

PROCEEDINGS

OF THE

FIFTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

VANCOUVER

11TH, 12TH, 14TH, 15TH AND 16TH OF AUGUST, 1922

Conference of Commissioners on Uniformity of Legislation in Canada

OFFICERS OF THE CONFERENCE.

- President* Sir James Aikins, K.C., Winnipeg,
Manitoba.
- Vice-President* Mariner G. Teed, K.C., St. John,
New Brunswick.
- Treasurer* Frank Ford, K.C., Edmonton, Alberta.
- Corresponding Secretary*. John C. Elliott, K.C., London, Ont-
tario.
- Recording Secretary* ... John D. Falconbridge, K.C., 22 Chest-
nut Park, Toronto, Ontario.

Local Secretaries.

(For the purpose of communication between the commis-
sioners of the different provinces.)

- Alberta* Walter S. Scott, K.C., Parliament
Buildings, Edmonton.
- British Columbia* Avarð V. Pineo, Parliament Buildings,
Victoria.
- Manitoba* Herbert J. Symington, K.C., Lombard
Building, Winnipeg.
- New Brunswick* J. D. Pollard Lewin, St. John.
- Nova Scotia* Frederick Mathers, K.C., Parliament
Buildings, Halifax.
- Ontario* John C. Elliott, K.C., London.
- Prince Edward Island* .. W. E. Bentley, K.C., Charlottetown.
- Quebec* Hon. Ed. Fabre Surveyer, Judges'
Chambers, Superior Court, Mont-
real.
- Saskatchewan* Robert W. Shannon, K.C., Parliament
Buildings, Regina.

**Commissioners and Representatives of the Provinces of
Canada for the Purpose of Promoting
Uniformity of Legislation.**

Alberta:

FRANK FORD, K.C., Edmonton.

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

HAROLD H. PARLEE, K.C., Edmonton.

(Commissioners appointed under the authority of the
Statutes of Alberta, 1919, c. 31).

British Columbia:

JOSEPH N. ELLIS, K.C., 470 Granville Street, Vancouver.

AVARD V. PINCO, Parliament Buildings, Victoria.

J. STUART YATES, 416 Central Building, Victoria.

(Commissioners appointed under the authority of the
Statutes of British Columbia, 1918, c. 92).

Manitoba:

ISAAC PIRBLADO, K.C., Bank of Hamilton Building,
Winnipeg.

HERBERT J. SYMINGTON, K.C., Lombard Building,
Winnipeg.

TRAVERS SWEATMAN, K.C., Garry Building, Winnipeg.

(Commissioners appointed under the authority of the
Statutes of Manitoba, 1918, c. 99).

HJALINAR A. BERGMAN, K.C., McArthur Building,
Winnipeg.

ESTEN K. WILLIAMS, Somerset Block, Winnipeg.

New Brunswick:

WILLIAM B. WALLACE, K.C., St. John.

MARINER G. TEED, K.C., St. John.

J. D. POLLARD LEWIN, St. John.

(Commissioners appointed under the authority of the
Statutes of New Brunswick, 1918, c. 5).

Nova Scotia:

STUART JENKS, K.C., Halifax.

FREDERICK MATHERS, K.C., Halifax.

CHARLES J. BURCHELL, K.C., Halifax.

(Commissioners appointed under the authority of the
Statutes of Nova Scotia, 1919, c. 25).

Ontario:

SIR JAMES AIKINS, K.C., Winnipeg.

FRANCIS KING, K.C., Kingston.

JOHN D. FALCONBRIDGE, K.C., 22 Chestnut Park, Toronto.

JOHN C. ELLIOTT, K.C., London.

(Commissioners appointed under the authority of the
Statutes of Ontario, 1918, c. 20).

Prince Edward Island:

WILLIAM E. BENTLEY, K.C., Charlottetown.

Quebec:

HON. ED. FABRE SURVEYER, Judges' Chambers, Superior
Court, Montreal.

Saskatchewan:

ROBERT W. SULLIVAN, K.C., Regina.

JOHN A. M. PATRICK, K.C., Yorkton.

DOUGLAS J. THOM, K.C., Regina.

PREFACE.

The independent action of the various provincial legislatures naturally results in a certain diversity of legislation. In some cases diversity is inevitable, as, for instance, when the province of Quebec legislates upon subjects within the purview of the Civil Code of Lower Canada and according to principles derived from the law of France, and the other provinces legislate upon similar subjects according to principles derived from the common law of England. In such cases the problem of securing uniformity is confined to the common law provinces. There are, however, many other cases in which no principle of either civil law or common law is at stake, with regard to which the problem of securing uniformity is the same in all the provinces. Both these classes of cases include subjects of legislation as to which it is desirable, especially from the point of view of merchants doing business in different parts of Canada, that legislation should be made uniform throughout the provinces to the fullest extent possible.

In the United States work of great value has been done by the National Conference of Commissioners on Uniform State Laws. Since the year 1892 these commissioners have met annually. They have drafted uniform statutes on various subjects, and the subsequent adoption of these statutes by many of the state legislatures has secured a substantial measure of uniformity. The example set by the state commissioners in the United States was followed in Canada when, on the recommendation of the Council of the Canadian Bar Association, several of the provinces passed statutes providing for the appointment of commissioners to attend an interprovincial conference for the purpose of promoting uniformity of legislation.

The first meeting of commissioners and representatives of the provinces took place at Montreal on the 2nd of September, 1918, and at this meeting the Conference of Commissioners on Uniformity of Legislation in Canada was organized. The second annual meeting of the Conference took place at Winnipeg on the 26th, 27th, 28th and 29th of August, 1919, the third at Ottawa on the 30th and 31st of August and the 1st, 2nd and 3rd of September, 1920, the fourth at Ottawa on the 2nd, 3rd, 5th, 6th, 7th and 8th of September, 1921, and the fifth at

Vancouver on the 11th, 12th, 14th, 15th and 16th days of August, 1922.

In 1919 the Conference considered and adopted a report on legislative drafting, containing a carefully prepared selection of extracts from books written by the leading authorities on the subject, and directing attention to many important rules to be observed by draftsmen of statutes.

In 1919 and 1920 the Conference secured the adoption of the Sale of Goods Act, 1893, and the Partnership Act, 1890, in those common law provinces which had not already adopted them, and these two codifying statutes are now in force in all the provinces of Canada except Quebec.

In 1920 the Conference revised and approved model uniform statutes relating to legitimation by subsequent marriage and to bulk sales.

In 1921 the Conference revised and approved model uniform statutes respecting fire insurance policies and warehousemen's liens.

In 1922, in consequence of representations made by the superintendents of insurance and the insurers, the Conference reconsidered the model uniform statute respecting fire insurance policies, and approved it in a revised form. The conference also revised and approved a model uniform statute respecting conditional sales, and devoted much time to the consideration of the draft of a uniform model statute respecting life insurance.

Other subjects which have been considered by the Conference or which have been referred to committees for report are: reciprocal enforcement of judgments, companies, devolution of estates, wills, succession duties, mechanics' liens, workmen's compensation for injuries and the protection and property rights of married women.

Statutes have been passed in some of the provinces providing both for contributions by the provinces towards the general expenses of the Conference and for payment by the respective provinces of the travelling and other expenses of their own commissioners. The commissioners themselves receive no remuneration for their services.

J. D. F.

PROCEEDINGS.

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

The following commissioners or representatives were present at some of the sessions of the conference:

Alberta:

MESSRS. FORD, SCOTT AND PARLEE.

British Columbia:

MESSRS. ELLIS AND PINEO.

Manitoba:

MESSRS. SYMINGTON, WILLIAMS AND BERGMAN.

New Brunswick:

MESSRS. WALLACE, TEED AND LEWIN.

Nova Scotia:

MR. JENKS.

Ontario:

SIR JAMES AIKINS AND MESSRS. KING, FALCONBRIDGE AND ELLIOTT.

Saskatchewan:

MESSRS. SHANNON AND PATRICK.

FIRST DAY.

Friday, 11th August, 1922.

The Conference assembled at 10.30 a.m., at the Court House, Vancouver. In the absence of the president, the chair was occupied by the vice-president, Mr. Teed.

It was resolved that no stenographer should be employed for the purpose of reporting the proceedings of the Conference.

Messrs. Pineo and Shannon were appointed auditors of the treasurer's report.

It was resolved that the minutes of the fourth annual meeting as printed should be taken as read and approved, subject to the insertion on p. 19 of the proceedings of the Conference, 1921 (Canadian Bar Association, 1921, p. 281) of the following resolution:

That the draft Life Insurance Act be referred to a committee consisting of the Ontario commissioners with instructions to prepare a revised draft for submission to the Conference in 1922.

It was resolved that the two secretaries and Mr. Pineo be an agenda committee, and that the Conference should proceed with the consideration of the Life Insurance Act.

Mr. Falconbridge read the report of the Ontario commissioners on a uniform Life Insurance Act, and gave some explanation of the model statute as tentatively revised.

(Appendix A.)

It was resolved that at 2.30 p.m. the Conference should receive and hear the superintendents of insurance and the representatives of the insurers, the hearing to be limited to one representative of each interest.

After discussion of the question of reconsidering the uniform Fire Insurance Policy Act it was resolved that the superintendents of insurance and the representatives of the insurers should be received and heard, the hearing to be limited to new points.

At 12.45 the Conference adjourned.

AFTERNOON SESSION.

Friday, 11th August, 1922.

At 2.30 the Conference reassembled.

Mr. H. J. Sims, K.C., was heard on behalf of the Life Officers Association, and Mr. V. Evan Gray, Superintendent

of Insurance for Ontario, was heard on behalf of the superintendents of insurance.

At 6.00 p.m. the Conference adjourned.

SECOND DAY.

Saturday, 12th August, 1922.

At 10.00 a.m. the Conference reassembled at the Hotel Vancouver.

The treasurer's report and the auditors' report were received and adopted.

For convenience of reference the treasurer's statements submitted in 1920 and 1921 (which were omitted from the printed proceedings of 1920 and 1921) are printed below, along with the statement submitted in 1922:

TREASURER'S STATEMENT.

August 31, 1920.

Receipts.

1919.	
Nov. 15.—Province of Ontario	\$ 200.00
Dec. 12.—“ “ British Columbia	200.00
1920.	
Jan. 13.—“ “ Alberta	200.00
Feb. 23.—“ “ Manitoba	200.00
Mar. 10.—“ “ Saskatchewan	200.00
June 29.—“ “ New Brunswick	250.00
Aug. 17.—“ “ Manitoba	200.00
	\$1,450.00

Disbursements.

1919.	
Dec. 12.—Carswell Co., printing 1919 proceedings.	\$ 246.50
Edmonton Rubber Stamp Co.65
Dec. 29.—E. H. Coleman, printing 1918 proceedings	50.00
1920.	
Jan. 31.—E. H. Coleman, 100 copies report on legislative drafting	5.00
Apl. 22.—Carswell Co., copies of proceedings for Canadian Bar Association annual volume	160.00
July 1.—S. Tidy & Sons, flowers for Dr. Wilson's funeral	20.40
	\$ 482.55
Balance.....	967.45
	\$1,450.00

TREASURER'S STATEMENT.

September 1st, 1921.

Receipts.

1920.	
Aug. 31.—Balance on hand	\$ 967.45
Oct. 1.—Ch. S. Tidy & Sons, ret'd. and cancelled..	20.40
Nov. 27.—Province of Ontario	200.00
1921.	
Jan. 3.— “ “ British Columbia	200.00
Jan. 11.— “ “ Alberta	200.00
Jan. 20.— “ “ Saskatchewan	200.00
	\$1,787.85

Disbursements.

1920.	
Oct. 1.—James Hope & Sons, stationery for 1920 meeting	\$ 15.30
Oct. 11.—R. W. Shannon, K.C., acct. Leader Publ. Co., printing 500 copies model Fire Insurance Act	63.49
Nov. 10.—H. E. Oliver and D. J. Halpin, reporting Proceedings 1920 Conference—244 pages—27 copies	390.80
Oct. 1.—J. D. Falconbridge, to pay acct. S. Tidy & Sons, wreath funeral of Matthew Wilson, K.C.	20.40
1921.	
Jan. 20.—Emery, Newell, Ford & Lindsay—Stationery and postage to Dec. 31, 1920	7.00
Feb. 19.—Bulman Bros., Ltd.—Printing reports for 1920, meeting, and copies Bulk Sales Act	104.33
	\$ 601.32

1920 Balance and 1921 Receipts.....	\$1,787.85
1921 Expenditures	601.32

Sept. 1, 1921, Balance on hand	\$1,186.53
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Audited and found correct,

H. J. SYMINGTON,
A. V. PINEO,

Sept. 6th, 1921.

TREASURER'S STATEMENT.

August 1, 1922.

Receipts.

1921.	
Sept. 1.—	Balance on hand \$1,186.53
Oct. 5.—	Province of British Columbia 200.00
Oct. 18.—	“ “ Ontario 200.00
1922.	
Jan. 23.—	“ “ Nova Scotia 200.00
Apl. 21.—	“ “ Saskatchewan 200.00
May 26.—	“ “ Alberta 200.00
Aug. 1.—	“ “ New Brunswick 200.00
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	\$2,386.53

Disbursements.

1921.	
Sept. 17.—	Bulman Bros., printing 1920 proceedings including pages for Canadian Bar Association annual volume \$ 715.02
	James Hope & Sons, stationery, etc., for 1921 meeting 7.90
1922.	
Feb. 8.—	Halpin & Oliver, stenographic report of 1921 meeting 877.30
May 3.—	Carswell Co., printing 1921 proceedings, 500 Fire Ins. Pol. Act and 500 Ware- housemen's Lien Act 316.25
May 27.—	Carswell Co., printing pages for Can- adian Bar Association annual volume 196.00
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	\$2,112.47
	Balance.... 274.06
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	\$2,386.53

Audited and found correct, showing balance on hand August 1,
1922, \$274.06.

R. W. SHANNON,
A. V. PINEO,

Auditors.

Vancouver, August 11, 1922.

The Conference then heard Mr. V. Evan Gray on behalf of the superintendents of insurance, and Mr. J. B. Laidlaw and others on behalf of the insurers, advocating certain amendments of the uniform Fire Insurance Policy Act, as revised and approved by the Conference in 1921.

(Appendix C of the proceedings of 1921.)

At 1.10 p.m. the Conference adjourned.

AFTERNOON SESSION.

Saturday, 12th August, 1922.

At 2.30 p.m. the Conference reassembled.

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

It was resolved that the recording secretary be instructed to arrange with the Canadian Bar Association to have the report of the proceedings of the Conference published as an addendum to the report of the proceedings of the Association, the expenses of the publication of the addendum to be paid by the Conference. The secretary was also instructed to have the report of the proceedings published in pamphlet form and to send copies to the other commissioners.

The Conference then resolved itself into committee of the whole for the purpose of discussing the draft Life Insurance Act section by section.

(Appendix A.)

At 4.15 the committee rose and reported progress.

The report of the agenda committee was received, and the Conference adjourned.

EVENING SESSION.

Saturday, 12th August, 1922.

At 7.15 p.m. the Conference reassembled and resumed the discussion of the Life Insurance Act in committee of the the whole.

At 10.30 p.m. the committee rose and reported progress and asked leave to sit again, and the Conference adjourned.

THIRD DAY.

Monday, 14th August, 1922.

At 10.00 a.m. the Conference reassembled at the Hotel Vancouver.

It was resolved that Mr. Shannon be the representative of the Conference to make a statement of the work of the Conference at the meeting of the Canadian Bar Association.

The Conference resumed the discussion of the draft Life Insurance Act in committee of the whole.

(Appendix A.)

At 12.45 p.m. the committee rose, and the Conference adjourned.

AFTERNOON SESSION.

Monday, 14th August, 1922.

At 2.15 the Conference resumed the discussion of the draft Life Insurance Act in committee of the whole.

At 4.30 the committee rose, and the Conference adjourned.

EVENING SESSION.

At 8.15 p.m. the Conference reassembled and resumed the discussion of the Life Insurance Act in committee of the whole.

At 10.15 the committee rose, and the Conference adjourned.

FOURTH DAY.

Tuesday, 15th August, 1922.

At 10.00 a.m. the Conference reassembled at the Hotel Vancouver, and resumed the discussion of the draft Life Insurance Act in committee of the whole.

(*Appendix A.*)

At 12.00 noon the committee rose and reported that it had considered the draft section by section, and had made various amendments therein.

It was resolved that the draft Life Insurance Act, as revised at the present (1922) meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, be provisionally approved and be recommitted to the Ontario commissioners with instructions to revise it further as to form, and to distribute copies of the draft as further revised to the other commissioners, to the superintendents of insurance and to the representatives of the insurers, and to report again to the Conference in 1923.

After discussion it was resolved that the Fire Insurance Policy Act, as revised and approved by the Conference in 1921 (*Appendix C, proceedings, 1921*), should be reconsidered on certain points, and the Conference resolved itself into committee of the whole for this purpose.

At 1.00 p.m. the committee rose and the Conference adjourned.

AFTERNOON SESSION.

Tuesday, 15th August, 1922.

At 2.00 p.m. the Conference reassembled and resumed the discussion of the Fire Insurance Policy Act in committee of the whole. At 4.00 p.m. the committee rose and reported progress, and asked leave to sit again.

The Conference then resolved itself into committee of the whole for the purpose of discussing the draft Conditional Sales Act.

(*Appendix B.*)

After discussion the committee rose and reported that it had considered the draft Conditional Sales Act and had made

certain amendments therein, and the Conference thereupon adopted the following resolution:

Resolved by the Conference of Commissioners on Uniformity of Legislation in Canada that the draft of a model Act entitled "An Act to Make Uniform the Law Respecting Conditional Sales of Goods," as revised at the present (1922) annual meeting of the Conference, be approved and adopted, and that this draft Act be now recommended to the legislatures of the several provinces of Canada for enactment.

At 5.00 the Conference adjourned.

FIFTH DAY.

Wednesday, 16th August, 1922.

At 9.30 a.m. the Conference reassembled, and resumed the consideration of the Fire Insurance Policy Act in committee of the whole.

After discussion the committee rose and reported that it had made certain amendments in the Fire Insurance Policy Act, and thereupon the following resolution was adopted by the Conference:

The draft of a model Act entitled "An Act to Make Uniform the Law Respecting Policies of Fire Insurance," which was approved in 1921, having been opened for reconsideration in view of representations made by the provincial superintendents of insurance, by officers of the insurers and others, and these representations having been duly considered,

Resolved by the Conference of Commissioners on Uniformity of Legislation in Canada that the said draft, as revised at the present (1922) annual meeting of the Conference, be approved and adopted, and be now recommended to the legislatures of the several provinces of Canada for enactment.

(Appendix C.)

Dr. Wallace, on behalf of the New Brunswick commissioners, presented the report of the committee on Workmen's Compensation for Injuries. The report was received and ordered to be printed in the proceedings.

(Appendix D.)

Mr. Parlee, on behalf of the Alberta commissioners, presented a draft Wills Act. The draft was received and ordered to be printed in the proceedings.

(*Appendix E.*)

Mr. Parlee also made an oral report on the subject of Mechanics' Liens.

Mr. Symington, on behalf of the Manitoba commissioners, presented a report and a draft Companies Act. The report was received and adopted, and it was ordered that the report and sections 15A and 15B of the draft Act should be printed in the proceedings.

(*Appendix F.*)

Mr. Pineo, on behalf of the British Columbia commissioners, presented a report and a draft Reciprocal Enforcement of Judgments Act. The report was received and adopted, and it was ordered that the report and the draft Act should be printed in the proceedings.

(*Appendix G.*)

Mr. Pineo also made a report as to his correspondence with parliamentary counsel in Great Britain on the subject of Part II of the Administration of Justice Act, 1920. The report was received.

Mr. Shannon, on behalf of the Saskatchewan commissioners, presented a report and a draft Intestate Succession Act. The report and the draft Act were ordered to be printed in the proceedings.

(*Appendix H.*)

Mr. Jenks presented an oral report on the subject of Succession Duties.

The officers of the Conference were re-elected for 1922-1923, as follows:

President—Sir James Aikins.

Vice-President—Mr. Teed.

Treasurer—Mr. Ford.

Corresponding Secretary—Mr. Elliott.

Recording Secretary—Mr. Falconbridge.

It was resolved that in 1923 the Conference should meet four days (exclusive of Sunday) before the opening of the

meeting of the Canadian Bar Association, and at the same place.

It was resolved that the following four subjects, in the order named, should be the subjects to be first taken up in 1923:

- (1) Draft Life Insurance Act.
Already recommitted to the Ontario commissioners.
- (2) Draft Reciprocal Enforcement of Judgments Act
—Referred to the commissioners for British Columbia, Alberta and New Brunswick for criticism and report.
- (3) Draft Intestate Succession Act.
—Referred to the commissioners for Saskatchewan, Manitoba and Nova Scotia for criticism and report.
- (4) Draft Wills Act.
—Referred to the commissioners for Alberta, Prince Edward Island and Ontario for criticism and report.

The other subjects before the Conference were disposed of as follows:

Fraudulent Conveyances—Removed from the agenda.

Workmen's Compensation—To stand for the present.

Protection and Property Rights of Married Women—To stand for the present.

Mechanics' Liens—Referred to the Alberta commissioners.

Companies—Referred to the British Columbia commissioners for report, especially as to sections 15A and 15B. =

Succession Duties—Referred to the Nova Scotia commissioners with instructions to prepare a draft Act.

At 12.30 p.m. the Conference was prorogued.

APPENDICES.

- A. Draft Life Insurance Act.
- B. Conditional Sales Act.
- C. Fire Insurance Policy Act.
- D. Report on Workmen's Compensation Acts.
- E. Draft Wills Act.
- F. Report on Companies Act.
- G. Draft Reciprocal Enforcement of Judgments Act.
- H. Draft Intestate Succession Act.

APPENDIX A.

Report of Committee on a Uniform Life Insurance Act.

1. At the meeting of the Conference held at Ottawa in September, 1921, the Superintendent of Insurance for Ontario, on behalf of the Attorney-General, laid before the Conference a draft Life Insurance Act. This draft was the result of the collaboration of various counsel and of representatives of the Government of Ontario, the life insurance companies and fraternal societies, and was printed as appendix F to the proceedings of the Conference (Conference of Commissioners, 1921, pp. 54 to 74; Canadian Bar Association, 1921, pp. 316 to 336).

2. The draft in question was discussed clause by clause by the Conference, and was then referred to a committee, consisting of the Ontario commissioners, with instructions to prepare a revised draft for submission to the Conference in 1922.

3. In October, 1921, at Quebec, the Superintendent of Insurance for Ontario laid the same draft before the Association of Superintendents of Insurance of the provinces of Canada at its annual meeting. The Association expressed the opinion that it was desirable to secure uniformity in provincial statutes relating to life insurance and approved the general principles of the draft, it being understood that further opportunity would be given to make suggestions for the improvement of the form of the draft.

4. In April, 1922, your committee was furnished with copies of a revised draft in a form recommended by a special committee of the Canadian Life Officers' Association, and gave careful consideration to the changes suggested. Your committee also discussed the terms of its proposed draft with counsel for the last named association and the Superintendent of Insurance for Ontario.

5. Your committee, using the draft of 1921 as a basis, then prepared a tentative revised draft, of which copies were furnished to all the commissioners, to the provincial superintendents of insurance, to the Dominion superintendent, and to the Cana-

dian Life Officers' Association, and this draft was further discussed at an open meeting of your committee held at Toronto on the 28th June, 1922.

6. The draft now submitted to the Conference is the result of some further revision by your committee in the light of the discussion which took place at the meeting above mentioned. Your committee has not, however, had an opportunity of fully considering all the suggestions made at that meeting, and has ventured to inform the superintendents of insurance and the representatives of the insurers that the Conference will give them an opportunity of presenting their views to the Conference.

7. As regards form, your committee has subjected the draft of 1921 to a radical revision and has tried to simplify and make uniform the language. It has also effected some rearrangement of the sections, but in order to facilitate comparison with the draft of 1921 and reference to the discussion which took place in 1921, the section-numbering has been left unchanged for the present.

All which is respectfully submitted:

JOHN D. FALCONBRIDGE,
On behalf of the
Ontario Commissioners.

Toronto, July, 1922.

NOTE.

As the result of the discussion of the draft Life Insurance Act which took place at the meeting of the Conference held at Vancouver in August, 1922, the draft was amended in various particulars. It is now reprinted in its amended form for the purpose of inviting further suggestions for its improvement.

J. D. F.

December, 1922.

DRAFT LIFE INSURANCE ACT.

As Revised and Provisionally Approved by the Conference of
Commissioners on Uniformity of Legislation in
Canada at Vancouver, September, 1922.

FOR CONVENIENCE OF COMPARISON, THE SECTION
NUMBERING OF THE DRAFT PRINTED IN THE
CONFERENCE PROCEEDINGS OF 1921 HAS BEEN PRE-
SERVED, NOTWITHSTANDING SOME REARRANGE-
MENT OF THE ORDER OF THE SECTIONS.

*An Act to make Uniform the Law respecting Life Insurance
Contracts.*

His Majesty, by and with the advice and consent of the Leg-
islative Assembly of the Province of _____ enacts
as follows:—

SHORT TITLE.

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

INTERPRETATION.

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

(1) "Beneficiary" means any person entitled to insur-
ance money;

(4) "Contract" or "contract of insurance" means a con-
tract of life insurance;

(5) "Court" means the _____ or
a judge thereof;

(6) "Declaration" means an instrument in writing,
signed by the insured, attached to or endorsed on a policy
or in any way identifying the policy or describing the subject
of the declaration as the insurance or insurance fund or a
part thereof or as the policy or policies of the insured or
using language of like import, by which the insured designates
or appoints a beneficiary or beneficiaries, or alters or revokes

the designation or appointment of a beneficiary or beneficiaries, or apportions or reapportions insurance money between or among beneficiaries;

(8) "Foreign jurisdiction" means any jurisdiction other than the province;

(9) "Fraternal society" means a corporation, society, order or voluntary association incorporated and carried on for the benefit of its members and their beneficiaries and not for profit, which makes provision by its constitution and laws for payment to beneficiaries of benefits on the death or disability of its members;

(10) "Head office" means the place where the chief executive officers of an insurer transact its business;

(11) "Instrument in writing" includes a last will and testament;

(12) "Insurance" means life insurance;

(13) "Insurance money" or "benefits" includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance.

(14) "Insured" means the person who makes a contract of insurance with an insurer;

(15) "Insurer" includes any corporation, or any society or association, incorporated or unincorporated, any fraternal society or any person or partnership, or any underwriter or group of underwriters, that undertakes or effects, or agrees or offers to undertake or effect, a contract of insurance.

(16) "Judge" means a judge of the court;

(17) "Life insurance" means a contract by which the insurer undertakes with the insured to pay insurance money contingently on the death, or on the duration of the life, of a designated human being;

(18) "Maturity of the contract" means the death of the person whose life is insured or the expiration in his lifetime of the period mentioned in the contract as the contingency to which the contract is subject;

(19) "Person" includes firms, partnerships, corporations and unincorporated societies and associations;

(21) "Premium" means the single or periodical payment which the insured agrees to make for the insurance, and includes dues and assessments;

APPLICATION OF THE ACT.

3. (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Act shall apply to every contract of life insurance made in the province after the coming into force of this Act, and any term in any such contract inconsistent with the provisions of the Act shall be null and void.

(2) Unless hereinafter otherwise specifically provided, this Act shall apply to every contract of life insurance made in the province before the coming into force of this Act, where the maturity of the contract has not occurred before the coming into force of this Act.

(3) This Act shall apply to every other contract of life insurance made after the coming into force of the Act, where the contract provides that the Act shall apply or that the contract shall be construed or governed by the law of the province.

(4) Where this Act applies to any contract, the rights and status of beneficiaries and the powers of the insured with regard to the designation or appointment of beneficiaries and the apportionment of the insurance money shall be governed by the provisions of the Act, whether or not the insured or any of the beneficiaries is domiciled in the province at the time at which the contract is made or at any time subsequent thereto.

16. A contract is deemed to be made in the province,

(a) If the place of residence of the insured is stated in the application or the policy to be in the province, and if the insurer is duly authorized to carry on business within the province;

(b) If neither the application nor the policy contains a statement as to the place of residence of the insured, but the actual place of residence of the insured is within the province, and if the insurer is duly authorized to carry on business within the province;

(c) In any other case, if the head office of the insurer is situated within the province.

THE CONTRACT OF INSURANCE.

5. A contract of insurance shall be evidenced by an instrument in writing called a policy.

6. (1) A policy issued after the coming into force of this Act by an insurer other than a fraternal society shall state the name or sufficient designation of the insured, the person whose life is insured, the beneficiary, the benefits payable, the

manner of payment, the premium, and the facts which determine the maturity of the contract.

(2) Where the amount of insurance money, exclusive of dividends and bonus, does not exceed \$500, the policy may be expressed to be payable to a named beneficiary or to any relative by blood or connection by marriage of the insured or any other person appearing to the insurer to be equitably entitled to the same by reason of having incurred expense for the maintenance, medical attendance or burial of the insured or to have a claim against the estate of the insured in relation thereto.

23. (1) Except in the case of a contract made with a fraternal society, no term or condition of a contract of insurance which is not set out in full in the policy or in a document or documents in writing securely attached to it, shall be valid or admissible in evidence to the prejudice of the insured or a beneficiary.

(2) In the case of the renewal of the contract by a renewal receipt, it shall not be necessary to restate the terms of the contract, provided the receipt refers to the policy by its number.

(2a) Sub-section 1 shall not apply to an alteration or modification of the contract agreed upon in writing by the insurer and the insured after the issue of the policy.

(3) In the case of a contract of insurance made by a fraternal society, the Act or instrument of incorporation, if any, the constitution and laws of the society and any amendments validly made to them or any of them, and the application and medical examination signed by the applicant, shall constitute the contract between the society and its member.

7. (1) The insured and the person whose life is insured shall each disclose to the insurer every fact within his knowledge which is material to the contract.

(2) Any conscious failure to disclose, or any misrepresentation, of a fact material to the contract, on the part of the insured or the person whose life is insured, shall render the contract voidable at the instance of the insurer.

(3) Any misrepresentation or fraudulent concealment on the part of the insurer of a fact material to the contract shall render the contract voidable at the instance of the insured.

23. (4) No contract shall be rendered void or voidable by reason of any misrepresentation, or any failure to disclose on the part of the insured or the person whose life is insured, in the application for the insurance or on the medical examination or

otherwise, unless the misrepresentation or failure to disclose is material to the contract.

(7) The question of materiality shall be one of fact.

22. The statements made by the insured, or the person whose life is insured, in the application for insurance and on the medical examination, except fraudulent statements or statements erroneous as to age, shall be deemed to be true and incontestable after the policy has been in force for two years during the lifetime of the person whose life is insured.

24. (1) If the age of the person whose life is insured is understated in the application, the insurance money shall be reduced to the amount which would have been payable in respect of the premium stated in the policy at the actual age, according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

(1a) Where such tables of rates of premium of the insurer do not extend to or include the rates for the actual age of the person whose life is insured, the insurance money shall be reduced in the proportion that the premium at the age stated in the application bears to the premium at the actual age, both premiums for this purpose being the net premiums shown in or deduced from the British Offices Life Tables, 1893, O_M(5), the rate of interest being three and one-half per cent. per annum.

(4) If the age of the person whose life is insured is overstated in the application, and the policy does not provide that in that event the insurance money shall be increased, the insurer shall repay the amount by which the premium paid exceeds the premium which would have been payable in respect of the actual age, but if the policy so provides, the insurance money shall be increased to the amount which would have been payable in respect of the premium stated in the policy at the actual age according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

(2) Where, by the terms or for the purposes of the contract, an addition is made to the age stated in the application, and the age is understated in the application, then, for the purpose of the calculation, the actual age and the stated age shall respectively be deemed to be the actual age and the stated age increased by such addition.

(3) Where the application or contract expressly limits the insurable age, and the actual age at the date of the application exceeds the age so limited, the contract shall, during the lifetime of the person whose life is insured, but not later than five

years from the date of the contract, be voidable at the option of the insurer within thirty days after the error comes to its knowledge.

9. (1) Unless the contract or the application otherwise expressly provides, the contract shall not take effect or be binding on either party until the policy is delivered to the insured, his assign, or agent, or the beneficiary named therein, and payment of the first premium is made to the insurer or his duly authorized agent, while the person whose life is insured is living.

(2) Where a cheque or promissory note payable to the insurer is given for the whole or part of any premium, and the cheque is not paid on presentation or the promissory note at maturity, the contract shall, unless otherwise provided in the policy, be voidable at the instance of the insurer at any time before the premium is actually paid.

21. (1) Where any premium (not being the initial premium), under any contract is unpaid, the insured, his assign or agent, or any beneficiary, may, within thirty days from and excluding the day on which the premium is due, pay, deliver or tender to the insurer at its head office, or at its chief agency in the province, or to its collector or authorized agent, the sum in default.

(2) The payment may be made by sending a post office order or postal note, or a cheque payable at par and certified by a bank doing business in the province under the Bank Act, or a draft of such bank, or a money order of an express company doing business in the province, in a registered letter duly addressed to the insurer, and the payment, delivery or tender shall be deemed to have been made at the time of the delivery and registration of the letter at any post office.

(3) Notwithstanding any agreement or stipulation to the contrary, payment, delivery or tender as aforesaid shall have the same effect as if made at the due date of the premium.

(4) The thirty days hereinbefore mentioned shall run concurrently with the period of grace or credit, if any, allowed by the contract for the payment of a premium or of an instalment of premium.

(5) Upon the maturity of the contract during the said thirty days and before the overdue premium is paid, the policy shall be deemed to be in as full force and effect as if the premium had been paid at its due date, but the amount of such premium with interest (not in excess of six per cent. per annum), may be deducted from the insurance money.

(6) Nothing in this section shall deprive the insured of the benefit of any period of grace or credit allowed by the contract in excess of the period of thirty days above provided.

10. The insurer shall, upon request, furnish to the insured a true copy of the application for the insurance.

11. In a policy, or a declaration, the words "heirs," "legal heirs," "lawful heirs," or "next of kin" shall mean and include all persons entitled to share in the distribution of the personal estate of an intestate.

14. No officer, agent, employee or servant of the insurer or any person soliciting insurance, whether an agent of the insurer or not, shall to the prejudice of the insured be deemed to be for any purpose whatever the agent of the insured in respect of any question arising out of the contract of insurance.

INSURABLE INTEREST.

19. Every person has an insurable interest in his own life.

18. Without restricting the meaning which "insurable interest" now has in law, each of the following persons has an insurable interest:

- (a) A parent in the life of his child under twenty-five years of age;
- (b) A husband in the life of his wife;
- (c) A wife in the life of her husband;
- (d) One person in the life of another, upon whom he is wholly or in part dependent for support or education, or from whom he is receiving support or education;
- (e) A corporation or other person in the life of its or his officer or employee;
- (f) A person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

17. The contract shall be void, if, at the time at which it would otherwise take effect, the insured has no insurable interest.

20. Where the insured has at the time at which the contract takes effect an insurable interest in the life insured, it is not necessary for the validity of the contract that any beneficiary, or any person claiming under a transfer or assignment, or by will or by succession, have an insurable interest.

POLICIES ON THE LIVES OF INFANTS OR MINORS.

25. A minor over the age of fifteen years may effect contracts of insurance on his life and may do in respect of any contract

of insurance whatever a person of full age may lawfully do, including the surrender of a policy, the borrowing of money on its security, and the giving of receipts or discharges.

26. (1) No insurer shall insure the life of a child under ten years of age in any sum, or pay on the death of a child under ten years of age any sum, which alone or together with any sum payable on the death of the child by any other insurer exceeds the following sums respectively:—

\$ 20	if the child dies	under the age of	1	year
50	“	“	“	2 years
75	“	“	“	3 “
100	“	“	“	4 “
130	“	“	“	5 “
160	“	“	“	6 “
200	“	“	“	7 “
250	“	“	“	8 “
320	“	“	“	9 “
400	“	“	“	10 “

(2) Where the age of the child at the date of the contract is less than ten years, and the insurer knowingly or without sufficient enquiry enters into any contract prohibited by this section, the premiums paid thereunder shall be recoverable from the insurer by the person paying the same, together with interest thereon at six per cent. per annum.

(3) Every insurer which undertakes or effects insurance on the lives of children under ten years of age shall print the scale of benefits provided in subsection 1 or a lower scale if the contract limits the amount to such lower scale, in conspicuous type upon every circular or advertisement soliciting, and upon every application for, and every policy of such insurance.

(4) An insurer which knowingly contravenes the provisions of the preceding sub-sections 1 and 3 shall be guilty of an offence and liable to the penalties provided by law for the illegal conduct of insurance business in the province.

(5) Nothing in sub-sections 1 and 3 shall apply to such contracts as were in force on the _____ or to a contract where the insured has a pecuniary interest in the life, or which limits the payment on the death of the child before attaining ten years of age to the premiums that have been paid, with interest at the rate provided for in the contract.

BENEFICIARIES.

28 (2) Beneficiaries for value are beneficiaries who have given valuable consideration other than marriage and who are expressly stated to be, or described as, beneficiaries for value in the policy or in an endorsement thereon or in a subsequent declaration signed by the insured.

(3) Preferred beneficiaries are the husband, wife, children, grandchildren and mother of the person whose life is insured.

(4) Ordinary beneficiaries are beneficiaries who are not preferred beneficiaries, beneficiaries for value or assignees for valuable consideration.

30. A beneficiary for value and the assignee for value of a policy shall have a vested interest in the policy, and nothing in this Act shall enable the insured to restrict, interfere with or defeat the rights of a beneficiary for value.

29. (1) Subject to the rights of beneficiaries for value and assignees for value and to the provisions of this Act relating to preferred beneficiaries, the insured may designate the beneficiary by the policy or by a declaration, and may from time to time by any declaration appoint or apportion the insurance money, or alter or revoke any prior designation, appointment or apportionment, or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate.

(2) Where the declaration is made by will, the declaration as against a subsequent declaration shall be deemed to have been made at the date of the will and not at the death of the testator. A declaration contained in an unrevoked instrument purporting to be a will shall be effective as a declaration notwithstanding that the instrument is invalid as a testamentary document.

34. Where two or more beneficiaries are designated, but no apportionment is made, they shall share equally.

31. Where there are several ordinary beneficiaries, if one or more of them die before the maturity of the contract and no apportionment or other disposition is subsequently made by the insured, and it is not otherwise provided for in the policy or prior declaration, the share of the deceased beneficiary or beneficiaries shall be for the benefit of the surviving beneficiary or beneficiaries, in equal shares, if more than one, and if all the beneficiaries or the sole beneficiary die before the maturity of the contract and no other disposition is made by the insured and it is not otherwise provided for in the contract or prior declaration, the insurance shall be for the benefit of the insured or his estate

33. (1) Where the insured, in pursuance of the provisions of section 29, designates as beneficiary or beneficiaries a member or members of the class of preferred beneficiaries, a trust is created in favour of the designated beneficiary or beneficiaries, and, so long as any object of the trust remains, the insurance money, or such part thereof as is apportioned to the preferred beneficiary or beneficiaries, shall not be subject to the control of the insured, or of his creditors, or form part of the estate of the insured.

(2) The provisions of sub-section 1 are subject to any vested rights of beneficiaries for value and assignees for valuable consideration, to the provisions hereinafter contained relating to preferred beneficiaries, and to any contingency or limitation stated in the instrument by which the insured first designates the preferred beneficiary or beneficiaries, and, in particular, the insured, in the instrument by which he first designates the preferred beneficiary or beneficiaries, may stipulate that if a designated beneficiary is not living at the maturity of the contract, the insurance money or any part thereof shall be payable to the insured, to his estate, or to any other person, whether or not such person is a member of the class of preferred beneficiaries, or may stipulate that a designated beneficiary shall be entitled only to the income derived from the insurance money or any part thereof for life or for a term of years or otherwise.

34. Notwithstanding the designation of a preferred beneficiary or beneficiaries, the insured may subsequently exercise the powers conferred by section 29 so as to restrict, limit, extend or transfer the benefits of the contract to any one or more of the class of preferred beneficiaries to the exclusion of any or all others of the class, or wholly or partly to one or more for life, or any other term or subject to any limitation or contingency, with remainder to any other or others of the class.

35. (1) Subject to the provisions of the next following section, where by the policy or by a subsequent declaration the insurance money or any part of it is made payable to or for the benefit of the wife of the person whose life is insured, his future wife, his wife and children or his future wife and children generally, or his children generally, the word "wife" means the wife living at the maturity of the contract, and the word "children" includes all the children of the person whose life is insured living at the maturity of the contract as well as the issue living at the maturity of the contract of any child of his who predeceases him, such issue taking by representation.

(2) The provisions of sub-section 1 shall *mutatis mutandis* apply to insurance effected by a woman on her life where the insurance money or any part of it is made payable to or for the benefit of her husband or future husband, her husband and children or future husband and children generally, or her children generally.

(3) Sub-sections 1 and 2 shall not apply where the beneficiary or beneficiaries is or are designated by name.

36. (1) In case of the death, before the maturity of the contract, of any preferred beneficiary, whether designated by name or not, his share may be dealt with or disposed of by the insured under section 29 to the same extent as if the deceased beneficiary had not been a preferred beneficiary.

(2) Subject to sub-section 1 and to any provision in the policy or a declaration, the share of a preferred beneficiary who dies before the maturity of the contract shall be payable as follows:—

- (a) If the deceased beneficiary was a child of the person whose life is insured, and has left issue surviving at the maturity of the contract, his share, and any share to which he would have been entitled if he had survived, shall be payable to such issue in equal shares.
- (b) If there is no person entitled under clause (a), the share of such deceased beneficiary shall be payable to the surviving designated preferred beneficiary or beneficiaries in equal shares.
- (c) If there is no person entitled under clauses (a) and (b), the share of such deceased beneficiary shall be payable in equal shares to the wife and the child or children of the person whose life is insured living at the maturity of the contract, and the issue then living of any deceased child of the person whose life is insured, such issue taking in equal shares the share to which his or their parent would have been entitled if living.
- (d) If there is no person entitled under clauses (a), (b) and (c), the share of such deceased beneficiary shall be for the benefit of the insured, or his estate.

39. (1) Where the wife or husband of the person whose life is insured is designated as beneficiary, and is subsequently divorced, all interest of the beneficiary under the policy shall pass to the insured or his estate, unless such beneficiary is a beneficiary for value, or an assignee for valuable consideration.

(3) Until the insurer receives actual notice of the Act of Parliament, decree or order granting the divorce, it may deal with the insurance money in the same manner and with the same effect as if no divorce had been granted, and before paying the insurance money, the insurer shall be entitled to receive the original order or decree or a duly verified copy thereof, or a duly verified copy of the Act of Parliament, or a copy thereof printed by the king's printer, as the case may be.

(4) Nothing in sub-section 3 shall affect the right of any person entitled to payment by virtue of such Act of Parliament, decree or order to recover from any person to whom payment is made by the insurer.

40. Where the wife or husband of the insured is designated as beneficiary, and it appears, in the case of the wife, that she is living apart from her husband in circumstances disentitling her to alimony, or in the case of the husband, that he is living apart from his wife in circumstances disentitling him to an order for restitution of conjugal rights, and that there is no other member of the class of preferred beneficiaries whom the insured may designate as beneficiary in place of the designated beneficiary, the court may, on the application of the insured, and on such terms as may seem fit, declare the designated beneficiary disentitled to claim the benefit of the provisions of this Act relating to preferred beneficiaries.

42. (1) Notwithstanding the designation of a preferred beneficiary, the insured may surrender the contract to the insurer and accept in lieu thereof such paid-up or extended insurance benefit as may be provided by the contract payable to such beneficiary.

(2) Notwithstanding the designation of a preferred beneficiary, the insured may, from time to time, borrow from the insurer on the security of the contract, such sums as may be necessary and are applied to keep it in force, and the sums so borrowed, with such interest as may be agreed on, shall be a first charge on the contract and the insurance money.

43. (1) Notwithstanding the designation of a preferred beneficiary, any person who has effected a participating policy may either receive the surplus or profits for his own benefit or may, from time to time, either apply the same in payment or reduction of premiums, or direct them to be added to the insurance money; and the share of each beneficiary shall, in the last case, be proportionately increased.

(3) The insurer shall not be obliged to pay or apply such surplus or profits in any manner contrary to the stipulations in the contract.

44. (1) Where all the designated preferred beneficiaries are of full age, they and the insured may surrender the contract or may assign or dispose of the same either absolutely or by way of security.

(2) Where the beneficiaries, whether designated by name or not, include the wife or children or grandchildren, it shall be sufficient, so far as their interests are concerned, if all then living are of full age and join in the surrender, assignment or disposal.

(3) Where a person is entitled to a benefit only in the event of the death of another person named as a beneficiary, it shall be sufficient for the purpose of this section if such last-mentioned person joins in the surrender, assignment or disposal.

45. (1) Where the insurance money is payable in instalments and the contract expressly provides that the beneficiary shall not have the right to commute the instalments or to alienate or assign his interest therein, the insurer shall not commute the instalments or pay them to any person other than the beneficiary, and the instalments shall not, in the hands of the insurer, be subject to legal process except in an action to recover for necessities supplied to the beneficiary or his or her infant children, unless the insured, by an instrument in writing, declares that the beneficiary shall have the right to commute, or alienate or assign, as the case may be, or unless a judge in chambers, upon the application of the insurer or the beneficiary, upon at least ten days' notice, declares that it is expedient in view of special circumstances that the beneficiary shall have the right to commute, or alienate or assign, as the case may be.

(2) Notwithstanding anything in subsection 1, after the death of the beneficiary his or her personal representatives may commute any instalments payable to them.

(3) In this section the word "instalments" includes insurance money or any part thereof held by the insurer under the provisions of the next following section.

46. Subject to the provisions of this Act relating to preferred beneficiaries, where it is so expressly provided in the contract or by any subsequent agreement in writing, the insurer may hold the proceeds of the policy or any part thereof after maturity of the contract subject to the order of the beneficiary, or upon such trusts or other agreements for the benefit of the beneficiary as may be provided in the contract or agreement, allowing and

paying to the person entitled to such proceeds, or any part thereof, interest thereon at a rate not less than specified in the contract or agreement for the term during which the insurer retains such proceeds or any part thereof.

15. (1) Until the insurer has received actual notice of the making of an order declaring a beneficiary disentitled to the benefit of a policy, or of any instrument in writing affecting the insurance money or any part thereof, or of the appointment or the revocation of the appointment of a trustee, it may make any payment which would have been lawful and valid except for such order, instrument in writing, appointment or revocation of appointment, and before making any payment in pursuance or under the authority of such order, instrument in writing, appointment or revocation of appointment, it shall be entitled to receive the original or a true copy thereof.

(2) Nothing in this section shall affect the right of any person entitled to payment by virtue of such order, instrument in writing, appointment or revocation of appointment, to recover from any person to whom payment is made by the company.

PROOF OF CLAIM AND PAYMENT.

50. (1) The insurer shall be entitled to reasonably sufficient proof in writing verified by affidavit or statutory declaration of the maturity of the contract, of the age of the person whose life is insured and of the right of the claimant to receive payment of the insurance money.

(4) Where the insurance money or part thereof is payable to or for the benefit of minors, the insurer shall be entitled to reasonably sufficient proof of the names and ages of the minors.

47. (1) Insurance money which is expressed to be payable at the maturity of the contract shall be payable thirty days after reasonably sufficient proof has been furnished to the insurer of the maturity of the contract, and of the right of the claimant to receive payment.

(2) Insurance money shall be payable in the province in lawful money of Canada.

48. (5) Where the insurer does not admit the sufficiency of the proof furnished by the claimant of the maturity of the contract, or of the age of the person whose life is insured, or of the right of the claimant to receive payment of the insurance money, and where there is no other question in issue, except a question under sub-section 5a, the insurer or the claimant may,

before or after action brought, upon at least ten days' notice, apply to a judge in chambers for a declaration as to the sufficiency of the proof furnished, and the judge in chambers may dispense with proof of the age of the person whose life is insured.

(5a) Where the claimant alleges that the person whose life is insured is presumed to be dead by reason of his not having been heard of for seven years, and where there is no other question in issue except a question under sub-section 5, the insurer may, before or after action brought, upon at least ten days' notice, apply to a judge in chambers for a declaration as to the presumption of death.

(6) If the judge finds that the proof of the maturity of the contract, of the age of the person whose life is insured or of the right of the claimant to receive payment is sufficient, or that a presumption of death has been established, or makes an order dispensing with proof of the age of the person whose life is insured, his finding or order shall, subject to appeal, be conclusive and binding upon the parties to the application, and he may make such order as to the payment of the insurance money and as to the costs as to him may seem just.

(7) The payment by the insurer in accordance with the order shall discharge it from liability in respect of such payment.

(8) If the judge does not find that the proof of the maturity of the contract, of the age of the person whose life is insured, or of the right of the claimant to receive payment is sufficient, or that the presumption of death is established, he may order that the question or questions in issue be decided in an action brought or to be brought, or may make such other order as to him seems just as to further proof to be furnished by the claimant, as to publication of advertisements, as to further inquiry, and as to costs, or otherwise.

(9) Unless otherwise ordered by the judge, the application shall operate as a stay of any pending action with respect to the insurance money.

49. Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be presumed that the person whose life is insured died first.

LIMITATION OF ACTIONS.

48. (1) Subject to the following sub-sections of this section, any action or proceeding against the insurer for the recovery of insurance money shall be commenced within one year next after

the furnishing of reasonably sufficient proof of the maturity of the contract and of the right of the claimant to receive payment, or within six years next after the maturity of the contract, whichever period shall first expire.

(2) Where an order has been made declaring that death is presumed from the fact that the person whose life is insured has not been heard of for seven years, an action or proceeding shall be commenced within one year and six months from the date of the order, but not afterwards.

(3) Where the death of the person whose life is insured is unknown to the person entitled to claim under the contract, an action or proceeding may be commenced within one year and six months after the death becomes known to him.

(4) Where an action or proceeding is prematurely brought, the plaintiff shall be entitled to commence a new action or proceeding at any time within the prescribed period or within six months after the final determination of the first action or proceeding.

TRUSTEES, GUARDIANS, ETC.

51. (1) The powers conferred upon the insured by this Act with regard to the designation or appointment of a beneficiary or beneficiaries, and the alteration or revocation of such designation or appointment, and the apportionment or reapportionment of insurance money between or among beneficiaries, may be exercised from time to time by the appointment of a trustee or trustees for any beneficiary or beneficiaries, by the revocation of such appointment or the alteration of its terms, by the appointment of a new trustee or trustees, or by making provision for the appointment of a new trustee or trustees.

(2) The appointment of a trustee or trustees for any beneficiary shall not have the effect of taking away from the court or the insured any power of depriving the beneficiary of the benefit of the insurance money which the court or the insured would have under this Act if such beneficiary had been designated as beneficiary without the appointment of a trustee.

52. (1) If no trustee is appointed to receive the shares to which infants or other persons who are under disability are entitled, or if a trustee is named, but refuses or neglects to act, the shares of such infants or other persons under disability may be paid to a guardian or tutor or trustee of such infants or to a

curator, committee or trustee of such other persons under disability duly appointed under the law of this province.

(3) When insurance money not exceeding two thousand dollars is payable to the husband and children, to the wife and children, or to the children of the person whose life is insured, and one or more of the children are infants, the court or a

may, if the widow is the mother of such infants, appoint her their guardian, or if the husband is the father of such infants, appoint him their guardian, with or without security, and the insurance money may be paid to him or her as guardian.

(4) Where it appears that a guardian, tutor, curator, committee or trustee of infants or other beneficiaries under disability has been appointed in a foreign jurisdiction, and has given security in that jurisdiction, and that the infants or other beneficiaries are resident within that jurisdiction, the court may authorize payment of the insurance money to the guardian, tutor, curator, committee or trustee with or without security in the province.

PAYMENT INTO COURT.

53. (1) Where:—

- (a) There are adverse claimants to the insurance money or any part thereof; or
- (b) there is no person competent to receive the share of an infant or other person incapable of giving a discharge, or
- (c) the insurance money or any part thereof is payable to a person whose place of abode is unknown, and the insurer admits the claim or any part thereof, it may at any time after the expiration of one month from the maturity of the contract apply to the court according to the practice thereof for an order for payment of the money into court.

53A. Where the insurer does not within two months after due proof of the claim, pay the insurance money to some person competent to receive the same under this Act or into court, the court may, upon application of any person, order that the insurance money, or any part thereof, be paid into court or may make such other order as to the distribution of such money as to the court may seem just, and payment made in accordance with such order shall be a sufficient discharge to the insurer.

53B. The court may order the costs incurred upon or in connection with any application or order made under sections 53 and 53A to be paid out of the insurance money or by the insurer or the applicant or otherwise as may seem just.

CONSTRUCTION OF ACT.

58. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

REPEAL.

59. Chapter _____ of the _____ is hereby repealed.

COMING INTO FORCE.

60. This Act shall come into force on the first day of January, 1924.

APPENDIX B.

THE CONDITIONAL SALES ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 1922.

An Act to make Uniform the Law 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:—

SHORT TITLE.

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

INTERPRETATION.

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

“Buyer” means the person who buys or hires goods by a conditional sale, or any successor in interest of such person;

“Conditional sale” means (a) any contract for the sale of goods under which possession is or is to be delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition; or (b) any contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon full compliance with the terms of the contract;

“Goods” means all chattels personal other than things in action or money, and includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale, or under the contract of sale;

“Proper officer” means the officer with whom bills of sale and chattel mortgages are registered or filed;

“Registration district” means the registration district for bills of sale and chattel mortgages;

“Seller” means the person who sells or lets to hire goods by a conditional sale, or any successor in interest of such person.

REQUISITES AS AGAINST CERTAIN PERSONS.

3. (1) After possession of goods has been delivered to a buyer under a conditional sale, every provision contained therein whereby the property in the goods remains in the seller shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith, for valuable consideration and without notice, and as against creditors of the buyer who at the time of becoming creditors have no notice of the provision and who subsequently obtained judgment, execution, or an attaching order, under which the goods, if the property of the buyer, might have been seized, and the buyer shall, notwithstanding such provision, be deemed the owner of the goods, unless the requirements of this Act are complied with.

(2) Such provision shall be evidenced by a writing signed prior to or at the time of delivery of the goods, by the buyer or his agent, giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount unpaid of the purchase price or the terms and conditions of the hiring; and a true copy of such writing shall be filed within twenty days after it has been signed, with the proper officer of the registration district in which the buyer resided at the time of the making of the conditional sale, or, in case his residence is outside the Province, of the district where the goods are delivered.

(3) If the buyer resides in one registration district and the goods are delivered to him in another, such copy shall be filed in the district in which the delivery is made as well as in that of the buyer's residence.

(4) If the goods are after delivery removed by the buyer into another district, a true copy of such writing shall, within twenty days after such removal has come to the knowledge of the seller, be filed in the district into which the goods are removed.

(5) If the goods, having been delivered at a place outside the Province, are subsequently removed into the Province by the buyer, such copy shall be filed in the registration district to which the goods are removed, within twenty days after such removal has come to the knowledge of the seller.

(6) In case the buyer is an incorporated company, the place where the head office, or its chief agency or place of business in the Province, is situated shall be considered its residence.

(7) In the case of a contract for the sale to a railway, street railway or inter-urban railway company of rolling stock, the foregoing provisions of this section shall not apply if the contract or a copy of it is, within thirty days of its execution, filed in the office of the provincial secretary of the province in which the head office or chief agency in Canada of the company is situated.

SALES TO TRADERS.

4. If the goods are delivered to a trader or other person and the seller expressly or impliedly consents that the buyer may resell them in the course of business, and such trader or other person resells the goods in the ordinary course of his business, the property in the goods shall pass to the purchasers notwithstanding the other provisions of this Act.

DELIVERY OF COPY OF WRITING TO BUYER.

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

INDEX-BOOK.

6. The proper officer shall make an entry of every writing of which a copy is filed in his office under this Act in an index-book to be kept for that purpose.

IMMATERIAL ERRORS.

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

SELLER'S DUTY TO FURNISH PARTICULARS.

8. (1) The seller shall, within five days after the receipt of a request from any person proposing to purchase the goods or from any actual or intending creditor of the buyer or from any

other interested person, accompanied by a sufficient amount in money or postage-stamps to pay the postage on a reply by registered letter, furnish particulars of the amount remaining due to the seller and the terms of payment, and in default he shall be liable, on summary conviction, to a penalty not exceeding fifty dollars.

(2) 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, postage prepaid, deposited in a post-office within the prescribed time addressed to the name and post-office address so given.

BUYER'S DUTY TO GIVE NOTICE OF SALE OR REMOVAL

9. (1) Except for temporary purposes for a period of not more than thirty days, the buyer shall not remove the goods into another registration district unless he has, at least ten days before such removal, given the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of the intended removal.

(2) The buyer shall not, prior to complete performance of the contract, sell, mortgage, charge, or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage, charge, or otherwise dispose of same, has notified the seller in writing, personally or by registered mail, of the name and address of such person, not less than ten days before such sale, mortgage, charge, or other disposal.

(3) In case the buyer removes the goods or disposes of his interest in them contrary to the foregoing provisions of this section, the seller may retake possession of the goods and deal with them as in case of default in payment of all or part of the purchase price.

REDEMPTION AND RESALE WHERE SELLER RETAKES POSSESSION.

10. (1) Where the seller retakes possession of the goods pursuant to any condition in the contract, he shall retain them for twenty days, and the buyer may redeem the same within that period by paying or tendering to the seller the balance of the contract price, together with the actual costs and expenses of taking and keeping possession, or by performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and

expenses; and thereupon the seller shall deliver up to the buyer possession of the goods so redeemed.

(2) When the goods are not redeemed within the period of twenty days, and subject to the giving of the notice of sale prescribed by this section, the seller may sell the goods, either by private sale or at public auction, at any time after the expiration of that period.

(3) If the price of the goods exceeds thirty dollars and the seller intends to look to the buyer for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intended sale has been given to the buyer.

(4) The notice shall contain:—

(a) A brief description of the goods; and

(b) An itemized statement of the balance of the contract price due and the actual costs and expenses of taking and keeping possession up to the time of the notice; and

(c) A demand that the amount as stated in the notice shall be paid on or before a day mentioned, not less than five days from the delivery of the notice, if it is personally delivered, or not less than seven days from the mailing of the notice, if it is sent by mail; and

(d) A statement that, unless the amount as stated in the notice is paid within the time mentioned, the goods will be sold either at private sale or advertised and sold by public auction.

(5) The notice may be given by personal delivery to the buyer or by mailing it by prepaid registered mail addressed to the buyer at his last-known address.

(6) The notice may be given during the twenty days mentioned in subsection (1).

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

MEMORANDUM OF SATISFACTION.

11. (1) Upon payment or tender of the amount due in respect of the goods or performance of the conditions of the sale, and upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall sign and deliver to the person demanding it a memorandum in writing stating that his claims against the goods are satisfied, and such memorandum shall be accompanied

by an affidavit of execution of an attesting witness, and may on payment of the prescribed fee be registered.

(2) If for ten days after receipt of such demand the seller unreasonably fails to mail or deliver the required memorandum, he shall be liable for all damages suffered by the demandant in consequence of his default.

(3) Upon registration of such memorandum the proper officer with whom the copy of the writing evidencing the conditional sale agreement is filed under the provisions of section 3 shall enter satisfaction upon such copy.

GOODS AFFIXED TO REALTY.

12. If the goods have been affixed to realty they shall remain subject to the rights of the seller as fully as they were before being so affixed, but the owner of such realty, or any purchaser, lessee, mortgagee, or tenant, or other encumbrancer thereof, shall have the right as against the seller to redeem the goods upon payment of the amount owing on them.

ASSIGNMENT.

13. A valid assignment of a lien note or conditional sale agreement shall transfer the assignor's rights of property in the goods therein comprised, his right of seizure, removal, and sale, and all other rights which he possesses for enforcement of the security.

EVIDENCE.

14. Copies of any instrument filed under this Act certified by the proper officer shall be received as *prima facie* evidence of the contents of the original instrument and of its execution according to the purport of the copy. And the officer's certificate shall also be *prima facie* evidence of the date and hour of filing.

FEEES.

15. For services under this Act the proper officer shall be entitled to the following fees:—

1. For each registration, including stamping original or duplicate (if any) with registration stamp, cents;
2. For searching each name, cents;
3. For each certificate or abstract of search, cents;
4. For copies of documents, including certificate thereof, every 100 words, cents;

CONSTRUCTION OF ACT.

16. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those Provinces which enact it.

COMING INTO FORCE.

17. This Act shall come into force on the day of ,
192 .

APPENDIX C.

THE FIRE INSURANCE POLICY ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 1922.

An Act to Make Uniform the Law respecting Policies of Fire Insurance.

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 person or 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, profits and charges where these are the subject matter of the insurance.

TERM OF CONTRACT.

3. No contract shall be made for a term exceeding three years, or, in the case of a mercantile or manufacturing risk, whether on building or contents, or other property or interest, 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 address of the chief agency of the company in the province, 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. (1) Subject to the provisions of sub-section (2) of this section and of section 6, the conditions set forth in the schedule to this Act shall be deemed to be part of every contract in force in _____, and shall be printed on every policy with the heading "Statutory Conditions."

(2) Where the subject matter of the insurance is exclusively rents, charges and loss of profits or any of them, the conditions numbered 3, 11, 12, 13, 15 and 19, as set forth in such schedule, shall not be part of such contract and need not be printed on the policy.

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 unless those words are so printed or stamped such clause shall not be binding upon the insured. Such clause shall not be deemed an addition to the statutory conditions or 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 name, address and emblem of the company and the policy number and 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 may seem just.

RIGHT TO RECOVER EXCESS.

10. Where a company, having paid its share of the loss as determined by a reference under statutory condition number 17, is dissatisfied with the apportionment made by the referee

or referees, it may, by action in a court of competent jurisdiction, recover from the other company or companies, in accordance with their respective liabilities, the amount, if any, which in the opinion of the court it has paid in excess of its just share of the loss.

CONSTRUCTION OF ACT.

11. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

COMING INTO FORCE.

12. This Act shall come into force on the first day of July, 1924.

SCHEDULE.

STATUTORY CONDITIONS.

1. *Misrepresentation.*—If any person applying for insurance falsely describes the property to the prejudice of the company, or fraudulently 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, 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.

3. *Property not Insured.* — Unless otherwise specifically stated in the policy, money, books of account, securities for money, evidences of debt or title, and automobiles, tractors and other motor vehicles, are not insured.

4. *Risks not Covered.*—Unless otherwise specifically stated in the policy, 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 or damage caused by invasion, insurrection, riot, civil commotion, military or usurped power;

(c) For loss due to the want, within the knowledge of the insured, of good and substantial 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, by the insured or to his knowledge, 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, petroleum or any liquid product thereof, coal oil, camphene, gasoline, burning fluid, benzine, naphtha, or any of their constituent parts (refined oil for lighting, heating or cooking 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, dynamite or similar explosives;

(c) *Change of Interest.* — After the interest of the insured in the subject-matter of the insurance is assigned, but this condition is not to apply to an authorized assignment under *The Bankruptcy Act* or to change of title by succession, by operation of law, or by death;

(d) *Vacancy*.—When the building insured or containing the property insured is, to the knowledge of the insured, vacant or unoccupied for more than thirty consecutive days or, being a manufacturing establishment, ceases to be operated and continues out of operation for more than thirty consecutive 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 and 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 seventy-five 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 other insurance of the same class and character on the 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 ratable proportion of the loss or a ratable proportion of such amount as the insured shall be entitled to recover under clause (a) of this condition.

9 *Mortgagees and other Payees.*—

(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, the policy shall not be cancelled or altered by the company to the prejudice of the payee without reasonable notice to him.

10. *Termination of Insurance.*—(1) The insurance may be terminated:—

(a) Subject to the provisions of condition 9, by the company giving to the insured at any time 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 or postal note or by cheque payable at par and certified by a chartered bank doing business in the province. If the notice is given by registered letter, such repayment shall accompany the notice, and in such 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 thereof at its agreed value or its value as appraised under condition 17 or undertakes replacement 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 refuse to do so, by a person to whom any part of the insurance money is payable.

15. *Requirements after Loss*.—Any person entitled to claim 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;

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 wilful act or neglect or the procurement, means or connivance 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 wilfully 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. *Reference.*—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 a single referee to be chosen by the company and the insured, or if they cannot agree on one person then to two referees, one to be chosen by each party;

(b) The referees shall select a competent and disinterested person to be a third referee or umpire;

(c) In case either party fails to name a referee within seven clear days after being served with written notice so to

do, or in case the referees fail to agree upon an umpire within fifteen days after their appointment, or in case a referee or umpire refuses to act, unreasonably delays in acting, or is incapable of acting or dies, a judge of a superior, county or district court having jurisdiction 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 referees shall be entitled to judge the value of the property insured, the property saved or the amount of the loss, from their own knowledge, inspection or examination or from such other sources of information as they may in their discretion deem proper; and shall be entitled to hear on any question of law any party or his counsel, to take the opinion of counsel and (or) to refer any question of law, by stated case or otherwise, to the court for its decision;

(e) The award in writing of a single referee, 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 of the reference; where the amount awarded does not exceed the sum offered by the company in settlement, the insured shall pay such costs; in other cases the costs shall be in the discretion of the referees who may apportion the same as to them shall seem just;

(f) 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), (d), and (e), shall apply with the following qualifications:—

- i. all the companies shall unite in the choice of a single referee or a referee to represent the companies, and if any company neglects or refuses to so unite within four clear days after being served with notice to do so, any other company may apply to a judge of a superior, county or district court having jurisdiction in the county or district in which the loss happened, who may accordingly make the appointment;
- ii. notice under clause (c) shall be given to or on behalf of all the companies, and for the purposes of paragraph i. notice under clause (c) may be given by or

- on behalf of any company or companies to the other or others of them;
- iii. the award shall determine the proportions to be paid by and recoverable from the companies respectively; but shall be without prejudice to the right of any of the companies to claim against the other or others that the amount of its liability is less than the proportion awarded;
 - 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 shall be deemed to have been waived by the company, either in whole or in part, unless the waiver is clearly expressed in writing signed by an agent of the company.

23. *Notice.*—Any written notice to the company may be delivered at or sent by registered post to the chief agency or head office of the company in this province or delivered or so sent to any 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.

APPENDIX D.

REPORT ON PROVINCIAL LAWS RELATING TO WORK-
MEN'S COMPENSATION.

*To the Conference of Commissioners on Uniformity of Legis-
lation in Canada.*

In compliance with the resolution passed by the Conference last year, referring the subject of Workmen's Compensation to the Commissioners for New Brunswick for a report on the condition of the law in various provinces and the desirability of uniform legislation therein, we submit the following:—

The hereinafter mentioned Ordinances, Statutes and Acts have been available to us:—

Alberta: Act, 1918, Chapter 5; as amended, 1919, 1920 and 1921.

British Columbia: Act, 1916, Chapter 77; as amended, 1919 and 1920.

Manitoba: Statute, 1920, Chapter 159; as amended, 1921.

New Brunswick: Act, 1918, Chapter 37, as amended, 1919, 1920 and 1922.

Nova Scotia: Act, 1920, Chapter 42.

Ontario: Act, 1914, Chapter 25; as amended, 1915, 1916, 1917, 1919 and 1920.

Quebec: Revised Statutes, 1909, Chapter 3, Book 3; as amended, 1914, 1915, 1916, 1917, 1919 and 1920.

Saskatchewan: Act, 1911, Chapter 9; as amended, 1913, 1915, 1916 and 1917.

Yukon Territory: Employers' Ordinance, 1918, Chapter 5.

The laws on this subject in the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario are somewhat similar in their provisions. Each of these provinces have a board of three commissioners, appointed by the government, and these commissioners administer the laws of their respective provinces and collect from employers the amount required for carrying on the business and paying the employee or his dependents the amount of compensation coming to him as provided in the Acts or Ordinances relating to the subject.

The plan adopted by the commissioners in these provinces is called Capitalized Reserve Plan, and the amount required

is assessed by fixing a rate on each industry determined by the accident experience. Accidents are charged up to the year in which they occur. In the Province of British Columbia the workmen contribute to the accident fund and then only to medical aid.

Industries are classified and the amounts to be paid by employers are levied by an assessment rated upon estimated or actual payrolls or otherwise, as the board may deem proper, and notice is given to each employer of the amount of assessments due from time to time in respect of his industry and the time when such assessments are due and payable.

In the Province of Alberta the employee has no common law rights and suit for damages is not permitted, and in the other five provinces suit is permitted only in respect of employments not under the Compensation Act, if the injury is due to employer's negligence, and defences are abrogated.

The time limit for putting in claims in Alberta is three months, in Ontario six months and in the other four provinces twelve months.

In the Provinces of Alberta, British Columbia, Manitoba, New Brunswick and Nova Scotia the compensation benefits are based on fifty-five per cent. of the wages earned by the employee and in Ontario sixty-six and two thirds per cent. In the Provinces of Alberta, British Columbia, Manitoba and Ontario the maximum amount of wages on which compensation for disability is based is two thousand dollars. In the Province of New Brunswick it is fifteen hundred dollars, and in the Province of Nova Scotia it is twelve hundred.

These provinces pay compensation benefits for disability (permanent or temporary), and on the accidental death of the employee. For permanent partial disability Alberta pays the injured employee 55% of his earnings and certain weekly allowances to dependents, not exceeding in the whole \$2,000.00. British Columbia and Manitoba 55%, and Ontario 66 $\frac{2}{3}$ % of the average wages, weekly maximum indemnity being \$22.00; New Brunswick 55% of wages and total not exceeding \$2,500.00; and Nova Scotia 55% of wages, weekly maximum being \$13.20.

In all these provinces the maximum period for payment of such compensation benefits in case of death is during the life or until the re-marriage of the deceased's widow, or in case of disability, during its continuance. Provision is also made for the payment of compensation to dependents.

There is also provision for the payment of compensation for injury received by an employee while working in another province or state when the workman is on the payroll of the employer in the province paying the compensation.

In all these provinces the board may pay the whole sum or part, at its discretion, or commute the amount receivable by the workman for a lump sum.

As to accident prevention work, the only board having statutory jurisdiction is British Columbia. Alberta and Manitoba have no compensation laws for this work, and in the provinces of New Brunswick, Nova Scotia and Ontario employers' associations can undertake this work under supervision of the board.

In the Provinces of Quebec and Saskatchewan and the Yukon Territory they have Employers' Liability Acts, which are administered by the courts.

In Quebec, in case of partial disability the amount recoverable is 50% of the wage loss, in Saskatchewan it can never exceed \$2,000.00, and in the Yukon Territory the maximum is \$3,000.00. In case of total disability in Quebec the amount recoverable is 50% of wages during disability. In Saskatchewan, three years' earnings or \$1,800.00, but not exceeding \$2,000.00, and in the Yukon Territory, for permanent disability, \$3,000.00, and for temporary disability 50% of wages during disability, but not for over six months.

Voluntary agreements can be made between the employer and the employee in the Province of Quebec and the Yukon Territory, but the amount recoverable is limited, in Quebec it being \$2,500.00, in Saskatchewan \$2,000.00, and in the Yukon Territory \$3,000.00, as above stated. The amounts recovered are paid by the employer and waivers by the employers are forbidden, same as in other provinces.

In the Province of Prince Edward Island there is no Employers' Liability or Workmen's Compensation Legislation and the employee is left to his ordinary legal remedy.

The commissioners are not unanimous in their views on the desirability of Uniform Legislation in all respects.

Respectfully submitted,

WM. B. WALLACE.

For New Brunswick Commissioners.

St. John, N. B.,
July 26, 1922.

APPENDIX E.

DRAFT OF UNIFORM WILLS ACT.

An Act to Make Uniform the Law Respecting Wills.

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 Wills Act."
2. In this Act unless the context otherwise requires—
 - (a) "Mortgage" shall include any charge whatsoever, whether equitable, statutory or of any other nature, including any lien for unpaid purchase money, and "mortgagee" and "mortgage debt" shall have similarly extended meanings;
 - (b) "Personal property" shall include leasehold estates and other chattels real and also moneys, shares of Government and other funds, securities for money (not being real property), debts, choses in action, rights, credits, goods and all other property other than real estate which by law devolves upon the executor or administrator and any shares or interest in such property;
 - (c) "Province" shall mean
 - (d) "Real Estate" shall include messuages, lands, rents and hereditaments, whether corporeal, incorporeal or personal and any undivided share thereof, and any estate, right or interest (other than a chattel interest) therein;
 - (e) "Wills" shall include a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, a disposition by will and testament and any other testamentary disposition.

WHO MAY MAKE A WILL.

3. Every person may devise, bequeath or dispose of by will executed in manner hereinafter mentioned all real estate and personal property to which he is entitled at the time of his death, either at law or in equity, and which if not so devised, bequeathed or disposed of would devolve upon his personal representatives, including therein—

- (a) All estates *pur autre vie*, whether there is or is not any special occupant thereof and whether the same are corporeal or incorporeal hereditaments; and
- (b) All contingent, executory or other future interests in any real estate or personal property whether the testator is or is not ascertained as the person or one of the persons in whom the same may respectively become vested and whether he is entitled thereto under the instrument by which the same were respectively created or under any disposition thereof by deed or will; and
- (c) All rights of entry for conditions broken and other rights of entry; and
- (d) Such of the same estates, interests and rights respectively and other real estate and personal property as the testator may be entitled to at the time of his death, notwithstanding that he has become entitled to the same subsequently to the execution of his will.

(British Columbia, Manitoba, Ontario, Nova Scotia, and Saskatchewan, practically the same. Nova Scotia mentioned "heirs at law.")

4. Except as hereinafter otherwise provided, no will made by any person under the age of twenty-one years shall be valid.

(British Columbia, Manitoba, Nova Scotia, New Brunswick, Saskatchewan, Ontario, the same. No exception in Ontario.)

5. (1) Any soldier being in actual military service and any mariner or seaman being at sea, may dispose of his real or personal property by a writing signed by him, without any further formality, or any requirement as to the presence of, or attestation or signature by any witness.

(2) A soldier shall be considered to be in actual military service after he has taken some step under the orders of a superior officer in view of and preparatory to joining the forces in the field.

(3) The fact that any such soldier, mariner or seaman is an infant at the time he makes his will shall not invalidate the same.

(British Columbia limits to personal property and requires manner as before the passing of the Act. Nova Scotia has limit of personal property and the manner is that in which he might have done prior to the 27th March, 1840. Manitoba refers to personal property—same otherwise. Sas-

katchewan, practically the same. Ontario limits to personal property and manner is as before the passing of the Act. New Brunswick, practically the same.)

FORM, EXECUTION AND ATTESTATION.

6. No will shall be valid unless it is in writing and executed in manner hereinafter mentioned, that is to say:

- (a) It shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction; and
- (b) Such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (c) Such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

(2) Notwithstanding the provisions of this section a holograph will, written and signed by the testator himself, shall be valid, though not made or acknowledged in the presence of any witness.

(See Manitoba, section 10.)

(If this provision as to holograph wills is accepted it is probable that consequent alterations shall have to be made to other sections, such as sections 11 and 19.)

7. Every will shall, so far only as regards the position of the signature of the testator or the person signing for him as aforesaid, be deemed to be valid if the signature is so placed at or after or following or under or beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will.

- (2) No such will shall be affected by the circumstance—
- (a) That the signature does not follow or is not immediately after the foot or end of the will; or
- (b) That a blank space intervenes between the concluding words of the will and the signature; or
- (c) That the signature is placed among the words of the testimonium clause or of the clause of attestation or follows or is after or under the clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name or one of the names of the subscribing witnesses; or

- (d) That the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or
- (e) That there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

(3) The enumeration of the above circumstances shall not restrict the generality of subsection 1 of this section, but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

8. (1) No appointment made by will in exercise of any power shall be valid unless the same is executed in manner hereinbefore required.

(2) Every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will notwithstanding that it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

9. Every will executed in manner hereinbefore required shall be valid without any further publication thereof.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

WITNESSES.

10. If any person who attests the execution of a will is at the time of the execution thereof or becomes at any time afterwards incompetent to be admitted as a witness to prove the execution thereof such will shall not on that account be invalid.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, and Saskatchewan, the same. Ontario practically the same.)

11. If any person attests the execution of a will to whom or to whose then wife or husband any beneficial devise, legacy,

gift or appointment of or affecting any real estate or personal property (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, gift or appointment shall so far only as concerns the person attesting the execution of such will or such wife or husband or any person claiming under such wife or husband, be null and void, and the person so attesting shall be admitted to prove the execution of such will or the validity or invalidity of such will: Provided that where the will is sufficiently attested without the attestation of any such person, such devise, legacy, gift or appointment shall not be void.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, and Saskatchewan, the same; Ontario practically the same.)

2. If by any will any real estate or personal property is charged with any debt or debts and any creditor or the wife or husband of any creditor whose debt is so charged attests the execution of such will such creditor, notwithstanding such charge, shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

13. No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

EXECUTION OF WILLS MADE OUTSIDE PROVINCE.

14. Every will made outside of the Province by a British subject whatever was the domicile of the testator at the time of making the same or at the time of his death shall, as regards personal property, be held to be well executed for the purpose of being admitted to probate in this Province if the same is made according to the forms required either—

- (a) By the law of this Province, or
- (b) By the law of the place where the testator was domiciled when the same was made, or
- (c) By the law of the place where the will was made, or
- (d) By the law then in force in that part of His Majesty's Dominions where he had his domicile of origin.

(British Columbia and Manitoba do not appear to have this section. New Brunswick, the same. Nova Scotia practically the same, except in Nova Scotia there is no restriction as to His Majesty's dominions. The Ontario provision is followed by a subsection which provides that where a British subject executes a will in Ontario, it is good, no matter what his domicile is, if made according to the law of Ontario. Saskatchewan practically the same.)

REVOCATION AND ALTERATION.

15. No will shall be held to be revoked or to have become invalid nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making same.

(British Columbia does not appear to have this section. Manitoba does not appear to have this section. New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

16. Every will shall be revoked by the marriage of the testator except in the following cases, namely—

- (a) Where it is declared in the will that the same is made in contemplation of such marriage;
- (b) Where the will is made in exercise of a power of appointment and the real estate or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator of the testator or persons entitled to the estate of the testator under *The*
- (c) Where the widower or widow of the testator elects to take under the will by an instrument in writing signed by him or her and filed within one year after the testator's death in the court in which probate of the will is taken or sought to be taken.

(Paragraphs (a) and (c) do not appear to be in British Columbia. Manitoba only has (b) of this section. New Brunswick only has (b) of this section. Nova Scotia, practically the same. Ontario, the same. Saskatchewan, the same.)

17. No will shall be revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

18. No will or any part thereof shall be revoked otherwise than as aforesaid, or—

- (a) By another will executed in manner required by this Act; or
- (b) By some writing declaring an intention to revoke the same and executed in the manner in which a will is by this Act required to be executed; or
- (c) By burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

19. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration are not apparent unless such alteration is executed in the manner by this Act required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or in some part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or in some other part of the will.

(British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan, the same. Nova Scotia, very much the same, but refers to cancellation by drawing lines.)

20. (1) No will or any part thereof which has been in any manner revoked shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner in this Act required and showing an intention to revive the same.

(2) When any will which has been partly and afterwards wholly revoked is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

21. No devise of land shall be valid or effectual as against the personal representatives of the testator until the land affected thereby has been transferred by them to the devisee thereof.

(British Columbia, Nova Scotia and Ontario do not appear to have this section. Manitoba, New Brunswick and Saskatchewan, the same.)

22. No conveyance or other act made or done subsequently to the execution of a will or relating to any real estate or personal property therein comprised, except an act by which such will is revoked as in this Act mentioned, shall prevent the operation of the will with respect to such estate or interest as the testator had power to dispose of by will at the time of his death.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

23. Every will shall be construed with reference to the real estate and personal property affected by it to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears by the will.

(British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan, the same. Nova Scotia practically the same, except refers to will of married woman.)

24. Unless a contrary intention appears by the will such real estate or interest therein as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of the devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise, if any, contained in such will.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

25. A devise of the land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it shall be construed to include the leasehold estate of the testator or his leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates, unless a contrary intention appears by the will.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

26. (1) A general devise of the real estate of the testator or of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall be construed to include any real estate or any real estate to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an

execution of such power unless a contrary intention appears by the will.

(2) In like manner a bequest of the personal property of the testator or any bequest of personal property described in a general manner shall be construed to include any personal property or any personal property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power, unless a contrary intention appears by the will.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

27. Where any real estate is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate which the testator had power to dispose of by will in such real estate, unless a contrary intention appears by the will.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

28. Where any real estate is devised to the heir or heirs of the testator or of any other person and no contrary or other intention is signified by the will, the words "heir" and "heirs" shall be construed to mean the person or persons to whom such real estate would descend under the law of the Province in the case of intestacy.

(Does not appear to be in British Columbia, Manitoba, New Brunswick or Nova Scotia. Ontario and Saskatchewan, the same.)

29. In any devise or bequest of real estate or personal property the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue unless a contrary intention appears by the will; but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift be born or if there is no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

(British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan, the same. Nova Scotia follows English Act in referring to "Estate tail.")

30. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such real estate or in the surplus rents and profits thereof is not given to any person for life, or such beneficial interest is given to any person for life, but for the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate and not an estate determinable when the purposes of the trust are satisfied.

(British Columbia, Manitoba, New Brunswick, Ontario and Saskatchewan, the same. Section does not appear to be in Nova Scotia.)

31. Where any real estate is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a definite term of years absolute or determinable or an estate of freehold is thereby given to him expressly or by implication.

(British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan, the same.)

32. Where any person to whom any real estate is devised for what would be under the law of England an estate tail or an estate in *uis entail*, dies in the lifetime of the testator leaving issue who would be inheritable under such entail if such estate existed and any such issue are living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person has happened immediately after the death of the testator, unless a contrary intention appears by the will.

(British Columbia, practically the same; Manitoba, New Brunswick, Nova Scotia and Saskatchewan, the same. Ontario, practically the same.)

33. Where any person being the child of other issue of the testator to whom any real estate or personal property is devised or bequeathed for any estate or interest not determinable at or before the death of such person dies in the lifetime of the testator leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if such person had died intestate immediately after the death of the testator, unless a contrary intention appears by the will.

(British Columbia, Manitoba, Nova Scotia, Ontario and Saskatchewan, the same. New Brunswick does not appear to have this section.)

33. Every illegitimate child of a woman shall be entitled to take under a testamentary gift by or to her or to her children or issue the same benefit as he or she would have been entitled to if legitimate.

(Saskatchewan, the same. Manitoba, New Brunswick, Nova Scotia, Ontario and British Columbia, do not appear to have this section.)

MORTGAGE DEBTS.

35. Where any person dies seized of or entitled to any estate or interest in any freehold or leasehold property which at the time of his death is charged with the payment of any sum or sums of money by way of mortgage and such person has not by his will or by deed or other document signified any contrary or other intention, the heir or devisee to whom such property descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of any other property of such person; but the property so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) In the construction of any will or deed or other document to which this section relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal property, or a charge of or direction for the payment of debts upon or out of residuary, real and personal estate or residuary real estate shall not be deemed to be a declaration of an intention contrary to or other than the rule in the first subsection hereof, unless such contrary or other intention be further declared by words expressly or by necessary implication referring to all or some of the testator's debts charged by way of mortgage on some part of his freehold or leasehold property.

(3) Nothing herein contained shall affect or diminish any right of the mortgagee of such freehold or leasehold property to obtain full payment or satisfaction of his mortgage debt out of

the personal property of the person so dying as aforesaid or otherwise.

(British Columbia, New Brunswick and Nova Scotia do not appear to have this section. Manitoba, Ontario and Saskatchewan, practically the same.)

36. When any person dies after the passing of this Act having by will or any codicil thereto appointed any person or persons to be executor or executors thereof such executor or executors shall be deemed to be a trustee or trustees of any residue not expressly disposed of for the person or persons, if any, who would be entitled thereto in the event of intestacy in respect thereof, unless it appears by the will or any codicil thereto that the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

Provided that nothing herein contained shall affect or prejudice any right to which the executor, if this Act had not been passed, would have been entitled, in cases where there is not any such person or persons as aforesaid.

37. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

BRITISH COLUMBIA WILLS ACT.

Section 4 of British Columbia deals with "special occupancy."

Section 9 of British Columbia deals with wills made in Great War.

Section 31 of British Columbia deals with wills to which the Act is applicable.

Section 32 of British Columbia deals with proof of execution and declaration of attesting witnesses.

MANITOBA WILLS ACT.

Section 10 of the Manitoba Act permits holograph wills.

NEW BRUNSWICK WILLS ACT.

Section 28 of the New Brunswick Act deals with married women.

NOVA SCOTIA WILLS ACT.

Section 3 of the Nova Scotia Act mentions "heirs at law."

Section 5 of the Nova Scotia Act gives power to a married

woman to appoint an executor or make an appointment under a power by will.

Section 15 of the Nova Scotia Act restricts devises, etc., to a husband as to amount and circumstances of making, and as to declaration for Justices, etc.

Section 34 of the Nova Scotia Act provides for penalty for suppression of will.

Section 35 of Nova Scotia Act provides for sale of lands by acting executors.

Section 33 of the Nova Scotia Act refers to carrying out of sale.

ONTARIO WILLS ACT.

Section 10 of the Ontario Act deals with a widow's right to dispose of crop.

SASKATCHEWAN WILLS ACT.

Section 5 of the Saskatchewan Act refers to married women.

Section 29 of the Saskatchewan Act has a direction as to a devise creating an estate tail.

APPENDIX F.

REPORT OF THE COMMITTEE ON A UNIFORM
COMPANIES ACT.

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

At the last meeting of the Conference, the subject of a Uniform Act was again referred to the Commissioners for Manitoba.

We are submitting for your consideration, a draft Companies Act in which the following principles have been embodied:

- (1) Incorporation by Memorandum of Association instead of by Letters Patent.
- (2) Instead of Articles of Association the Act provides for By-laws of the Company.
- (3) The Act provides for the abolition of the doctrine of *ultra vires* in so far as corporate contracts are concerned, but an attempt is made in the draft Act to protect shareholders and creditors where rights may be affected by directors engaging in transactions foreign to those provided for in the Memorandum of Association.
- (4) Mining companies have been provided for.
- (5) Supplementary Letters Patent increasing the powers of the Company may be obtained at the wish of the majority of the shareholders.
- (6) Prospectuses have been dealt with.

The draft Act is based on a bill prepared by Mr. H. A. Robson, K.C., of Winnipeg, some years ago when the Manitoba members and a committee of the Bar Association on Company Law had under consideration a Uniform Companies Act.

We have omitted for the present, clauses dealing with licensing of foreign companies and have also omitted statutory forms.

We understand the prospectus provisions have aroused a great deal of objection in Ontario where substitutes are now being considered.

We realize that the draft Act is very incomplete and will require a great deal of careful study and consideration by the

members, but we hope it may serve as a basis for further deliberation by the Conference.

Respectfully submitted,

H. J. SYMINGTON,

Secretary Manitoba Commission.

Winnipeg, August 8th, 1922.

DRAFT COMPANIES ACT.

Note.—In accordance with the instructions of the Conference, only sections 15A and 15B of the draft Companies Act are reprinted here, as follows:

15A. Every company heretofore or hereafter created,

- (a) By or under this Act, or by or under any Act for which this Act was substituted; or
- (b) By or under any Act hereafter passed in substitution for or in lieu of this Act; or
- (c) By or under any general or special Act of the legislature of the Province of

shall, unless otherwise expressly declared in the Act or instrument creating it, or in the memorandum of association thereof, have, and be deemed to have had from its creation, the capacity of a natural person to accept the same powers and rights outside of the Province of _____ as it has in the province, and to exercise its powers beyond the boundaries of the province to the extent to which the laws in force where such powers are sought to be exercised permit, and shall, unless otherwise expressly declared in the Act or instrument creating it, or in the memorandum of association thereof, have, and be deemed to have had from its creation, the general capacity which the common law ordinarily attaches to corporations incorporated by royal charter under the great seal.

(Man. 1917, c. 12, sec. 1. Similar provision: Alta., 1916, c. 26, sec. 1; Ont. 1916, c. 35, sec. 6.)

15B. Any contract made by a company shall, as between the contracting parties and all persons lawfully claiming any right thereunder, be binding upon the parties thereto, notwithstanding that such contract was beyond the powers of the company, and in any action brought in any Court of this Province, upon or in respect of any such contract, no person shall plead that the contract was beyond the powers of the company.

Provided, however, that the Court shall have power at the suit of any shareholder or creditor of a company, to enjoin

the company or its directors or officers from engaging in or attempting to engage in any business or transaction which is outside the scope of the objects or powers of the company.

And provided further, that any director or officer of the company who authorizes or consents to the company engaging in any business or transaction which is outside the scope of the objects or powers of the company, shall be personally liable for any damages sustained by the company at the suit of the company or any shareholder on behalf of himself and all other shareholders, provided that any action for the recovery of such damages must be brought within one year after such business or transaction was engaged in, and provided that if the company is not a plaintiff it shall be made a party defendant in any such action.

APPENDIX G.

REPORT OF COMMITTEE SUBMITTING DRAFT ACT
TO FACILITATE THE RECIPROCAL ENFORCE-
MENT OF JUDGMENTS AND AWARDS.

*To the Conference of Commissioners on Uniformity of Legis-
lation in Canada:*

GENTLEMEN—

Your Committee, consisting of the British Columbia Commissioners, herewith present the redraft of an Act to facilitate the reciprocal enforcement of judgments and awards, and in doing so beg to state that they have simply endeavoured to give effect to the recommendations and resolutions passed at the Conference held last September, and which are embodied in the printed report of the proceedings of the Conference.

Respectfully submitted,

J. STUART YATES,

On behalf of the Committee.

Victoria, May 29th, 1922.

DRAFT RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT.

*An Act to facilitate the Reciprocal Enforcement of Judgments
and Awards.*

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 Reciprocal Enforcement of Judgments Act*.

INTERPRETATION.

2. (1) In this Act, unless the context otherwise requires:—
“Judgment” means any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become

enforceable in the same manner as a judgment given by a Court in that place;

“Judgment creditor” means the person by whom the judgment was obtained, and includes the successors and assigns of that person;

“Judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given;

“Original Court” in relation to any judgment means the Court by which the judgment was given;

“Registering Court” in relation to any judgment means the Court by which the judgment was registered under this Act.

(2) Subject to Rules of Court, any of the powers conferred by this Act on any Court may be exercised by a Judge of the Court.

ENFORCEMENT IN THIS PROVINCE OF JUDGMENTS OBTAINED IN OTHER PROVINCES OF THE DOMINION.

3. (1) Where a judgment of any Court of Record has been obtained outside this Province in any other Province of the Dominion of Canada to which this Act applies, the judgment creditor may apply to the Supreme Court of this Province at any time within six years after the date of the judgment to have the judgment registered in the Supreme Court, and on any such application the Court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in this Province and subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if:—

- (a) The original Court acted without jurisdiction; or
- (b) The judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court, did not voluntarily appear or otherwise submit to the jurisdiction of that Court; or
- (c) The judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original Court and did not appear, notwithstanding that he was ordinarily resident, or was carrying on business

within the jurisdiction of that Court, or agreed to submit to the jurisdiction of that Court; or

- (d) The judgment was obtained by fraud; or
- (e) The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering Court.

(3) Where a judgment has been ordered to be registered under this section on the *ex parte* application of the judgment creditor, if the judgment debtor within the time limited by Rules of Court in that behalf satisfies the registering Court either that an appeal is pending or that he is entitled and intends to appeal against the judgment, the registering Court shall set aside the order for registration and the registration of the judgment thereunder.

(4) Where a judgment is registered under this section:—

- (a) The judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of the registration in the registering Court;
- (b) The registering Court shall have the same control and jurisdiction over the judgment as it had over similar judgments given by itself, but in so far only as relates to execution under this section;
- (c) The reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original Court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(5) Rules of Court shall provide:—

- (a) For service on the judgment debtor of notice of the application for registration of a judgment under this section, unless the judgment was obtained after a trial at which the judgment debtor appeared or was represented; and
- (b) In case of the registration of a judgment on the *ex parte* application of the judgment creditor, for service on the judgment debtor of notice of the registration of the judgment under this section; and for enabling the registering Court on an application by the judgment

debtor to set aside the registration of the judgment under this section on such terms as the Court thinks fit; and

- (c) For suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

(6) In any action brought in any Court in this Province on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has been previously refused or unless the Court otherwise orders.

POWER TO MAKE RULES OF COURT.

4. Provision may be made by Rules of Court for regulating the practice and procedure (including scales of fees and evidence) in respect of proceedings of any kind under this Act.

POWER TO APPLY ACT TO OTHER PROVINCES ON BASIS OF RECIPROACITY.

5. (1) Where the Lieutenant-Governor is satisfied that reciprocal provisions have been made by the Legislature of any other Province of the Dominion of Canada for the enforcement within that Province of judgments obtained in any Court of Record in this Province, the Lieutenant-Governor may, by Order in Council, direct that this Act shall apply to that Province, and thereupon this Act shall apply accordingly.

(2) An Order in Council under this section may be varied or revoked by a subsequent Order.

APPENDIX H.

REPORT OF COMMITTEE ON A UNIFORM ACT RESPECTING DEVOLUTION OF ESTATES.

To the Conference of Commissioners on Uniformity of Legislation in Canada.

GENTLEMEN—

At the meeting of the Conference held in 1919 the Ontario Commissioners were requested to consider the question of making uniform the law relating to devolution of estates and to report the following year with a summary of existing statutes. This they did in 1920, presenting with their report a comparative statement of the distribution of the property of intestates in the various provinces. After a discussion of the report the subject was again referred to the same Commissioners, with instructions to draft a model Act for consideration in 1921, but in that year the Commissioners reported that, in their opinion, the principles to be adopted should be prescribed by the Conference before any drafting was done, and to that end they put forward certain recommendations of their own. These recommendations were discussed and dealt with and the subject was then referred to the Commissioners for Saskatchewan for the purpose of drafting a model Act.

The subject has been treated hitherto as confined to the devolution of the estates of intestates, and the undersigned have accordingly drawn a bill so limited which is submitted herewith. They wish to point out, however, that The Imperial Land Transfer Act of 1897, providing that real estate shall devolve to and become vested in the personal representatives of a deceased, deals with the subject in a wider manner and lays down that such real estate shall on the death of the owner, "notwithstanding any testamentary disposition," devolve upon his personal representatives as if it were a chattel real.

The Ontario Devolution of Estates Act, now R.S.O. 1914, chapter 119, was, as it first appeared in the statutes of 1886, copied from a bill introduced into the Imperial House of Commons but never passed, a bill which was presumably the original of The Imperial Land Transfer Act above mentioned. Section 3 of The Ontario Act declares that "all real and personal property which is vested in any person without a right in any other

person to take by survivorship shall, on his death, whether testate or intestate, and notwithstanding any testamentary disposition, devolve to and become vested in his personal representative from time to time as trustee for the person by law beneficially entitled thereto." The statutes of British Columbia, Manitoba and Saskatchewan are equally comprehensive.

In the opinion of the undersigned it is desirable that a uniform Act should proceed upon the same lines as the enactments above referred to and they respectfully submit this view for the consideration of the Conference.

R. W. SHANNON,

On behalf of the Committee.

Regina, July 1st, 1922.

AN ACT TO MAKE UNIFORM THE LAW RESPECTING
THE DEVOLUTION OF ESTATES OF
INTESTATES.

(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 Intestate Succession Act*.

INTERPRETATION.

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

- (1) "Issue" includes all lawful lineal descendants of the ancestor.

R.S.N.S. c. 140, s. 1; R.S.S. c. 73, s. 2.

DEVOLUTION OF REAL ESTATE TO PERSONAL REPRESENTATIVES.

3. (1) Where real estate is vested in any person without a right in any other person to take by survivorship, it shall, on his death intestate, devolve to and become vested in his personal representatives from time to time as if it were a chattel real vesting in them.

- (2) This section applies only in cases of death after the commencement of this Act.

Imp. Act 60 and 61 Vict. c. 65, s. 1; B.C. 1921, c. 26, s. 26; R.S.M. c. 64, s. 21; R.S.O. c. 119, s. 3 (1); R.S.S. c. 73, s. 3 (1); and see Alta. 1906, c. 24, s. 74 and 1920, c. 11, s. 2 (b).

PERSONAL REPRESENTATIVES TO HOLD AS TRUSTEES.

4. Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representatives of an intestate shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

Imp. Act, s. 3 (1); B.C. s. 27 (1); Man. s. 21 (3); Ont. s. 3 (1); Sask. s. 3 (1).

RULES OF LAW TO APPLY.

5. All enactments and rules of law relating to the effect of letters of administration as respects chattels real, and as respects the dealing with chattels real before administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties and liabilities of personal representatives in respect of personal estate, shall apply to real estate, so far as the same are applicable, as if that real estate were a chattel real vesting in them, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the Court of _____ or a judge thereof, to sell or transfer real estate.

Imp. Act s. 2 (2); B.C. 1921, c. 26, s. 27 (2); Man. s. 21 (4); Ont. s. 4; Sask. s. 4; and see Alta., 1920, c. 11, s. 2 (b).

ADMINISTRATION OF REAL ESTATE.

6. In the administration of the assets of a person dying intestate after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and

personal assets, respectively, are now applicable in or towards the payment of funeral or testamentary expenses or debts.

Imp. Act. s. 2; B.C. 1921, c. 26, s. 27 (3); Man. s. 21 (5);
Ont. s. 5; and Sask. s. 5; see Alta. 1920, c. 11, s. 2 (b).

WHERE AN INFANT IS INTERESTED.

7. Where an infant is interested in the real estate of an intestate, no sale or conveyance thereof shall be valid without the written consent or approval of the Official Guardian, or, in the absence of such consent or approval, without an order of a judge of the Court of

Ont. s. 19 (1); Sask. s. 9. See Man. s. 25.

POWERS OF SALE OF REAL ESTATE.

8. (1) The powers of sale conferred by this Act on personal representatives may be exercised for the purpose not only of paying debts but also of distributing the estate among the persons beneficially entitled thereto, whether there are or are not debts and in no case shall it be necessary that the persons beneficially entitled shall concur in any such sale where it is made for the purpose of distribution only.

(2) No sale of real estate for the purpose of distribution only shall be made without the concurrence of the persons beneficially entitled thereto; but where a lunatic is beneficially entitled, or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown, or where in the opinion of a judge of the Court of _____ it would be inconvenient to require the concurrence of such persons, he may, upon proof satisfactory to him that such sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested therein, approve such sale on behalf of such lunatic and non-concurring persons, and any such sale made with such approval shall be valid and binding upon such lunatic and non-concurring persons.

(3) In this section the word "lunatic" includes an idiot and a person of unsound mind.

Ont. s. 21; Sask. s. 11; and see Man. s. 25.

EFFECT OF ACCEPTING SHARE OF MONEY.

9. The acceptance by an adult of his share of the purchase money in the case of a sale by personal representatives which

has been made without the approval required by subsection (2) of section 8, shall be a confirmation of the sale as to him.

Ont. s. 22; Sask. s. 12.

REAL ESTATE SOLD OR DISTRIBUTED.

10. (1) A person purchasing real estate in good faith and for value from the personal representatives, or from a person beneficially entitled thereon to whom the same has been conveyed by the personal representatives, shall hold the same freed and discharged from any debts or liabilities of the intestate except such as are specially charged thereon, and, where the purchase is from the personal representatives, freed and discharged from all claims of the persons beneficially interested.

See Ont. ss. 23 and 24 (1); Sask. s. 13 and 14.

(2) Real estate which has been conveyed by the personal representatives to a person beneficially entitled thereto shall continue to be liable to answer the debts of the intestate so long as it remains vested in such persons, or in any person claiming under him not being a purchaser in good faith and for value, as it would have been if it had remained vested in the personal representatives, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he shall be personally liable for such debts to the extent of the proceeds of such real estate.

Ont. s. 24 (2).

OTHER POWERS OF PERSONAL REPRESENTATIVES.

11. (1) The powers of personal representatives under this Act shall include:

- (a) power to lease from year to year while the real estate remains vested in them;
- (b) power, with the approval of the Court of or a judge thereof, to lease for a longer term;
- (c) power to mortgage for the payment of debts, and maintenance, repair or completion of buildings.

(2) Where infants or lunatics are concerned, the approval required by subsection (2) of section 8 shall be required in the case of a mortgage under clause (c) of subsection (1) of this section.

Ont. s. 25; Sask. s. 15.

DISTRIBUTION OF ESTATES OF INTESTATES.

INTESTATE LEAVING WIDOW AND ISSUE.

12. (1) If an intestate dies leaving a widow and one child, one-half of his real and personal estate shall go to each.

Alta. 1920, c. 11, s. 3 (b); Sask. s. 16 (1).

(2) If he dies leaving a widow and children, one-third of his real and personal estate shall go to the widow and the remaining two-thirds to the children in equal shares.

Alta. s. 3 (a) and 4; Man. s. 4; Ont. s. 30; Sask. s. 16 (2); (as to personalty) R.S.B.C. c. 4, s. 95 (1); R.S.N.B. c. 161, s. 2; N.S. s. 6; and P.E.I. 1873, c. 23, s. 10.

(3) In the last mentioned case, if a child has died leaving issue, the distributive share of such child shall go to the issue who shall take according to their right of representation.

Alta. s. 3 (2); Man. s. 4; Ont. s. 30; Sask. s. 16 (3); (as to personalty) B.C. s. 95 (1); N.B. s. 2; N.S. s. 6; and P.E.I. s. 10.

(4) If there is no child of the intestate living at the time of his death but a child has died leaving issue, the share of the estate which would otherwise go to his child or children shall go to the lineal descendants of the intestate. If all such descendants are in the same degree of kindred to the intestate they shall take the estate equally, otherwise they shall take according to their right of representation.

Man. s. 4; Ont. s. 30; Sask. s. 16 (4).

WIDOW AND NO ISSUE.

13. (1) If an intestate dies leaving a widow but no issue his real and personal estate, where the net value thereof does not exceed \$20,000, shall go to his widow.

(2) Where the net value exceeds \$20,000 the widow shall be entitled to \$20,000, and shall have a charge upon the estate for that sum with legal interest from the date of the death of the intestate.

(3) Of the residue of the estate after payment of the said sum of \$20,000 and interest one-half shall go to the widow and one-half to those who would take the estate, if there were no widow, under section 15, 16 or 17, as the case may be.

(4) In this section "net value" means the value of the real and personal estate after payment of the charges thereon and

the debts, funeral expenses and expenses of administration, including succession duty.

Imp. Act 53 and 54 Vict. c. 29, ss. 1, 2 and 4; Ont. s. 12; see Alta. s. 3 (c); B.C. s. 95 (3); Man. s. 5; N.B. s. 2; N.S. s. 6; P.E.I. s. 10; and Sask. s. 17.

ISSUE AND NO WIDOW.

14. If an intestate dies leaving a child or children or issue and no widow, his whole estate, real and personal, shall go to his child or in equal shares to his children if any are living, and if any of the children have died leaving issue such issue shall take according to their right of representation. If there is no child living, the estate shall go to the lineal descendants of the intestate as in subsection (4) of section 12.

Man. s. 6; Ont. s. 30; Sask. s. 18; see Alta. s. 4; B.C. s. 95 (4); and P.E.I. s. 10.

NEITHER WIDOW NOR ISSUE.

15. If an intestate dies leaving no widow or issue, his whole estate, real and personal, shall go to his father and mother in equal shares, if both are living, but if either of them is dead the estate shall go to the survivor.

Alta. s. 6; Man. s. 12; N.S. ss. 2 and 6; see B.C. s. 95 (4); N.B. s. 2; Ont. s. 30; P.E.I. s. 10; and Sask. ss. 19 and 20.

NO WIDOW, ISSUE OR PARENT.

16. If an intestate dies leaving no widow or issue or father or mother, his whole estate, real and personal, shall go to his brothers and sisters in equal shares, and, if any of his brothers or sisters be dead, the children of such deceased brother or sister shall take the parent's share.

Alta. s. 7; Man. s. 12; Sask. s. 21.

WHERE ESTATE GOES TO NEXT OF KIN.

17. If an intestate dies leaving no widow, issue, father, mother, brother or sister or children of any deceased brother or sister, his estate, real and personal, shall go to his next of kin.

Alta. s. 8 (1); Man. s. 12; Sask. s. 22.

ESTATES OF INTESTATE WOMEN.

18. The real and personal estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the real and personal estate of a man so dying, the word "husband" for the purpose of this section being substituted for the word "widow," the word "her" for the word "his," the word "she" for the word "he" and the word "her" for the word "him" where such words respectively occur in sections 12, 13, 14, 15, 16, 17 and 22.

Man. s. 15; Sask. s. 35; see Ont. s. 29 (1).

DISTRIBUTION AMONG NEXT OF KIN.

19. In every case where the estate goes to the next of kin it shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and those who legally represent them; but in no case shall representation be admitted among collaterals after brothers' and sisters' children.

Imp. 22 and 23 Car. 2, c. 10, ss. 3 and 4; see B.C. s. 95 (1);

Ont. s. 30; Man. s. 12; Sask. s. 16 (4) and s. 22; and N.B. s. 2; and N.S. s. 4 (4) (as to real property).

DESERTION AND ADULTERY.

20. (1) If a wife has left her husband and has lived in adultery after leaving him she shall take no part of his real or personal estate.

Alta. s. 3 (*d*); Sask. s. 36; see Imp. Act 13 Ed. 1, c. 34; and R.S.O. c. 70, s. 9, as to dower.

(2) If a husband has left his wife and has lived in adultery after leaving her he shall take no part of her real or personal estate.

Alta. s. 3 (*e*); Sask. s. 37.

NO DISTINCTION OF HALF BLOOD.

21. For the purposes of this Act degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

Alta. s. (2) and (3); Man. s. 8; N.S. s. 1; Sask. s. 38.

POSTHUMOUS CHILDREN.

22. Descendants and relatives of the intestate begotten before his death but born thereafter shall in all cases inherit in the same manner as if they had been born in the lifetime of the intestate and had survived him.

Alta. s. 2 (*d*); Man. s. 8; N.S. s. 15 (1); Sask. s. 39 (1);
and R.S.B.C. c. 108, s. 21 (as to real estate).

ADVANCES TO CHILDREN.

23. (1) If any child of an intestate has been advanced by the intestate by settlement or by portion of real or personal estate or both of them and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned for the purposes of this section only as part of the real and personal estate of such intestate distributable according to law; and, if such advancement is equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the intestate as above reckoned, then such child and his descendants shall be excluded from any share in such estate.

Alta. s. 5; Man. s. 7; N.S. ss. 8, 9 and 10; Ont. s. 28 (1);
Sask. s. 40 (1); see B.C. s. 95 (2) and P.E.I. s. 10.

(2) If such advancement is less than such share such child and his descendants shall be entitled to receive so much only of the real and personal estate of the intestate as is sufficient to make all the shares of the children in such estate and advancement to be equal as nearly as can be estimated.

Ont. s. 28 (2); Sask. s. 40 (2); B.C. s. 95 (2).

(3) The value of any real or personal estate so advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in any instrument in writing, otherwise such value shall be estimated according to the value of the estate when given.

N.S. s. 11; Ont. s. 28 (3); Sask. s. 41.

(4) The maintaining or educating or the giving of money to a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act.

Ont. s. 28 (4); Sask. s. 42.

ESTATE UNDISPOSED OF BY WILL.

24. All such estate, real and personal, as is not devised by will shall be distributed as if the testator had died intestate.

Man. s. 13; N.S. s. 18; Sask. s. 43.

NO DOWER OR CURTESY.

25. No widow shall be entitled to dower in the land of her deceased husband dying intestate and no husband shall be entitled to an estate by the curtesy in the land of his deceased wife so dying.

Alta. 1906, c. 19, ss. 5 and 6; Man. ss. 19 and 20; Sask. s. 44.

ILLEGITIMATE CHILDREN.

26. Illegitimate children shall inherit from the mother as if they were legitimate, and they shall inherit through the mother, if dead, any real or personal estate which she would have taken, if living, by purchase, gift, demise or descent from any other person.

Alta. s. 9 (4); Sask. s. 45; see Ont. s. 27 (1).

SUCCESSION TO ILLEGITIMATES.

27. If an intestate, being an illegitimate child, dies leaving no widow or husband or issue, the whole of such intestate's estate, real and personal, shall go to his or her mother.

Alta. s. 9 (2); Sask. s. 46.

CONSTRUCTION OF ACT.

28. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

COMING INTO FORCE.

29. This Act shall come into force on the
day of

19 .

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF
LEGISLATION IN CANADA.

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