

PROCEEDINGS

OF THE

THIRD ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

OTTAWA, ONTARIO

**AUGUST 30TH, AUGUST 31ST,
SEPTEMBER 1ST, 2ND AND 3RD, 1920**

CONFERENCE ON UNIFORMITY OF LEGISLATION

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1920-1921.

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 J. C. Elliott, London, Ontario.

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.

New Brunswick J D. Pollard Lewin, St. John.

Nova Scotia Stuart Jenks, K.C. Halifax.

Ontario J. C. Elliott, D.C.L., London.

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

Quebec Hon. E. Fabre Surveyer, Superior Court,
Montreal.

Saskatchewan Robert W. Shannon, KC., 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, Alberta.

J. C. F. BOWN, K.C., Edmonton, Alberta.

WALTER S. SCOTT, K.C., Edmonton, Alberta.

(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.

TRAVERS SWEATMAN, K.C., Winnipeg, Man.

HERBERT J. SUMINGTON, 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:

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

J. L. RALSTON, K.C., Halifax, N.S.

F. MATHERS, K.C., Halifax, N.S.

Ontario:

SIR JAMES AIKINS, K.C., Winnipeg, Man. (honorary
Commissioner).

FRANCIS KING, Kingston, Ont.

JOHN D. FALCONBRIDGE, 22 Chestnut Park, Toronto,

Ont. J. C. ELLIOTT, London, 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. C.
G. DUFFY, K.C., Charlottetown, P.E.I.

Quebec:

EUGENE LAFLEUR, K.C., No. 107 James Street, Montreal,
Que.

Hon. Mr. JUSTICE SURVEYER, Montreal, Que.

Saskatchewan:

The HON. W. F. A. TURGEON, K.C., AttorneyGeneral,
Regina, Sask.

ROBERT W. SHANNON, K.C., Regina; Sask.

PHILIP E. MACKENZIE, K.C., Saskatoon, Sask.

PROCEEDINGS

**PROCEEDINGS OF THE THIRD ANNUAL MEETING OF THE
CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF
LEGISLATION IN CANADA:**

Monday, 30th August, 1920.

The Conference assembled at 10.am. at the Chateau Laurier, Ottawa. 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, K.C.
J. C. F. BOWN, K.C.

British Columbia:

J. N. Mims, K.C. H.
E. A. COURTNEY.

Manitoba:

Isaac PITBLADO, K.C.
HERBERT J. SYMINGTON, K.C.
TRAVERS SWEATMAN, K.C.

New Brunswick:

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

Ontario:

SIR JAMES AIKINS, K.C.
FRANCIS KING.
J. C. Elliott

Prince Edward Island:

W. E. BENTLEY, K.C.
JAMES D. STEWART, K.C.
C. G. DUFFY, K.C.

Saskatchewan:

The HON W. F. A. TURGEON, K.C.
ROBERT W. SHANNON, K.C.
J. A. M. PATRICK, K.C.

Mr. Falconbridge, the Recording Secretary, not being able to be present at any of the sessions of the Conference, Mr. Elliott acted as Recording Secretary.

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

(Appendix "A")

The minutes of the second annual meeting were taken as read and approved as printed.

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.

It was resolved to have notes of the proceedings of this Conference taken in shorthand and that each commissioner be supplied with a report of the proceedings.

The report of the Recording Secretary on The Legitimation Act was presented. After discussion it was resolved that this Conference receive the report Of the Secretary to the commissioners reporting on the adoption of the Legitimation Act by the Provinces of Manitoba, Prince Edward Island, New Brunswick and Saskatchewan, and while recognizing that the acts as adopted by those provinces are not identical in form but contain similar enactments recommends to the provinces which shall enact this law that the shorter form of statute as found at page 53 of the Proceedings of the Conference, 1919, be adopted.

(Appendix "B")

The Commissioners considered the question of the revision or consolidation of statutes and the indexing of statutes submitted by the Committee on legislative drafting and drew attention to the cumulative index-now printed by the Province of British Columbia as an excellent example. IT WAS RESOLVED that the Commissioners go on record as approving the publishing each year by the authorities of each Province of cumulative index of the statutes from the date of the last revision.

The Commissioners from British Columbia were requested to forward to the Attorney General of each of the Provinces several copies of the sample index and a copy of the memorandum.

The Committee on Sales of Goods and Partnership reported that the Sales of Goods Act 1893, was now in force in all the Provinces of Canada except Quebec, having been adopted in New Brunswick and Prince Edward Island at the instance -of

the Commissioners from those Provinces in 1919, and in Ontario upon similar recommendation in 1920; that the Factors' Act 1889 was in force in Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan having been adopted in Prince Edward Island in 1920, and that it would probably be adopted in Manitoba in 1921, and that as a result of adoption on recommendation of Commissioners in New Brunswick, Ontario and Prince Edward Island in 1920 the Partnership Act 1890 was now in force in all the provinces of Canada except Quebec. A report as to the state of the law on those subjects in various British Dominions and with reference to limited partnerships and registration of partnerships was also submitted to the Conference.

(Appendix "C")

A draft of a proposed act respecting Warehousemen's Liens was presented by the Commissioners from British Columbia and was considered clause by clause and certain amendments adopted. The act was subsequently referred to the Commissioners of New Brunswick with instruction to draft a model bill and report at the next Conference.

(Appendix "D")

At 12.45 P.M. the Conference adjourned to the Rideau Club where they took luncheon as the guests of the President.

AFTERNOON SESSION.

Monday, 30th August, 1920.

After luncheon the President introduced Honourable 'Senator Robertson, Minister of Labour, who addressed the Commissioners On the subject of "Uniformity of Labour Laws in Canada."

The Minister of Labour referred to the advantage of uniformity in the laws relating to the welfare of those engaged in industrial work in the several provinces of the Dominion of Canada, and at the conclusion of his most instructive address the subjects discussed by him were referred to by the President, the Vice-President and some of the other members of the Conference.

At 3.15 P.M. the Conference re-assembled at the Chateau Laurier where the following' resolutions were adopted:—

That this Conference desires to place on record its- deep sense of the loss sustained by this Conference and the community at large by the death since our last meeting of Matthew Wilson, KC., D.C.L. Mr. Wilson passed away at a ripe age after having had a distinguished career as one of the leaders of the Bar of Canada. He was a man of great scholarship, outstanding ability and high integrity, and was active in many fields outside of his chosen profession. As Corresponding Secretary of this Conference and Chairman of the Ontario Commissioners he was enthusiastic and efficient in the discharge of his duties. The surviving relatives of Dr. Wilson have the deep sympathy of the members of this Conference.

This Conference of Commissioners learn with deep regret of the untimely death of the /wife of Mr. John D. Falconbridge, the Secretary of this Conference, and tender to him our deepest sympathy in his bereavement.

The report of the Committee on a uniform Bulk Sales Act was presented by the Commissioners of British Columbia and was considered clause by clause, and after certain amendments were approved the act was referred to the Manitoba Commissioners to revise and forward copies to the commissioners for submission to their respective Legislatures.

(Appendix "E")

At 6 P.M. the Conference adjourned until 10 A.M. tomorrow.

SECOND DAY

Tuesday, August 31st, 1920.

The report of the Committee upon a model Statute on Fire Insurance conditions together with a draft bill was presented by Mr. R. W. Shannon. The Conference thereupon resolved itself into committee of the whole and considered the bill section by section. Mr. Jenkins representing the Canadian Underwriters Association was present and took part in the discussion of the Act. After discussion the committee arose and reported progress and-asked leave to sit again.

(Appendix "F")

At 1 P.M., the Conference adjourned.

AFTERNOON SESSION.

Tuesday, August 31st, 1920.

The Conference re-assembled at 2.30 P.M. and again resolved itself into committee of the whole on the model Statute on Fire Insurance conditions, the Vice-President in the chair. After discussing the remaining sections of the proposed Act and deciding upon some changes therein the act was referred to the Manitoba Commissioners and Mr. Shannon to be redrafted in accordance with the amendments decided upon and reprinted and forwarded to the various Commissioners to be by them brought before their Legislatures.

Mr. W. B. Wallace presented the report of the Committee to which had been referred the Conditional Sales Act and the draft Act submitted was discussed at some length.

(Appendix "G")

At 6 P.M. the Conference adjourned.

THIRD DAY.

Wednesday, September 1st, 1920.

The Conference re-assembled at 12 o'clock noon, the Vice-President in the chair.

Mr. Francis King presented the report of the Committee on The Devolution of Estates.

(Appendix "H")

On motion of Mr. Ellis seconded by Mr. Pitblado IT WAS RESOLVED that this Conference affirm the principle of the desirability of Uniformity of Laws with respect to the Devolution of Estates both real and personal.

At 1 P.M. the Conference adjourned.

The Conference re-assembled at 3 P.M., the Vice-President in the chair.

On motion of Mr. Pitblado, seconded by Mr. Symington, IT WAS RESOLVED that in endeavouring to bring about Uniformity of Legislation in regard to the Devolution of Estates real and personal property of intestates should be treated in the same manner.

After discussing the various principles of the proposed Act IT WAS RESOLVED that the matter of Devolution of Estates of intestates be referred back to the Commissioners for Ontario, with instructions to draft a model act in the light of the discussion which had taken place' and to have copies of the act printed and sent to the Commissioners for the several provinces three months before the next session of the Conference.

The report presented by the Treasurer showing a balance on hand of \$967.45 was adopted.

The act representing Conditional Sales of goods was discussed clause by clause and certain amendments decided upon At 6 P.M. the Conference adjourned.

FOURTH DAY

Thursday September 2nd, 1920.

The Conference re-assembled at 3 P.M. and resumed consideration in committee of the whole of the model bill respecting Conditional Sales of goods, the Vice-President in the chair.

It was later resolved that this bill be referred to the Saskatchewan Commissioners to redraft in the light of the discussion here and having in mind the act adopted by the United States, and to report with a model act at the next session of the Conference.

Mr. H. J. Symington presented the report of 'the Committee on Company Law.

(Appendix "I")

After considerable discussion as to the abolition of the doctrine of *ultra vires* and also as to whether incorporation should be by memorandum of association or letters patent the Conference adjourned.

FIFTH DAY.

Friday, September 3rd, 1920.

The Conference re-assembled at 9.30 A.M. and proceeded to review its program, the Vice-President in the chair.

The subject of Wills including any acts affecting the Wills Act such as dower, courtesy, etc., was referred to the Alberta Commissioners to bring in a report at next year's Conference upon the whole subject with a view to having a model Act based thereon.

The question of reciprocal enforcements of judgments was referred to the Prince Edward Island Commissioners to draft a model Act and report at the next session of the Conference.

- The Matter of the laws relating to the protection and property right's of married women was referred to the British Columbia. Commissioners with a request that they investigate and report on the laws of the different provinces relating to the above named subjects, such report to be the basis of future - action.

IT WAS RESOLVED that the President of the Conference Sir James Aikins, be requested to respectfully urge upon the Governments of Quebec, Nova Scotia and Prince Edward Island, the desirability of their appointing Commissioners or representatives to this Conference.

IT WAS RESOLVED that the subject of Succession Duties, including probate, legacy and estate duties, be referred to the Commissioners from Nova Scotia to investigate and report thereon to the Conference with such suggestions as they deem advisable.

The Conference resumed. consideration of the report of the committee on Company Law.

On motion of Mr. Pitblado IT WAS RESOLVED that any model Act drawn make provision for doing away entirely with the doctrine of *ultra vires* in so far as it relates to corporate contracts along the line of the resolution passed by the Canadian Bar Association in 1919, but that at the same time the model act attempt to give some protection to the shareholder or creditor if the, Company is engaged or attempting to engage in business outside the scope of the objects of incorporation.

On motion of Mr. Symington IT WAS RESOLVED that the Manitoba Commissioners be instructed to draft the proposed Act in accordance with the principle of incorporation by memorandum of association.

IT WAS RESOLVED after some further discussion that the matter of Company Law be referred back to the Manitoba, Commissioners for the purpose of drafting a model uniform Act upon the subject in the light of the discussion and recommendations that have been male at this meeting and to report at the next meeting of the Conference.

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

PresidentSIR JAMES AIKINS, K.C.

Vice-PresidentMARINER G. TEED, K.C.

TreasurerFRANK, FORD, K.C.

Corresponding Secretary . C. ELLIOTT.

Recording SecretaryJOHN D. FALCONBRIDGE.

IT WAS RESOLVED that in 1921 the Conference meet four days before the opening of the Bar Association Convention.

IT WAS RESOLVED that the corresponding Secretary , be requested to notify the different Commissioners at least one month in advance of the time and place of Meeting of the Conference, and that at the earliest moment copies of the minutes and verbatim report of the discussion be sent to the local Secretaries of the Commission.

IT WAS RESOLVED that a vote of thanks be tendered to Sir James Aikins, M. Teed, Mr. Falconbridge and Mr. Ford for their services as officers of this conference.

At 1 P.M. the Conference adjourned.

CONFERENCE OF COMMISSIONERS ON UNIFORMITY
OF LEGISLATION IN CANADA

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ON UNIFORMATION OF LEGISLATION.

(Appendix "A")

PRESIDENTIAL ADDRESS BY SIR JAMES ATKINS, K.C.

The Report of the Secretary shows that the work accomplished by the Commissioners and the Conference has fully justified the calm optimism of those governments who so cordially promoted the organization and its purposes. The agenda of this meeting manifests the earnestness of the Commissioners in that free and feeless public service which they undertook when accepting the appointment of Commissioners, a service which the people generally have not appreciated because unostentatious and not advertised. And I do not propose to advertise it now. The fact is that the purposed results are being produced and they speak louder than words.

Of those nations in the British Empire which are composed of federated states or provinces having differing legislative and executive jurisdictions over business and commercial affairs, Canada takes no second place in endeavouring to facilitate trade and business by uniformity of laws relating to them within the nation. If newspaper reports of a speech of the Honorable the Premier of Ontario are correct, our efforts are recognized and approved by his government, which also means specially by his Attorney General, for the report intimated that the Premier, referring to the passing of some uniform Acts which this Conference had recommended, said it was his intention to further the codification of the Ontario law for the purpose of making it and its administration simpler, more certain, and better understood by the people. Though not a lawyer, he has expressed a sound principle of the law. Every citizen responsible for his words and actions is presumed to know the law and is not excused by ignorance for offending. The more highly organized society is the more complex necessarily will its law be. The plethora of legislation annually produced in Canada is making the paths of the law less plain and more bewildering. To remedy this in Ontario the Premier proposes to codify more, and, may I suggest, to pass fewer and better prepared Acts than has been the custom in our country. To remedy this for those who trade and do business interprovincially and who earnestly require it, most of the local governments propose codifying uniformly the laws respecting such commerce and business as far as it can reasonably be done, and the Commissioners and the members of the Canadian Bar Association have offered to assist.

As in a previous year I addressed the Bar Association on the subject of Codification, I will not discuss it now, but only say that in respect of uniform codification, by, legislation

CONFERENCE OF COMMISSIONERS

of course, throughout Canada, of law generally, there must be limitations. For instance we should not consider uniformity in respect of the law relating to the machinery or method of government in the provinces or of laws relating to religion or education or of laws touching local community life or of fiscal policy laws. There are others which should be studied with a view to uniformity at the request of provincial government, such as Succession duties on properties owned by a deceased on several provinces, the issue and sale of municipal debentures, reciprocal' enforcement of judgments.

In order to make clear the purpose of the appointment of the Commissioners and the organization of the Conference, let me point out that it is not their function or duty to initiate new laws or to draft uniform acts for such on any of the subjects committed to provincial jurisdictions by Section 92 of the British North American Act. That is the prerogative of the people through their representatives in the legislatures. This even does not mean that the legislatures make the laws. Rules of conduct or regulating laws on any subject in self-governing provinces and states have their origin in the persistent volitions and desires of a majority of the people interested in that subject, which are usually expressed in methods, practises and usages. Legislation which simply expresses the theories or the chimerical fancies of a legislator and which does not express the views and will of a people never becomes regulating law, though for the time being on the Statute Book. It will not be respected or enforced. Generally the habits, practises and methods of a people, particularly in reference to business and commerce, are constant, and the same or similar in all parts of a country where the conditions are alike. What is desired by a people is the best legal expression of those methods, customs and usages in all parts of a nation where the business or trade is carried on. But where there are several legislative, jurisdictions preparing their acts separately, they naturally will vary in detail and be different in expression, though all may have a common aim. People having business dealings throughout all Canada, or in several provinces, are, irritated and embarrassed and hindered by those differing details and variations of statutory law, and demand. substantial uniformity. There are two ways by which that demand for uniformity may be satisfied, and satisfied it will be, for where there is a defect and loss results, and there is an available remedy, that remedy, if persistently required, is sure to come. One :Is by the Federal Parliament passing Acts under the jurisdiction conferred by Section 91; the other is by the provinces voluntarily adopting uniform enactments. The one means a centralizing of authority and an unbalancing of our Federal 'system, the other the preservation of local self-government and the retention of those subjects intended when the British North America Act was passed. The unfortunate

tendency is towards centralization, and the wording at the beginning and end of Section 91, and an overlapping in parts of Section 91 and 92, lend themselves to wide interpretation according to the expressed wishes from time to time, of the people. This centralizing was manifest in the passing recently of a Federal insolvency law and largely because for many years, when there was no such law the provincial enactments- relating to fraudulent assignments, preferential payment of creditors and the distribution of insolvent estates, were not in harmony.

The same tendency is seen in the increasing number of Dominion incorporations and the careful regulation of them, chiefly owing to the lack of alertness and attention of the provincial governments in not having more uniform, simpler, better and less lax laws relating to the creation and organization and regulation of provincial companies. The situation calls for immediate and wise action by local legislatures.

There is urgent need for an adequate, practicable and commercially sound Uniform Companies Act in all the provinces. The Commissioners, if their efforts are encouraged and well supported by the provincial governments, can give signal assistance in securing such uniformity of provincial legislation relating to business and the like, and thus obviate a general demand for uniformity by an exercise of the Federal jurisdiction. Better have voluntary uniform local enactments where that is at all practicable in interprovincial business, than an enforced uniformity imposed by Federal authority through majorities who may not consider the wishes of localities or minorities. Voluntary uniformity and cordial inter-provincial co-operation are a safeguard against legislative intrusion by the Dominion. Sectional jealousies or provincial isolation will not promote business solidarity or develop that national consciousness and spirit without which Canada cannot attain that vigor, prosperity and happiness to which it aspires.

The greatest privilege of a citizen in a self-governing nation is the right of public service. Its correlate is the duty to serve as he is best qualified. It is a case of "to every man his work." Naturally every one who so serves is encouraged if his work is upheld and conditions arranged to make it efficient.

To pat oneself on the back may be a pleasing self deception but it does not produce practical results. But should not the Commissioners make the importance of their work in the public interest known to the people interested and claim from them through their governments the needed assistance to facilitate and advance that work.

In these times of class assertion and selfishness, meagre credit will be given to any who endeavour to serve the people generally. - No chaplets await any member of this Conference for doing faithfully his inconspicuous duty. His reward will be in the consciousness of having helped in the upbuilding of Canada.

(Appendix "B")

REPORT ON THE LEGITIMATION ACT.

1. A report on this subject would have been made by Mr. Matthew Wilson, K.C., D.C.L., as corresponding secretary of the Conference, had not his death, to the profound regret of his colleagues, deprived the Conference of his services. Mr. Wilson was an enthusiastic and able officer and member of the Conference, as well as discharging with great efficiency the duties of chairman of the Ontario commissioners. In accordance with the request of the president of the Conference, the undersigned now submits a report in Mr. Wilson's place.

2. At the meeting of the Conference held in 1919, a draft of a uniform Legitimation Act was revised (Proceedings of the Conference, 1919, pp. 16, 53; Canadian Bar Association, 1919, pp. 240, 277,) and it was resolved that the draft

"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 the several provinces of Canada for enactment."

3. The draft as revised in 1919 was accordingly printed and copies were sent by the corresponding secretary to all the commissioners for further consideration. Disapproval of the draft was subsequently expressed by the commissioners from British Columbia and Saskatchewan, and by two of the commissioners from Ontario, being more than one-fourth of the members of the Conference who were present at the meeting of 1919. The draft was, however, adopted by statute in Manitoba and Prince Edward Island in 1920.

4. The commissioners from Saskatchewan submitted a new draft, and the commissioners from Ontario another. The last mentioned draft was revised by the commissioners from British Columbia, and in its revised form was in 1920 adopted by statute in the provinces of New Brunswick and Saskatchewan, as follows:

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. (1) Where the parents of any child born out of lawful wedlock have intermarried after the birth of the child and prior to the passing of this Act, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

(2) Nothing in this section shall affect any right, title or interest in or to property, where the right, title or interest has vested in any person prior to the passing of this Act.

3. (1) Where the parents of any child born out of lawful wedlock intermarry after the birth of the child and subsequent to the passing of this Act, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

(2) Nothing hi this section shall affect any right, title or interest hi or to property, where the right, title or interest has vested in any person prior to the intermarriage.

All which is respectfully submitted.

JOHN D. FALCONBRIDGE,

Recording Secretary.

(Appendix "C")

REPORT OF THE COMMITTEE ON SALE OF GOODS AND
PARTNERSHIP.

1. Your committee, consisting of the commissioners from Ontario, is glad to be able to report further substantial progress in the direction of securing uniformity of legislation on the subject of Sale of Goods and Partnership.

Sales of Goods.

2. As mentioned in the report of your committee presented to the Conference in 1919, the Sale of Goods Act, 1893, was adopted in New Brunswick and in Prince Edward Island in 1919, at the instance of the commissioners from those provinces respectively.

Pursuant to the recommendation of the Conference made in 1919, and at the instance of the Ontario commissioners, the statute was adopted, in Ontario in 1920. The result is that the statute is now in force in all the provinces of Canada except Quebec.

3. It is of interest to note that the Sale of Goods Act, 1893, originally enacted to codify the law of the United Kingdom, has been adopted in the following British dominions:

- 1895. Barbados, Gibraltar, Jamaica, Isle of Man, New Zealand, South Australia, Trinidad and Tobago, Western Australia.
- 1896. Ceylon, Hong-Kong, Manitoba, Queensland, Tasmania, Victoria;
- 1897. British Columbia;
- 1898. Northwest Territories of Canada (then including Alberta and Saskatchewan);
- 1899. British Honduras, Newfoundland;
- 1904. Bahamas;
- 1910. Nova Scotia.
- 1913. British Guiana;
- 1919. New Brunswick, Prince Edward Island;
- 1920. Ontario.

The Factors Act.

4. As noted in last year's report of this committee, the Factors Act, 1889, enacted by the British Parliament, had been adopted in Alberta, British Columbia, New Brunswick, Nova

Scotia, Ontario and Saskatchewan. Pursuant to the recommendation of the Conference it was also adopted in Prince Edward Island in 1920, at the instance of the commissioners from that province. Your committee is informed that it will probably be adopted in Manitoba in 1921. In Quebec, articles 1735-1754 of the Civil Code of Lower Canada are based upon the former British legislation, superseded in the United Kingdom by the Factors Act of 1889.

Partnership.

5. Pursuant to the recommendation of the Conference in 1919, the Partnership Act, 1890, which codified the general English law of partnership, was adopted in New Brunswick, Ontario and Prince Edward Island in 1920, at the instance of the commissioners from these provinces respectively. The result is that the statute is now in force in all the provinces of Canada except Quebec. In the last mentioned province, the general law of partnership is governed by articles 1830-1870 and 18X-1900 of the Civil Code of Lower Canada.

6. The Partnership Act, 1890, has been adopted in the following British dominions:

- 1891. Queensland, Tasmania, South Australia;
- 1892. New South Wales, Newfoundland;
- 1894. British Columbia;
- 1895. Western Australia, Gibraltar;
- 1897. Manitoba, Hong-Kong;
- 1899. Northwest Territories of Canada (then including Alberta and Saskatchewan), British Honduras.
- 1900. British Guiana;
- 1902. Bermuda;
- 1904. Bahamas;
- 1908. New Zealand;
- 1910. Fiji;
- 1911. Nova Scotia;
- 1912. Papua;
- 1913. Trinidad and Tobago;
- 1915. Victoria;
- 1916. St. Lucia;
- 1920. New Brunswick, Ontario, Prince Edward Island.

7. The principal points on which the general non-English law of partnership—the civil law—differs from the English common law are these: under the civil law, (1) a partnership has a separate legal personality—distinct from that of the indivi-

dual members; (2) a partner's liability is joint, and several; (3) partnerships *en commandite* may be formed by which the advantages of limited liability are secured to dormant partners. On the first two points there remains a difference between the law of Quebec and that of the other provinces; the third point will be further referred to below.

Limited Partnership

8. Your committee was instructed in 1919 to compare the Limited Partnership Act, 1907, passed by, the 'British Parliament, and the statutes of the different provinces on the same subject, and to report thereon. As mentioned in the former report of your committee the various provincial statutes are not based upon British legislation, and differ in some material respects from the statute of 1907 above mentioned. In comparing the various statutes your committee has derived much help from an article by James Edward Hogg published in 1918, in the Journal of the Society of Comparative Legislation—Volume 16, New Series, pp. 233-241, under the title "Partnership Law in the Empire."

9.. As already stated, limited partnerships exist in English law only by virtue of some express statutory enactment, whereas partnerships *en commandite* are part of the general law of partnership under the civil law. Nevertheless in Quebec and in several other of the British dominions where the English common law does not prevail, limited partnerships are expressly sanctioned by statute. In Canada the Quebec statute and the statutes of the other provinces are alike based upon a statute of 1849 passed by the late province of Canada (12 V. c. 75). There is, as a result, substantial uniformity of legislation on this subject throughout Canada. The Quebec provisions are contained in articles 1871-1888 of the Civil Code of Lower Canada and in the Revised Statutes of Quebec, 1909, articles 1743-5.

10. It will be sufficient to mention a few points on which the British Act of 1907 (which has been followed in some of the British dominions) differs from the Canadian Acts. The differences are enumerated as follows, in Hogg's article already cited:

The "limited" partners of the English Act are in other jurisdictions called "special" partners. Whilst the English Act contemplates a limited partnership carrying on banking business, and also restricts the number of persons who may form a limited partnership, in most cases of statutes framed on the Canadian model banking and insurance are prohibited, but there is no restriction as to numbers. (except so far as this may be enforced by companies acts). The ordi-

nary law of partnership obtains under the English Act, so that an action against the partnership as a whole does not differ from an action against an ordinary partnership; in some of the statutes on the Canadian model actions may be brought against the general partners only, as though there were no special partners. Under the English Act the general partners are "liable for all debts and obligations of the firm"; under many statutes on the Canadian model the general partners are "jointly and severally responsible as general partners are by law." In jurisdictions where the liability of partners is not by statute made joint only during their lifetime, it may be that this reference points to a joint and several liability in the case of ordinary partnership.

The British Columbia statute contains a restriction as to the number of partners, and omits the reference to joint and several liability. In some of the Canadian provinces there are special statutory provisions as to mining partnerships.

11. The reference in some of the Canadian Acts to joint and several liability is apparently an error of law which ought perhaps to be corrected, but your committee is of the opinion that the differences in language between the Canadian Acts and the English Act do not constitute a sufficient reason for attempting at present any general revision of the Canadian Acts, especially in view of the substantial uniformity of legislation now existing in Canada on this subject and in view of the fact that there are many other subjects of more pressing importance requiring the attention of the Conference.

Registration of Partnership.

12. The system of requiring partnerships to be registered, introduced in the United Kingdom only in 1916, has been in force in Ontario since 1869 (33V. c. 20), and in Quebec since 1849 (12 V. c. 45; cf. the Civil Code of Lower Canada, article 1834). As pointed out in your committee's report in 1919, there are now statutes on this subject in force in all the provinces of Canada. There is some diversity in these various statutes. In New Brunswick, for instance, all partnerships must be registered, while in some other provinces only trading, manufacturing and mining firms need be registered, and there are other differences of detail in different provinces. In the opinion of your committee, however, the subject of the registration of partnerships and trade names might well be left, along with the subject of limited partnerships, for consideration at some future time when other matters of more pressing practical importance have been disposed of.

All which is respectfully submitted.

JOHN D. r FALCONBRIDGE,
On behalf of the Committee.

(*Appendix CD*))

Certified correct as passed Third Reading on the 25th day of
March, 1920. C. K. COURTNEY, *Law Clerk*.

BILL.

No. 19] - [1920.
An Act respecting Warehousemen's liens.

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

-SHORT TITLE.

1. This Act may be cited as the "*Warehousemen's Lien
Act.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires:—
"Charges" shall have the meaning assigned to it in section 3;
"Goods" includes personal property of every description that
may be deposited with a warehouseman as bailee;
"Warehouseman" means a person lawfully engaged in the
business of storing goods as a bailee for hire.

WAREHOUSEMAN'S LIEN.

3. (1) Subject to the provisions of sections 4 and 5, every
warehouseman shall have a lien on goods deposited with him for
storage, whether deposited by the owner of the goods or by his
authority, or by any person entrusted with the possession of the
goods by the owner or by his authority.

CHARGES COVERED BY LIEN.

(2.) The lien shall be for the amount of the warehouseman's
charges, that is to say:—

- (a.) All lawful charges for storage and preservation of the
goods;
- (b.) All lawful claims for money advanced, interest, insur-
ance, transportation, labour, weighing, cooping, and
other expenses in relation to the goods; and
- (c.) All reasonable charges for any notice required to be
given under the provisions of this Act, and for notice
and advertisement of sale, and for sale of the goods
where default is made in satisfying the warehouseman's
lien.

REQUIREMENT AS TO NOTICE OF LIEN IN CERTAIN CASES.

4. (1.) Where the goods on which a lien exists were not deposited by the owner or by his authority, the warehouseman, within two months from the date of their deposit, shall give notice of the lien to:—

- (a.) The owner of the goods; and
- (b.) To the seller of the goods, where in respect of the goods a copy of a valid receipt note, hire receipt, order, or other instrument evidencing a bailment or conditional sale of the goods is filed under the "Sale of Goods Act" at the date on which the goods are deposited with the warehouseman; and
- (c.) To the grantee of every valid bill of sale of the goods registered under the "Bills of Sale Act" at the date on which the goods are deposited with the warehouseman.

CONTENTS OF NOTICE.

(2.) The notice shall be in writing and contain:—

- (a.) A brief description of the goods; and
- (b.) A statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
- (c.) A statement that a lien is claimed by the warehouseman in respect of the goods under this Act.

LOSS OF 'LIEN FROM FAILURE TO GIVE NOTICE

(3.) Where the 'warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give the notice, shall be void as from the expiration of the period of two months from the date of the deposit of the goods.

EFFECT ON LIEN WHERE WAREHOUSE RECEIPT ISSUED WITHOUT ENUMERATION OF CHARGES.

5. (1.) Where a negotiable receipt for the goods is issued by the warehouseman which does not contain an express enumeration of the charges for which a lien is claimed, the warehouseman shall have no lien on the good& except for charges subsequent to the date of the receipt.

SCOPE OF LIEN WHERE CHARGES ARE ENUMERATED IN RECEIPT.

(2.) Where the receipt expressly enumerates the charges for which a lien is claimed, the warehouseman shall have a lien for the charges enumerated so far as they are within the terms of section 3, although the amount of the charges so enumerated is not stated in the receipt.

ENFORCEMENT OF LIEN BY SALE OF GOODS.

6. (1.) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges which have become due.

NOTICE OF SALE.

(2.) The warehouseman shall give notice in writing of the proposed sale:—

- (a.) To the person liable as debtor for the charges for which the lien exists; and
- (b.) To the owner of the goods; and
- (c.) To the seller of the goods, where in respect of the goods a copy Of a valid receipt note, hire receipt, order ,or other instrument evidencing a bailment or conditional sale of the goods is filed under the "Sale of Goods Act" at the date on which the goods are deposited with the warehouseman; and
- (d.) To the grantee of every valid bill of sale of the goods registered under the "Bills of Sale Act" at the date on Which the goods are deposited with the warehouseman.

CONTENTS OF NOTICE

(3.) The notice shall contain:—

- (a.) A brief description of the goods; and
- (b.) A statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
- (c.) An itemised statement of the warehouseman's charges, showing the sum due at the time of the notice and the date when it became due: and
- (d.) A demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than

twenty-one days from the delivery of the notice if it is
_personally delivered, or from the time when the notice
should reach its destination according to the due course of
mail if it is sent by mail; and

- (e.) A statement that unless the charges are paid within the
time mentioned the goods will be advertised for sale and
sold by public auction at a time and place specified in
the notice.

ADVERTISEMENT OF SALE.

(4.) Where the charges are not paid on or before the day
mentioned in the notice, an advertisement of the sale, describing
the goods to be sold, and stating the name of the person liable as
debtor for the charges for which the lien exists, and the time and
place of the sale, shall be published at least once a week for two
consecutive weeks in a newspaper published in the Province and
circulating in the locality where the sale is to be held. The sale
shall be held not less than fourteen days from the date of the first
publication of the advertisement.

DISPOSITION OF PROCEEDS OF SALE.

7. From the proceeds of the sale the warehouseman shall
satisfy his lien, including the expenses of notice, advertisement,
and sale, and shall pay over the balance of the proceeds (if any) to
the person entitled thereto, or into the registry of the Supreme
Court of British Columbia to the credit of the person entitled
thereto, if such person or some one on his behalf be not present at
the time of sale to receive such balance. And such warehouseman
shall, when paying over any such balance, deliver to the person to
whom he pays the same a statement of account showing how such
balance has been computed. And the Registrar or any District
Registrar of the Supreme Court shall receive and place to the credit
of the person entitled thereto any such balance so paid to him
without an order of the Court requiring him so to do.

DUTY OF WAREHOUSEMAN WHERE CHARGES PAID BEFORE SALE.

8. At any time before the goods are sold any person claiming
an interest or right of possession in the goods may pay the
warehouseman the amount necessary to satisfy his lien, including
the expenses incurred in serving notices and advertising and
preparing for the sale up to the time of the payment. The ware-
houseman shall deliver the goods to the person making the pay-
ment if he is a person entitled to the possession of the goods on
payment of - the warehouseman's ' charges thereon, otherwise the
warehouseman shall retain possession of the goods according to the
terms of the contract of deposit.

MANNER OF GIVING NOTICES REQUIRED BY ACT.

9. Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by mailing it in the post-office, postage paid and registered, addressed to him' at his last-known address.

RETROSPECTIVE APPLICATION OF ACT.

10. This Act shall apply to goods in the possession of a warehouseman deposited with him for storage before the commencement of this Act, as well as to goods deposited after its commencement. The application of this Act to goods deposited before its commencement shall be governed by the following provisions :—

- (a.) The period of two months mentioned in subsections (1) and (3) Of section 4, respectively, shall run from the date of the deposit of the goods:
- (b.) The date referred to in clauses (b) and (c) of subsection (1) of section 4 and clauses (c) and (d) of subsection (2) of section 6, respectively, shall be deemed to be the date of the commencement of this Act, instead of the date on which the goods are deposited with the, warehouseman: -
- ✶ The day mentioned in any notice pursuant to the provisions of clause (d) of subsection (3) of section 6 shall be not less than six months from the delivery of the notice or the time when the notice should reach its destination, instead of the period of not less than twenty-one days mentioned in said clause (d) .

(Appendix "E")

Vancouver, B.C.,
May 27, 1920.

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 consisting of the Commissioners from Manitoba was appointed to prepare a model statute on the "Bulk Sales Act."

This Committee presented its Report at the meeting of the Conference in Winnipeg in August, 1919, and submitted a model statute, which was considered „Section by Section, and, after the principle of the Act was approved by the Conference, it was then re-committed to the Committee for further consideration, to be presented to the Conference again at its next annual meeting. Owing to the heavy work assigned to the Manitoba Commissioners for the Session of 1920, the Commissioners from British Columbia were requested to prepare the Report for your consideration.

Your Committee finds, on due investigation, that the work of the Manitoba Committee in drafting the model Act was so thoroughly and carefully done that any recommendations it has to make are of a minor character, and for this reason dispenses with any necessity of reprinting the Act.

Acting on the suggestion of the Conference, your Committee submitted the draft to representatives of the Canadian Credit Men's Trust Association, Limited, and the Retail Merchant's Association of Canada, and in both instances the draft was returned, after careful consideration by both of these bodies, with the statement that it was perfectly satisfactory, and no request for alterations, additions or amendments was made.

The chief work then, in view of the adoption by the Conference of the principle of the Act; was to consider the draft in relation to the Acts now in force in various Provinces of Canada. After investigation your Committee heartily compliments the Manitoba Commissioners on the result of their work; and simply recommends the following minor changes to the draft Bill, a copy of which is appended:

1. That pursuant to the resolution of the Conference, the Act should begin in the following form:

"An Act to make uniform the Law respecting the sale of goods in bulk.

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

2. That the terms defined in Section 2 should be arranged alphabetically, and should therefore be:

- (a) "Creditor"
- (b) "Proceeds of Sale"
- (c) "Sale in bulk"
- (d) "Stock"
- (e) "The Bankruptcy Act"
- (f) "Trustee"
- (g) "Vendor."

3. That the present tense be used in Section 5 in conformity with the Report on Legislative Drafting adopted by the Conference, and that the word "closing" in the fifth line of the Section be struck out. Your Committee does not think the word has any legal meaning, and its inclusion is more apt to lead to confusion than be of any assistance, unless the payment of \$50.00, as provided in the latter part of the Section, is meant as closing of the purchase.

Your Committee suggests that the word "said" before the word "statement" in the twentieth line of the Section should be deleted.

4. That the word "closing" in the first line of Section 6 be deleted for the reasons above stated.

5. That the repetition of the words "of this Act" in Sections 7 and 8 are unnecessary..

6. In regard to Section 12, your Committee is of the opinion that there will be considerable difficulty in the operation of the Act in so far as attacking a sale within sixty days from the date when the creditor attacking had notice, unless some provision is made by which notice commences. If some system of registration of the declaration or other evidence of the sale is filed, similar to the filing that takes place under the "Assignment of Book Debts" or other Acts, the computation of sixty days would be an easy matter.. As the Section stands, how is it to be ascertained when the Creditor had notice, and there should be some reasonable limit to the length of time in which an action can be brought. Your Committee therefore suggests that actions be limited to sixty days from the date of the sale, and that the rest of the Section be struck out.

7. Your Committee does not approve of the provision in Section 13 of paying the judge a fee. It is a departure from

our usual legislation, and it is not clear why a judge, in carrying out his judicial duties under this Act, should be in any different position than he is in the exercise of his' duties under any other Act. It is not consonant with Canadian ideals, and your Committee submits with deference that it is not good legislation for this Conference to inaugurate.

Respectfully submitted,

J. N. ELLIS,

Chairman.

THE BULK SALES ACT.

Approved September, 1920

An Act to make Uniform the law respecting the Sale of Goods in Bulk.

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

1. This Act may be cited as "*The Bulk Sales Act.*"
2. In 'this Act, unless the context otherwise requires

VENDOR AND PURCHASER.

(a) "Vendor" shall include any person who barter 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;

CREDITOR.

(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;

STOCK.

(c) "Stock" shall mean any stock of goods, wares and merchandise ordinarily the subject of trade and commerce, and the goods, chattels and fixtures ordinarily used in connection with any business;

(d) "Stock in bulk" shall mean any "stock" (or portion thereof) which is the subject of a sale in bulk.

SALE IN BULK AND SALE.

(e) "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; and sale, 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 or exchange, and an agreement to sell, transfer, convey, barter or exchange;

PROCEEDS OF SALE.

(f) "Proceeds of sale" shall include the purchase price or consideration payable to the vendor, or passing from the purchaser to the 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.

TRUSTEE.

(g) "Trustee" shall mean an authorized trustee under The Bankruptcy Act appointed for the bankruptcy district or division 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 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 o or be named as trustee by the creditors of the vendor in their written consent to any sale in bulk.

"THE BANKRUPTCY ACT."

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

PERSONS TO WHOIVI THE ACT APPLIES. ,

3. This.kct 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.

SCOPE OF ACT.

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.

STATEMENT OF CREDITORS TO BE FURNISHED.

5. It shall be the duty of each purchaser of any stock in bulk, 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 in bulk 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 manager, 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 statement and declaration may be in the form set forth in schedule A hereto or to the like effect. Any purchaser may, however, before obtaining such statement pay to the vendor a sum not exceeding fifty dollars on account of the purchase price.

NO PREFERENCE OR PRIORITY.

(1) 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. At the time of the completion of every sale in bulk some one of the following provisions shall also be complied with:

PAYMENT OF CREDITORS IN FULL.

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

WAIVER BY CREDITORS OF PROVISIONS OF ACT.

(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 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

CONSENT OF CREDITORS TO SALE.

(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 exceeding fifty dollars as shown by said written statement.

WHEN PROCEEDS OF SALE TO BE PAID OVER TO TRUSTEE.

7. Where a sale in bulk is made with the written consent of the creditors of the vendor, under the provisions of section 6, sub-section (c), 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, to be dealt with by any such trustee as provided by section 8.

DISTRIBUTION OF PROCEEDS OF SALE

8. In case the proceeds of sale are paid, delivered or conveyed to a trustee under the provisions of section 7, such trustee shall be a trustee for the general benefit of the creditors of the vendor and shall distribute the proceeds of such 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, shall 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 said Act.

FEES OF TRUSTEE.

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.

SALE VOID AGAINST CREDITORS UNLESS ACT COMPLIED WITH.

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 there-f or, 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.

BURDEN OF PROOF ON PURCHASER.

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.

LIMITATION OF TIME WITHIN WHICH ACTION MAY BE BROUGHT
TO SET ASIDE 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.

APPOINTMENT OF TRUSTEE BY JUDGE.

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 county 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.

14. This Act shall come into force on the

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 -----
----- n the -----
Province of ----- this -----
----- day of -----
A.D. 191 .

A Commissioner etc.

SCHEDULE B.

(WAIVER.)

We, the undersigned creditors of -----
in the
Province of -----, DO HEREBY WAIVE
the provisions of "The Bulk 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 A
Dated this -----
A.D. 191 ----- day of -----,
Signed in the presence of -----

(Appendix "F")

REPORT OF COMMITTEE UPON 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 Winnipeg in August of last year the representatives of Saskatchewan submitted a model statute upon the above subject, in conformity with a resolution passed at the Meeting held in Montreal in 1918. At the same time a similar measure, prepared by a committee of the Canadian Bar Association, was referred to the Conference, and as a result the Saskatchewan representatives were requested to reconsider the whole matter and to report further to the Conference:

The Draft Act of 1919 was accordingly revised and early, in June copies were sent out to the Commissioners from the other provinces, to Superintendents of Insurance, to representative bodies of insurance underwriters, to trade journals and to individual known to have given special attention to the subject, with a request that they would forward any suggestions they might desire to make not later than the first day of August.

As a result letters and memoranda were received containing a considerable body of comment and criticism, representing various and at times conflicting points of view. In order to enable our fellow Commissioners to understand and intelligently discuss the questions at issue they have been furnished with copies of the most important communications. In perusing these documents it will be found that they raise questions of policy or practical expediency many of which could only be dealt with in a satisfactory manner by oral discussion between persons having an expert knowledge of the subject and representing various interests.

Such being the case, it is not in the opinion of the undersigned, advisable that the Bill submitted should be finally adopted. A conference of the Superintendents of Insurance for the various provinces is to be held in October and uniform conditions of fire insurance policies will furnish one of the topics for discussion. Under these circumstances it is recommended that the draft Bill accompanying this report should, when revised by the commissioners, be submitted to the con-

ference of Insurance Superintendents with a request that they examine its provisions and report any suggestions they may desire to make to the committee of this conference having the matter in hand, at as early a date as convenient.

, In the notes appended to the Bill reference has been for convenience sake, as in Our report of 1919, principally 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,

W. F. A. TURGEON. R.

W. SHANNON.

CHAPTER.....

An Act to Make Uniform the Law respecting Conditions in Policies 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, or the attorney in fact of any reciprocal or inter-insurance association, that undertakes or effects, or agrees or offers for valuable consideration to undertake or effect, a contract of insurance Within the meaning of this Act.

2. "Contract" Means an agreement whereby a company undertakes to indemnify the insured against loss of or damage to property in the province or in transit therefrom or thereto, .caused 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.

4. "Property" includes use and occupancy, rents and profits.

TERM OF CONTRACT.

3. No contract shall be made for a term exceeding three years, or, in the case of the building or contents of a mercantile or manufacturing risk, 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 subject to the provisions of section 6, 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 not less in size than ten point and in red' ink immediately after such conditions the proposed variations or additions or a reference to the omissions with these introductory 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 upon 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 and subject to the provisions of section 6.

USE OF RED INK.

8: No red ink shall be used in printing a policy except for the purposes mentioned in this Act.

RELIEF FROM FORFEITURE.

9. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured and a consequent forfeiture or avoidance of the insurance, in whole or in part, 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.

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 policy sent to the insured is intended to be in accordance with the terms of the application, unless the company points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy. 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, within two weeks from the receipt of the policy, points out to the company in writing the particulars wherein it differs from such application or instructions.

3. *Property not Insured.*—Money, books of account, securities for money, and evidences 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;

(c) For loss due to the want of good and substantial brick or stone or cement chimneys; or caused 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 in the building insured or which contains the property insured, or while there is stored or kept therein by the insured or, to his knowledge, by any person under his control, fireworks, Greek fire, phosphorous, explosives, petroleum or any liquid product thereof, coal oil, camphene, gasoline, burning fluid, benzine, naphtha, or any of their constituent parts (refined oil for lighting purposes only, not exceeding five gallons in quantity, gasoline, if contained in a tightly closed metallic can free from leaks and not exceeding one quart in quantity, or lubricating oil not being crude petroleum nor oil of less specific gravity than is required by law for illuminating purposes, not exceeding five gallons in quantity, excepted) or more than twenty-five pounds weight of gunpowder;

(c) *Change of Title.*—After the interest of the insured in the subject matter of the insurance is assigned, but this condition is • not to apply to change of title by succession, by operation of law, or by death;

(d) *Vacancy.*—Where the building insured or containing the property insured is vacant or unoccupied beyond a period of thirty days.

6. *Explosion 'and Lightning.*—The company will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gasworks, whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion; but, if electrical appliances or devices are insured, any loss or damage to them caused by lightning 'or other electrical currents is excluded and the company shall be liable only for such loss or damage to them as may 'occur from fire originating outside the articles themselves.

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 in default of such payment the policy shall no longer be in force and the company shall return the unearned portion, if any, of the premium paid.

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, the company shall be liable only for payment of a rateable proportion of the loss or a rateable, proportion of such amount as the insured shall be entitled to recover under clause (a) of this condition.

9. Mortgages and other Creditors.—

(a) In case this policy is assigned to a mortgagee or other creditor of the insured, 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 such mortgagee or creditor it shall to the extent of such payment be subrogated 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;

(b) 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 to the prejudice of the mortgagee without reasonable notice to him.

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

(a) Subject to the provisions of Section 9, by the company giving to the insured at any time before loss, fifteen days notice of cancellation by registered mail, or five days

notice of cancellation personally delivered, and, if the insurance is on the cash plan, refunding the excess of paid premium beyond the *pro rata* premium for the expired time;

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

(2) Repayment of the excess premium may be made by money, post office order, postal note or cheque, payable at par, certified by a chartered bank doing business in the province, enclosed with the notice in a registered letter under condition 23, in which case the fifteen days mentioned in clause (a) of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

11. Salvage.—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, and to notify the company of the separation.

12. Insurance on Goods Moved.—If any of the insured property is necessarily removed to prevent damage or further damage thereto, that part of the insurance under this policy which exceeds the amount of the company's liability for any loss already incurred shall for seven days only, or for the unexpired term if less than seven days, cover the property removed and any property remaining in the original location in the proportions in which the value of the property in the respective locations bears to the value of the property in them all; 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 accredited agents sufficient to enable them 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 them to make an appraisal 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 or salvage thereof, unless it accepts a part there-

of at its agreed value or its value as appraised under condition 17 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 L088.—Any person entitled to claim under 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 through any willful act or neglect or the procurement, means or contrivance of the insured;

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

All liens 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. The evidence furnished under this clause shall not be considered proofs of loss -within the meaning of conditions 18 and 19.

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:

(a) 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 the appraisal of two persons, one to be chosen by the insured and the other by the company;

(b) The appraisers shall select a competent and disinterested person to be a third appraiser or umpire.

(c) In case either party fails to name an appraiser within seven clear days after being served with written notice so to do, or in case the appraisers fail to agree upon an umpire within fifteen days after their appointment, or in case an appraiser or umpire refuses to act or is incapable of acting or dies, a judge of a court of record in the county or district in which the loss happened may make the necessary appointment on the application of the insured or of the company;

(d) 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 company shall pay the costs; where the amount awarded does not exceed the sum offered by the company in settlement, the insured shall pay the costs; in other cases the costs shall be in the discretion of the appraisers who may apportion the same as to them shall seem just.

(e) If the property is insured in more than one company, the question at issue shall be dealt with as between the insured and all the companies, and in such case the provisions of clauses (a) (b) (c) and (d) shall apply with the following qualifications:

- i. all the companies shall unite in the choice of an appraiser or a second, appraiser;
- ii. Notice under clause (c) shall be given to -or on behalf of all the companies;
- iii. the award shall determine the proportions to be paid by the companies respectively;
- iv. where costs are to be paid by the companies, they shall be borne by them in proportion to the amounts of their respective liabilities.

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 of loss.*

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.*

28. *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 authorized 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.*

THE FIRE INSURANCE POLICY MODEL ACT.

NOTES ON SECTIONS OF THE ACT. *Section*

2. Definitions.

"Company" taken from section 2 of the Ontario Act, and amended.

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

"Property." The extended meaning seems required by the facts.

Section 3. At present mutual policies may be made for Any term not exceeding four years. *Ont., sec. 19,2 (1).*

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. (4) *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*, more briefly expressed.

NOTES ON THE STATUTORY CONDITIONS.

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

Con.2. Taken, with the addition of a time limitation, 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) *Ontario, condition 6 (a).*

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

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

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

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

(b) *Ontario, condition 6 (f)*; western provinces, *condition 14 (f).*

(c) *Ontario, condition 3.*

(d). Western provinces, *condition 14 (g).*

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) New. Taken from the mortgage clause in common use.

(b) Sask., 1915, c. 15, s. 85; B.C. 1919, c. 37, s. S.

Con. 10. (a) Ontario condition 11,, with alteration of time allowance.

(b) Ontario, condition 12, slightly altered.

(2) Ontario, 1919, c. 25, s. 24.

Con. 11. See c. 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.

Con. 14. Ontario, condition 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 making other slight alterations.

Con. 16. Ontario, condition 20.

Con. 17. Bar Association, condition 18, somewhat altered.

This condition provides for appraisal 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. 8, par. 14*, and *Ontario Insurance Act, sec. 200 (3)*.

Con. 18. Ontario, condition 22. Con.

19. Ontario, condition 23. Con. 20.

Ontario, condition 24. 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.

(Appendix "G")

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 chattle 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 person letting 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 in 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 let for hire, and

(b) within twenty days after the execution of the contract, or a true copy of it is filed in the office of the proper officer of the county where the goods are delivered, and in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

(2) Sub-section 1 shall also 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) 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 twenty cents for making the record and to a fee of ten 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 \$50.00, 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 letter for hire 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 upon payment of the balance of the contract price, together with the actual costs and expenses of taking and keeping possession.

(2) Where the purchase price of the goods exceeds \$30.00, 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 ONTARIO COMMISSIONERS PRESENTING COMPARATIVE TABLE OF DEVOLUTION OF ESTATES OF INTES-TATES IN THE VARIOUS PROVINCES

At the last session of the Conference on the 29th of August, 1919, the Ontario Commissioners were asked to consider the law relating to the devolution of estates and to present at the next meeting a summary of the existing law on this subject in each province.

A table has now been prepared setting out the substance of these laws in brief terms. No attempt has been made to do more than show, in a form which will admit of ready comparison, the general rule as to devolution in each case; and for the purpose of simplicity and brevity the statement deals with the subject under headings covering simply the cases of death, married or unmarried, with or without surviving consort, and with or without issue. A few foot-notes have been appended dealing with certain general questions of importance and indicating the identity or diversity of the rules applicable in the various provinces. It was at first intended to cite chapter and section for each statement, but as it was not found possible to do this in every case in time for printing the plan was abandoned for the present. The idea of preserving all possible shades of meaning by using the actual words of the various statutes was also dropped in order to avoid unnecessary complication of the table.

The Ontario Commissioners are greatly indebted to the Commissioners in the other provinces for assistance in revising this statement, and an acknowledgement is also made of the assistance received from a little pamphlet published by the National Trust Company covering certain of the provinces and a leading firm of members of the Quebec Bar at Montreal. Necessarily, revision has not been complete, as in the case of several provinces your committee has found it necessary to compile its statement of the law direct from the statutes and impossible to secure local revision, at least in time for the present meeting; and quite probably therefore a number of inaccuracies will be observed. The conference is asked to treat the document merely as a draft.

Your committee realizes that the consideration of this subject must necessarily occupy considerable time and the accompanying table is presented without recommendation at present, and as sufficient simply to enable the conference to formulate plans for further action.

Respectfully submitted,

FRANCIS KING,

On behalf of the Ontario Commissioners.

Kingston, Ont. August 30th, 1920.

COMPARATIVE STATEMENT OF DISTRIBUTION OF. PROPERTY OF
INTESTATES IN THE VARIOUS PROVINCES.'

A

AN UNMARRIED MAN.

AN UNMARRIED WOMAN.

A WIDOWER WITHOUT ISSUE.

A WIDOW WITHOUT ISSUE.

ALBERTA

At present: All to next of kin in equal degree to the intestate and to their legal representatives, but no representatives are admitted among collaterals after brothers' and sisters' children.

After Chapter 11, 1920, comes in force June 1st, 1921: To father and mother or the one of them living and if neither living then to brothers and sisters and children of deceased brother or sister by right of representation and failing any of above then to next of kin.

BRITISH COLUMBIA

REALTY

(a) To the father, if the inheritance did not come to the deceased on the part of the mother. (b) If it did so come and the mother be dead, then to the father for life, and reversion to brothers and sisters and their descendants, if any, otherwise to father absolutely. (c) If it did so come and mother be living, then as in (b) with "mother" substituted for "father." (d) If neither father or mother survive capable of inheriting, then to brothers and sisters and descendants *per stirpes*. (e) if no heir entitled as above, then (1) if the inheritance came on the part of the father to brothers and sisters of father, in equal shares if all living, otherwise to the survivors of them and the descendants of those deceased,

PERSONALTY

To next of kin in equal degree and their legal representatives, the mother taking equally with the father, and no representatives being admitted among collaterals after children of brothers or sisters.

in equal shares *per stirpes*; and if all dead then to their descendants as if such brothers and sisters had been brothers and sisters of the deceased; and if no such heirs survive, then to brothers and sisters of the mother and their descendants, &c., &c., as if "mother" written for "father" above; and (2) If the inheritance came on the part of the mother, it descends as above with the words "father" and "mother" transposed; and, (3) if it came neither on the part of father or mother, it descends to brothers and sisters of father and mother and their descendants *per stirpes*. (f) If no heir entitled as above, then inheritance descends to remaining next of kin according to the provisions of the Statute affecting personalty.

MANTOBA

All to father; if no father, all to mother, brothers and sisters equally. If no father, mother, brother or sister or children of any brother or sister, all to next of kin in equal degree subject to section 12 of Devolution of Estates Act,

NEW BRUNSWICK

To next of kin and their representatives.

NOVA SCOTIA

To father and mother or to the one of them living; and if neither living then to brothers and sisters and children of deceased brother and sister by, right of representation, but if only children of brothers and sisters survive, then to all of them in equal shares, and failing any of above then to next of kin' in equal degree.

ONTARIO

To father, mother, brother and sisters in equal shares, the children of a deceased brother or sister taking by representation, unless only children of deceased brothers or sisters survive, when they take *per capita* and not *per stirpes*; and if none of the above survive, then to next of kin in equal degree.

PRINCE EDWARD ISLAND

To next of kin in equal degree and their representatives.

QUEBEC

One-half to father and mother or the survivor of them, one-half to brothers and sisters, nephews and nieces (the latter taking by representation ;the share of their deceased parent); if both father and mother previously deceased, brothers and sisters, nephews and nieces take all to exclusion of other relations; if intestate leaves neither father nor mother, nor brothers, sisters, nephews, or nieces but only other ascendants (grandparents, etc.) the latter take all to the exclusion of all other relatives; if he leaves ascendants in one line only the nearest of such ascendants takes one half of the succession and the other half devolves to the nearest collateral relation of the other line; if he leaves no such ascendants, one-half goes to nearest collateral relation of paternal line, and other half to nearest collateral relation of maternal line. Relations beyond the twelfth degree do not inherit.

SASKATCHEWAN

All to father; if no father, to mother; if no father or mother to brothers and sisters in equal shares, children of deceased brother or sister, taking *per stirpes*, and if no brother or sister or children of deceased brother or sister, then to next Of kin in equal degrees subject to Section 22 of the Devolution of Estates Act.

B

A WIDOWER WITH ISSUE.
A WIDOW WITH ISSUE.

ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW
BRUNSWICK, NOVA SCOTIA, ONTARIO, PRINCE
EDWARD ISLAND, QUEBEC, SASKATCHEWAN

All to children and lineal descendants of deceased children; children taking *per capita*, and their representatives *per stirpes*.

C

A MARRIED MAN WITHOUT ISSUE

ALBERTA

All to wife, subject to certain statutory provisions.

BRITISH COLUMBIA

REALTY

One-half absolutely to wife and residue of inheritance descends as in case "A" of British Columbia.

PERSONALTY

All to wife.

MANITOBA

All to wife.

NEW BRUNSWICK

REALTY

Subject to wife's dower, to next of kin and their representatives.

PERSONALTY

Half to wife and half "equally amongst the next of kin in equal degree and those who legally represent them:"

NOVA SCOTIA

REALTY

Half to wife in lieu of dower and residue as in "A" of Nova Scotia save that the wife takes all on failure of children of brothers or sisters.

PERSONALTY

Half to wife and residue same as residue of realty.

ONTARIO

To wife absolutely if total under \$1,000; otherwise \$1000 and one-half of residue to the wife and the rest to next of kin in equal degrees. But wife must elect to take an interest in realty otherwise she takes only one-third, of the personalty and her dower.

PRINCE EDWARD ISLAND

REALTY

Subject to wife's dower, to next of kin in equal degree and their representatives.

PERSONALTY

Half to wife and half to next of kin in equal degree and those who legally represent them.

QUEBEC

If wife abandon rights in community of property, the marriage contract, the insurance policies, and dower, one-third to wife, one-third to father and mother and one-third to collateral relations up to nephews and nieces in the first degree; if no collateral relations, one-half to wife and one-half to father and mother; if no father or mother, one-half to wife and one-half to collateral relations. If no father or mother and no collateral relations as aforesaid, then all to the wife. If wife does not abandon rights above mentioned she is excluded from the succession, and is also excluded if intestate deceased had not reached the age of majority.

SASKATCHEWAN

All to wife.

D

A MARRIED WOMAN WITHOUT ISSUE.

ALBERTA

All to husband.

BRITISH COLUMBIA

REALTY

One-half absolutely to husband, and residue of inheritance descends as in "A" of British Columbia.

PERSONALTY

All to husband.

MANITOBA

All to husband.

NEW BRUNSWICK

REALTY

To next of kin and their representatives, subject however to husband's curtesy if the marriage took place prior to 1st Jan., 1896. (See Married Woman's Property Act Con, Stat. 1903, Cap. 78 and Sec. 4 and Sec. 23 as Sec. 4 is amended by Act Q, Geo. V. (1916) Cap. 29).

PERSONALTY

All to husband. See it re Cleveland, 29 NB.R. 70. And on appeal sub nomine Lamb V. Cleveland, 19 S.C.R. 78.

NOVA SCOTIA

One-half to husband and the residue same as residue of realty in "C" of Nova Scotia with the word "husband" substituted for the word "wife."

ONTARIO

One-half to husband absolutely and residue as in "A" of Ontario. But husband may elect to remain tenant by curtesy in wife's real estate.

PRINCE EDWARD ISLAND

REALTY

Subject to husband's estate by the curtesy, same as in "A" of Prince Edward Island.

PERSONALTY

To husband. (See 3 Edw. VII. Cap. 21. Re Lambert's Estate 39 C.D. 626).

QUEBEC

Same as in "C" of Quebec with the word "husband" substituted for the word "wife" throughout.

SASKATCHEWAN

All to husband.

E

A MARRIED MAN WITH ISSUE.

ALBERTA

If only one child has been born to the intestate either by the wife living at his death, or by any former wife, one-half of his property goes to the wife and the other half to the child, if living, or to the legal representatives of said child, if deceased; and if the intestate dies leaving a wife and more than one child, then one-third goes to wife, rest to children; in case any of such children be dead, then to their lineal descendants *per stirpes*.

BRITISH COLUMBIA

REALTY

Wife takes one-third realty for life and subject thereto inheritance descends as in "A" of British Columbia.

PERSONALTY

One-third to wife and residue among children and such persons as legally represent them.

MANITOBA

One-third to wife; two-thirds to child or children. Children of deceased child take parent's share. By the Dower Act, 1919, the wife has also a life estate in the homestead.

NEW BRUNSWICK

REALTY

Subject to wife's dower, equally to children and their legal representatives.

PERSONALTY

One-third to wife and residue to children and their legal representatives.

NOVA SCOTIA

REALTY

Subject to wife's dower, same as in "B" of Nova Scotia.

PERSONALTY

One-third to wife and residue same as in "B" of Nova Scotia.

ONTARIO

One-third to wife absolutely and residue to children, dividing *per capita*, but including issue of deceased children *per stirpes*. Wife takes dower only in real estate unless she elect to take interest in realty as above.

PRINCE EDWARD ISLAND

REALTY

Subject to wife's dower, to children and their legal representatives.

PERSONALTY

One-third to wife and residue to children and their legal representatives.

QUEBEC

If wife abandon rights in community of property, the marriage contract, the insurance policies and dower, one-third goes to wife and two-thirds to child or children, and their issue *per stirpes*. If wife do not abandon rights above mentioned she is excluded from the succession, and she is also excluded if intestate deceased had not attained the age of majority.

SASKATCHEWAN

One-third to wife; rest to child or children, if children dead, then to their lineal descendants; but, by amendment in 1919, if only one child, the widow and this child share equally.

F

A MARRIED WOMAN WITH ISSUE.

ALBERTA

At present: Husband takes the whole of his deceased wife's personal estate and one-third of her real estate. The child or children take the other two-thirds of their mother's real estate.

After Chapter 11, 1920, comes in force June 1st, 1921: Same as by present law in "E" of Alberta, substituting "husband" for "wife."

BRITISH COLUMBIA

REALTY

Husband takes one-third realty for life, and subject their thereto inheritance descends as in "A" of British Columbia.

PERSONALTY

One-third to husband and residue to children and legal representatives

MANITOBA

One-third to husband and two-thirds to child or children. By the Dower Act, 1919, the husband has also a life-estate in the homestead.

NEW BRUNSWICK

REALTY

Subject to the husband's estate by the curtesy if the marriage occurred prior to January 1st, 1896, same as in "B" of New Brunswick.

PERSONALTY

If children by former husband survive, one-third to husband and two-thirds to all her children and their representatives; if children by surviving husband only survive then one-half to him and half to her children and their representatives.

NOVA SCOTIA

REALTY

Subject to husband's estate by the curtesy to her children and their legal representatives.

PERSONALTY

One-third to husband and residue to children and their legal representatives.

_ ONTARIO.

One-third to husband absolutely and residue to children and their issue as in "E" of Ontario. But husband may elect to remain tenant by curtesy in wife's real estate.

PRINCE EDWARD ISLAND

REALTY

Subject to husband's estate
by the curtesy to children and
their legal representatives.

PERSONALTY

One-third to husband and
residue to children and their
legal representatives.

QUEBEC

Same as in "E" of Quebec with the word "husband" substituted for the word "wife" and similar substitutions throughout.

SASKATCHEWAN

One-third to husband and two-thirds to child or children as in case "E" of Saskatchewan. The amendment of 1919 cited in case "E" also applies.

NOTES

1. There is dower in Prince Edward Island, New Brunswick, Nova Scotia, Ontario, Quebec and Manitoba (under special Dower Act); but none in Saskatchewan, Alberta, or British Columbia.
2. There is estate by the curtest' in Prince Edward Island, New Brunswick, Nova Scotia, Ontario and Manitoba (under special Dower Act); but none in Quebec, Saskatchewan, Alberta, or British Columbia.
3. The rule of distribution *per stirpes* seems of general application up to the third degree. In Prince Edward Island, Nova Scotia, Ontario, Manitoba and Alberta, but not in Quebec, where the only heirs are children of deceased brothers and sisters and they take *per capita*.
4. Distribution of realty or personalty among collaterals is not carried beyond the children of brothers and sisters in Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia; but in Prince Edward Island, the Statute has been interpreted by the Supreme Court as permitting the inclusion of further degrees of kindred in the case of personalty and in New Brunswick the limitation does not apply. In Quebec the limitation is at the 12th degree (see Table).
5. Advances seem to be treated as part of the shares in the estate both as to realty and personalty in all the Provinces.
6. Degrees of kindred are computed by the common law rule in New Brunswick and Manitoba and according to the civil law rule in Prince Edward Island, Nova Scotia, Quebec, Ontario, Saskatchewan and British Columbia.
7. Half blood inherits in all the provinces.
8. Escheat occurs in all the provinces.
9. Illegitimate children inherit in Saskatchewan and Alberta from and through their mother, but do not inherit at all in other provinces. Where legitimation takes place by subsequent marriage of the parents in the provinces which have adopted the Statute dealing with that subject or in Quebec under Article 237 of the Civil Code, inheritance can follow subject to the exceptions named in the Statute first mentioned.
10. Posthumous children inherit in all the Provinces.

(Appendix "I")

Winnipeg, Manitoba, July 19th, 1920:

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

At the meeting of the Conference held in Winnipeg on August 29th, 1919, "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 Act is undertaken, with the suggestion that they should confer with the Committee of the Association on Uniform Legislation." (Vol. 4 of the proceedings of the Canadian Bar Association, page 240.)

The Manitoba Commissioners have, therefore, prepared the following memorandum with regard to the matters submitted to them:—

1. History of proceedings taken in regard to Company Law by the Canadian Bar Association.

At the first annual meeting of the Canadian Bar Association, held at Montreal in 1915, no action whatever was taken with regard to the subject of Company Law. When the

Committees were elected, no Special Committee was elected to deal with the subject of Company Law, but the minutes show (Vol. 1, page 14), that "it was suggested" that "the Western group of representatives" consider the subject of "Joint Stock Companies." In an address delivered at the 1915 meeting on the subject, "Uniformity of Laws in Canada," Eugene Lafleur, K.C., had called attention to the unsatisfactory condition of our Company Law. (See Vol. 1, page 26.)

At the second annual meeting of the Canadian Bar Association, held at Toronto in 1916, a great deal of time and attention was devoted to this subject. A paper was read by A. H. Clarke, K.C. (See Vol. 2, page 88 for paper.) Following the reading of Mr. Clarke's paper a lengthy report of the Committee on Company Law prepared by Judge Robson (see Vol. 2, page 185, for report), was presented to the meeting by C. P. Wilson, K.C., and read by him in Judge Robson's absence. (See Vol. 2, page 19.) Following the reading of this report Mr. Wilson moved the following resolution:—

"That the Committee in charge be instructed to prepare a draft Act for submission at the next meeting of the Association, which will recognize the principle of the doctrine of *ultra*

vires, as suggested by Mr. Robson's paper, and will also provide for a distinction between public and private Companies." (See Vol. 2, page 19.)

This motion was seconded by S. B. Woods, K.C. Mr. Woods' remarks in support of the motion were followed by the reading by Victor E. Mitchell, K.C., of a paper on Company Law. (See Vol. 2, page 97 for paper.) Mr. Wilson then made some observations on Mr. Mitchell's paper, after which his motion was put to a vote without further discussion and carried. (See Vol. 2, page 22.) It is to be noted that while there are numerous suggestions contained in Judge Robson's report and in the papers read by Mr. Clarke and Mr. Mitchell the only official action was that embodied in Mr. Wilson's motion, namely, that the draft Act should (1) recognize the principle of the doctrine of *ultra vires*, and (2) provide for a distinction between public and private Companies. The suggestion that with regard to the manner of incorporation: the Association go on record in favor of the system of incorporation by Memorandum of Association rather than by Letters Patent was not adopted, although the impression seems to be quite general that this was done at the 1916 meeting.

The third annual meeting of the Association was not held until 1918. During the interval between the second and third meetings the subject of Company Law was in the hands of the Manitoba members of the Council, although there does not appear to be anything in the minutes of the Association specifically referring the matter to them. A draft Provincial Companies Act, prepared about 1913 by Judge Robson, was, at the instance of the general Manitoba Committee, introduced in the Dominion Parliament in April, 1917, with slight modifications as Bill 43, but was never considered by Parliament or its Committees. This Bill was under consideration for some time by the General Committee, but as no satisfactory progress was being made, the matter was finally referred to a Sub-Committee of four, consisting of E. Loftus, F. M. Burbidge, W. H. Trueman and H. A. Bergman, for the purpose of considering the broad general principles to be settled by the General Committee before the drafting of a model Act could be proceeded with. This Sub-Committee was appointed on June 18, 1919, with a request that it report at the earliest possible date, so that its report could be dealt with by the General Committee before the meeting of the Canadians Bar Association. This Committee presented its report on July 2nd, 1919, there being a majority report concurred in by Messrs. Loftus, Burbidge and Bergman, and a minority report by Mr. Trueman. It was felt that it was then too late for the General Committee to deal properly with the matter, and it took no

further action. The majority and minority reports of the Subcommittee, prefaced by an introductory and explanatory note by Mr. Isaac Campbell, K.C. were presented by Mr. Pitblado as the Report of the Committee on Company Law at the third annual meeting of the Canadian Bar Association, held at Montreal in 1918. The reports are found in the proceedings of the Canadian Bar Association., Vol. 3, at pages 202-219. Mr. Pitblado's remarks in presenting the report are found at pages 71-74. On the conclusion of his remarks a motion was made and carried, without any discussion, that the report be referred to the Committee on Uniform Laws of the Association, to be dealt with by them. (See page 74.)

When the Standing Committees of the Canadian Bar Association for 1918-1919 were struck, Mr. Trueman was made Convener of the Committee on Uniform Legislation and Law Reform (Vol. 3, page 104), and also made the Convener of the Committee on Company Law (Vol. 3, page 106), the latter Committee consisting of the Manitoba members of the Council (Vol. 3, page 106). No meeting of either of these two Committees was held between the third annual meeting of the Association in 1918 and the fourth annual meeting in 1919. The consequence was that no report on Company Law was presented at the fourth annual meeting of the Association, held at Winnipeg in 1919. The subject of *Ultra Vires* in Company Law was, however, on the programme. The discussion that took place is found at pages 38-47 of Vol. 4 of the proceedings of the Association. A motion was finally put and carried by a vote of 51 to 4 reversing the action taken by the Association in 1916, and adopting the recommendations embodied in the majority report of the Committee presented in 1918 (Vol. 4, page 47).

It would appear that by the action taken by the Association in 1918 (Vol. 3, page 74), referring the Report of the Committee on Company Law to the Committee on Uniform Laws, the Committee on Company Law really ceased to exist, or at any rate ceased to have any special work to do. And it is to be noticed, that when the Standing Committees for 1919-1920 were struck (Vol. 4, pages 77-79), no provision was made for a Committee on Company Law, and that beyond the vote taken on the subject of *ultra vires*, no action whatever was taken in 1919 by the Association with regard to Company Law.

2. Matters of principle to be decided before the drafting of a uniform Act is undertaken.

From the short history above set forth it will be seen that the whole matter is still in a state of chaos, so far as any definite policy has been decided upon, either as to method of incorporation or as to contents of any proposed uniform Act.

The Manitoba Commissioners suggest the following:—

Some of the matters of principle which will require decision before any uniform Act can be drafted:—

1. Should incorporation be by Letters Patent or Memorandum of Association?

Under existing laws the manner of incorporation at the present time is as follows:—

Letters Patent—The Dominion of Canada, Ontario, Quebec, Manitoba, Prince Edward Island and New Brunswick.

Memorandum of Association—Nova Scotia, Saskatchewan, Alberta and British Columbia.

2. Might a method be adopted of allowing incorporation either by Letters Patent or Memorandum of Association and providing for By-laws in a similar form to present Articles of Association? By this method it is thought there might be uniformity in the general bylaws of corporations even although there was not absolute uniformity in the method of obtaining the Charter. One of the arguments in favor of Articles of Association or By-laws similar thereto, is that these would be filed, and in that way the public might, if desired, have notice of the internal regulations of the Company.

3. No matter what the form of incorporation takes, should the doctrine of *ultra vires*, be abolished?

- (a) In its entirety, or
- (b) In so far as corporate contracts of 'a company concerned.

A discussion on this point took place at the annual meeting of the Canadian Bar Association in 1919 (see page 46 or the printed minutes), and it will be remembered that at this meeting a resolution was passed by a vote of 51 to 4 in the following language:

"That a uniform Companies Act be prepared embodying the provisions and suggestions set forth in Section 4 of the report of the majority of the Committee on Company Law as contained in Volume 3 of the Association, page 205."

Section 4 of the Committee's Report, which was approved in this resolution (see page 205 of the 1918 minutes), suggested doing away entirely with the doctrine of *ultra vires*, in so far as it related to corporate contracts, and the providing "that in any action brought on a contract entered into by a corporation it shall not be open to either the company or the other contracting party to raise the defence that the contract was *ultra vires* of the Company?"

The Committee's Report also suggested that if some protection was required for the shareholder or Creditor, provision Could be made for this by giving them the right to apply for an injunction to restrain the Company from engaging or attempting to engage in business outside the scope of the objects of incorporation.

Since the Bonanza Creek Company's case it must be noted that a number of the Provincial Legislatures have apparently attempted to give Companies incorporated in their respective Provinces the power and capacity of an ordinary person. See

Alberta (1916), Cap. 26.

Ontario (1916), Cap. 35, section 6.

Manitoba (1917), Cap. 12.

Saskatchewan (1917), Cap. 34; section 42.

4. Should the Imperial At be followed as closely as possible?

5. Should provision be made for the following:—

- (a) Companies 'limited by guarantee.
- (b) Companies unlimited as to liability.
- (c) Associations not for profit.
- (d) Companies without share capital:
- (e) Share warrants.

6. Supplementary Powers under "The Letters Patent Act"

The granting of Supplementary Letters Patent while theoretically discretionary, is in practice absolutely, within the control of the majority of the shareholders. Under the Imperial Act the right to obtain supplementary powers, is much restricted, and such powers can only be obtained on application to the Court and on showing sufficient cause.

Should a majority of the shareholders have the power to completely alter the objects of a Company and the nature of its business unless it is satisfactorily Shown that there is no oppression or unfair dealing on the part of such majority?

7. Issuing of Prospectuses.

The Ontario Act contains elaborate provisions in regard to the issuing of prospectuses. It has been claimed that in practice these provisions of the Ontario Act are unworkable, and that it is difficult to determine what Companies must issue a prospectus.

8. Public or Private Companies.

Should a distinction be made between Public and Private Companies? It will be remembered that at the Canadian Bar Association meeting in 1915 the resolution then passed suggested that Any draft bill should make such distinction. Probably the issuing of prospectuses would be one of the matters in which a distinction should be made,

9. Mining Companies.

Should Mining /Companies be treated differently from other Corporations; and, if so, in what respects?

10. Details.

There are many matters of detail which, once the broad general matters hereinbefore referred to have been disposed of, would, of course, require very careful consideration, but it is not thought advisable by the Manitoba Commissioners to deal with any of these matters until such time, as further progress has been made towards obtaining uniformity of view with regard to the matters hereinbefore referred to.

11. Is Uniformity in all Respects Feasible.

In view of the practice under the special Acts both in the Dominion and in the Provinces dealing with Company Law and the long established practice of the members of the profession in the various parts of Canada, your Commissioners feel that it may be very difficult to obtain uniformity in all respects in the various Provinces, but even if such uniformity may not be obtained, still, it should be feasible to have a very large number of the sections of the various Acts governing management, procedure, holding of meetings, borrowing powers, ect., made uniform your Commissioners feeling there should be no reason why the language of these different sections should differ in the different Provinces.

Respectfully submitted,

I. PITBLADO.

W. J. TUPPER

H. J. Symington,

Commissioners for Manitoba.