PROCEEDINGS

OF THE

SIXTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

MONTREAL

30TH AND 31ST AUGUST, 1ST, 3RD, 4TH AND 5TH SEPTEMBER, 1923

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

Honorary President ....Sir James Aikins, K.C., Winnipeg, Manitoba.

President .....Mariner G. Teed, K.C., St. John, New Brunswick.

Vice-President .....Isaac Pitblado, K.C., Winnipeg, Manitoba.

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

Corresponding Secretary.John C. Elliott, K.C., London, Ontario.

Recording Secretary ...John D. Falconbridge, K.C., 22 Chestnut Park, Toronto, Ontario.

Local Secretaries.

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

Alberta .....Walter S. Scott, K.C., Parliament Buildings, Edmonton.

British Columbia .....Avard 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, Montreal.

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. PINEO, Parliament Buildings, Victoria.

J. STUART YATES, 416 Central Building, Victoria.

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

HERBERT G. GARRETT, Parliament Buildings, Victoria.

Manitoba:

ISAAC PITBLADO, 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).

ESTEN K. WILLIAMS, K.C., Somerset Block, Winnipeg.

W. RANDOLPH COTTINGHAM, Parliament Buildings, 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).

J. LAYTON RALSTON, K.C., Halifax.

Ontario:

SIR JAMES AIKINS, K.C., Winnipeg, Manitoba.

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:

HON. C. GAVAN DUFFY, K.C., Charlottetown.

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

Quebec:

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

Saskatchewan:

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

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, the fifth at Vancouver on the 11th, 12th, 14th, 15th and 16th of August, 1922, and the

sixth at Montreal on the 30th and 31st of August, and the 1st, 3rd, 4th and 5th of September, 1923.

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.

In 1923 most of the time of the meeting was devoted to an act respecting life insurance, which was approved in its revised form. The subjects of intestate succession and reciprocal enforcement of judgments were also discussed.

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

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 SIXTH 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 AND SCOTT.

British Columbia:
MESSRS. ELLIS AND GARETT.

Manitoba:
MESSRS. PITBLADO, WILLIAMS AND COTTINGHAM.

New Brunswick:
MESSRS. WALLACE, TEED AND LEWIN.

Nova Scotia:
MESSRS. MATHERS AND RALSTON.

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

Prince Edward Island:
MESSRS. DUFFY AND BENTLEY.

Saskatchewan:
MESSRS. SHANNON AND THOM.

FIRST DAY.

Thursday, 30th August, 1923.

The Conference assembled at 10.30 a.m., at the Mount Royal Hotel, Montreal.

Sir James Aikins, K.C., read his presidential address. It was ordered that the address should be printed in the proceedings,

and the Conference expressed its thanks to the president for his care in preparing it.

(*Appendix A.*)

It was ordered that the minutes of the last meeting, as printed and circulated, be taken as read and confirmed.

The following reports of committees were submitted and received:—

(1) Ontario—Life insurance (Appendix B).
(2) Alberta—Wills (Appendix C).
(3) Saskatchewan—Intestate succession (Appendix D).
(4) British Columbia—Companies (Appendix E).
(5) Alberta—Mechanics' liens (Appendix F).
(6) Nova Scotia—Succession duty (Appendix G).

Mr. Falconbridge read the report of the Ontario commissioners on a uniform Life Insurance Act.

(*Appendix B*).

The following persons appeared before the Conference, and were heard with regard to various provisions of the draft act submitted by the committee, with special reference to the changes suggested in a written memorandum presented by the Canadian Life Officers' Association: Mr. H. J. Sims, K.C., counsel for the Canadian Life Officers' Association; Mr. H. G. Dunham, attorney for the Association of the Life Insurance Presidents of the United States; Mr. Lyman Lee and Mr. V. E. Sinclair, for the fraternal societies, and Mr. V. Evan Gray, Superintendent of Insurance for Ontario, and secretary of the Association of Superintendents of Insurance.

The Conference adjourned at 12.45 p.m.

AFTERNOON SESSION.

At 3 p.m. the Conference reassembled, and the hearing of the representatives of the insurers and the superintendents was continued.

After the conclusion of the hearing of these representatives, Sir James Aikins announced his resignation of the office of

president. This resignation was accepted by the Conference with regret. The following officers were elected:—

Honorary President—Sir James Aikins.
President—Mr. Teed.
Vice-President—Mr. Pitblado.
Treasurer—Mr. Ford.
Corresponding Secretary—Mr. Elliott.
Recording Secretary—Mr. Falconbridge.

The Conference then commenced the discussion of the draft Life Insurance Act, section by section.

At 6.15 p.m. the Conference adjourned.

SECOND DAY.

Friday, 31st August, 1923.

At 9.30 a.m. the Conference reassembled and resumed the discussion of the draft Life Insurance Act, the president, Mr. Teed, in the chair.

At 12.45 p.m. the Conference adjourned.

AFTERNOON SESSION.

At 3 p.m. the Conference reassembled, and resumed the discussion of the Life Insurance Act.

At 6 p.m. the Conference adjourned.

THIRD DAY.

Saturday, 1st September, 1923.

At 9.30 a.m. the Conference reassembled and resumed the discussion of the Life Insurance Act.

At 1 p.m. the Conference adjourned.

EVENING SESSION.

At 8 p.m. the Conference reassembled.

The treasurer's report was presented and received, and was referred to Messrs. Shannon and Garrett for audit.

The Conference then resumed the discussion of the Life Insurance Act, and adjourned at 11 p.m.

FOURTH DAY.

Monday, 3rd September, 1923.

At 9 a.m. the Conference reassembled, and resumed the discussion of the Life Insurance Act.

At 11.30 a.m., the Life Insurance Act having been discussed section by section, the following resolution was adopted:—

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 Life Insurance Contracts," as revised at the present (1923) 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.

The Ontario commissioners were authorized to renumber the sections and make such changes merely of form as might seem to them to be necessary.

The treasurer's and auditors' reports were adopted as follows:—

TREASURER'S STATEMENT—AUGUST, 1923.

1922.			
Aug. 1	To Bal. at Deposit in Bank of Montreal as audited and found correct by R. W. Shannon and A. V. Pineo	$274.06	
Sept. 25	To deposit Grant Prov. Saskatchewan	200.00	
Oct. 6	To deposit Grant Prov. Ontario	200.00	
Nov. 13	To deposit Grant Prov. Nova Scotia.	200.00	
1923.			
Jan. 29	By cheque Emery, Newell, Ford & Lindsay, stationery, postage and revenue stamps		5.00
" "	By cheque Carswell Co. Ltd. printing Annual Report, Life Insurance Act, etc.		454.61
	By balance		414.45
		$874.06	$874.06

Aug. 1—To balance at Deposit in the Bank of Montreal $414.45

Audited and found correct.

H. G. Garrett,
R. W. Shannon.

Montreal, Sept. 3rd, 1923.

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.

Mr. Charles Marriott addressed the Conference on behalf of the Toronto Board of Trade, advocating certain changes in statutory condition number 17 in the schedule to the Fire Insurance Policy Act adopted by the Conference in 1922 (Proceedings of the Conference, 1922, p. 47; Proceedings of the Cana-

dian Bar Association, 1922, p. 353), particularly the addition of a provision allowing an appeal from the award of the referee or referees.

It was resolved that a provision allowing an appeal should be added and Messrs. Shannon, Scott, Garrett and Cottingham were appointed a committee to draft such provision.

At 1 p.m. the Conference adjourned.

AFTERNOON SESSION.

Monday, 3rd September, 1923.

At 2.30 p.m. the Conference reassembled.

Mr. Finlayson, Dominion Superintendent of Insurance, addressed the Conference, advocating certain changes in the Life Insurance Act, particularly the amendment of the provision making the Act applicable to existing policies.

After having given full consideration to Mr. Finlayson's representations, the Conference resolved to make no change in the Act, being of opinion that the attainment of one of the principal objects of the Act would be defeated or unduly postponed if the Act were not made applicable to existing policies.

The Conference then commenced the discussion, section by section, of the draft Reciprocal Enforcement of Judgments Act, submitted to the Conference in 1922 (Proceedings of the Conference, 1922, p. 78; Proceedings of the Canadian Bar Association, 1922, p. 384).

After discussion, it was resolved that the draft Act should be referred again to a committee for further revision, and that a committee should also be appointed to consider the principles upon which defences to foreign judgments should be made uniform in the several provinces and to submit a draft Act.

At 6 p.m. the Conference adjourned.

FIFTH DAY.

Tuesday, 4th September, 1923.

At 9.15 a.m. the Conference reassembled.

The president (Mr. Teed) was requested to represent the Conference in making a statement before the Canadian Bar Association as to the work of the Conference.

The Conference then commenced the discussion of the draft Intestate Succession Act, section by section.
(*Appendix D*).

At 12.30 p.m. the Conference adjourned.

AFTERNOON SESSION.

At 3 p.m. the Conference reassembled, and resumed the discussion of the Intestate Succession Act.

At 6.15 p.m. the Conference adjourned.

SIXTH DAY.

Wednesday, 5th September, 1923.

At 9.15 a.m. the Conference reassembled.

The draft Intestate Succession Act was referred back to the Saskatchewan commissioners for revision.

The draft Wills Act was referred back to the Alberta commissioners, the other commissioners being requested to submit suggestions to them.

The draft Reciprocal Enforcement of Judgments Act was referred to the New Brunswick commissioners for revision, with instructions to provide for notice of the application to register a

judgment only in a case where there was no personal service of the defendant in the original action, and no appearance or defence.

The New Brunswick commissioners were also instructed to consider and report upon the defences which should be permitted in an action upon a foreign judgment, and to incorporate their recommendations in a separate draft Act if they should deem it advisable.

It was resolved that the following subjects should be discussed in 1924, in the order named:—

(1) Intestate Succession.
(2) Wills.
(3) Reciprocal Enforcement of Judgments, and Defences to Actions upon Foreign Judgments.

The discussion of the following subjects was postponed until 1924:—

(4) Mechanics' Liens.
(5) Companies.
(6) Succession Duty.
(7) Protection and Property Rights of Married Women.

The subject of chattel mortgages and bills of sale was referred to the Saskatchewan commissioners for investigation and report.

In view of the requests which have been made to certain Governments for amendments of the Bulk Sales Act, adopted by the Conference in 1920, the subject was referred to the Manitoba commissioners for report, and the other commissioners were requested to furnish them with reasons why the Act has not been adopted and suggestions as to its amendment.

It was resolved that the Conference should meet four days (exclusive of Sunday) before the next meeting of the Canadian Bar Association.

The following resolution was adopted:—

Resolved, that the Conference is of opinion that regular contributions should be made by all the provinces to meet the general expenses of the Conference, and that the treasurer be in-

structed to write to each provincial Board of Commissioners asking it to obtain from its Government a contribution of $200, and to write to the Attorney-General of each province which has not appointed commissioners, asking for a contribution of $200.

At 11 a.m. the Conference adjourned.

AFTERNOON SESSION.

Wednesday, 5th September, 1923.

At 2.30 p.m. the Conference reassembled.

The committee appointed on the subject of the Fire Insurance Policy Act submitted the following proposed amendments of statutory condition number 17:—

Insert at the beginning of clause (*e*) the words "subject to the provisions hereinafter contained."

Add the following new clauses:

(*g*) The insured or any company interested may, within one month after the date of the award, appeal therefrom to the Court of and the Court may affirm or amend the same or may remit it to the referee or referees for further consideration with directions, or may appoint a new referee or new referees and remit the award to the referee or referees so appointed, or may otherwise deal with the same as may be deemed advisable.

(*h*) The referees shall, on the written request of the insured or of any company interested, state for the information of the Court:

(*i*) whether they have proceeded upon their own knowledge, inspection or examination of the property insured, and the other sources of information, if any, to which they have had recourse;

(*ii*) their reasons for the apportionment made by them of the loss as between the company and the insured or as between the different companies;

(*iii*) any question of law raised by the parties, and the principle of law upon which they have acted in deciding the same.

(*i*) Upon such appeal the practice and proceedings shall be such as may from time to time be prescribed by rules or orders made by the Court.

(*j*) When an award has been remitted, the award made upon such remission shall be filed in Court, and the Court may, upon the application of any of the parties, confirm or alter, vary or amend the same, and the award so confirmed, altered, varied or amended, shall become a Judgment of the Court.

(*k*) No judgment of the Court shall be subject to appeal, and except as herein provided, there shall be no appeal from, or proceedings had to impeach or set aside any award made under this Act.

It was resolved that the proposed amendments of condition number 17, providing for an appeal, should be referred to the Saskatchewan commissioners for redrafting, after such consultation as might be deemed advisable, and the Conference recommended the following principles for their guidance as far as it should appear possible to adopt them, viz.:

(1) The appeal to be taken to such court as would have jurisdiction according to the amount of the claim made by the insured and the locality of the property if an ordinary action had been brought for the amount of that claim.

(2) The appeal to be on all or any grounds.

(3) The power of the court to be as defined in clause (*g*) of the foregoing draft, including the hearing of evidence.

(4) The referees to make a statement for the information of the court as set out in paragraph (*h*).

(5) A statement of the practice to be followed to be set out in the draft.

It was also resolved that the Saskatchewan commissioners be requested to make a further report at the next meeting of the Conference as to the status of the present draft bill in the various provinces.

Mr. King having reported that the Canadian Bar Association had referred to the Conference a recommendation of the association in favour of legislation providing, in cases of con-

tributory negligence, for division of damages in proportion to the degree of fault, the subject was referred to the Ontario commissioners with instructions to prepare and submit a draft Act.

With respect to the Intestate Succession Act, the Conference approved the opinion expressed by the Saskatchewan commissioners in 1922 (Proceedings of the Conference, 1922, p. 83; Proceedings of the Canadian Bar Association, 1922, p. 389) that a uniform Act should be drawn so as to provide for the devolution of estates in the case of testacy as well as intestacy, and should contain provisions relative to the powers of personal representatives in cases of testacy as well as intestacy, and that the Intestate Succession Act should be revised accordingly. It was also suggested for the consideration of the Saskatchewan commissioners that the Act so drawn should be entitled the Devolution of Estates Act, or Personal Representatives Act, and that those provisions contained in the present draft Intestate Succession Act which relate to distribution amongst the beneficiaries (ss. 11 *et seq.*) might be better incorporated in a separate draft act to be entitled the Intestate Succession Act or the Distribution Act. In the event of the Saskatchewan commissioners considering this division of the present draft Intestate Succession Act to be advisable, they were instructed to submit two separate drafts accordingly.

The Conference expressed its hearty appreciation of the services rendered to the Conference by Sir James Aikins, formerly its president and now its honorary president, and of the warm welcome and hospitality extended to the members of the Conference and their wives by Sir James and Lady Aikins and the members of the Montreal Bar.

At 3.30 p.m. the Conference was prorogued.

APPENDICES.

A. Presidential Address.
B. Life Insurance Act.
C. Draft Wills Act.
D. Draft Intestate Succession Act.
E. Report on Companies Act.
F. Report on Mechanics' Lien Act.
G. Report on Succession Duty Act.

APPENDIX A.

President's Address.

The Conference of Commissioners on Uniform Legislation has done excellent work, not well known because not advertised or published, work not appreciated because not known, and because the value of it is not properly known it has not been utilized. Is it enough that the best thought and effort should be put forth to produce good, model, uniform, provincial acts and then fail to press them before legislators for enactment, leaving them still-born productions? Governments are usually quiescent till budged or pressed. All do not lie awake nights studying out what are the real ills which the people bear, what the disadvantages under which people work and what are the causes of those ills and disadvantages. They can only be avoided by the combined action of those who suffer and are willing to assist. There must be public opinion behind all reform. The community must realize not only the unfavourable conditions and the defects, but be shown how to avoid them, and then they will take corrective measures. Burke said:—"Where there is abuse, there ought to be clamour, for it is better to have our slumber broken by the fire-bell than to perish amidst the flames in our bed."

You commissioners know, perhaps more than others, the benefits arising from that Saxon principle, the right of local communities to legislate for themselves concerning their property and civil rights and to administer the laws they make within their own territory or province, a right which should be sedulously preserved. You also know the disadvantages. You know that to the extent of their right to legislate for themselves exclusively they are foreign states to the adjoining communities or provinces, each jealous of its own autonomy, each disposed to think and act provincially and within its own narrow limits in proud or selfish or ignorant disregard of the hurtful effect upon the people of contiguous territories with whom they have dealings or who deal or trade with them, and reciprocally upon themselves. The people of those several and separate provincial governments do not consider the moral and

material loss and damage they all suffer by reason of discord between the local or provincial laws made by jurisdictions, say, within Canada, foreign to each other. Much of that material loss and damage could be avoided by the several provincial governments heartily concurring in the passage of uniform provincial laws, and in that way preserving their provincial jurisdiction from encroachment by the federal. For people will not continue to suffer constant uncertainty, inconvenience and economic loss from divergent provincial business laws, but to prevent such, will urge federal legislation, the assumption of federal jurisdiction on the ground of interprovincial trade, of the regulation of trade and commerce, and of the power to create corporations to carry on business anywhere, regardless of provincial enactments and other such like grounds. The lawyers of Canada, wishing to co-operate with business men and others interested in interprovincial matters, are endeavouring through the Canadian Bar Association and this Conference of Commissioners to avoid or mitigate that loss and damage by having the local jurisdictions or provinces adopt uniform legislation on subjects common to all, model acts of the best type, well drafted and carefully considered, particularly relating to business and commercial transactions in which the people of the several provinces are concerned, and at the same time to preserve and advance local government by avoiding centralization. But the people generally, those not directly affected, do not realize and are not alive to the disadvantage of discord or diversity in local business and similar laws, laws which relate to the material side of life, or to the advantage which they can derive from the offered assistance and actual work of the existing agencies, the Conference of Commissioners and the Canadian Bar Association, to make uniform the legislation and do away with the inter-local discord and diversity. The purchasing and consuming public are interested, for to the extent of the greater expense there is in the transaction of business, they will have to pay.

For those who are not conversant with the work of the commissioners, let me say there is a twofold purpose, (*a*) to secure uniformity in the *lex scripta* of provincial enactments governing the same activity or thing in commercial and kindred subjects; (*b*) to obviate conflicting decisions of courts in different provinces upon the same question arising out of identical or similar facts and under statutes substantially alike in principle or varying slightly only in phrases expressing those principles. Such

conflict of decisions results mainly from a slavish following of precedent. The reason for that twofold purpose is that the person or merchant owning property of various kinds, or having trade in all or more than one of the provinces, may know or can readily ascertain the written law and its judicial interpretation relating to the matter or business in any provincial jurisdiction. It is impossible to get uniformity of judicial decision unless there is uniformity in the written law. Even with uniformity in the *lex scripta* it is quite possible to have conflict of decision in its interpretation. There are many reasons for such diversity of judicial decisions; the devotion to the maxim, "*Stare decisis et non quieta movere*"—to stand by what is decided, and not to disturb what has been thus set at rest. That maxim is not a law, but is observed as a judicial custom. Too often judge-made law arises out of that unreasonable following of precedent upon precedent, and so eventually it digs the grave of statutory or remedial enactment or amendment and buries it. Judges are fallible, some more so than others, and the decision of the weakest of them, while it stands, is cited and followed as precedent, and divergence thus grows; a judgment may not express the law correctly, not only because of human fallibility, but owing to haste, lack of industry, deliberation or experience, or to ignorance of the fundamental and underlying principles of the law relating to the case under advisement; a misconception of the policy and purpose of the legislation to be interpreted and a misconstruction of it under the diverting influence of the *stare decisis* rule which induces counsel and judges to hunt up and apply cases "almost in point" and yet quite different; a disposition to follow the line of least resistance by relying on such cases instead of courageously depending upon the application of fundamental principles or an unfettered construction of a statute. In respect of the latter, Lord Herschell said in the Vagliano case (1891) A. C. at pages 144, 145:

"I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. If a statute intended to embody in a code a particular branch of the law, is to be treated in this fashion, it appears to me that its utility will be almost entirely destroyed, and the very object

with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used, instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am, of course, far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground."

Each uniform act should be in the nature of a code on the particular subject upon which it treats and be construed according to its wording. The old maxim may be well applied, judgments should be based on the prescribed law, not on example, "*Judicandum est legibus non exemplis.*"

In forming the model uniform Acts we should have ever in our thought what will be best for the people at large. Efforts to make modifications of the model uniform Acts or opposition to them may be expected where they affect large monied interests or dividend-paying corporations, for those seek their own advantage too often in disregard of the public welfare. But that or the apathy of some governments should not deter the commissioners or the Conference from proceeding with the work they believe will be of service to the people, and pressing their activities to practical results, that is, to the enactment of such uniform provisions.

After an experience extending over thirty years the view of the American Conference of Commissioners on Uniform State Laws as expressed by its president in the October number of the *American Bar Association Journal* is:—"The National Conference of Commissioners on Uniform State Laws must depend

upon the American Bar Association in large measure both for active professional and legislative support and financial help as well. In return it gives to the public through the American Bar Association a large amount of constructive work of inestimable value to the public, to the bar and to the bench alike, for which the association gets, properly, much credit."

Similarly this body must depend largely upon the Canadian Bar Association for support, and should in its work more closely co-operate with the association for the purpose of effectuating the object of this Conference and one of the chief objects of the association.

APPENDIX B.

REPORT OF COMMITTEE ON A

UNIFORM LIFE INSURANCE ACT

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1. At the meeting of the Conference held at Vancouver in 1922, the following resolution was adopted:

> 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, the superintendents of insurance and the representatives of the insurers, and to report again to the Conference in 1923.

2. Your committee revised the draft in the light of the discussion which took place at the meeting of the Conference, and caused it to be reprinted in its revised form (Conference proceedings, 1922, pp. 20-39; Canadian Bar Association proceedings, 1922, pp. 326-345), and distributed as directed by the Conference.

3. On the 14th of June, 1923, an open meeting of the committee was held at Toronto, when the superintendent of insurance for Ontario and representatives of Canadian life insurance companies and of American life insurance companies doing business in Canada were heard, and various suggestions made with a view of improving the draft were considered.

4. Your committee has again revised the draft in various particulars. It has not been able to adopt all the suggestions made, and it understands that the representatives of the insurers intend, subject to the approval of the Conference, to submit some

suggestions in writing to the meeting of the Conference to be held at Montreal in September, 1923.

All which is respectfully submitted.

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

Toronto, July, 1923.

NOTE.

At the meeting of the Conference held at Montreal in August and September, 1923, representatives of the superintendents of insurance and of the life insurance companies were again heard, and the draft was discussed section by section and amended in various particulars. The draft is now printed in its revised form.

J. D. F.

Toronto, September, 1923.

THE LIFE INSURANCE ACT

AS REVISED AND APPROVED BY THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA IN SEPTEMBER, 1923.

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

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 Life Insurance Act.*

INTERPRETATION.

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

(1) "Beneficiary" means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable;

(2) "Contract" or "contract of insurance" means a contract of life insurance;

(3) "Contract of 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;

(4) "Court" means the or a judge thereof;

(5) "Declaration" means an instrument in writing signed by the insured, attached to or endorsed on a policy, or an instrument in writing, signed by the insured 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 benefi-

ciaries, or apportions or reapportions, or appropriates or reappropriates, insurance money between or among beneficiaries;

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

(7) "Fraternal society" means a corporation, society, order or voluntary association incorporated or formed 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;

(8) "Instrument in writing" includes a last will;

(9) "Insurance" means life insurance;

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

(11) "Insured" means the person who makes a contract of insurance with an insurer, and, unless the context otherwise requires, includes the person whose life is insured;

(12) "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;

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

(14) "Person" includes firm, partnership, corporation and unincorporated society or association;

(15) "Premium" means the single or periodical payment to be made 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 this Act shall be null and void.

(2) Unless hereinafter otherwise specifically provided, this Act shall apply to the unmatured obligations of every contract of life insurance made in the province 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 this Act, where the contract provides that this 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 this 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.

4. 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; or,

(*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 at the time of the making of the contract.

The Contract of Insurance.

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

6. (1) Every 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, of the person whose life is insured, and of the beneficiary, the insurance money 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, is less than one thousand dollars, the policy, notwithstanding that it is expressed to be payable to a named or designated beneficiary, may provide that the insurance money may be paid 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.

7. (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 attached to it, when issued, shall be valid or admissible in evidence to the prejudice of the insured or a beneficiary.

(2) 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.

8. (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.

9. (1) 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.

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

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

11. (1) Where 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 correct 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 such tables of rates of premium of the insurer do not extend to or include the rates for the correct 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 correct age, both premiums for this purpose being the net premiums shown in or deduced from the British Offices Life Table, 1893, $O_M(5)$, the rate of interest being three and one-half per cent. per annum, or, at the option of the insurer, both premiums for this purpose being calculated on the same principles as govern the calculation of premiums for ages mentioned in the table of rates of premium of the insurer in force at the time of the issue of the policy.

(3) Where 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 correct 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 correct age according to the tables of rates of premium of the insurer in force at the time of the issue of the policy.

(4) 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 correct age and the stated age shall respectively be deemed to be the correct age and the stated age increased by such addition.

(5) Where the application or contract expressly limits the insurable age, and the correct 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 policy, be voidable at the option of the insurer within thirty days after the error comes to its knowledge.

12. (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 its duly authorized agent, no change having taken place in the insura-

bility of the life about to be insured subsequent to the completion of the application.

(2) Subject to the provisions of section 13, where a cheque, bill of exchange or promissory note payable to the insurer, or other written promise to pay the insurer, is given, whether originally or by way of renewal, for the whole or part of any premium, and the instrument, if payable on demand, is not paid upon presentment made on or after its date, or, if payable at a future time, is not paid upon presentment made at or after its maturity, the contract shall, unless otherwise provided in the policy, be void.

13. (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 a period of grace of thirty days (or, in the case of a contract providing for the payment of premiums weekly, four weeks) 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 Canada 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) Payment, delivery or tender as aforesaid shall have the same effect as if made at the due date of the premium.

(4) The period of grace hereinbefore in this section mentioned shall run concurrently with the period of grace, 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 period of grace and before the overdue premium is paid, the contract 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), and the balance, if any, of the current year's premium, may be deducted from the insurance money.

(6) Nothing in this section shall deprive the insured of the benefit of any period of grace allowed by the contract in excess of the period of grace allowed by this section.

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

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

16. 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.

17. 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.

19. The contract shall be void, if, at the time at which it would otherwise take effect and be binding, 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 or any assignment that any beneficiary, or any person claiming under an assignment, or by will or by succession, have an insurable interest.

Policies on the Lives of Minors.

21. (1) A minor over the age of fifteen years may effect contracts of insurance on his life and may do in respect of any

such contract or of any contract of insurance on his life which he may have effected before attaining the said age whatever a person of full age may lawfully do, including the surrender of the contract, the borrowing of money on its security, the designation of beneficiaries and the alteration and revocation thereof, and the giving of receipts or discharges.

(2) In the case of insurance effected by a person of full age upon the life of a minor, the minor, after attaining the age of fifteen years, may, with the written consent of the person who effected the insurance, do in respect of the insurance whatever he might have done in respect of a contract within the meaning of sub-section 1. After the death of the person who effected the insurance, the written consent may be given by a parent or duly appointed guardian of the minor if the insurance was effected by a parent, and, in other cases, by the personal representative of the person who effected the insurance.

22. (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 in conspicuous type upon every circular or advertisement soliciting, and upon every policy of, such insurance.

(4) An insurer which knowingly contravenes the provisions of sub-section 1 or 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.

23. (1) 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.

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

(3) Ordinary beneficiaries are beneficiaries who are not preferred beneficiaries, beneficiaries for value or assignees for value.

24. 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 such beneficiary or assignee.

25. (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 contract or by a declaration, and may from time to time by any declaration appoint, appropriate or apportion the insurance money, or alter or revoke any prior designation, appointment, appropriation or apportionment, or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, and may surrender the contract to the insurer, borrow from the insurer upon the security of the contract, receive the surplus or profits for his own benefit, and otherwise deal with the contract as may be agreed upon between him and the insurer.

(2) Where the declaration is made by a last 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.

26. Where two or more beneficiaries are designated otherwise than alternatively, but no apportionment is made, they shall share equally.

27. 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 payable to 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 money shall be payable to the insured or his estate.

28. (1) Where the insured, in pursuance of the provisions of section 25, 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 of the class of preferred beneficiaries remains, the insurance money, or such part thereof as is or has been apportioned to a preferred beneficiary, shall not, except as otherwise provided in this Act, 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 value, 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; provided that no provision in such instrument reserving to the insured the right to revoke or abridge the interest of a preferred beneficiary shall be effective so as to enable the insured to revoke or abridge such interest in favour of any person not in the class of preferred beneficiaries.

(3) The insured, in the instrument by which he designates the preferred beneficiary or beneficiaries, may provide that if a designated beneficiary is not living at the maturity of the con-

tract, the insurance money or any part thereof that would have been payable to such designated beneficiary, if living, 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 provide 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.

29. Notwithstanding the designation of a preferred beneficiary or beneficiaries, the insured may subsequently exercise the powers conferred by section 25 so as to restrict, limit, extend or transfer the insurance money or any part thereof 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.

30. (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, or otherwise definitely indicated.

31. (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 25 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 or husband 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 payable to the insured, or his estate.

32. (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 value.

(2) Where a divorce has been granted on the application of the beneficiary, the beneficiary shall be estopped from denying the validity of the divorce for the purpose of this section.

(3) Until the insurer receives notice in writing of the Act of Parliament, judgment, 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 judgment, 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 divorce to recover from any person to whom payment is made by the insurer.

33. Where the wife or husband of the person whose life is 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, and the insured may then deal with the policy as provided by section 25.

34. (1) Where a preferred beneficiary is designated, the insured may surrender the contract to the insurer and accept in lieu thereof any paid-up or extended insurance provided by the contract in favour of such preferred beneficiary.

(2) Where a preferred beneficiary is designated, 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.

35. (1) Notwithstanding the designation of a preferred beneficiary, any person who has effected a participating contract 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.

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

36. (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, to the insurer, the insured or any other person, but notwithstanding anything herein contained the insured may exercise the borrowing powers conferred by section 34 without the concurrence of any beneficiary.

(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.

37. Where by a contract a person is to become entitled to insurance money only in the event of the death of another person named as a beneficiary it shall not be necessary for such first mentioned person to join in any surrender, assignment or disposal of the contract.

38. (1) Where the insurance money is payable in instalments and the contract, or a subsequent instrument in writing signed by the insured and delivered to the insurer, 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 necessaries supplied to the beneficiary or his or her infant children.

(2) Notwithstanding anything contained in sub-section 1,—

(*a*) the insured may, by an instrument in writing signed by him and delivered to the insurer, declare that the beneficiary shall have the right to commute, or alienate or assign, as the case may be;

(*b*) The court may, upon the application of the insurer or the beneficiary, upon at least ten days' notice, declare that in view of special circumstances the beneficiary shall have the right to commute, or alienate or assign, as the case may be;

(*c*) after the death of the beneficiary his 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.

39. 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 insurance money 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 insurance money, or any part thereof, interest thereon at a rate not less than that specified in the contract or agreement for the term during which the insurer retains such insurance money or any part thereof.

40. (1) Until the insurer receives notice in writing of the making of an order declaring a beneficiary disentitled to insurance money, 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 has been made by the insurer.

PROOF OF CLAIM AND PAYMENT.

41. (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.

(2) 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.

42. (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, of the age of the person whose life is insured, and of the right of the claimant to receive payment.

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

43. (1) 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 2, the insurer or the claimant may, before or after action brought, upon at least ten days' notice, apply to the court for a declaration as to the sufficiency of the proof furnished, and the court may direct what further evidence

of the age of the person whose life is insured shall be furnished, or, in special circumstances, may dispense with further evidence of the age of the person whose life is insured.

(2) 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 1, the insurer may, before or after action brought, upon at least ten days' notice, apply to the court for a declaration as to the presumption of death.

(3) If the court finds that the proof 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 is sufficient, or that a presumption of death has been established, or makes an order directing what further evidence of the age of the person whose life is insured shall be furnished or dispensing with further evidence of the age of the person whose life is insured, the finding or order of the court shall, subject to appeal, be conclusive and binding upon the parties to the application, and the court may make such order as to the payment of the insurance money and as to the costs as to it may seem just.

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

(5) If the court 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, the court 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 it 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.

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

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

LIMITATION OF ACTIONS.

45. (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, but not afterwards.

(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 the prescribed period or within one year and six months after the death becomes known to him.

(4) Where an action or proceeding is prematurely brought, the plaintiff may 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.

46. (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, shall include power from time to time to appoint a trustee or trustees for any beneficiary or beneficiaries, to revoke such appointment or alter its terms, to appoint a new trustee or trustees, or to make 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.

(3) Payment made to the trustee or trustees appointed as hereinbefore provided shall discharge the insurer.

47. (1) Where no trustee is appointed to receive the shares to which minors or other persons who are under disability are entitled, or where a trustee is named, but refuses or neglects to

act, the shares of such minors or other persons under disability may be paid to a guardian or tutor or trustee of such minors or to a curator, committee or trustee of such other persons under disability duly appointed under the law of this province.

(2) Where insurance money not exceeding two thousand dollars is payable to the husband and children or to the wife and children, or to the children of the person whose life is insured, and one or more of the children are minors, the court may, if the wife is the mother of such minors, appoint her their guardian, or if the husband is the father of such minors, appoint him their guardian, with or without security, and the insurance money may be paid to him or her as guardian.

(3) Where it appears that a guardian, tutor, curator, committee or trustee of minors or other beneficiaries under disability has been appointed in a foreign jurisdiction, and that the minors 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.

48. (1) Where the insurer admits liability for the insurance money or any part thereof, and,

(*a*) there are adverse claimants; or,

(*b*) the place of abode of a person entitled is unknown; or,

(*c*) there is no person capable of giving a valid discharge;

the insurer may, at any time after the expiration of one month from the maturity of the contract, apply to the court for an order for payment of the money into court.

(2) Where the insurer admits liability for the insurance money or any part thereof payable to a minor and there is no person capable of giving a valid discharge therefor, the insurer may at any time after the expiration of one month from the maturity of the contract, pay such money, less the costs mentioned in sub-section 3, into court to the credit of the minor.

(3) The insurer may retain out of the insurance money for costs ten dollars if the amount does not exceed one thousand dollars, and fifteen dollars in other cases, and payment of the remainder into court shall discharge the insurer.

(4) No order shall be necessary for payment into court under sub-section 2, but the accountant or other proper officer shall

receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the official guardian of infants [*if there is no official guardian of infants, insert reference to some other officer*] and deliver to him a copy of the affidavit.

49. 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.

50. The court may order the costs incurred upon or in connection with any application or order made under section 48 or 49 to be paid out of the insurance money or by the insurer or the applicant or otherwise as may seem just.

Construction of Act.

51. 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.

52. Chapter of the is hereby repealed.

Coming into Force.

53. This Act shall come into force on the first day of January, 1925.

APPENDIX C.

DRAFT 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. Saskatchewan, 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. (1) 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 will have to be made to other sections, such as Sections 11 and 19.)

7. (1) 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 exer-

cise 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.)

12. 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 the 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 of 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 pur-

poses 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 *quasi 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.)

34. 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. (1) 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 the 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 D.

DRAFT INTESTATE SUCCESSION ACT.

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

(*Assented to* 19 .)

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. Nova Scotia, ch. 140, s. 1; R.S. Sask. c. 73, s. 2.

DEVOLUTION OF REAL ESTATE TO PERSONAL REPRESENTATIVE.

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 upon and become vested in his personal representative from time to time as if it were personal property vesting in him.

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

Imp. Act 60 & 61 Vict. c. 65, s. 1; B.C. 1921, c. 26, s. 26; R.S. Man. c. 54, s. 21; R.S. Ont. c. 119, s. 3 (1); R.S. Sask. ch. 73, s. 3 (1); and see R.S. Alta. ch. 133, s. 109.

PERSONAL REPRESENTATIVE TO HOLD AS TRUSTEE.

4. Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representative of an intestate

shall hold the real estate as trustee for the persons by law beneficially entitled thereto, and those persons shall have the same power of 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 personal estate, and as respects the dealing with personal estate 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 personal estate 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 R.S.A. c. 143, s. 2 (*e*).

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.

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 s. 2 (*e*).

POWERS OF SALE OF REAL ESTATE.

7. (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 bene-

ficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

(2) No sale of real estate for the purpose of distribution only shall be valid as respects any person beneficially entitled thereto unless he concurs therein; 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) Where an infant is interested in the real estate of an intestate, no sale thereof shall be valid without the written consent or approval of the Official Guardian, which he is hereby authorised to give, or, in the absence of such consent or approval without an order of a judge of the Court of

(4) The personal representative shall have power, with the concurrence of the adult persons beneficially entitled thereto, with the approval of the Official Guardian on behalf of infants, and, in the case of a lunatic, with the approval of a judge of the Court of if any infants or lunatics are so entitled, to convey, divide or distribute the estate of the deceased person, or any part thereof, among the persons beneficially entitled thereto according to their respective shares and interests therein.

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

Ont. ss. 19 (1) and 21; Sask. ss. 9 and 11; and see Man. s. 25.

EFFECT OF ACCEPTING SHARE OF MONEY.

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

has been made without the concurrence required by subsection (2) of section 7, shall be a confirmation of the sale as to him.

Ont. s. 22; Sask s. 12.

REAL ESTATE SOLD OR DISTRIBUTED.

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

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

(2) Real estate which has been conveyed by the personal representative 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 person, 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 representative, 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 REPRESENTATIVE.

10. (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 for the repair or completion of buildings.

(2) Where infants or lunatics are concerned, the approval required by section 7 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.

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

Alta. 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. ch. 161, s. 2; N.S. s. 6; and P.E.I. 1873, c. 23, s. 10.

(3) If a child has died leaving issue, the estate shall be distributed in the same proportions as if such child had been living at the death of the intestate, and the distributive share of such child shall go to his issue who shall take according to the right of representation.

Alta. s. 3 (*f*); 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 or children have died leaving issue, the share of the estate which would have gone to such child or children, if living, 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 equally, otherwise they shall take according to the right of representation.

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

WIDOW AND NO ISSUE.

12. (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 14, 15 or 16, 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 & 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.

13. 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 11.

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.

14. 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. s. 19.

NO WIDOW, ISSUE OR PARENT.

15. 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 share their parents would have taken, if living.

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

WHERE ESTATE GOES TO NEXT OF KIN.

16. 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.

ESTATE OF INTESTATE WOMEN.

17. 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 purposes 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 11, 12, 13, 14, 15, 16 and 21.

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

DISTRIBUTION AMONG NEXT OF KIN.

18. 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 & 23 Car. II., c. 10, ss. 3 and 4; see B.C. s. 95 (4); 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.

19. (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. I., 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.

20. 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. 8 (2) and (3); Man. s. 8; N.S. s. 1; Sask. s. 38.

Posthumous Children.

21. 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 (*a*); 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.

22. (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 not equal to 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.

23. All such estate, real and personal, as is not devised by will shall be distributed as if the testator had died intestate and had left no other estate.

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

NO DOWER OR CURTESY.

24. 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.

R.S.A. c. 134, ss. 4 and 5; Man. ss. 19 and 20; Sask. s. 44.

ILLEGITIMATE CHILDREN.

25. 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 gift, devise or descent from any other person.

R.S. Alta. c. 143, s. 9 (4); Sask. s. 45; see Ont. s. 27 (1).

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

R.S. Alta. c. 143, s. 9 (2); Sask. s. 46.

CONSTRUCTION OF ACT.

27. 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.

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

APPENDIX E.

REPORT ON A UNIFORM COMPANIES ACT.

TO THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

1. Your Committee, consisting of the British Columbia Commissioners, has considered the draft Uniform Companies Act referred to it, but, as will appear from this Report, feels that it is impossible to comment on the draft except in a general way.

The draft appears to have been compiled several years ago mainly from Ontario and Manitoba sources and does not appeal to your Committee as a satisfactory foundation for constructing the Uniform Act. Almost every Companies Act in Canada has undergone change since the original date of the draft, and in particular in the Province of British Columbia the Companies Act was revised and redrawn in 1921. The draft does not exclude trust and insurance companies and the construction and operation of railways which do not fall under any general Companies Act in Canada and does not contain provisions, for example, as to public and private companies, voluntary liquidation, and the registration of mortgages, some of which are to be found in a number of Acts now in force, while others were recommended for consideration by the Canadian Bar Association Report of 1918.

2. Viewing section 15A of the draft Act from the standpoint of drafting, your Committee would suggest:—(1) that logically it should first confer the internal capacity equivalent to that of a natural person and then deal with the exercise of that capacity externally; (2) that the section should be made generally applicable to all provincial corporations and not merely companies within the Act; (3) that as the words "heretofore or hereafter" are used it would be sufficient to say "created by or under any general or special Act of the Legislature"; (4) that the internal and external capacity should be described in the same language, and not in one case as that of a "common law" corporation and in the other of a "natural person."

That part of the section dealing with internal capacity seems to us bound up with section 15B, and the question of *ultra vires* which is next discussed. Every corporation has an inherent capacity adequate to carry on its undertaking. For the purposes of exercising its powers abroad it is not necessary and is indeed inadvisable to confer a wider capacity than a corporation possesses at home. In British Columbia such capacity is conferred in the following terms by the "Companies Act, 1921":—

> 9. (1) For the purposes of this section, the expression "Charter" includes any Act, Letters Patent under the Great Seal, certificate of incorporation, memorandum of association, declaration, or other instrument by or under which a corporation has been or may be incorporated in the Province.
>
> (2) Every corporation heretofore or hereafter incorporated within the Province by or under any Act of the Legislature shall have, and shall be deemed to have always had, capacity to effect outside the Province its objects or purposes, and to accept powers and rights in respect thereof from any lawful authority outside the Province, except where the operations of a corporation are confined to the Province by some express provision in its charter or an Act of the Legislature.
>
> (3) An express provision in the charter of a corporation which confines its operations to the Province may be abrogated in the same manner as the objects or purposes of the corporation may by law be altered. 1918, c. 18, ss. 2, 3, 4.

It will be noted that the language used follows very closely the terms of the judgment in the Bonanza Creek Case. The section is one of a group which apply to all Provincial corporations.

3. Section 15B endeavours to carry out the decision of the Conference that the *ultra vires* doctrine be abolished in so far as corporate contracts of a company are concerned, provided that shareholders, investors and creditors have a measure of protection. In the opinion of your Committee the protection afforded by the draft clause would be found almost valueless in practice. Usually the thing will have been done before dissentients ever hear of it, and it will be very difficult to prove the amount of damage. It may also be anticipated that recovery of damages

from the parties liable will be impossible. In fact your Committee feels that the compromise suggested is not feasible, and unlimited capacity cannot be reconciled with proper security for the persons whose money is at stake.

There seems to be some ambiguity in the phraseology of the section between *ultra vires* contracts and other *ultra vires* acts. One or two other changes seem desirable and a fresh draft is submitted herewith:—

"S. 15B. Where a company enters or proposes to enter into a contract which is beyond the scope of the objects set forth in its (charter) and is not otherwise within its powers:—

"(*a*) Any contract so made shall be enforceable according to its tenor by and against the company and all persons claiming or liable under the contract.

"(*b*) The Court may at the suit of any member or creditor of the company or of any person whose interest in the company may be affected by the contract restrain the company and its directors and members from entering into the contract:

"(*c*) Every director and every member of the company who authorizes or approves any such contract shall be personally liable to the company for any damage suffered or liability incurred by it by reason of the contract, and any member who did not authorize or approve the contract may in the name and on behalf of the company institute an action to recover damages from the directors and members who authorized or approved the contract, but every such action shall be brought within one year from the date of the contract and not afterwards."

4. The question whether the doctrine of *ultra vires* should or should not apply to companies under the Uniform Act has been discussed at some length at several meetings of both the Conference and the Canadian Bar Association, and it appears that the policy of abolition has been at least tentatively adopted. It is clear, however, that a distinct difference of opinion exists, and your Committee earnestly submits that further consideration is most desirable. Your Committee feels that it has not been demonstrated, that apart from a section of the legal fra-

ternity such public opinion as is actively concerned and competent to pass judgment is in favour of so radical a change in the law. The discussion took place some three years ago and various important arguments have received little or no consideration. Your Committee ventures to suggest that the matter might be reopened, and presents the following points of view:—

(*a*) Canada will be the only important commercial country in the world where the doctrine of *ultra vires* will not prevail. The British Empire, including India, Australia, the possessions in China and the West Indies, has adopted the registration system. The doctrine is and always has been in force in the United States, and is likewise in force in Mexico and Japan. Your Committee is also advised that the doctrine is recognized by the commercial codes of countries like Germany, France, Holland, &c.

(*b*) The grounds on which the doctrine is based are (as well put by Cook on Corporations) the obligation of anyone contracting with a corporation to take notice of the legal limits of its powers, the interest of the stockholders not to be subject to risks which they have not undertaken, and the interest of the public that the corporation shall not transcend its lawful powers, and, it may be added, the fact that the privilege of limited liability is conditioned on the public nature of the company's and directors' powers.

(*c*) The abolition of the doctrine is revolutionary in point of law as regards "registration" companies and in point of practice as regards "letters patent" companies. Prior to the Bonanza case all lawyers held that the latter class of company was subject to the doctrine. The amendments somewhat hastily passed in several provinces with a view to converting all their companies into "common law" corporations have not had time to take root.

It is not clear whether section 15B is meant to extend the powers of companies incorporated by special or private Act of the Legislature, powers presumably conferred after mature deliberation. It does not appear reasonable that a company created by such an Act for a special purpose such as a railway or an electric

light undertaking should be at liberty to do anything else. It is doubtful whether this effect of the amendments just referred to was foreseen.

(*d*) The doctrine has analogies in other relationships at law. For example, a partnership is not bound by an Act which is not "business of the kind carried on in the usual way" by the firm, and a principal is not bound when his attorney exceeds his powers. The statute-book is full of laws limiting powers and compelling disclosure of authority or rights, and in consequence business men have habitually to tread with caution. The registration system for companies provides an easy method of ascertaining powers, while the instances where the existence of a specific power is in doubt are not frequent enough to justify so great a change in the law.

(*e*) A company will be able to engage in any transaction whatever and enjoy limited liability, whereas the liability of an individual will be unlimited.

(*f*) To abolish the doctrine is a retrograde step, since the trend of all modern company legislation is restrictive. Logically there is no more reason why a grocery company should have unlimited powers than an insurance company.

(*g*) It is untrue to say that most companies to-day incorporate with every conceivable power. The experience of the registration office in British Columbia is the reverse. Large companies, *bona fide* companies, and private companies, always have a well-drawn, compact set of objects, suitable for their project. The cases where the objects clause copies out the whole precedent-book are generally bogus flotations, instances of ignorant or slipshod drafting, or cases of real-estate or investment concerns.

Your Committee understands that the policy of the Dominion Department is so far as practicable to limit a company to one main line of business and concrete subsidiary businesses. Following an Order-in-Council of April 5th, 1897, "as closely as may be, in departmental practice," companies are "confined to one description of business and to matters strictly in connection there-

with." (Mulvey—Dominion Company Law, pp. 9, 130, 185).

(*h*) Assuming that there are cases which make abolition desirable, why should it be compulsory? Could not the Act provide that a company may take power in its memorandum either to do any and all kinds of business or to do the business specified? Creditors and shareholders would then deal with the company with their eyes open.

It should be recalled, too, that a company may always apply for an extension of its powers, and the cases where there is such urgency to engage in a new line of business that there is no time to proceed in this way must be very rare.

(*i*) It is easy to talk of "grave injustice" suffered by someone owing to the *ultra vires* act of a company, but your Committee suggests that there would be far more cases of graver injustice if unscrupulous directors were given the chance of playing fast and loose with shareholders and debenture-holders' money and with their creditors. It is very rare indeed to see any case in the Courts involving *ultra vires,* and that is some criterion that the times when the point occurs are comparatively uncommon.

It may be pointed out that in Canada and under English law the apparent harshness of the *ultra vires* doctrine is softened by the equitable doctrine that, while an *ultra vires* contract cannot be enforced against a company, *i.e.,* there is no remedy *in personam,* there is a remedy *in rem,* and an action can be maintained for an accounting or *quantum meruit,* where the company has received benefit. A similar principle is recognized in the United States and, it is believed, under European law.

The law is well reviewed in *Trades Hall Co.* v. *Erie Tobacco Co.*—29 D. L. R. 779.

(*j*) It seems to your Committee that at least on this question an effort should be made to ascertain the opinions of the business and banking world before the Conference settles its policy. The liberty of action which it is proposed to confer on companies may in its eyes be reckoned as a weakness rather than an advantage.

5. Your Committee suggests that one risk of an *ultra vires* Act may be avoided by the abrogation of the "main object" rule, namely, that "the main purpose or object . . . . controls the construction of all that follow." This canon of construction was applied more strictly in the past than it is to-day, and the tendency of the courts in Canada is perhaps to be more indulgent than in Great Britain. It is true that the operation of the rule can be prevented by the insertion in the objects clause of "words expressly providing that certain (or all)) of the objects are to be construed as independent objects," and the case of *Cotman* v. *Brougham* establishes the validity of such provision. But the danger exists and can be easily removed.

The practice of the Secretary of State's Department alluded to above is, though salutary in strict theory, possibly not suited to modern conditions.

6. Your Committee notes that while the draft Act adopts the memorandum system, it departs from the Imperial model in retaining the "by-law" method of internal government in use in the provinces which have the "letters patent" system, instead of completing the assimilation by adopting the method of articles of association. The question is of importance and has not been discussed, so far as your Committee is aware, at any meeting of the Canadian Bar Association or this Conference. On general principles of uniformity your Committee is of opinion that the Uniform Act should provide for articles. The Imperial Act is founded on the publicity of the documents of a company—its memorandum and articles, prospectus, mortgages and so forth—and, in this respect the European countries, like Germany and France, and on this side of the world Mexico and Japan, but not the United States, have adopted the same principle. The element of being a public document is one of the chief differences between articles and by-laws. A further distinction lies in the methods by which a company passes a by-law or makes an alteration to articles, and the requisite majority prescribed by the two types of Act.

At common law the power to make by-laws rests with the shareholders, but the "letters patent" Acts vest certain—indeed very large—powers to make by-laws in the directors, with the consequence, according to some authorities, that the shareholders no longer possess the power in those cases. The position is radically different where there are articles, as, subject to rare exceptions, the power over articles is given by statute absolutely to the shareholders and cannot be taken away.

Your Committee recognizes that the situation is difficult, and whichever system is adopted for the Uniform Act, some provision would have to be inserted for existing companies. It is submitted, however, that the procedure by articles is more elastic and adaptable than by by-laws and furnishes more protection for shareholders, because the ultimate control is fixed in them. It is quite usual for articles to vest absolute powers of management in directors, but the position is quite different where that is done by the Act itself—in the one case it is optional, in the other compulsory, a comparatively rigid method.

Under the "letters patent" Acts by-laws fall roughly into two groups, administrative and constitutional. The "administrative" by-laws are made by the directors and are valid and in force until the next annual general meeting, when unless they are "functus" they must be confirmed by the shareholders, in order that they may continue in force. It is obvious that a vast and dangerous power may be exercised in the interval. "Constitutional" by-laws, such as changing the letters patent, must be passed by directors and confirmed by a general meeting before they come into effect, but it seems that in both cases the right to initiate by-laws vests only with the directors, and the shareholders cannot enact any by-law interfering with the managerial authority of the directors. Under the "articles" Acts the statute requires certain "constitutional" matters to be done by the company, but leaves all other things to be done in such manner as the company itself desires. The power to alter articles where conditions are unsatisfactory may be exercised at any time. But the right of initiation belongs to every member of the company, and thus the directors can be controlled.

Your Committee favours the adoption of "articles" because it is part and parcel of the "registration" system, and it would be awkward to have to refer to separate text-books and different decisions for the construction of the memorandum and by-laws. The cases relating to articles are by no means equally applicable to points arising out of by-laws, and resort would be rather to American than English decisions: in the United States the "by-law" system generally prevails. It would be easier, too, for existing "by-law" companies to adopt new articles by which full powers could be conferred on directors, although ultimate control would rest with the company, than to place existing "article" companies under a system which by statute would alter their articles and would take that control away.

7. In the first paragraph your Committee stated that it was

not possible to examine the draft Act critically in detail. Certain matters should be considered before the framework of the Act can really be designed. Company law is not in the same category as most subjects which have been or are being dealt with by our Conference. It is not in the same sense "pure law," more or less static, but is continually liable to change owing to its ramifications and the ever-increasing use of corporate machinery. Then again a Companies Act does not work automatically like a Wills Act, but in large part is administered, and it is a trite observation that the success of a law more often depends on that factor than its actual provisions. The legal profession, accountants, and business men generally are more conversant with and intimately affected by laws of this kind, and your Committee entertains some doubt whether the Conferences can or ought to settle big changes without taking some pains to ascertain the views of the classes indicated.

8. Since the Federal Government possesses concurrent powers of legislation as to companies, it would seem almost essential that the Federal Act should be uniform with the Provincial Act. Otherwise the gain would be comparatively slight. There will still exist two different systems of company law, and if the Uniform Act presents more obstacles to incorporation or management, the Federal Act will be patronized to the detriment of Provincial revenue and control. It is suggested that the Federal Government be invited to collaborate with our Conference with a view to the enactment by it of one Uniform Companies Act, subject, of course, to such changes as are necessary. The Federal Act has been amended in many respects in the last few years, and the adoption of our Act would not present any greater difficulties than for any province.

9. A further matter which should in the opinion of your Committee be settled *in limine* is the type of Act which is to be drawn—that is, how stringent it will be in its control and the nature of the returns prescribed, and whether it will contain any "Blue-sky" provisions. The Acts in force vary greatly in the matter of returns, while most provinces have enacted separate "Blue-sky" legislation. It may, for instance, be unnecessary to insert in the Uniform Act any restrictions on commencing business or sales of shares, leaving such matters to be regulated by another Act and making the Uniform Act merely an incorporation and "constitutional" Act. The objection to this course is that it straightway leads to divergency unless a Uniform

"Blue-sky" Act could also be agreed on. On the other hand, if provision is made for private companies, the percentage of companies subject to special regulation would be very small; nine out of ten companies to-day are private companies—at least in British Columbia. As a rule private companies are obliged to file the same returns as public companies. A Uniform Act which does not compel full disclosure and prescribe all proper filings would not be acceptable to this province.

From this standpoint also it is most desirable that the federal should be uniform with the provincial legislation. The Dominion Companies Act in spite of the modernization which it has in recent years undergone will be an easier law for promoters to work under than such a Uniform Act as your Committee has in mind. The principle of Gresham's law that bad money drives out good would come into play, and the easier Act would be resorted to in preference to the new provincial law.

10. There are certain other points to which your Committee wishes to direct the attention of the Conference as bearing on the general scheme of the Act. One class involves the question whether the Uniform Act should attempt to reform some of the evils of existing company law; for example:—

(*a*) Fraudulent "one-man" companies;

(*b*) Excessive consideration for property sold by promoters and "watered" stock;

(*c*) Fraudulent or unfair reorganizations so-called;

(*d*) Oppression of minorities;

(*e*) Distribution of unearned dividends;

(*f*) Abuse of voting trusts;

(*g*) Fictitious increases of capital;

(*h*) Suppression of or refusal to furnish to shareholders at annual meetings or otherwise information concerning a company's affairs.

Other cases can be cited. The issue your Committee desires to raise is whether the Uniform Act should be designed to furnish better safeguards against such abuses, and, if necessary, make new law by over-riding decisions by the Courts.

Another class relates to "constitutional" points to which allusion has been made in the various discussions that have taken place; for example:—

(*a*) Provision for private companies;

(*b*) Provision for companies limited by guarantee, for companies with unlimited liability, for special classes of business such as insurance;

(*c*) Provision for shares having no par value;

(*d*) Provision for share warrants.

Such points will involve a number of sections in each case, and, in the view of your Committee, it will facilitate and shorten discussion on separate sections if the requisite provisions could be inserted in all proper places where the subject matter is dealt with.

11. It is submitted that a better draft should be prepared as a basis for discussion, showing comparatively, in a succinct fashion, easy for reference, the provisions of the Companies Acts now in force in Canada. Your Committee ventures to say that the Companies Act, 1921, of British Columbia (a copy of which accompanies this report) will best carry out this suggestion. It appeals to your Committee as more logically arranged than other Acts; is the latest Companies Act in Canada; adheres, so far as local conditions permit, to the Imperial Act; is the fullest in the variety of its provisions; and contains special provisions as to private companies, mining companies, voluntary liquidation, extra provincial companies, and stringent sections relating to prospectuses and conditions precedent to commencing business.

Your Committee suggests that a number of interleaved copies be prepared for the use of the Conference. Opposite every section should be printed the reference to the corresponding section in the Acts of the Dominion and the other Provinces —the Imperial references are already in the British Columbia Act—with brief remarks as required. This process would be simpler than starting out to draft an entirely new Act, and effect a saving in time for the Conference which would be ample justification for the expense entailed.

Respectfully submitted,

H. G. GARRETT,
For the British Columbia Commissioners

Victoria, B.C., August 14th, 1923.

APPENDIX F.

REPORT ON MECHANICS' LIEN ACTS OF CANADA.

Most of the Acts in Canada on this subject bear a marked resemblance. In all the provinces the lien seems to arise by virtue of a contract. It may be claimed by persons not parties to that contract, such as sub-contractors and workmen.

The person against whom the lien is claimed must be a person who, at any rate, has some interest in the property against which a lien is claimed.

In general, the amount of the lien is limited by the amount due to the person making the claim and the amount due from the other party to the contractor or sub-contractor.

In all the Acts, a lien can only attach upon the estate or interest of the person with whom the contract, whether such contract was express or implied, was made.

Meaning of "Owner."

In the Alberta Act, "Owner" shall include a person having any estate or interest, legal or equitable, in the lands upon or in respect of which the work is done or materials are placed or furnished, at whose request and upon whose credit or on whose behalf, or with whose privity or consent, or for whose direct benefit any such work is done or materials are placed or furnished, and any person claiming under him whose right is acquired after the work in respect of which the lien is claimed is commenced or the materials have begun to be placed or furnished;

In British Columbia "work or service" is referred to.

Manitoba expressly includes "municipal corporation" and refers to "work or service."

Nova Scotia is practically the same as Manitoba.

Ontario refers to "work or service" and includes "municipal corporation and railway company."

New Brunswick mentions "placing and furnishing material."

Subject Matter of Lien.

Speaking generally, the lien is confined to the estate or interest of the owner in a building, erection or mine. Nearly all

the statutes give specific enumerations of things which may be the subject matter of a lien. In most of the provinces these would be covered by the general words "building, erection or mine," but there are specific enumerations of things which might not come within this general description.

In Ontario, well, excavation, fountain, fish-pond, drain, sewer, aqueduct, road-bed, way, fruit or ornamental trees are specifically enumerated.

Nova Scotia follows this enumeration almost in its entirety, as do British Columbia and Manitoba, with the exception of fruit or ornamental trees.

Everything mentioned in the Saskatchewan Act would seem to be covered by the general words above referred to, whilst in Alberta there is specific mention of tramways, railways, excavations, drainage and irrigation work.

As a rule, the lien extends to the land occupied by the erection, etc., or upon or in respect of which the work or service is performed, or upon which materials are placed or furnished to be used.

In Ontario the description of the land is somewhat amplified by describing it as "the land occupied thereby or therewith, or upon or in respect of which work or service is performed, or upon *or adjacent to which* such materials are placed or furnished to be used."

In Ontario (3) there is an exception of public streets and highways and work or improvement done by municipal corporations thereon. (See also British Columbia (3) and Nova Scotia (3).) Where the estate is leasehold, the fee simple may be charged by signature of the owner upon the claim. (See Ontario (8(2)), British Columbia (32), Manitoba (5(2)), Saskatchewan (7(2)) and Nova Scotia (8(1)).)

Limit of Lien.

In general, there is a limitation of $20.00. See Alberta (13), British Columbia (21), Manitoba (4).

Contracts Waiving Application of Act by Manual Labourers.

In Ontario (4), British Columbia (4) and Nova Scotia (4) there is a provision avoiding contracts made by manual labourers which waive application of the Act, except in the case of a man-

ager, officer, foreman or person whose wages are more than $5.00 per day.

In Saskatchewan (3) there is the same provision without the exception. In Manitoba and Alberta there is no such express section.

Waiver of Agreements Not to Affect Third Parties.

Provisions to this effect occur in Ontario (5), Alberta (6), Manitoba (3), New Brunswick (5) and Saskatchewan (6).

Subjection of Wife's Land to Lien by Reason of Implied Agency.

Provisions as to this occur in Ontario (7), British Columbia (5), Nova Scotia (7), New Brunswick (6(2)), Saskatchewan (5) and Alberta (10(2)).

Priority of Mortgages.

In general a lien takes its ordinary priority, but it attaches in priority to a prior mortgage or charge upon the increased selling value caused by the work done.

In Ontario (8) the value is deemed to be increased by the value of the work done, etc. Provisions in Nova Scotia (8(3)) are similar.

In Alberta (9) and British Columbia (9) the increase in value has to be decided by taking an account, or in an action, or by actual sale by order of a judge, whereas in Manitoba (5(3)) a mortgage has its ordinary priority over the lien, but only to the actual value of the land at the time of the commencement of the improvement.

In general, an agreement to purchase is a mortgage where the purchase money is unpaid. (See Ontario (14(2)), Alberta (9(2)), British Columbia (9(*a*)). In Manitoba there is no specific mention of vendor's lien, etc.)

Insurance Moneys.

In general, insurance moneys stand in place of property. (see Alberta (12), British Columbia (12), Manitoba (6), Nova Scotia (9), Saskatchewan (8)).

Priority Over Judgments, Etc.

In Ontario (14), a lien has priority over subsequent judgments, executions, assignments, attachments, garnishments and receiving orders and over all payments made on account of any conveyance or mortgage after written notice of claim for lien, or after registration of claim. See also Manitoba (11) and Nova Scotia (4).

In Saskatchewan (13) there is no mention of written notice.

Limit of Amount of Lien.

The owner is not liable for more than is payable to the contractor, and except as to wages, the lien is limited to the amount owing to the contractor or sub-contractor, as the case may be, when the lien is claimed. See Ontario (10) and (11), Manitoba (7) and (8), New Brunswick (8) and (10), Nova Scotia (10) and (11) and Saskatchewan (9) and (10).

In Alberta (8) and (32) and British Columbia (7) and (8), the lien is limited to the sum actually owing to the person entitled to the lien and is further limited to the amount payable by the owner to the contractor.

In Alberta (32) the time at which the amount is due is to be ascertained as the time of receipt by the owner of the notice in writing of a lien.

Retention of Percentage.

The owner must deduct from every payment made under the contract 20% (or 15% where price exceeds $15,000) of the contract price, or if none, of the actual value, and retain the same for a period of thirty days after the completion or abandonment of the contract. Up to that percentage, *bona fide* payments before notice in writing discharge the owner, and the percentage itself may be paid after the thirty days unless proceedings are commenced. See Ontario (12), Manitoba (9), Nova Scotia (12) and Saskatchewan (11), except that in Saskatchewan the percentage is always 20%.

In New Brunswick the owner must retain 15% where the price is not over $1,000, 12½% where the price is not over $5,000 and 10% in all other cases.

Direct Payments by Owner to Persons Entitled to Lien.

The owner may make payments direct to persons entitled to lien, giving notice to the person primarily responsible for such

payment within three days; but not so as to affect retained percentage. (See Ontario (13), Manitoba (10), Nova Scotia (13) and Saskatchewan (12)).

Priority of Lien for Wages.

Wages for six weeks (British Columbia and Alberta) or thirty days (Ontario, Nova Scotia, Saskatchewan and Manitoba) have priority over the retained fund for thirty days and wage earners may enforce their lien in respect of a contract not completely fulfilled, the percentage in such a case being calculated on the value of the work done, etc.

Devices to Defeat Priority of Wage-Earners.

Such devices are forbidden. (See Ontario (15(5)), Nova Scotia (15(5)), Manitoba (12(5)), New Brunswick (6(3)), British Columbia (18), Alberta (31), Saskatchewan (14(5)).

Material.

Material once placed is not to be removed. See Ontario (16(1)), Alberta (16), British Columbia (17), Manitoba (13), New Brunswick (14), Nova Scotia (16(1)) and Saskatchewan (16(1)).

Material is subject to a lien in favour of furnisher until placed in building, etc., but is not subject to executions, etc., for any debt other than that due for its purchase by the furnisher. (See Ontario (16(2)) and Nova Scotia (16).

Alberta (5), Manitoba (6) and Saskatchewan (16(3)) have no express savings as to executions, etc.

Registration.

Registration is made in Ontario in the registry office or in the Land Titles Office. In Alberta in the office of the Clerk of the Superior Court or in the Lands Titles Office. In British Columbia in the County Court Registry and the Land Registry Office. In Manitoba in the Land Titles Office or the Registry Office. In New Brunswick in the office of the Registrar of Deeds. In Nova Scotia in the office of the Registrar of Deeds and in Saskatchewan in the Land Titles Office.

Speaking generally, there may be unions of claims and only substantial compliance with forms, etc., is required.

In the case of Ontario (17(3)) and Nova Scotia (17(3)), a claim against a railway may be registered against the land of the railway company in general.

In most cases registration must take place within thirty days, but in British Columbia (19) the period is thirty-one days and in mine cases sixty days, whilst in Alberta (13) it is thirty-five days, and sixty days.

The particulars required to be given when filing claim vary in the different jurisdictions, but those required by Saskatchewan (17) seem sufficient.

In Nova Scotia (23) and Ontario (22(5)), it is provided that where the contract is under the supervision of an architect upon whose certificate payments are to be made, the claim may be registered either within the thirty days, or within seven days after the architect has refused to give final certificate.

Cesser of Liens.

Unregistered liens cease on expiry of the time, unless action is sooner commenced and certificate of action filed.

Registered liens cease after the expiry of ninety days after the completion of the work, etc., or after the period of credit, if any period is mentioned in the claim for lien, or where an architect's certificate is necessary, upon the expiry of thirty days from the registration of the claim, unless action is commenced and certificate registered. If the period of credit is longer than six months, it ceases upon the expiry of six months and the claim must be re-registered. (See Ontario (23), (24) and (25).)

In Alberta a registered lien expires sixty days after service of notice upon the lien-holder, unless he takes proceedings and files certificates of claim in the Land Titles Office.

In British Columbia a registered lien expires thirty-one days after filing of affidavit or lien, unless proceedings have been instituted or an extension of time filed within the County Court.

In Manitoba, a registered lien ceases after ninety days, or upon the expiry of the credit mentioned in the claim unless action is commenced and *lis pendens* filed in the Land Titles Office.

In Saskatchewan any person claiming any interest in the property may require the Registrar to notify the lien-holder and if the lien-holder does not institute action and deposit a certificate in the Land Titles Office within thirty days from the date of such notice, the lien ceases to exist.

Assignment of Lien.

A lien may be assigned and in any event passes to personal representative. See Ontario (26), Alberta (15), British Columbia (22), Manitoba (23), New Brunswick (24), Nova Scotia (27) and Saskatchewan (25).

Discharge and Vacation of Lien.

Speaking generally, a lien is discharged by receipt or by giving security. See Ontario (27), Manitoba (24), New Brunswick (25) and (27), Nova Scotia (28) and Saskatchewan (26).

In Alberta (36) a lien is cancelled by the Registrar on receiving a certificate from the Clerk of the Court, or on receiving a statement in writing signed by the claimant.

In British Columbia (24), cancellation is by the County Court Registrar, and the County Court Registrar issues a certificate on which the registration in the Land Registry Office is cancelled.

Taking Security or Giving Time.

Taking security or giving time does not prejudice a lien except by agreement. Where the period of credit has not expired, negotiation of a note, etc., will not affect matters, if at the time of action it is in the hands of the lien-holder. If time is given, action must be taken and certificate obtained. See Ontario (28), Alberta (7), British Columbia (38), Manitoba (25), Nova Scotia (29) and Saskatchewan (27).

In Saskatchewan there appear to be no provisions as to period of credit.

Where time is extended a claim may be proved in another's action. See Ontario (29), Alberta (Proviso to 7), British Columbia (38), Manitoba (25), Nova Scotia (30).

Right of Lien-Holder to Information.

A lien-holder has a right to information as to the contract and an action for damages if refused. The Court may order production of the contract. See British Columbia (13), Manitoba (26), Nova Scotia (31), Saskatchewan (28) and (29).

By section 14 of British Columbia, the owner may demand particulars from the lien-holder and a statement of account. Damages will lie upon refusal and the lien is limited by the statement given.

PROCEDURE TO REALIZE CLAIM.

In Ontario action is begun by statement of claim, whilst in Alberta procedure may be by originating summons or by suit. The taking of action may result in getting only the costs or originating summons procedure.

In British Columbia, procedure is by summons in the County Court.

In Manitoba, liens are realized by action in the County Court by filing a statement of claim. Notice of trial must be served on all lien-holders, who within six days must file in Court a statement of lien.

In New Brunswick a statement of claim is filed and the judge issues a certificate in duplicate. This certificate is served and any person may dispute the claim within ten days. Then follows an appointment for taking accounts and verified statements of account.

In Nova Scotia, the statement of claim is filed in the County Court and served within a month after it is filed.

In Saskatchewan, the District Court has exclusive jurisdiction and action is begun in the ordinary way.

In general, the action is on behalf of all lien-holders. Actions may be consolidated and sale may be directed.

In Ontario, where the claims do not amount to more than $100 there is no appeal. Where they are no more than $500, the appeal is to the Divisional Court and no further. Where they are over $500, the appeal lies as from a judge trying an action in the Supreme Court.

In Alberta, an appeal lies where the claims are over $200.

In British Columbia, there is no appeal where the claims are less than $250.

In Manitoba, in case of liens of $100 and less there is no appeal; over that sum there is an appeal to the Court of Appeal and no further.

In Nova Scotia where the claims are $100 or less there is no appeal; otherwise there is an appeal to the Supreme Court.

In Saskatchewan there is an ordinary appeal.

In all jurisdictions there appears to be a limit of costs.

In Ontario, British Columbia, Manitoba and Nova Scotia the costs are not to be more than 25% of award or of claim.

In New Brunswick the limit of costs is 10%.

In Ontario (48) and Manitoba where a lien might exist, but claim fails, there may be personal judgment, so also for deficiency.

In Alberta personal judgment may be given where any parties are debtor and creditor.

In New Brunswick a certificate is given for the balance of the claim which is enforced as a judgment of the County Court.

In Nova Scotia there may also be a certificate for the balance.

In Saskatchewan personal judgment for the balance and also personal judgment when the lien fails. Further, in Saskatchewan there is a provision for extending the time for filing or taking any proceedings.

Distribution of Moneys After Sale.

In Alberta there is express provision for the distribution of these moneys in the following order:—

1. Costs.
2. Six weeks' wages
3. Material.
4. Sub-contractors.
5. Contractors.

Further wages may be deducted from these.

In British Columbia the order of payment is much the same, but apparently all wages are payable before any contractor.

In most of the other jurisdictions, the judge makes a report on sale and therein directs to whom the moneys in Court shall be paid, with power to make vesting orders.

In Saskatchewan (13(3)) all lien-holders rank *pari passu,* except where it is otherwise declared (that is, wages).

Manitoba (11(3)) provides that there shall be no priority over another person of the same class. See also Ontario (14(3)) and Nova Scotia (14(3)).

Special Provisions of Different Acts.

Receipted Pay-rolls.

In Alberta (17), where the contract price exceeds $500, copies of the receipted pay-rolls must be posted and the original roll given to the owner by the contractor or sub-contractor. No payment by the owner without this can defeat a labourer's claim. Failure to post may be relieved against by the judge in Alberta but not in British Columbia.

An assignment by a contractor or sub-contractor cannot defeat a lien, and as to liens, except contractors', there can be no offset, etc.

British Columbia, whilst making similar regulations as to posting receipted pay-rolls, protects also persons placing or furnishing material.

Mortgages.

In Alberta (9) there is a special provision that mortgage shall not include any part of the principal sum secured thereby in actual advances to the borrower at the time the works or improvements are commenced.

Authorization of Owner.

By section 11 of the Alberta Act the owner is deemed to authorize construction unless he posts up a disclaimer within three days after knowledge. Posting such disclaimer at any time saves the owner as to after construction.

Under section 10 of the British Columbia Act, the owner is deemed to have authorized the works done with his knowledge except as to works or improvements begun after two conspicuous notices have been put up, or after actual notice in writing.

Owner's Liability as to Wages.

In Alberta (32) there is provision that written notice is necessary to make the owner liable for more than what is due to the contractor (except six weeks' wages). This section reads as follows:—

"32. (1) No lien, except for not more than six weeks' wages in favour of labourers, shall attach so as to make the owner liable for a greater sum than the sum owing by the owner to the contractor at the time of the receipt, by the owner or person having superintendence of the work on behalf of the owner, of notice in writing of such lien and of the amount thereof; or which may become owing by the owner to the contractor at any time subsequent thereto while such lien is in effect.

"(2) Where more than one such notice is given by a lien-holder to the owner in regard to material furnished to the same contractor the lien-holder shall in the latest notice so given state the total amount or balance owing at the time of the giving of such latest notice by the contractor to the lien-holder, and in default of such total amount or balance being so stated it shall, with respect to any payments made by the owner, be taken to be

the amount of the lien mentioned in the latest notice in which an amount has been stated as owing and no lien or liens of such lien-holder shall attach so as to make the owner liable for more than the amount or the total amount or balance so stated as owing.

" (3) Where notice of a lien has been given as in this section provided the lien-holder shall upon request furnish to the contractor or owner a statement in writing of the amount or balance due and payable in respect of the material, for the supplying or furnishing of which such lien is claimed, and no lien or liens of such lien-holder for material supplied or furnished up to the time of the giving of such statement shall attach so as to make the owner liable for any greater sum than is so stated.

" (4) The contractor or the owner may apply to the Court or a judge by originating notice under the Rules of Court, to compel any lien-holder who refuses or neglects to do so, to furnish such a statement as in the next preceding subsection required or to obtain a decision with respect to the accuracy of any statement furnished in accordance with the provisions of this section, and the Court or judge may upon such application make such order in the premises and as to the costs of the application as shall seem just."

Material Men.

In the British Columbia Act (6), material men cannot have liens unless they give notice before delivery or within ten days thereof.

Option Lands.

In the British Columbia Act (11), where lands are held under option or working bond, the work is deemed to be done at the request of the owner or grantor.

New Brunswick.

Under the New Brunswick Act (11) labourers and material men must notify the owner within thirty days of any unpaid account against a lien-holder.

Under the provisions of section 30, the contractor, before he is entitled to receive any payment must make an affidavit stating who has been paid and the owner may deduct unpaid

wages from the amount due to the contractor. Such declaration is conclusive evidence in favour of the owner, but no declaration is necessary where monthly payments do not exceed $100.

Under section 33, mechanics have priority as to advances made by a mortgage without an affidavit from the mortgagor that the wages have been paid and also when the mortgagee has express notice that there are unpaid claims.

By section 34, in the case of the sale or mortgage of an apparently unfinished business, the purchaser must require from the vendor or mortgagor a similar affidavit.

Nova Scotia.

In the Nova Scotia Act there are special provisions as to mining claims for two months' wages and priority over all other charges.

Liens on Chattels.

Provisions appear in many of the Acts for a lien in case of persons who have worked upon a chattel. It is thought that these liens would more appropriately be provided for in another Act.

Questions for Consideration.

Amongst other questions which would be necessary to consider in making a draft, it is suggested that the following are of importance:

(*a*) It should be determined what the exact meaning of "privity and consent" in the definition of "owner" is. See *Marshall Brick Company* v. *York Farmers' Colonization Company,* 54 S.C.R., 569, where it is laid down that there must be something in the nature of a direct dealing between the contractor and the persons whose interest is sought to be charged.

(*b*) The enumeration of the property which is lienable might well be made clearer. For instance apparently there can be a lien for digging a well in Saskatchewan, owing to the presence of the word "land," whereas there can be no lien for that work in Alberta, though the word "well" appears in neither Statute, and is expressly mentioned in some of the Statutes.

It does not appear reasonable that a cook should have a lien in one jurisdiction and not in another. So also with the services of an architect. See *Hutchinson* v. *Berridge,* 1922, 2, W.W.R., 710, where it was held under the Alberta Statute that the work of a cook was work in connection with the excavation of land in respect of a mine. So there are different decisions in Alberta and British Columbia as to the rights of persons hauling material.

(*c*) It is suggested further that the question of whether there can be a lien or not on property used for public purposes, and if so, how far, should be definitely settled. Here is also involved the question as to how far it is possible to affect railways, either Dominion or Provincial.

(*d*) In general the date from which the time for expiry of a lien might be more clearly expressed. For instance in the case of a lien for work, does the time count from the last performance of work in general, or from the performance of work for which a lien may be claimed?

(*e*) There seems to be a slack use in some of the Acts of the word "owing." Indeed, it sometimes seems to be used as equivalent to the words "to become payable," or what would be owing if the contract were fulfilled.

(*f*) In the sections following those dealing with the retention of percentages, a doubt arises as to whether the fund retained can be spent upon the completion of the work after abandonment or failure on the part of the contractor, and so as to defeat the lien of material men, etc., and this doubt should be cleared up. Perhaps a change should be made to agree with the views expressed in *Rice Lewis & Sons* v. *Rathbone,* 27 O.L.R., 630.

(*g*) Perhaps the provision that where a claimant takes an action and fails to establish it, that such action, whether the lien could have been maintained in any event or not, might be taken advantage of by others, should be made clearer.

(*h*) The word "lien holder" seems to be used loosely at times in some of the Acts. It might be well to stress the inchoate nature of the right of a person who has not registered or established his lien.

(*i*) With respect to the deductions from payments made,

perhaps it would be as well to draft the sections so as to accord with *Rice Lewis & Sons* v. *Rathbone,* 27 O.L.R., 630.

In that case, Magee, J., says:

"In my opinion the true meaning of the Statute is, that if the owner has agreed to pay moneys before completion of the contract, whether fixed amounts or sums arrived at by an architect's progress certificate or otherwise, and they actually become payable, he must retain the same to the extent of twenty (or fifteen) per cent. of the value of the work and materials to the date for payment, calculated as prescribed in the Act, and upon this percentage the liens will be a charge. But, except insofar as wages become actually payable, there is no percentage upon which liens other than wage earners' liens can become a charge."

(*j*) Some confusion arises at times as to whether a vendor under an agreement for sale is to be treated as an owner or mortgagee. For instance, in certain Statutes when the vendor knows of the construction and gives no notice, is his interest fully affected as owner, or is it only affected to the extent of the increase in value?

(*k*) It is thought that the position of a person who has supplied material under a conditional sale agreement is very often not clear in the Statutes.

(*l*) With respect to the sections which limit the amount recoverable to the amount due to the contractor, it is thought that it is not always clear when this latter amount should be ascertained. For instance, it is ascertained at the arising of the lien, or at the time of the filing of the lien?

(*m*) It is thought that the law might be made clear and uniform upon the point of delivery. That is whether there must be delivery upon the ground for the purposes of use, or whether delivery close to the ground, as held in Alberta, is at times sufficient, and also whether incorporation in the building, etc., is necessary, and whether materials consumed in the process of work, such as dynamite, are to be reckoned materials within the meaning of the Act.

(*n*) It is presumed that an infant's interest in land cannot be charged as he cannot contract, but it is thought that perhaps this is not quite clear.

(*o*) Some attention should be paid to the so-called dower right now existent in some of the Western Provinces.

APPENDIX G.

REPORT ON A UNIFORM SUCCESSION DUTY ACT.

The Nova Scotia Commissioners on Uniformity of Legislation have carefully considered the matter of preparing a Succession Duty Act and beg leave to report as follows:—

At present the legislation of each province is, speaking generally, a combination of the English Statutes dealing respectively with Legacy Duty, Succession Duty, Estate Duty and the former Probate Duty; but the manner in which the English Statutes have been combined is by no means uniform and there are some provisions in the legislation of practically every province which are original or are copied or adapted from the legislation of other jurisdictions.

Under the English Legislation referred to, it is broadly true that the domicil of the deceased governs the liability to Legacy and Succession Duty, while the actual situs of the property governs the liability to Estate Duty and governed the liability to the former Probate Duty. The rate at which such Legacy Duty or Succession Duty is imposed depends only on the relationship to the deceased of the beneficiary and the amount which he receives, while the rate at which Estate Duty is levied is determined only by the aggregate value of the entire property passing on the death of the deceased. Legacy Duty and Succession Duty are payable at the time when the enjoyment takes place, Estate Duty being imposed on the whole estate in bulk before administration begins.

Each of the provinces has imposed Succession Duty which is not English Legacy or Succession or Probate or Estate Duty, but which has some of the features of each. For example, under the provincial Succession Duty Acts property locally situate within the jurisdiction is dutiable even if the deceased was domiciled elsewhere; the Duty attaches immediately on the death and the rate is fixed by having regard to all the following:

1. The aggregate value of the entire estate, wheresoever situate;
2. Relationship to the deceased of the beneficiary;
3. The amount each beneficiary receives;
4. In some provinces the residence of the deceased and the residence of the beneficiary.

The Commissioners fail to perceive any sound reason why aggregate value should be taken into account in fixing the rate of duty payable in respect of the property each beneficiary receives, though it seems to be reasonable to have regard thereto when the duty is levied on the entire estate irrespective of the beneficiaries. However, it is common to the Act of every province to have regard to aggregate value, and it is at least very doubtful if any of them would be willing to make any change in that respect.

At present there is in substance though not in arrangement or form a fair degree of uniformity in the provincial Succession Duty legislation. The rates of duty, however, vary in each province.

With regard to the matters in respect of which uniformity is lacking in the present Succession Duty legislation in Canada we may mention some of the features of each provincial Act:—

The Alberta Act levies a tax only on property situate in the Province. It does not purport to impose a tax on property locally situate out of the province and has no regard to the rule *mobilia sequuntur personam*. It does not levy a tax even when property is brought into the jurisdiction to be administered or distributed. The rate of taxation is determined, however, according to the value of the whole Estate both within and without the province, and is also determined by the residence of the beneficiary and the degree of kinship or absence of kinship to the deceased. Non-resident beneficiaries in the direct line are discriminated against by being obliged to pay Duty at a higher rate, which is one-half per cent. more than the regular rate where the aggregate value of the Estate does not exceed one million dollars and one per cent. where the aggregate value exceeds one million dollars. Letters of Probate or of Administration cannot be granted until the Duty is paid or secured, but the Act levies Duty on certain property in respect of which no such letters can be necessary; for example, "gifts *inter vivos*."

The Duty imposed by the British Columbia Act resembles that levied by Alberta, but no difference is made in the rate of Duty by reason of a beneficiary being a non-resident of the province, and property brought into the province to be administered or distributed is taxed, though provision is made for a deduction from the Duty if Succession Duty has been paid in the place where the property was locally situate at the time of the death of the deceased, provided that place accords like

treatment to British Columbia and the Lieutenant-Governor of British Columbia has extended to that place the provision referred to.

The Manitoba Act in respect of the matters referred to in connection with British Columbia is similar thereto.

The New Brunswick statute purports to levy a tax on all property situate in the province regardless of the domicil of the deceased; all property situate outside the province belonging to a deceased person domiciled therein; all property situate outside the province belonging to a person not domiciled therein if and to the extent that such property shall pass to a person domiciled therein; all simple contract debts due to a person domiciled in the province whether the debtor resides within or without the Province; all specialty debts due to a person domiciled within the Province whether the specialty is within or without the province; all debts due to a person domiciled in the province, notwithstanding the same may be wholly or partly secured by or be a charge upon land or other property without the Province; and all shares, stock, debentures and the like of any Company whatsoever if the same are owned by a person domiciled within the Province. This Act in respect of the property on which it purports to levy Duty, is, perhaps, with the exception of the Saskatchewan Act which closely follows it in that respect, the most comprehensive of all, but the constitutionality thereof is doubtful as regards certain property, particularly that which is out of the Province and passes to a non-resident beneficiary.

The rate of Duty prescribed when the beneficiary is a non-resident is double the regular Duty. New Brunswick, Alberta and Saskatchewan apparently are the only provinces that discriminate against non-residents. The giving of security for the payment of Duty is a condition of the granting of Letters of Probate or Administration.

Provision is made for an allowance from the Duty on property locally situate out of the province, but belonging to a deceased domiciled in the province, the provision being similar to that made by British Columbia.

The Nova Scotia and Ontario Acts may be dealt with together as they are very similar, but the former purports to tax only property having a situs in Nova Scotia at the time of the death or subsequently brought into the province to be administered or distributed, while the latter purports to tax all property locally situate in the province irrespective of the

domicil of the owner, and also to impose a tax in respect of property abroad when the deceased was domiciled in Ontario, but an allowance for Duty levied abroad is authorized, as in the case of British Columbia. Under the Ontario Act, in consideration of the granting of Letters Probate or Administration, the applicant for the Letters must have paid the Duty or given security for the payment thereof; this is not necessary under the Nova Scotia Act, which however, provides that the Probate Court shall not allow the accounts of nor finally settle any Estate nor order the distribution of the surplus assets unless and until the Duty in respect of any such assets has been paid or has been secured to the satisfaction of the Treasurer. Succession Duty is not leviable or payable in Nova Scotia on property which is brought or sent into Nova Scotia to be administered or distributed if any Succession Duty has been paid on such property elsewhere than in Nova Scotia and such Duty or tax is equal to or greater than the Duty payable on the property in this province, but if the Duty or tax so paid elsewhere is less than the Duty payable on the property in that province then on the property upon which such Duty or tax has been paid elsewhere only the difference between the Nova Scotia Duty and the Foreign Duty shall be payable; this exemption applies whether or not similar treatment has been accorded Nova Scotia, and in that respect the Nova Scotia Act differs from every other provincial Act.

Prince Edward Island apparently expressly taxes only property locally situate in the province whether the deceased was domiciled therein or elsewhere, though there is a provision in the Act to the effect that where any property locally situate out of Prince Edward Island shall have paid Succession Duty elsewhere than in that province then the property shall be subject to the payment of such portion only of the Prince Edward Island Duty as will equal the difference between the Foreign Duty and the Prince Edward Island Duty, provided like treatment is accorded to that Province, and the Lieutenant-Governor-in-Council has extended the provision to the foreign place. It is a condition of granting Letters of Probate or Administration that security be given to pay the Duty.

There is probably more dissimilarity between the Quebec Act, or rather Acts, and any other provincial Succession Duty Act, than there is between the Acts of any other two provinces.

Quebec had three statutes on the subject, namely:—

First: An Act imposing Duty on property that may be described generally as property actually situate in the province, whether the deceased was domiciled therein or elsewhere. The Duty seems to be a property tax with incidental personal liability on the part of the beneficiary, and the Act declares in effect that no title to such property shall vest in any person if the Duty thereon has not been paid.

Second: An Act imposing Duty on all transmissions in the province of movables locally situate outside the province. The Judicial Committee of the Privy Council held in *Alleyn* versus *Barthe,* [1922] 1 Appeal Cases 215, that this Act only applies where the beneficiary and the decedent were domiciled in the province, and apparently that the tax was really on the person in respect of the transmission. The Act contains a provision authorizing an allowance to be made on account of Duty having been paid in the place where the property was locally situate, the provision being practically the same as the British Columbia provision on the same subject, but as far as can be ascertained the provision has never been acted on.

Third: In consequence of the decision in *Alleyn* versus *Barthe* an Act was passed 21st March, 1922, entitled "An Act respecting the Seizin of Certain Beneficiaries," which provides in effect that it is a condition precedent to property passing by will or intestacy, where the deceased was domiciled in the province, and the property and the beneficiary were out of the province, that the tax prescribed by that Act be paid. The tax is called in the Act a Court Fee, but is nothing more or less than a Legacy or Succession Duty like that levied under the English Act.

The Nova Scotia Commissioners are of the opinion that this method of taxation would be effective except as respects property situate in jurisdictions that refused to recognize it; the Legislature of Nova Scotia at its last session passed legislation with a view of avoiding double taxation in Quebec and Nova Scotia in cases where property situate in Nova Scotia passes on the death of a Quebec decedent to a non-resident of Quebec. If Quebec extended to any province the provision referred to respecting the making of an allowance from the Quebec Duty, double taxation would be avoided as regards Quebec and that province.

The Quebec Act makes no reference to Letters of Probate or of Administration.

The legislation in Saskatchewan resembles the New Brunswick statute particularly in regard to the enumeration of property subject to Duty. Non-resident beneficiaries are discriminated against by being subject to an additional rate of one per cent., and there is a like discrimination where the decedent was a non-resident. The Duty must be paid or secured before Letters of Probate of Administration will be granted. Authority is conferred on the Lieutenant-Governor to make reciprocal arrangements for the purpose of avoiding double taxation where property is situate out of the province and passes on the death of a resident, the section dealing with this matter being practically the same as the provision on the same subject in the New Brunswick Act.

The Duty imposed by the Yukon ordinance more nearly resembles English Estate or Probate Duty than does that prescribed by any other Provincial Acts. It levies a Duty on the entire Estate within the territory at rates that vary according to the aggregate value of the Estate, but provides that when property passes in the direct line the rate shall be one-half the regular rates.

The Commissioners understand that the Conference desire to have before them for the purpose of discussion a draft Act based on *situs,* but the Commissioners would point out that the law regarding the *situs* of intangible property for the purpose of Provincial Succession Duty is not settled, although that question, as respects shares of Canadian Banks, now stands for argument in the near future before the Judicial Committee of the Privy Council in the case of *Levesque* versus *Smith,* in which leave to appeal from the decision of the Supreme Court of Canada was recently granted. In that case the deceased was domiciled in Nova Scotia and the shares, which were registered in Nova Scotia, passed on the death to next of kin none of whom were residents of Quebec. The Supreme Court of Canada had decided in a previous action, that the Province of Nova Scotia was entitled to payment of Succession Duty on the shares, but the Province of Quebec also claimed to be entitled to Succession Duty on the same shares on the ground that the bank had its head office in Montreal. The Supreme Court of Canada decided against Quebec, and an Appeal has been taken by Quebec to the Privy Council. It is expected that when this case is decided, the Succession Duty law on the subject of the *situs* of intangible property will be clarified.

In the opinion of the Commissioners it would be futile to

draft a new Act based on *situs* and attempt in such a draft to settle the various points of difference between the several provinces, at least without first calling a conference of all the Provincial Succession Duty Authorities with a view to ascertaining whether an agreement can be reached as to the basic principles of such an Act; in this regard the Commissioners would refer to the Report of the Committee of the Canadian Bar Association, printed in Volume 3, page 179 of the Proceedings of the Association.

The only useful purpose at the present time of a draft Act based upon *situs* would be for the purpose of discussion; if such discussion is desired, the Commissioners recommend and present the Alberta Act, which more distinctly than the Act of any other province is based on *situs*.

Respectfully submitted,

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S. JENKS.
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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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