of the *ejusdem generis* rule is to ascertain the real intent of the law-maker ; it is not a rule of abrogation, and an express declaration which makes the intent clear when the act is judged as a whole will prevent it from overriding other rules of construction. . .

" In view of the widely different practice in different jurisdictions it is not advisable to put any language in a law which- may allow the application of the· *ejusdem generis* rule. It may cut down the scope of the law because the intent is so lacking in clearness as to 'force the courts to resort to construction. As the courts have repeatedly said, where the intent is clear there is no room for rules of construction. In proportion as laws are carefully drafted the importance of the *ejusdem generis* rule Will decrease." (Jones, pp. 135, 136.)

## JUDICIAL RULES OF INTEEPRETATIOY.

The standard works on the interpretation of Statutes are written primarily for use by the Courts and legal practitioners. They are not so readily useful from the standpoint of the draftsman, being too detailed in their treatment for his general purposes. The draftsman should, however, make sufficient use of them to enable him to form a general conception of the rules used by the Courts in interpreting and construing statutes.

The following extract from Sir Courtenay Ilbert's Mechanics of Law Making will be found suggestive in this connection :—

" The English draftsman has to consider not only the statutory rules of interpretation which are to be found in the Act of 1889, but also the general rules which are based on judicial decisions and which are to be found in a good many useful textbooks on the interpretation of statutes., Among the most important of these rifles are :—

" 1. The rule that a statute must be read as a whole. Therefore the language of one section may affect the construction of another.

" 2. The rule that a statute may be interpreted by reference to other statutes dealing with the same or a similar subject-matter. Hence the language of those statutes must be studied. The meaning attached to a particular expression in one statute, either by definition or by judicial decision, may be attached to it in another. And variation of language may be construed as indicating change of intention.

" 3. The general rule that special provisions will control general provisions.

" 4. The similar rule that where particular words are followed by general words (horse, cow, or other animal), the generality of the latter will be limited by reference to the former (` Ejusdem generis ' rule).

" 5. The general rule, subject to important exceptions, that a guilty mind is an essential element in a breach of a criminal or penal law. It should, therefore, be considered whether the words wilfully' or knowingly' should be inserted, and whether, if not inserted, they would be implied, unless expressly negatived.

" 6. The presumption that the legislature does not intend any alteration in the rules or principles of the common law beyond what it expressly declares.

" 7. The presumption against any intention to contravene a rule of international law.

" 8. The presumption against the retrospective operation of a statute, subject to an exception as to enactments which affect only the practice and procedure of the courts.

" 9. The rule that a power conferred on a public authority may be construed as a duty imposed on that authority (` may' ' shall ')." (Ilbert's Mechanics of Law Making, p. 119.)

## LISTS OF TEXT-BOOKS.

*Legislative Expression.* By George Coode. Philadelphia, T. & J. W. Johnson. 1848.

*A Legislative Handbook.* By Ashton R. Willard. Boston. 1890.

*Practical Legislation,.* By Lord Thring, K.C.B. (First edition 1877.) Toronto, George N. Morang & Company, Limited. 1902.

*Legislative Methods and Forms.* By Sir Courtenay Ebert, K.C.S.I. London, Henry Frowde. 1901.

*Statute Law Making in the United States.* By Chester Lloyd Jones. Boston, The Boston Book Company. 1912.

*The Mechanics of Law Making.* By Courtenay Ebert, G.C.B. New York, Columbia University Press. 1914.

*Statute Law-making in Iowa.* Being Vol. III. of Applied History, published by the State Historical Society, of Iowa, Iowa City. 1916.

## CONCLUSIONS.

If the suggestions contained in this pamphlet are found to be of practical assistance to draftsmen, the Conference is recommended to consider the appointment of a special committee on legislative drafting, with instructions to enlarge the scope of these suggestions and, if thought practicable, to supply model clauses for statutory provisions of frequent recurrence.

Respectfully submitted.

J. N. Brims,
H. E. A. COURTENAY,
A. V. PINED,
*Committee.*

*Victoria, B.C., July 8th, 1919.*

## APPENDIX C.

*To The Conference of Commissioners on Uniformity of Legislation in Canada:*

Your committee, consisting of the commissioners from New Brunswick, appointed to prepare and submit a model statute on the subject of legislation *per subseguens matrimonitim,* have to report :—

That they have looked into the matter so submitted to them and present herewith a bill for the consideration and approval of the Conference.

They find that by the Civil Code of Lower Canada, Book L, Title VII., Chapter III., Articles 237-241, inclusive, provision is made for legitimation of children born out of marriage; and in the year 1917, by 8 George V., Cap. XXIII., intituled an Act relating to the Solemnization of Marriage, the Legislature of the Province of New Brunswick made some provisions as to children born out of lawful wedlock.

Also, by the Statute Law Amendment Act, 1916, of the Province of Alberta, Chapter 3, under the title of Devolution of Estates, said last mentioned Province has enacted a short section on the subject.

We have been unable to find any legislation on the matter in any other Province, and annex copies of the above statutory provisions.

All of which is respectfully submitted,

W. B. WALLACE,
*Chairman.*

N.B. Commissioners.

BILL.

*An Act relating to legitimation per subsequens matrimonium.*

Be it enacted by the Lieutenant-Governor and Legislative Assembly, as follows :-

1. That any child born out of lawful wedlock shall and he or she is hereby declared to be legitimate from the time of his or her birth by the subsequent marriage of the father and mother of said child.

2. That such legitimation includes children born as aforesaid, but who have died previously to said subsequent marriage, leaving legitimate issue, and in that case such issue shall have the benefit thereof and the rights and privileges arising therefrom.

3. That in case any lawfully married person goes through a form of marriage with any other person during the life of his wife or her husband, the issue of such persons shall be, and is hereby declared to be legitimate, upon proof that such married person so went through a form of marriage in good faith, and had reasonable grounds for believing and did believe his wife or her husband to be dead, or upon proof that such wife or husband had been continually absent from the domicile or residence of such lawfully Married person, and had not been heard of, for seven years next previously to going through said form of marriage.

4. That children legitimated under or by virtue of the aforegoing provisions shall have the same rights, benefits and privileges as if they were born in lawful wedlock.

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ACTS OF ASSEMBLY.

PROVINCE OF NEW BRUNSWICK.

*8 George V.., Cap. XXIII.*

Section 22. If the parents of any child born out of lawful wedlock shall, after the birth of such child, intermarry, the said child shall be and he or she is hereby declared to be legitimate from the time of his or her birth.

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STATUTE LAW AMENDMENT ACT, 1916.

PROVINCE OF ALBERTA.

*Chapter III.*

Section 5. If the parents of a child born out of wedlock afterwards marry, such child shall for the purposes of this Ordinance and for all other purposes be deemed the legitimate child of such parents.

CIVIL CODE OF LOWER CANADA.

BooK I., TITLE VIII.

*Chapter III.*

237. Children born out of marriage, other than the issue of an incestuous or adulterous connection, are legitimated by the subsequent marriage of their father and mother.

238. Such legitimation takes place even in favor of the deceased children who have left legitimate issue, and in that case it benefits such issue.

239. Children legitimated by a subsequent marriage have the same rights as if they were born of such marriage.

210. The forced or voluntary acknowledgment by the father or mother of their illegitimate child, gives the latter the right to demand maintenance from each of them, according to circumstances.

241. An illegitimate child has a right to establish judicially his claim of paternity or maternity, and the proof thereof is made by writings or testimony, under the conditions and restrictions set forth in articles 232, 233 and 234.

———

*_Note of the Recording Secretary.*

The attention of the Conference was also drawn, to the following

*Extract from Marriage Act Amendment Act, 1919, Statutes of British Columbia, 1919, Chap. 52.*

5. Said chapter 151 is amended by inserting therein the following as section 24A :—

" 24A. (1) If the parents of any child born out of lawful wedlock marry each other after the birth of the child, that child shall for all purposes be deemed the legitimate child of the parents from the time of birth.

"(2). The provisions of sub-section (1) shall apply in respect of marriages whether before or after the enactment of this section, but nothing in this section shall affect any right, title, or interest in any property which has vested in any person prior to the enactment of this section."

## APPENDIX D.

*Draft of model Act respecting Legitimation by Subsequent Marriage as revised by the Conference.*

BILL.

An Act respecting Legitimation by Subsequent Marriage.

His Majesty by and with the advice and consent of the Legislative Assembly of the. Province of _____ enacts as follows :

*1.* This Act may be cited as *The Legitimation Act.*

2. If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

3. Nothing in this Act shall affect any right, title or interest in or to property if such right, title or interest has vested in any person

(a) prior to the passing of this Act in the case of any such intermarriage which has heretofore taken place, or

(b) prior to such intermarriage in the case of any such intermarriage which hereafter takes place.

## APPENDIX E.

Model Statute submitted by Committee on Bulk Sales.

### THE BULK SALES ACT.

1. This Act may be cited as " The Bulk of Sales Act."

2. In this Act :

(a) " Vendor" shall include any person who barters or exchanges any stock in bulk with any other person for other property, real or personal, and "purchaser " shall include the person who gives such other property in barter or exchange;

*(b)* " Creditor " shall mean a person to whom the vendor of any stock as defined by this Act is indebted, whether the debt is due and owing or not yet payable, and shall include any surety and the endorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such endorsement was given, become a creditor of such vendor;

*(c)* " Stock " shall mean any stock of goods, wares and merchandise ordinarily the subject of trade and commerce, and the fixtures ordinarily used in connection with any business ; and the expression " stock in bulk " shall mean any "stock " (or portion thereof) which is the subject of a sale in bulk.

*(d)* " Sale in bulk " shall mean any sale, transfer, conveyance, barter or exchange of a stock or part thereof, out of the usual course of business or trade of the vendor ; a sale, transfer, conveyance, barter or exchange of substantially the entire stock of the vendor; and a sale, transfer, conveyance, barter or exchange of an interest in the business of the vendor; and the word " sale," whether used alone or in the expression " sale in bulk," shall include a transfer, conveyance, barter and exchange, and an. agreement to sell, transfer, convey, barter or exchange.

*(e)* " Proceeds of sale " shall include the purchase price or consideration payable to the vendor, or passing from the purchaser to vendor, on a sale in bulk, and the moneys realized by a trustee under any security, or by the sale or other disposition of any property, coming into his hands as the consideration, or part of the consideration, for such sale.

*(f)* " Trustee" shall mean an authorized trustee under The Bankruptcy Act appointed for the bankruptcy division or district

wherein the stock of the vendor, or some part thereof, is located, or the vendor's business or trade, or some part thereof, is carried on, at the time of the sale in bulk thereof ; or an official assignee duly appointed under The Assignments Act; or any trust company licensed or authorized to carry on business in the Province of ; or such person as shall be appointed as trustee under the provisions of section 13 of this Act, or be named as trustee by the creditors of the vendor in their written consent to any sale in bulk.

*(g) "* The Bankruptcy Act " shall mean " The Bankruptcy Act " of the Dominion of Canada and any amendments which may subsequently be made thereto, and any Act which may hereafter be substituted therefor.

3. This Act shall apply only to sales by traders and merchants, defined as follows :—

(a) Persons who, as their ostensible occupation or part thereof, buy and sell goods, wares and merchandise ordinarily the subject of trade and commerce;

(b) Commission merchants;

(c) Manufacturers.

4. Nothing in this Act contained shall apply to or affect any sale by executors, administrators, receivers, assignees or trustees for the benefit of creditors, any public official acting under judicial process, or traders or merchants selling exclusively by wholesale, or an assignment by a trader or merchant for the general benefit of his creditors.

5. (1) It shall be the duty of every person who shall bargain for, buy or purchase any stock in bulk, for cash or on credit, or who shall bargain for the barter or exchange of the same in bulk for any other property, real or personal or both, before closing the purchase, barter or exchange of the same, and before paying to the vendor any part of the purchase price (save as hereinafter provided), or giving any promissory note or notes or any security for the said purchase price or part thereof or executing any transfer, conveyance or incumbrance of such other property, to: demand of and receive from the vendor, and it shall be the duty of each vendor of such stock to furnish to the purchaser a written statement verified by the statutory declaration of the vendor or his duly authorized agent-or, if the vendor is a corporation, by the statutory declaration of its president, vice-president, secretary-treasurer or man-

ager, which statement shall contain the names and addresses of all the creditors of the vendor, together with the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the vendor to each of said creditors, which said statement and declaration may be in the form set forth in schedule A hereto. It shall, however, be competent for the purchaser of any stock to pay to the vendor a sum not exceeding fifty dollars on account of the purchase price thereof for the purpose of constituting a binding agreement for the purchase of such stock, before obtaining such statement as aforesaid.

(2) From and after the furnishing of the statement and declaration provided for by this section, no preference or priority shall be obtainable by any creditor of the vendor in respect of such "stock in bulk" or the proceeds of sale thereof by attachment, garnishment proceedings, contract or otherwise.

6. Prior to or at the time of the closing of every sale in bulk some one of the following provisions shall also be complied with :

(a) The claims of all the creditors of the vendor as shown by said written statement shall be paid in full; or

(b) The vendor shall produce and deliver to the purchaser a written waiver of the provisions of this Act, other than the provisions contained in section 5 hereof, from creditors of the vendor representing not less than sixty per cent. in number and amount of the claims for amounts exceeding fifty dollars as shown by said written statement, which waiver may be in the form set forth in schedule B hereto, or to the like effect; or

(c) The vendor shall produce and deliver to the purchaser the written consent thereto of creditors of the vendor representing not less than sixty per cent, in number and amount of the claims for amounts exceeding fifty dollars as shown by said written statement.

7. Where a sale in bulk is made with the written consent of the creditors of the vendor under the provisions of section 6, subsection *(c)*, of this Act, the entire proceeds of such sale shall be paid, delivered and conveyed to the person named as trustee by the creditors in such written consent, or, if no trustee is named in such written consent, then to the trustee named by the vendor or appointed under section 13 of this Act, to be dealt with by any such trustee as provided by section 8 of this Act.

8. In case the proceeds of sale are paid, delivered or conveyed to a trustee under the provisions of section 7 of this Act such

trustee shall be a trustee for the general benefit of the creditors of the vendor and shall distribute the proceeds of sale *pro rata* among the creditors of the vendor as shown by said statement, and such other creditors of the vendor as file claims with such trustee in accordance with the provisions of The Bankruptcy Act, and such distribution shall be made in like manner as moneys are distributed by a trustee under The Bankruptcy Act, and in making such distribution all creditors' claims shall be proved in like. manner, shadd be subject to the like contestation and entitled to the like priorities as in the case of a distribution under the said Act, and the creditors, trustee and vendor shall in all respects have the same rights, liabilities and powers as the creditors, authorized assignor, and authorized trustee respectively have under the said Act, the vendor being for such purpose deemed to be an authorized assignor under the provisions of The Bankruptcy Act, and the trustee an authorized trustee under such Act.

9. The fees or commission of any such trustee shall not exceed three per cent. of the total proceeds of such sale which come to his hands ; and, in the absence of an agreement by the vendor to the contrary, such fees or commission, together with any disbursements made by such trustee, shall be paid by being deducted out of the moneys to be received by the creditors and shall not be charged to the vendor.

10. Every sale in bulk in respect of which the provisions of this Act have not been complied with shall be deemed to be fraudulent and void as against the creditors of the vendor ; and every payment made on account of the purchase price, and every delivery of any note or notes or other security therefor, and every transfer, conveyance and incumbrance of property by the purchaser, shall, be fraudulent and void, as between the purchaser and the creditors of the vendor. If, however, the purchaser has received or taken possession of the stock which is the subject of such sale in bulk, or any part thereof, he shall be personally liable to account to the creditors of the vendor for all moneys, security or property realized or taken by him from, out of, or on account of the sale or other disposition by him of such stock, or any part thereof; and, in any action brought, or proceedings had or taken, by a creditor of the vendor within the time limited by section 12 of this Act to set aside or have declared void a sale in bulk, or in the event of a seizure of the stock in the possession of the purchaser, or some part thereof, under judicial process issued by or

on behalf of a creditor of the vendor within such period, the purchaser shall be stopped from denying that the stock in his possession at the time of such action, proceedings or seizure is the stock purchased or received by him from the vendor; but if the stock then in the possession of the purchaser, or some part thereof, was in fact purchased by him subsequent to such sale in bulk from some one other than the vendor of the stock in bulk and has not been paid for in full, the creditors of the purchaser, to the extent of the amounts owing to them for such goods so supplied, shall be entitled to share *pro rata* with the creditors of the vendor in the amount realized on the sale or other disposition of the stock in the possession of the purchaser at the time of such action, proceedings or seizure, in like manner and within the same time as if they were creditors of the vendor.

11. In any action, issue or proceeding wherein a sale in bulk is attacked or comes in question, whether directly or collaterally, the burden of proof that the provisions of this Act have been complied with shall rest upon the person upholding such sale in bulk.

12. No action shall be brought or proceedings had or taken to set aside or have declared void any sale in bulk for failure to comply with the provisions of this Act, unless such action is brought within sixty days from the date of such sale or within sixty days from the date when the creditors attacking such sale first had notice thereof.

13. Upon the application of any person interested, if the creditors of the vendor in their written consent to a sale in bulk have not named a trustee and the vendor has not named one, any judge of the country court division in which the vendor's stock, Or any part thereof, or the vendor's business or trade, is located, at the time of the sale in bulk thereof, shall by order appoint a trustee and fix the security, if any, to be given by him, and the judge shall be entitled to a fee of five dollars on every such order.

14. This Act shall come into force on the day it is assented to.

## SCHEDULE A.

( STATEMENT AND DECLARATION.)

Statement showing names and addresses of all creditors of ....

| Name of Creditors | Post Office Address | Nature of Indebtedness | Amount | When Due |
|---|---|---|---|---|
| | | | | |

I..... of ..... in the Province of ....., do solemnly declare that the above is a true and correct statement of the names and addresses of all ..... creditors, and shows correctly the amount of indebtedness or liability due, owing, payable or accruing due, or to become due and payable by ..... to each of said creditors. (If the declaration is made by an agent, add: I am the duly authorized agent of the vendor and have a personal knowledge of the matters herein declared to.)

Or, if the vendor is a corporation;

I, ……of…….. in the Province of ..... do solemnly declare that the above is a true and correct statement of the names and addresses of all the creditors of the ..... Company, and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by such Company to each of said creditors, and that I am the ..... of the said Company, and have a personal knowledge of the matters herein declared to.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

Declared before me at the .....
..... of .....
..... in the Province of ....., this .....
..... day of .....
A.D. 191 .

.....

A Commissioner in B.R., etc.

## SCHEDULE B.

(WAIVER.)

We, the undersigned creditors of .....
..... of ..... in the Province 'of ....., ..... HEREBY WAIVE the provisions of " The ulk Sales Act," of the Province of .....
'in so far as said Act would apply to, affect or cause to make fraudulent or void the sale in bulk by the said .....
..... of his stock of goods, wares, merchandise and fixtures, or part thereof, or an interest in his business (as the case may be), to .....
of ..... in the Province of .....
……, AND WE DO HEREBY ADMIT having received notice of said intended sale and agree not to disturb, dispute or question the validity of said sale in any way under the Provisions of said Act.

Dated this ..... day of .....
A.D. 191 .
Signed in the presence of

**APPENDIX** P.

## REPORT OF THE COMMITTEE ON SALE OF GOODS AND PARTNERSHIP.

This committee, consisting of the commissioners from New Brunswick, Ontario and Prince Edward Island, was appointed in 1918 with instructions " To consider the Sale of Goods Act and the Partnership Act and to report thereon at the next meeting of the Conference."

The committee is of opinion that it is desirable that the Sale of Goods Act, 1893, and the Partnership Act, 1890, as enacted in England, and subsequently adopted, subject to necessary verbal modifications, in some of the provinces of Canada, should be adopted in all the provinces in which the English Common Law prevails. Vie committee feels that the general adoption of these statutes will have the effect of securing on the two subjects of Sale of Goods and Partnership, that uniformity of provincial legislation which is intended to be promoted by the appointment of provincial commissioners, and of facilitating trade with other parts of the British Dominions and with other countries.

For the information of the Conference the committee 'has collated the existing statutes on the two subjects above mentioned, and gives herewith a summary of the present state of legislation. Although the Factors Act, 1889, as enacted in England, was not mentioned in the instructions to the committee, the subject of that statute appeared to the committee to such an extent cognate with the Sale of Goods Act as to justify it in including the Factors Act in its investigations and recommendations.

It gives the committee pleasure to report that since the 1918 meeting of the Conference the Sale of Goods Act and the Factors Act have been adopted in New Brunswick, and the Sale of Goods Act has been adopted in Prince Edward Island. The adoption of these statutes at the instance of the commissioners of these provinces is worthy of note as being the first legislation passed as a direct result of the meeting of the Conference.

### SALE OF GOODS ACT.

The English Sale of Goods Act, 1893, has been adopted in the following provinces of Canada (as well as in many other parts of the British Dominions)

*Alberta* .....C.O., N.W.T. 1898, c. 39.
*British Columbia* .....R.S.B.C. 1911, c. 203, as amended 1914, c. 66; 1916, c: 56; 1917, c. 55.
*Manitoba* .....R.S.M., 1913, c. 174.
*New Brunswick* .....Statutes of 1919, c. 4.
*Nova Scotia* .....Statutes of 1910, c. 1.
*Saskatchewan* R S S 1909, c. 147.
*Prince Edward Island* . . statutes of 1919, c. 11.

The English Factors Act, 1889, has been adopted in the following provinces of Canada :

*Alberta* C **0** , N.W.T. 1898, c. 40.
*British Columbia* .....R.S.B.C. 1911, c. 203, part 6.
*New Brunswick* .....Statutes of 1919, c. 5.
*Nova Scotia* R S N S 1900, c. 146, as amended, 1910, c. **1,** s. 60.
*Ontario* R S **0** 1914, c. 137.
*Saskatchewan* R S S 1909, c. 148.

## PARTNERSHIP.

In order to avoid confusion the committee points out that there are three phases of the law of partnership, all of which have been the subject of legislation in some of the provinces or Canada.

These three phases of the law of partnership are :

(1) The general law of partnership as codified in the English Partnership Act, 1890.

(2) Limited partnerships.

(3) The registration of partnerships and of trade names.

By way of illustration the committee refers to the Revised Statutes of British Columbia, 1911, chapter 175, as a stlaute which includes these three phases of the subject, and deals with them in separate " parts " of the statute.

## THE PARTNERSHIP ACT.

The Partnership Act, 1890, by which the general law of partnership was codified in England has been adopted in *1-2 following provinces of Canada (as well as in many other parts of the British Dominions) :

*Alberta*.....*N.* W. T. Ord. 1899, c. *7.*
*British Columbia* ..... R.S.B.C. 1911, c. 175, parts 1, 2 and 3.

*Manitoba* ..... B.S.M. 1913, c. 151, as amended, 1915, c. 51; 1916, c. 82.
*Nova Scotia* ..... Statutes of 1911, c. 1, as amended 1916, c. 24.
*Saskatchewan*..... R.S.S. 1909, c. 143; amended 1913, c. 67, s. 21.

## LIMITED PARTNERSHIPS.

The English Limited Partnership Act, 1907, has not been adopted in any of the provinces of Canada.

In the following provinces there are statutes relating to limited partnerships, differing in some material respects from the English statute and not based upon it :

*Alberta* ..... N.W.T. Ord.., 1899, c. 7, ss. 47-66.
*British Columbia* ..... R.S.B.C. 1911, c. 175, part 3.
*Manitoba* R S.M. 1913, c. 151, ss. 61-79.
*New Brunswick* .. ..... C.S.N.B. 1903, c. 144, part 1.
*Nova Scotia* ..... R.S.N.S. 1900, c. 144.
*Ontario* R S 0 1914, c. 138.
*Saskatchewan* R,S S 1909, c. 143, ss. 59-77.

## REGISTRATION OF PARTNERSHIPS.

There are statutes on this subject in force in the following provinces of Canada :

*Alberta* ..... 'Statutes 1908, c. 5.
*British Columbia* ..... R.S.B.C. 1911, c. 175, part 4, as amended, 1914, c. 55.
*Manitoba* ..... R S M 1913, c. 151, ss. 48-60.
*New Brunswick* .....*C.S.N.B.* 1903, c. 144, part 2 as amended 1906,c. 7; 1915, c. 32.
*Nova Scotia* .. ..... R.S.N.S. 1900, c.143.
*Ontario* ..... R.S.O. 1914, c. 139.
*Prince Edward Island*. . ..... Statutes 1876, c.8.
*Quebec* ..... R.S.Q. 1909, art.7437 ff., as amended 1915, c. 72.
*Saskatchewan* ..... R.S.S. 1909, c. 143, *ss*. 47-58, as amended 1915, c. 43, s. 23.

## RECOMMENDATIONS.

The committee suggests :

(1) That the Conference recommend

(a) That the Sale of Goods Act, 1893, as enacted in England, be adopted by the legislature of Ontario, with the necessary modifications.

(b) That the Factors Act, 1889, as enacted in England, be adopted by the legislatures of Manitoba and Prince Edward Island, with the necessary modifications.

(c) That the Partnership Act, 1890, as enacted in England, be adopted by the legislatures of New Brunswick, Ontario and Prince Edward Island, with the necessary modifications.

(2) That the Conference appoint a committee to compare the English Limited Partnership Act, 1907, and the statutes of the different provinces on the subject of limited partnerships and the registration of partnerships, and to report at the next meeting of the Conference as to the advisability of recommending uniform legislation on these subjects, and, if it should seem advisable, to submit to the Conference model statutes to be considered by the Conference and recommended for adoption by the provincial legislatures.

All which is respectfully submitted.

JOHN D. FALCONBRIDGE,
*On behalf of Committee*.

## APPENDIX G.

*Draft Act prepared by a Committee of the Caadian Bar - Association.*

*(Note.—See proceedings of the Canadian Bar Association, 1916, pp. 222 ff., and 1918, pp. 69, 199.)*

BILL.

*An Act respecting Conditional Sales of Goods.*

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of , enacts as follows :

*1.* This Act may be cited *as The Conditional Sales Act.*

2. In this Act,—

"Goods" shall include wares and merchandise.

" Proper Officer " shall mean the officer with whom bills of sale and chattel mortgages are registered.

3.—(1) Where possession of goods is delivered to a purchaser, or a proposed purchaser or a hirer of them, in pursuance of a contract which provides that the ownership is to remain in the seller or lender for hire until payment of the purchase or consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration, such provision shall be invalid, and such purchaser, or proposed purchaser or hirer, shall be deemed the owner of the goods, unless

(a) the contract is evidenced by a writing signed by the purchaser, proposed purchaser or hirer or his agent, stating the terms and conditions of the sale or hiring and describing the goods sold or lent for hire; and,

- *(b)* within ten days after the execution of the contract a true copy of it is filed in the office of the proper officer of the county in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

(2) Sub-section 1 shall apply to the case of a hire receipt where the hirer is given an option to purchase.

(3) Where the delivery is made to a trader or other person for the purpose of resale by him in the course of business such

provision shall also, as against his creditors, be invalid and he shall be deemed the owner of the goods unless the provisions of this Act have been complied with.

(4) Where such trader or other person resells the goods in the ordinary course of his business the property in and ownership of such goods shall pass to the purchaser notwithstanding that the provisions of this Act have been complied with.

(5) Clause *(b)* of sub-section 1. shall not apply to a contract respecting manufactured goods, including pianos, organs or other musical instruments which, at the time possession is delivered, have the name and address of the seller or lender painted, printed, stamped or engraved thereon or plainly attached thereto, nor to a contract respecting household furniture other than pianos, organs or other musical instruments.

(6) An error or inaccuracy in the name or address of the seller or lender which does not mislead shall not prevent the application of sub-section 5.

(7) This section shall not apply to a contract for the sale by an incorporated company to a railway company of rolling stock if the contract or a copy of it is filed in the office of the Provincial Secretary within ten days from its execution.

4. The seller or lender shall deliver a copy of the contract to the purchaser or hirer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so the Judge of the County Court of the county in which the purchaser or hirer resided when the contract was made may, on summary application, make an order for the delivery of such copy.

5. The proper officer shall make a record of every contract of which a copy is filed in his office under this Act in an index book to be kept for that purpose, and he shall be entitled to a fee of ten cents for making the record and to a fee of five cents for every search in respect thereof.

6. An error of a clerical nature or in an immaterial or non-essential part of the copy of the contract which does not mislead shall not invalidate the filing or destroy the effect of it.

7.(1) The seller or lender shall, within five days after the receipt of a request in writing from any proposed purchaser of any goods to which this Act applies, or from any other person interested, furnish particulars of the amount remaining

due to him and the terms of payment of it, and in default he shall incur a penalty not exceeding $50, recoverable under *The Summary Convictions Act.*

(2) If the request is by letter the person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if 'the information is given by registered letter deposited in the post office within the prescribed time addressed to the person inquiring at his proper post office address, or, where the name and address is given by him, by the name and at the post office address so given.

8.—(1) Where the seller or lender retakes possession of the goods for breach of condition he shall retain them for twenty days, and the purchaser or hirer or his successor in interest may redeem the same within that period on payment of the amount then in arrear, together with interest and the actual costs and expenses of taking and keeping possession.

(2) Where the purchase price of the goods exceeds $30, and the seller or lender intends to look to the purchaser or hirer for any deficiency on a resale of the goods, they shall not be resold until after notice in writing of the intended sale has been given to the purchaser or hirer or his successor in interest.

(3) The notice shall be served personally upon or left at the residence or last known place of abode in the Province of the purchaser or hirer or his successor in interest at least five days before the sale, or may be sent by registered post at least seven days before the sale addressed to the purchaser or hirer or his successor in interest at his last known post office address.

(4) The notice may be given during the twenty days mentioned in sub-section 1.

(5) This section shall apply notwithstanding any agreement to the contrary.

9. Where the goods have been affixed to realty they shall remain subject to the rights of the seller or lender as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other encumbrancer thereof shall have the right as against the seller or lender or other person claiming through or under him to retain the goods upon payment of the amount owing on them.

## APPENDIX H

REPORT OF COMMITTEE SUBMITTING A MODEL STATUTE ON FIRE INSURANCE CONDITIONS.

*To the Conference of Commissioners on Uniformity of Legislation in Canada:*

GENTLEMEN,-

At the annual meeting of the Conference held in Montreal in September last, a resolution was passed " That the Commissioners from Saskatchewan be requested to prepare and submit to the Commissioners from the other provinces a model statute on the subject of Conditions in Fire Insurance Policies, and subsequently to report thereon to the Conference."

In accordance with this resolution the accompanying model statute has been prepared and submitted to the provincial Commissioners as required.

A certain degree of uniformity had already been attained by the action of the western provinces which have adopted uniform conditions based upon those in force in Ontario. The Superintendents of Insurance for those provinces met in Calgary in May, 1914, for the discussion and consideration of matters of common interest connected with their departments, and among other things, fire insurance conditions. Taking the Ontario conditions as a groundwork, and making certain alterations in form and substance, not very serious in extent, they drew up a set of conditions which may be found in the statutes of Manitoba, 1915, c. 35, s. '3; Saskatchewan, 1915, c. 15, s. 80; Alberta, 1915, c. 8, schedule; and British Columbia, 1919, c. 37, schedule. In consequence Ontario and the four western provinces have the same fire insurance conditions in substance, while those provinces have uniformity as well as substantial agreement.

In the United States the standard form of fire policy generally in use has been the statutory form made compulsory by the State of New York in 1886 and subsequently adopted by most of the States of the Union. At the annual meeting of the American Bar Association held in August, 1918, one of the speakers .stated that, " Ninety-five per cent of all 'insurance is probably now written " on the New York standard form. This form was subjected to thorough and careful revision by the

National Conference of Insurance Commissioners, and on May 14, 1917, the New York Legislature, passed an Act prescribing for use in that State " the printed blank form of a contract or policy of fire insurance adopted by the National Conference of Insurance Commissioners at its meeting held. in the City of New York on the twelfth day of December, 1916," declaring that " on and after January 1st, 1918, no fire insurance corporation, its officers or agents, shall make, issue or deliver for use any fire insurance policy or the renewal of any such policy on property in this State, other than such as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with such printed blank form of contract or policy; and no other or different provision, agreement, condition or clause shall be in any manner made a part of such contract or policy or indorsed thereon or added thereto or delivered therewith," with the exception of certain stated riders, indorsements or provisions which may be sanctioned by the Superintendent of Insurance.

That the New York form, notwithstanding its general adoption, does not meet with universal approval is shown by the s remarks of Mr. Waldo G. Morse, of New York, who informed his professional brethren present at the association meeting that " It is a burden and a nuisance. I should hesitate to inflict it upon any other State." However the general adoption of that form seems to show that public opinion is overwhelmingly on the other side.

The New York form provides' for additions by a clause which empowers the Superintendent of Insurance, when in his judgment the use of any rider, indorsement, clause, permit, form or other memorandum is so extensive that there should be a standard form, to prepare and file in his office such a standard form " and thereafter no fire insurance corporation shall attach to any such standard policy of insurance any rider, indorsement, clause, permit, form or other memorandum except it be in the precise language of the form so filed by the Superintendent of Insurance."

Your Committee has not thought it advisable to depart from the practice of allowing variations and additions to the standard conditions, provided they are printed in conspicuous type and are found to be just and reasonable when brought before the court.

At the meeting of the Canadian Bar Association' held in Montreal last autumn a report was presented by the Association's Committee on Insurance submitting a model Act, so

that the task assigned to your Committee was one that had already been performed by another body. The report of the Bar Association Committee presented in 1916 contains an illuminating survey of the origin and character of insurance, its place in modern industry and commerce, and the progressive steps that have been taken to regulate its operations by legislation. The report of the same Committee in 1918, after dealing with some general questions connected with insurance, proceeds by means of notes upon the separate sections of the Act and the proposed statutory conditions to explain the sources of each of these and the extent to which the original has been altered or modified.

The Act now submitted including the conditions, is, like that of the Bar Association Committee, based upon Ontario legislation, so that the commentaries contained in the report of that body upon its proposed model statute apply to a large extent to the sections and conditions in the Act which we have prepared, and relieve your Committee of the task of giving as full and detailed explanations as might otherwise have been considered desirable. Reference has for convenience sake been made to the provisions of the Ontario Act corresponding to those submitted, or dealing with the same or a kindred subject matter, so that a comparison may easily be instituted between such provisions and those which are now proposed.

Respectfully submitted,
R. W. SHANNON,
*On behalf of Committee.*

---

CHAPTER .....

*An Act to Secure Uniform Conditions of Fire Insurance.*

*(Assented to )*

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of enacts as follows :

SHORT TITLE.

1. This Act may be cited as *The Fire Insurance Policy Act.*

INTERPRETATION.

2 In this Act, unless the context otherwise requires, the expression :

1. " Company " includes any corporation, or any society or association, incorporated or unincorporated, or any partnership or any underwriter or group of underwriters that undertakes or effects, or agrees or offers for valuable consideration so to undertake or effect in the province, a contract of insurance within the meaning of this Act;

2. " Contract " means an agreement whereby a company undertakes to insure property in the province or in transit therefrom or thereto against loss of or damage by fire, lightning or explosion, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

3. " Policy " means an instrument containing all the terms of the agreement between the parties.

TERM OF CONTRACT.

3. No contract shall be made for a term exceeding three years, or, in the case of mercantile or manufacturing risks,. exceeding one year, but any contract may be renewed by the delivery of a renewal receipt or a new premium note.

CONTENTS OF POLICY.

4. Every policy shall contain the name of the company, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium or other consideration for the insurance, the subject matter of the insurance, the indemnity for which the company may become liable, the event on the happening of which such liability is to accrue and the term of the insurance.

STATUTORY CONDITIONS.

5. The conditions set forth in the schedule to this Act shall be deemed to be part of every contract in force in and shall be printed on every policy with the heading " Statutory Conditions."

VARIATIONS.

6. (1) If a company desires to vary, omit or add to the statutory conditions or any of them, there shall be printed in conspicuous type and in red ink immediately after such conditions the proposed variations or additions or a reference to the omissions and the following words :

*"Variations in Conditions.*

" This policy is issued on the above statutory conditions with the following variations, omissions and additions, which are, by virtue of *The Fire Insurance Policy Act,* in force so far only as they shall be held to be just and reasonable to be exacted by the company."

(2) No variation, omission or addition shall be binding on the insured, unless the foregoing provisions of this section have been complied with; and any variation, omission or addition shall be so binding only in so far as it is held by the court before which a question relating thereto is tried to be just and reasonable.

CO-INSURANCE CLAUSE.

7. A policy may contain a co-insurance clause, in which case it shall have printed or stamped across its face in conspicuous type and in red ink the words " This policy contains a co-insurance clause," and such clause shall be deemed an addition to the statutory conditions.

RELIEF FROM FORFEITURE.

8. In any case where there has been imperfect compliance with a statutory condition and a consequent forfeiture or avoidance of the insurance, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may deem just.

EXAMINATION OF INSURED.

9. Where proofs of loss are -made by any person other than the insured, the company shall be entitled to have the insured examined under oath touching the loss or damage before a judge of the county (or district) court of the county (or district) in which the insured resides, and the procedure shall be the same as that upon an examination for discovery in an action.

COMING INTO FORCE.

10. This Act shall come into force on the day of ,19 .

## SCHEDULE.

### STATUTORY CONDITIONS.

*1. Misrepresentation.—If* any person applying for insurance falsely describes the property to the prejudice of the company, or misrepresents or omits to communicate any circumstance which is material to be made known to the company in order to enable it to judge of the risk to be undertaken, the contract shall be void as to the property in respect of which the misrepresentation or omission is made.

*2. Form of Contract.—After* application for insurance, if the same is in writing signed by the insured, it shall be deemed that any contract sent to the insured is intended to be in accordance with the terms of the application, unless the company point out in writing the particulars wherein the policy or other contract differs from the application. If the policy has been issued on the verbal application or instructions of the insured it shall be deemed to be in accordance with such application or instructions, unless the insured points out to the company in writing the particulars wherein the policy differs from such application or instructions.

*3. Property not Insured.—Money*, books of account, securities for money, and evidence of debt or title, are not insured.

*4. Risks not Covered.—The* company is not liable for the losses following, that is to say:

(a) For loss of or damage to property Owned by any person other than the insured, unless the interest of the insured therein is stated in the policy;

(b) For loss caused by invasion, insurrection, riot, civil commotion, military or usurped power, or by order of any civil authority;

(c) For loss due to the want of good and substantial brick or stone or cement chimney ; or by ashes or embers being deposited, with the knowledge and consent of the insured, in wooden vessels; or by stoves or stove-pipes being, to the knowledge of the insured, in an unsafe condition or improperly secured; or

(d) For loss of or damage to goods while undergoing any process in or by which the application of fire heat is necessary.

*5. Risks not Covered Except by Special Permission.—Unless* permission is given by the policy or indorsed thereon, the company shall not be liable for loss or damage occurring :

*(a) Repairs.—To* buildings or their contents during alteration or repair of the buildings, and in consequence thereof, fifteen days being allowed in each year for incidental alterations or repairs without such permission;

*(b) Inflammable Substances.—While illuminating* gas or vapour is generated on the insured premises, or while there is kept, used, or allowed thereon, fireworks, Greek fire, phosphorus, explosives, benzine, gasoline, naphtha, or any other petroleum product of greater inflammability than kerosene oil, gunpowder exceeding in quantity twenty-five pounds or kerosene oil exceeding five gallons;

*(c) Change of Title.—After* property insured is assigned, or in case of chattels is mortgaged, but this condition is not to apply to change of title by succession, by operation of law, or by death;

*(d) Factories.—To* a manufacturing establishment or its contents, while operated in whole or in part between the hours of ten in the evening and five the following morning, or when it has not been operated for a period of ten days ;

*(e) Vacancy.*—While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of thirty days.

*6. Explosion and Lightning.—The* company shall be liable for loss or damage caused by lightning or by the explosion of natural gas or coal (except in gas works) or by fire caused by any other explosion; but not for loss or damage to electrical devices, appliances or machinery caused solely and directly by lightning or electrical current.

*7. Material Change.—Any* change material to the risk, and within the control or knowledge of the insured, shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the company or its local agent; and the company when so notified may return the unearned portion, if any, of the premium paid, and cancel the policy, or may notify the insured in writing that, if he desires the policy to continue in force, he must within fifteen days of the receipt of the notice pay to the company an additional premium, and that in default of such payment the policy shall no longer be in force.

8. *Other Insurance.—*

(a) If the insured has at the date of this policy any other insurance on property covered thereby which is not disclosed to the company, or hereafter effects any other insurance thereon without the written assent of the company, he shall not be entitled to recover more than sixty per cent. of the loss in respect of such property; but if for any fraudulent purpose the insured does not disclose such other insurance, this policy shall be void;

(b) The company shall be deemed to have assented to such other insurance unless it dissents by notice in writing within two weeks after notice thereof ;

(c) In the event of there being any other insurance on property herein described at the time of the happening of a loss in respect thereof, this company shall be liable only for payment of a rateable proportion of the loss or of such amount as the insured shall be entitled to recover under sub-clause *(a)* of this clause.

9. *Mortgage Interests.-*

(a) No assignment of this policy before loss to a mortgagee or other creditor of the insured shall be valid unless notice in writing is given to the company and its assent obtained, and the company shall be deemed to have assented to the assignment unless it dissents by notice in writing within seven days after notice thereof ;

(b) If the company claims that no liability to the insured existed in respect of any loss or damage hereunder for which payment has been made to a mortgagee or creditor o f the insured, it shall to the extent of such payment be surrogated to the rights of the mortgagee or creditor under any securities for the debt held by him; or it may pay the debt in full and require an assignment of the claim or security. No such subrogation shall impair the right of the mortgagee or creditor to recover the full amount of his claim;

(c) Where the loss (if any) under a policy has, with the consent of the company, been made payable to some person other than the insured as mortgagee, the policy shall not be cancelled, altered or otherwise dealt with by the company upon the application of the insured without reasonable notice to the mortgagee.

10. *Termination* of *Insurance.—The* insurance may be terminated

:

(a) By the company giving to the insured, at any time before loss, seven days' written notice of cancellation with an offer, if the insurance is on the cash plan, to refund the excess of paid premium beyond the *pro rata* premium for the expired time, which excess if not tendered shall be refunded on demand;

(b) If on the cash plan, by the insured giving written notice of termination to the company, in which case the company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rate for the expired time.

*11. Salvage and Inventory.—After* any loss or damage to insured. property, it shall be the duty of the insured, when and as soon as practicable, to secure the insured property from further damage, and to separate as far as reasonably may be the damaged from the undamaged property, to make or cause to be made an inventory of the destroyed, damaged and undamaged property, and to notify the insurer of the separation and inventory.

*12. Insurance on Goods Moved.—If* any of the insured property is necessarily removed to prevent damage or further damage thereto, it shall be covered in its new situation for not more than seven days by that part of the insurance under this policy which exceeds the amount of the company's liability for any loss already incurred, and the company will contribute *pro rata* towards any loss or expense connected with such act of salvage according to the respective interests of the parties.

*13. Entry, Control, Abandonment.—After* any loss or damage to insured property, the company shall have an immediate right of access and entry by an accredited agent sufficient to enable him to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable him to make an appraisement or particular estimate of the loss or damage, but the company shall not be entitled to the control or possession of the insured property, or the remains of salvage thereof, unless it accepts a part thereof at its agreed or appraised value or undertakes reinstatement under condition 19 ; and without the consent of the company there can be no abandonment to it of insured property.

14. *Who to Make Proof.—Proof* of loss must be made by the insured although the loss is payable to a third person, except that, in case of the absence of the insured or his inability to make the same, proof may be made by his agent, such absence or inability being satisfactorily accounted for, or in the like case or if the insured refuses to do so, by a person to whom any part of the insurance _money is payable.

15. *Requirements after Loss.—Any* person entitled to claim wider this policy shall:

(a) Forthwith after loss give notice in writing to the company;

(b) Deliver, as soon thereafter as practicable, a particular account of the loss;

(c) Furnish therewith a statutory declaration declaring : "

That the account is just and true and as complete as the circumstances permit;

" When and how the loss occurred, and if caused by fire how the fire originated, so far as the declarant knows or believes;

" That the loss did not occur, or if caused by fire that the fire was not caused, through any willful act or neglect or the procurement, means or contrivance of the assured;

" The amount of other insurances, and names of other insuring companies;

" All lien and incumbrances on the property insured; "

The place where the property insured, if moveable, was deposited at the time of the fire;"

(d) If required and if practicable, produce books of account, warehouse receipts and stock lists and furnish invoices and other vouchers verified by statutory declaration and furnish a copy of the written portion of any other policy.

16. *Fraud.—Any* fraud or false statement in a statutory declaration, in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

*17. Appraisement.—If* any difference arise as to the value of the property insured, the property saved or the amount of the loss, the question at issue shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the appraisal of some disinterested person to be chosen by both parties, or, if they

cannot agree on one person, then to two persons, one to be chosen by the insured and the other by the company. The appraisers shall first select a competent and disinterested umpire, and, if they fail to agree upon such umpire, within fifteen days, then, on request of the insured or the company', an umpire shall be appointed by a judge of a court of record in the county or district in which the loss happened, and the award in writing of a single appraiser, or of any two where an umpire is appointed, shall, if the company is liable for the loss, be conclusive as to the amount of the loss and the proportion to be paid by the company. Where the full amount of the claim is awarded the costs shall follow the event, and in other cases all questions of costs shall be in the discretion of the appraisers.

*18. When Loss Payable.—The* loss shall be payable within sixty days after completion of the proofs of loss, unless the contract provides for a shorter period.

*19. Replacement.—The* company, instead of making payment, may within a reasonable time repair, rebuild or replace the property damaged or lost, giving written notice of its intention so to do within fifteen days after receipt of the proofs herein required.

*20. Action.—Every* action or proceeding against the company for the recovery of any claim under or by virtue of this policy shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

*21. Agency.—Any* officer or agent of the company, who assumes on behalf of the company to enter into a written agreement relating to any matter connected with the insurance, shall be deemed *prima facie* to be the agent of the company for the purpose.

22. Waiver.--No condition of this policy, either in whole or in part, shall be deemed to have been waived by the company, unless the waiver is clearly expressed in writing signed by an agent of the company.

*23. Notice.—Any* written notice to the company may be delivered at or sent by registered post to the chief agency or head office of the company in this province or delivered or so sent to any authorised agent of the company therein. Written notice may be given to the insured by letter personally delivered

to him or by registered letter addressed to him at his last post office address notified to the company, or, where no address is notified and the address is not known; addressed to him at the post office of the agency, if any, from which the application was received.

24. *Subrogation.—The* company may require• from the insured an assignment of all right of recovery against any other party for loss or damage to the extent that payment therefor is made by the company.

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## THE FIRE INSURANCE POLICY MODEL ACT

### NOTES ON SECTIONS OF THE ACT.

*Section 2.* Definitions.

" Company" taken from section 2 of the Ontario Act.

" Policy." Under the Ontario Act " contract" and " policy " are synonymous.

*Section 3.* At present mutual policies may be made for any term not exceeding four years. *Ont., sec. 192 (1).* There seems rid advantage in perpetuating this difference.

*Section* 4. Substantially the same as *Ont., sec. 193 (1).*

*Section 5. Ont., sec., 194,* in part. The words " as against the insurer " are omitted, the conditions being deemed to be incorporated for all purposes.

*Section 6. (1) Ont., sec. 195.*

*(2) Ont., sec. 196, 197 and 193 (3)* combined.

*Section 7. Ont., sec. 193* (2) with the proviso that the co-insurance clause shall be deemed an addition to the statutory conditions, and must therefore be found to be just and reasonable if questioned.

*Section 8. Ont., sec. 199,* rules out from admissible defences failure to comply strictly with a condition as to proof of loss. The substitute here proposed allows the court to grant relief in any case where there has been imperfect compliance with a condition.

NOTES ON THE STATUTORY 'CONDITIONS.

*Con. 1.* In substance the same as *Ontario, condition 1.*

*Con. 2.* Taken from *condition 5 of Manitoba, Saskatchewan; Alberta and British Columbia. Ontario, condition 8,* does not distinguish between verbal and written applications.

*Con. 3. Ontario, condition* 4.

*Con.* 4. (a) Same as *Ontario, condition 6 (a).*

(b) The words "by order of any civil authority " are new and are taken from the *New York standard policy.* In case of loss from such a cause resort should properly be made to the civil authority giving the order.

*(c) Ontario, condition 6 (c).*

*(d) Ontario, condition 6 (d).*

*Con. 5. (a) Ontario, condition, 6 (e),* shortened in form.

*(b) Canadian Bar Association Model Act, condition 5 (e),* taken from *New York* with slight alterations. Compare *Ontario, condition 6 (f).*

*(c) Ontario, condition 8,* with the addition of the words " or in the case of chattels is mortgaged," taken from *New York.*

*(d) New York Standard* form altered in language.

*(e) Bar Association Model Act, condition 6 (q).*

*Con. 6. Ontario, condition 10,* redrawn.

*Con. 7. Ontario, condition 2,* altered by allowing the insured fifteen days within which to pay the additional premium instead of requiring him to pay it " forthwith." The Western Provinces have adopted this alteration.

*Con. 8. (a) and (b) Ontario, condition 5,* reworded and simplified.

*(c) Ontario, condition 9.*

*Con. 9. (a) The Bar Association Model Act, condition 11,* taken from the *New York standard policy,* allowing the company to cancel the policy on assignment. The new section renders the assignment invalid unless assented to.

(b) From the same source.

*(c) British Columbia Fire Insurance Policy Act, 1919. c. 37, s. 3.*

*Con. 10.* (a) Part of *Bar Association, condition 8,* altered. in expression; *Ontario, condition 11.* It is believed that in its present form this provision will prevent such a question arising as came before the court in *Veltre v. London and Lancashire Fire Insurance Co.,* 39 D.L.R. 221.

*(b) Ontario, condition 12, slightly altered.*

*Con. 11. Sec. 200* (2) of the Ontario Act. *Con.*

*12. Ontario, condition 16,* in part redrawn.

*Con. 13. Ontario, sec. 200 (1),* and part of *condition 16,* redrawn. See *Bar Association, condition 17.*

*Con. 14. Ontario, conditions 17* and *19,* combined.

*Con. 15. Ontario, condition 18,* adding to the item " the amount of other insurances " in *clause (c)* the words " and names of other insuring companies," and omitting the latter part of *(d)* which is contained in *condition 10.*

*Con. 16. Ontario, condition 20.*

*Con. 17. Bar Association, condition 18,* slightly altered. This condition provides for appraisement instead of arbitration as required by *Ontario, condition 21,* and the reasons for the change are stated in the report of the insurance committee of the Bar Association for 1918. See *Saskatchewan Act, 1917, c. 22, sec. 11, par. 14,* and *Ontario Insurance Act, sec. 200 (8).*

*Con. 18. Ontario, condition 22. Con.*

*19. Ontario, condition 23. Con. 20.*

*Ontario, condition 2.4. Con. 21.*

*Ontario, condition 14. Con. 22.*

*Ontario, condition 13. Con. .23.*

*Ontario, conditions 7 and 15,* combined.

*Con. 24.* From the *American standard form.*

# CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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