1925

PROCEEDINGS

OF THE

EIGHTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

WINNIPEG

21ST, 22ND, 24TH AND 25TH JULY, 1925

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

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

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

Vice-President ..... Robert W. Shannon, K.C., Regina, Saskatchewan.

Treasurer ..... W. Randolph Cottingham, K.C., Parliament Buildings, Winnipeg, Manitoba.

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

Recording Secretary..... John D. Falconbridge, K.C., Osgoode Hall, Toronto 2, 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 ..... W. Randolph Cottingham, K.C., Parliament Buildings, Winnipeg.

New Brunswick..... Cyrus F. Inches, K.C., 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:

WALTER S. SCOTT, K.C., Legislative Counsel, Parliament Buildings, Edmonton.

(Commissioner 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, Legislative Counsel, Parliament Buildings, Victoria.

HENRY G. LAWSON, 918 Government Street, Victoria.

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

Manitoba:

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

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

W. RANDOLPH COTTINGHAM, K.C., Legislative Counsel, Parliament Buildings, Winnipeg.

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

New Brunswick:

HON. WENDELL P. JONES, K.C., Woodstock.

JAMES FRIEL, K.C., Moncton.

CYRUS F. INCHES, K.C., St. John.

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

Nova Scotia:

FREDERICK MATHERS, K.C., Deputy Attorney-General, Halifax.

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

JOHN E. READ, K.C., Dean, Dalhousie Law School, Halifax.

W. J. MAHONEY, M.L.A., Halifax.

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

Ontario:

SIR JAMES AIKINS, K.C., Winnipeg, Manitoba.
FRANCIS KING, K.C., Kingston.
JOHN D. FALCONBRIDGE, K.C., Dean, Osgoode Hall Law School, Toronto 2.
JOHN C. ELLIOTT, K.C., London.
(Commissioners appointed under the authority of the Statutes of Ontario, 1918, c. 20.)

Prince Edward Island:

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

Quebec:

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

Saskatchewan:

ROBERT W. SHANNON, K.C., Legislative Counsel, Parliament Buildings, Regina.
DOUGLAS J. THOM, K.C., Regina.

LEGISLATIVE COUNSEL
Legislative Building
EDMONTON, Alberta

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.

Subsequent annual meetings have been held as follows:—

1919. August 26-29, Winnipeg.
1920. August 30-31, September 1-3, Ottawa.
1921. September 2-3, 5-8, Ottawa.
1922. August 11-12, 14-16, Vancouver.
1923. August 30-31, September 1, 3-5, Montreal.
1924. July 2-5, Quebec.
1925. August 21-22, 24-25, Winnipeg.

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 respecting legitimation by subsequent marriage and bulk sales.

In 1921 the Conference revised and approved model uniform statutes respecting fire insurance policies and warehousemen's liens, and discussed the draft of a uniform life insurance act. It also received a report on provincial legislation relating to the protection and property rights of married women.

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 revised draft of an act respecting life insurance.

In 1923 most of the time of the Conference 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.

In 1924 the Conference again discussed the act respecting fire insurance policies, as revised in 1922, and made some additions to statutory condition 17, and revised and approved model uniform statutes respecting contributory negligence and reciprocal enforcement of judgments. The subjects of devolution of estates, intestate succession and defences to actions on foreign judgments were also discussed.

In 1925 the Conference revised and approved a model uniform statute respecting intestate succession, and discussed and approved certain amendments of the Bulk Sales Act as revised and approved by the Conference in 1920. It also discussed and referred again to committees an act respecting devolution of real property, a report on defences to actions on foreign judgments, and a report on a uniform Wills Act. Other subjects upon which reports were received and

which were referred again to committees were chattel mortgages and bills of sale and trustees.

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.

The appointment of commissioners or participation in the meetings of the Conference does not of course bind any province to adopt any conclusions reached by the Conference, but it is hoped that the voluntary acceptance by the provincial legislatures of the recommendations of the Conference will secure an increasing measure of uniformity of legislation.

The following table shows to what extent, if any, each model statute drawn by the Conference has been adopted by the provinces:

1920. Bulk Sales Act: adopted in Alberta (1922), British Columbia (1921), and Manitoba (1921).

1920. Legitimation Act: adopted in British Columbia (1922), Manitoba (1920), New Brunswick (1920), Ontario (1921), Prince Edward Island (1920), and Saskatchewan (1920). Provisions similar in effect are in force in Alberta, Nova Scotia, and Quebec.

1921. Warehousemen's Lien Act: adopted in Alberta (1922), British Columbia (1922), Manitoba (1923), New Brunswick (1923), Ontario (1924), and Saskatchewan (1922).

1922. Conditional Sales Act: adopted in British Columbia (1922).

1923. Life Insurance Act: adopted in Alberta (1924), British Columbia (1923), Manitoba (1924), New Brunswick (1924), Nova Scotia (1925), Ontario (1924), Prince Edward Island (1924), and Saskatchewan (1924).

1924. Fire Insurance Policy Act.

1924. Reciprocal Enforcement of Judgments Act: adopted in Alberta (1925), New Brunswick (1925).

1924. Contributory Negligence Act: adopted in New Brunwsick (1925) and Saskatchewan (1924).

1925. Intestate Succession Act.

J. D. F.

PROCEEDINGS.

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

The following commissioners or representatives of the provinces were present at some or all of the services of the Conference:

Alberta:
MR. SCOTT.

British Columbia:
MESSRS. PINEO AND LAWSON.

Manitoba:
MESSRS. PITBLADO, SYMINGTON AND COTTINGHAM.

New Brunswick:
MESSRS. FRIEL AND INCHES.

Nova Scotia:
MESSRS. READ AND MAHONEY.

Ontario:
SIR JAMES AIKINS AND MR. FALCONBRIDGE.

Saskatchewan:
MESSRS. SHANNON AND THOM.

FIRST DAY.

Friday, 21st August, 1925.

The Conference assembled at 10 a.m., at the Royal Alexandra Hotel, Winnipeg, Mr. Pitblado, the vice-president, in the chair.

Mr. Pitblado referred to the great loss suffered by the Conference in the death of its president, Mr. Teed, which occurred a few days after last year's meeting.

The Hon. R. W. Craig, K.C., Attorney-General of Manitoba, welcomed the commissioners, and expressed his appreciation of the value of the work done by the Conference and his good wishes for its success in the future.

Sir James Aikins, honorary president, read an address. The Conference expressed its appreciation of Sir James' continued interest in the Conference, and ordered that his address should be printed in the proceedings.

(*Appendix A.*)

Reference was made to the fact that the Conference proceedings of 1924 had been by oversight omitted from the year book of the Canadian Bar Association for 1924, and Sir James Aikins expressed the hope that they would be included with the Conference proceedings of 1925 in the year book for 1925.

The minutes of last year's meeting as printed were taken as read and approved.

The treasurer's report, forwarded by Mr. Frank Ford, K.C. (no longer a member of the Conference), was received, and referred to Messrs. Cottingham and Lawson for audit.

It was ordered that a copy of the auditor's report should be sent to Mr. Ford, with the thanks of the Conference for his services as treasurer.

Mr. Shannon then read the draft Devolution of Real Estate Act submitted by the Saskatchewan commissioners, and the Conference proceeded to discuss the draft, section by section.

(*Appendix B.*)

At 12.45 p.m. the Conference adjourned.

At 2.30 p.m. the Conference reassembled, and resumed the discussion of the Devolution of Real Estate Act.

At 4.30 p.m. the Conference adjourned.

SECOND DAY.

Saturday, 22nd August, 1925.

At 10 a.m. the Conference reassembled and resumed the discussion of the Devolution of Real Estate Act.

At 1 p.m. the Conference adjourned.

At 2 p.m. the Conference reassembled, and resumed the discussion of the Devolution of Real Estate Act.

After further discussion, the draft Act was referred again to the Saskatchewan commissioners with instructions to revise it in the light of the discussion, to send copies of the revised draft to the other commissioners and to report again at the next meeting of the Conference.

(*Appendix B.*)

Mr. Shannon then read the draft Intestate Succession Act, submitted by the Saskatchewan Commissioners, and the Conference proceeded to discuss the draft, section by section.

(*Appendix C.*)

At 4 p.m. the Conference adjourned.

At 8.15 p.m. the Conference reassembled.

Mr. Falconbridge was instructed to represent the Conference in making a statement of the work of the Conference before the Canadian Bar Association.

Mr. Pineo made an oral report on the subject of company law, explaining that the British Columbia commissioners had not acted on the instructions of the Conference (Proceedings, 1924, pp. 15, 16) owing to the expense that would be involved in the preparation of the material.

It was resolved that the preparation of a draft uniform Companies Act should stand over until next year, and that in the meantime the commissioners from those provinces which now have the system of incorporation by letters patent should ascertain the views of their respective governments as to the adoption of a model uniform act based on the system of incorporation by memorandum of association.

Mr. Pineo referred to the subject of reciprocal enforcement of judgments within the British Empire, but no action was taken, the Conference adhering to the views already expressed by it (Proceedings, 1921, pp. 17-18; 1924, p. 15).

Mr. Pineo also referred to the subject of succession duties (see Conference Proceedings, 1923, pp. 93 ff., and paper by G. H. Barr, K.C., read before the Canadian Bar Association in 1925), and mentioned the fact that an interprovincial conference was to take place at Winnipeg on the 24th instant, such as had been suggested by the

Conference in 1923 (Proceedings, 1923, p. 99). No action was taken.

Mr. Cottingham read the report on the Bulk Sales Act and a draft amending Act, submitted by the Manitoba commissioners.

(*Appendix D.*)

At 10.45 p.m. the Conference adjourned.

THIRD DAY.

Monday, 24th August, 1925.

At 10 a.m. the Conference reassembled.

The auditors report was received and adopted. The treasurer's statement for the period since the report submitted in 1923 (Proceedings, 1923, p. 12) was as follows:

TREASURER'S STATEMENT.

1923			
Aug. 1.	To balance on deposit in the Bank of Montreal	$ 414.45	
Oct. 11.	To deposit grant Ontario	200.00	
1924			
Jan. 8.	To deposit grant Alberta	200.00	
Apr. 21.	To deposit grant Saskatchewan	200.00	
Apr. 21.	By cheque Carswell Co. Ltd., printing proceedings, etc.		$610.73
Nov. 12.	To deposit grant Ontario	200.00	
Nov. 12.	To deposit grant Alberta	200.00	
Nov. 15.	By cheque Carswell Co. Ltd., printing proceedings, etc.		224.70
1925			
Feb. 4.	To deposit grant British Columbia	200.00	
Feb. 11.	To deposit grant Nova Scotia	200.00	
Mar. 10.	To deposit grant Saskatchewan	200.00	
June 29.	To deposit grant Manitoba	500.00	
		$2,514.45	$835.43

Aug. 1	By balance on deposit		$1,679.02
		$2,514.45	$2,514.45

Audited and found correct.
Winnipeg, August 24, 1925.

W. R. COTTINGHAM
H. G. LAWSON
Auditors.

The Conference then resumed the discussion of the report on the Bulk Sales Act.

Mr. Pineo submitted certain correspondence, which was referred to the Manitoba commissioners for consideration and report.

It was resolved that in the opinion of the Conference the Bulk Sales Act should cover the sale of a partner's interest either to another partner or to a third party, and the matter be referred to the Manitoba commissioners for consideration and report.

The report of the committee was then adopted, together with the draft amending Act.

(*Appendix D.*)

Mr. Shannon submitted a fair copy of the Intestate Succession Act, as revised on the preceding day, and the draft Act was adopted, subject to the redrafting of s. 17.

(*Appendix C.*)

Mr. Falconbridge read the report of the Ontario commissioners on Defences to Actions on Foreign Judgments.

(*Appendix E.*)

At 12.45 the Conference adjourned.

At 2.30 p.m. the Conference reassembled, and reconsidered the Reciprocal Enforcement of Judgments Act, as revised in 1924, in view of the fact that the Province of Alberta, in adopting this Act, substituted the word "and" for the word "or" in the middle of line 3 of s. 3(2) (Proceedings, 1924, p. 61). After discussion the Conference approved of this amendment.

The Conference then resumed the discussion of the report on Defences to Actions on Foreign Judgments.

Some verbal alterations were made in the report (these alterations being incorporated in the report as printed in Appendix E).

The following resolution was then adopted:

The Conference adopts the recommendation contained in the second sentence of paragraph 6 of the report on Defences to Actions on Foreign Judgments, but, recognizing that the enactment of legislation in accordance with the recommendation is a matter of policy, the Conference requests the commissioners to ask the attorneys-general of their respective provinces for instructions. If it appears that there is any likelihood of general agreement, the Ontario commissioners are instructed to prepare a draft Act for submission to the Conference.

(*Appendix E.*)

A redraft of s. 17 of the draft Intestate Succession Act having been submitted and revised, 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 the Distribution of Estates of Intestates," as revised at the present (1925) 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.

(*Appendix C.*)

Mr. Read then read the report of the Nova Scotia commissioners on the Wills Act, supplementing the report of the Alberta commissioners (Proceedings, 1924, p. 64) on the draft Wills Act (Proceedings, 1923, p. 45).

(*Appendix F.*)

The report was considered clause by clause.

At 6 p.m. the Conference adjourned.

At 8.30 p.m. the Conference reassembled and continued the discussion of the draft Wills Act.

Officers of the Conference for the ensuing year were elected as follows:

Honorary President: Sir James Aikins.

President: Mr. Pitblado.

Vice-President: Mr. Shannon.

Recording Secretary: Mr. Falconbridge.

Corresponding Secretary: Mr. Elliott.

Treasurer: Mr. Cottingham.

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

The 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 instructed 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 11.50 p.m. the Conference adjourned.

FOURTH DAY.

Tuesday, 25th August, 1925.

At 9 a.m. the Conference reassembled.

The discussion of the Wills Act was resumed, and it was then resolved that the subject be referred to the Nova Scotia commissioners with instructions to prepare and send to the other commissioners a revised draft Act and to report again to the Conference next year.

(*Appendix F.*)

After discussion of the question whether the draft Wills Act or any particular sections thereof should apply to wills executed before the coming into force of the act by persons dying after the coming into force of the act, the Nova Scotia commissioners were instructed to communicate with the other commissioners and ascertain their views, and to draft provisions that will meet the views of the majority, and to report specifically upon the answers received.

Mr. Falconbridge, upon the instructions of the Attorney-General of Ontario, brought before the Conference the question whether the Conference would recommend the Attorneys-General of the provinces to communicate to the Under-Secretary of State for Canada the concurrence of the provinces in extending to Canada certain conventions respecting legal proceedings in civil and commercial matters entered into between the United Kingdom on the one part and France, Belgium, Italy and Czecho-Slovakia on the other part.

(*Appendix G.*)

The Conference was of the opinion that it would be desirable that the Attorneys-General of the provinces should concur in having this series of conventions extended to Canada, and suggested that each provincial board of commissioners should make a recommendation to its Attorney-General accordingly.

Mr. Shannon submitted the report of the Saskatchewan commissioners on Chattel Mortgages and Bills of Sale. The subject was referred to the British Columbia commissioners with instructions to prepare a draft act suitable to the needs of all the provinces.

(*Appendix H.*)

Mr. E. K. Williams, K.C., convener of the committee of the Canadian Bar Association on Comparative Provincial Legislation and Law Reform, having submitted an interim report as to the law of the several provinces on the subject of trustees, the Manitoba commissioners were instructed to co-operate with that committee in the preparation of a report to be made to the Conference next year.

A memorandum regarding certain English legislation (1907, c. 16) having been laid before the Conference, the matter was referred to the New Brunswick commissioners to consider the statutes of the provinces on the same subject and to report to the Conference.

The commissioners from each province were requested to report to the president of the Conference as to the uniform acts which have been adopted in their province, and as to the objections if any, raised regarding those acts which have not been adopted.

It was resolved that the next meeting of the Conference should be held four days (excluding Sunday) before the next meeting of the Canadian Bar Association and at the same place.

The Conference expressed its appreciation of the hospitality shown to the visiting commissioners by Sir James and Lady Aikins,

Mr. and Mrs. Pitblado, the Attorney-General of Manitoba and the Manitoba commissioners.

At 12 noon the Conference was prorogued.

APPENDICES.

A. Address by the Honorary President.
B. Draft Devolution of Real Estate Act.
C. Intestate Succession Act.
D. Report on Bulk Sales Act.
E. Report on Defences to Actions on Foreign Judgments.
F. Report on Wills Act.
G. Convention between United Kingdom and Belgium, etc.
H. Report on Chattel Mortgages and Bills of Sale.

APPENDIX A.

ADDRESS BY THE HONORARY PRESIDENT.

Since last meeting the presidency of the Conference became vacant through the death of Dr. M. G. Teed, K.C., a man kindly of disposition, courteous in manner, thorough in his knowledge of law and in its application, fervent in his public spirit, faithful in service. New Brunswick could not have been better represented on the Conference. Our memory of him will always be happy and encouraging.

We all regret that the provinces are not fully represented at this Conference, for all are deeply interested. I know of no public service of an interprovincial and indeed of a national nature, since all the provinces are included, which offers such immediate and beneficial results to the business of Canada as the service freely offered by the members of this Conference. The people do not generally know the usefulness of your work. They need to be instructed. If they had to pay for the legal knowledge and trained skill required in this work and the time you spend, they might then be able to value it on the basis of dollars, but because you give them without money and without price they are about as much disregarded as the gift of spiritual grace. Nevertheless, it is part of your contribution as citizens of constructive public spirit to the upbuilding and upholding of the nation and its laws. Some of the local governments seem to be too engrossed in the insistent demands of constituencies and in political strategies to give the work of the commissioners the consideration it merits and which must be given if it is to continue in strength, for it is a work which has an immediate benefit and an ever increasing usefulness. It was unfortunate that through some one's oversight the report of the 1924 Conference was not included in the year book of the Canadian Bar Association and thus given wider publicity. I hope you and the Council of the Association will see that it is published in the Association's book for the current year. This Conference of Commissioners is an essential part of the Canadian Bar Association brought into being by the Association to effectuate one of its main objects: "To promote the administration of justice and uniformity of legislation throughout Canada so far as consistent with the preservation of the basic systems of law in the respective provinces." In order to express with certainty that it was not the intention and

would not be the purpose of the Association to interfere with the jurisprudence peculiar to any province, and particularly with the civil code system of Quebec, the Honourable Mr. Doherty, then Minister of Justice and representing the Bar of Quebec at the organization meeting, worded the sentence as it now stands. Our work would be aided if that province would send representatives to advise us. But to return to our correlation with the Association, the Conference would be largely ineffective without the backing and support of the Association which is I am pleased to say going from strength to strength. It can exert an excellent influence in pressing upon the legislatures the propriety and in some cases the urgency of putting upon their statutes the uniform acts recommended by this Conference. It will assist by referring to the Conference for consideration and action enactments of the provinces having the same or similar principles and purposes, but needing to be made uniform that business may be facilitated, and with such reference to submit the studies and conclusions of its committee on comparative legislation and law reform. The Association will also supplement our work by the research of that committee or other special committees on subjects or acts at the request of this body. You being members of the Association know the difficulty it encountered in its endeavour to accomplish the work you are doing by reason of the fact that the large committee had not continuity in its working members or concentration, for its members were in all parts of Canada. They could not attend every annual meeting and the travelling expense of long journeys was too great for many. The provincial governments acceded to the Association's request to appoint commissioners. I do not say generously acceded, but I will say wisely, for the provinces get a large return for the small amount invested. They pay the travelling expenses of the commissioners, some printing and incidental outlays. For all these the Canadian Bar Association and, I am sure, the members of this Conference are appreciative, but we of both bodies hope for the more enthusiastic interest and support by the good governments of the provinces. Since the first meeting of the Conference in 1918, some twenty-five important subjects of legislation have been considered and as far as practicable dealt with. Page eight of the Conference Proceedings of 1924 shows the model acts drawn and recommended by the Conference and the extent to which they have been adopted in the several provinces. The constructive work of this body for the benefit of the people of all Canada may be illustrated by the Uniform Life Insurance Act. It is substantially a codification of all provincial insurance law in a simple and compact form and has disposed of many debatable points. It has been already adopted by six or seven

of the provinces, is in all the insurance offices, and has been distributed to many thousands of the people, and has made the life insurance business and principles better understood by them. Insurance companies, underwriters, and agents in other countries have been attracted by the completeness and success of this uniform act. In conclusion let me suggest that the agenda for future conferences be published with the programme of concurrent annual meetings of the Canadian Bar Association, and that both bodies take concerted action to produce the best possible uniform Acts, and have them considered thoroughly by the legislatures and passed if they are found meritorious, as they are and will be since recommended by the best aggregation of Canadian jurists of the Conference of Commissioners and the Canadian Bar Association.

APPENDIX B.

DRAFT DEVOLUTION OF REAL ESTATE ACT.

An Act to make Uniform the Law respecting the Devolution of the Real Estate of Deceased Persons.

[*Assented to* 192 .]

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

1. This Act may be cited as *The Devolution of Real Estate Act, 192* .

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

1. "Lunatic" includes an idiot and a person of unsound mind. R.S. Ont. c. 119, s. 2.

3. This Act shall apply only in cases of death after its commencement.

Imp. Act 60 and 61 Vict. c. 65, s. 1 (5); B.C. 1921, c. 26, s. 26 (4).

4.—(1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition, devolve upon and become vested in his personal representative from time to time as if it were personal estate vesting in him.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

Imp. Act 60 and 61 Vict. c. 65, s. 1; R.S. B.C. c. 5, s. 106; R.S. Man. c. 54, s. 21; R.S. Ont. c. 119, s. 3 (1); R.S. Sask. c. 73, s. 3(1); and see R.S. Alta. c. 133, s. 109.

5. Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representative of a deceased person 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. 107 (1); Man. s. 21 (3); Ont. s. 3 (1); Sask. s. 3 (1).

6. Subject to the provisions hereinafter contained, all enactments and rules of law relating to the effect of probate or letters of administration as respects personal estate and as respects the dealing with personal estate before probate or 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.

Imp. Act, s. 2 (2); B.C. s. 107 (2); Man. s. 21 (4); Ont. s. 4; and see R.S.A. c. 143, s. 2 (*e*).

7. In the administration of the assets of a deceased person his real estate shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses and with the same incidents, as if it were personal estate:

Provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts or legacies, or the liability of real estate to be charged with payment of legacies.

Imp. Act. s. 2; B.C. s. 107 (3); Man. s. 21 (5); and see Ont. s. 5; Sask. s. 5; and Alta. s. 2 (*e*).

8. Subject to the provisions of section of The Wills Act, the real and personal property of a deceased person comprised in any residuary devise or bequest shall, except in so far as a contrary intention appears from his will or any codicil thereto, be applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the costs and expenses of administration.

Ont. s. 6; Sask. s. 6.

9. When any part of the real property of a deceased person vests in his personal representative under this Act, such personal representative, in the interpretation of any Act of this Legislature or in the construction of any instrument to which the deceased was a party or under which he is interested, shall, while the estate remains in him,

be deemed in law his heir, as respects such part, unless a contrary intention appears; but nothing in this section shall affect the beneficial right to any property, or the construction of words of limitation of any estate in or by any deed, will or other instrument.

Man. s. 22; Ont. s. 7; Sask. s. 7.

10.—(1) At any time after the expiration of one year from the date of letters probate or of administration, if—

(*a*) the personal representative has failed, on the request of the person entitled to a conveyance of land under the terms of the will, if any, to convey the land to such person; or

(*b*) where there is no will or the land is not specifically devised, the personal representative has not sold the lands;

application may be made by the person entitled to a conveyance under the will, or a majority of the persons of adult age beneficially interested in the proceeds of sale of the said lands to , and such judge may, after fourteen days' written notice to the personal representative, to all adult parties beneficially interested and to the official guardian on behalf of infants, exercise the powers hereinafter in this section set forth.

(2) In the case of land specifically devised, the judge may direct that the personal representative shall convey such land to the person entitled thereto within a time to be limited, and in default may make an order vesting the land in such person as fully and completely as might have been done by a conveyance thereof from the personal representative.

(3) In the case of land not specifically devised or of land vested in an administrator as such, the judge may order that the same be sold on such terms and within such period as may appear reasonable, and, on the failure of the personal representative to comply with such order, the judge may, on the application of any person beneficially interested, refer the matter to the (*Master in Chambers or local master, or as the case may be,*) directing a sale of the lands upon such terms of cash or credit or partly one and partly the other as he may deem advisable.

See Imp. Act. s. 3 (2); B.C. s. 108 (2); and Man. 1917, c. 25.

11.—(1) The personal representative may sell the real estate for the purpose not only of paying debts, but also of distributing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case shall it be necessary that the

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

(2) 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, transfer or dispose of real estate, save that where probate is granted to one or some of several persons named as executors, power being reserved to the others or other to prove, the sale, transfer or disposition of real estate may, notwithstanding anything in this Act contained, be made by the proving executor or executors, without the authority of the Court, as effectually as if all the persons named as executors had concurred therein.

See Imp. Act. s. 2 (2); B.C. s. 107 (2) and (4); Man. s. 21 (4); Ont. s. 4; Sask. s. 4, and R.S.A. c. 143, s. 2 (*e*).

12.—(1) Subject to the provisions hereinafter contained, no sale of real estate for the purpose of distribution only shall be valid as respects any person beneficially interested, unless he concurs therein.

(2) Where, in the case of such a sale, a lunatic is beneficially interested or adult beneficiaries do not concur in the sale, or where under a will there are contingent interests or interests not yet vested or the persons who may be beneficiaries are not yet determined, a judge of the Court of , 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, and any sale so approved shall be valid and binding as respects such lunatic, non-concurring persons, contingent interests, interests not yet vested and beneficiaries not yet determined.

(3) If an adult accept a share of the purchase money, knowing it to be such, he shall be deemed to have concurred in the sale.

13. No sale, where an infant is interested, shall be valid without the written consent or approval of the Official Guardian (*or, where there is no Official Guardian, of the proper officer*) 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 .

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

14. The personal representative may, with the concurrence of the adult persons beneficially interested, with the approval of the Official Guardian (*or other proper officer*) on behalf of infants and, in the case of a lunatic, with the approval of , if any infants or lunatics are so interested, convey, divide or distribute the estate of the deceased person, or any part thereof, to or among the persons beneficially interested according to their respective shares and interests therein.

Ont. s. 21 (3); Sask. s. 11 (3).

15. 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 deceased 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 or mortgage thereof in good faith and for value by such person beneficially entitled, he shall be personally liable for such debts to the extent to which such real estate was liable when vested in the personal representative, but not beyond the value thereof.

See Ont. s. 24 (2).

16.—(1) The personal representative may, from time to time, subject to the provisions of any will affecting the property:

(*a*) lease the real estate for any term not exceeding one year;

(*b*) lease the same, with the approval of the Court of or a judge thereof, for a longer term;

(*c*) raise money by way of mortgage for the payment of debts or taxes and, with the approval of the Court or a judge for the erection, repair, improvement or completion of buildings, or the improvement of lands.

(2) Where infants or lunatics are concerned, the approval required by sections 12 and 13 shall be required in the case of a mortgage under clause (*c*) of subsection (1) of this section.

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

17. 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.

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

APPENDIX C.

THE INTESTATE SUCCESSION ACT

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in August, 1925.

An Act to make Uniform the Law respecting the Distribution of Estates of Intestates.

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

1. This Act may be cited as The Intestate Succession Act.

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

1. "Estate" includes both real and personal property;

2. "Issue" includes all lawful lineal descendants of the ancestor.

3. This Act shall apply only in cases of death after its commencement.

4.—(1) If an intestate dies leaving a widow and one child, one-half of his estate shall go to the widow.

(2) If he leaves a widow and children, one-third of his estate shall go to the widow.

(3) If a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.

5. If an intestate dies leaving issue, his estate shall be distributed, subject to the rights of the widow, if any, *per stirpes* among such issue.

6.—(1) If an intestate dies leaving a widow but no issue, his 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 7, 8, or 9, as the case may be.

(4) In this section, "net value" means the value of the estate wherever situate, both within and without the province, after payment of the charges thereon and the debts, funeral expenses, expenses of administration and succession duty.

7. If an intestate dies leaving no widow or issue, his estate will 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.

8. If an intestate dies leaving no widow or issue or father or mother, his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken, if living:

Provided that where the only persons entitled are children of deceased brothers and sisters, they shall take *per capita*.

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

10. 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.

11. For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative; and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

12. Descendants and relatives of the intestate, begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

13.—(1) If any child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purposes of this section only, as part of the estate of the intestate distributable according to law; and, if the advancement is equal to or greater than the share of the estate which the child would be entitled to receive as above reckoned, the child and

his descendants shall be excluded from any share in the estate; but if the advancement is not equal to such share, the child and his descendants shall be entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

(2) The value of any portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in writing, otherwise the value shall be the value of the portion when advanced.

(3) The onus of proving that a child has been maintained or educated, or has been given money, with a view to a portion, shall be upon the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

14. All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

15. Subject to the provisions of (*The Dower Act in Alberta or Manitoba, or any similar Act in the other provinces*), 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.

16. Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit as if the children were legitimate, through the mother, if dead, any real or personal property which she would have taken, if living, by gift, devise or descent from any other person.

17. If an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and if any child is dead the children of the deceased child shall take the share their parent would have taken if living:

Provided that where the only persons entitled are children of deceased children of the mother, they shall take *per capita*.

18. The estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow," the word "her" for "his," the word "she" for "he," and the word "her" for "him," where such words respectively occur in sections 4, 5, 6, 7, 8, 9, 12 and 17.

19.—(1) If a wife has left her husband and is living in adultery at the time of his death, she shall take no part of her husband's estate.

(2) If a husband has left his wife and is living in adultery at the time of her death, he shall take no part of his wife's estate.

20. 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.

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

APPENDIX D.

REPORT OF COMMITTEE TO CONSIDER CERTAIN CRITICISMS OF THE BULK SALES ACT.

Historical.

In dealing with proposed amendments to draft Bills recommended by the Conference to Provincial Legislatures the Conference should have before it a brief resumé of the subject under discussion. Accordingly the Conference is reminded that the question of Bulk Sales was first referred to the Manitoba Commissioners in 1918 (Proceedings 1918, page 10). In 1919 a Bill draft by the Manitoba Commissioners was considered clause by clause and referred to the British Columbia Commissioners for re-drafting (Proceedings 1919, page 10; Appendix E., page 54). British Columbia reported (Proceedings 1920, page 29) a general approval of the draft with recommendations as to minor changes particularly in section 12 (limitation on time for commencing action to set aside bulk sale). The original draft limited the time for the bringing of the action to sixty days from the date of sale or to sixty days after notice to the creditor. The British Columbia Commissioners recommended and the Conference approved the deletion of the provision for notice to the creditor, because in the absence of a scheme for registration of sales in bulk the doctrine of notice was impracticable. In that year the Conference after considering the matter referred the Act to the Manitoba Commissioners to revise and forward copies to the Commissioners for submission to their respective Legislatures (Proceedings 1920, page 9). The reported Bill appears in 1920 Reports at page 31. In 1921 (Proceedings, page 9) the Conference corrected the minutes of the preceding year by correcting a clerical error in the definition of "sale" in paragraph (*e*) of section 2 where in the printed Bill, toward the end of the third line of this paragraph the word "sale" followed by a comma was wrongly inserted.

The Bill as approved by the Conference was enacted in some of the provinces as follows:—

British Columbia, 1921
(amended in 1924, c. 7, to extend period in section 12 from 60 days to six months);
Manitoba, 1921;
Alberta, 1922;
Saskatchewan, 1922.

A Bulk Sales Act was enacted in Ontario in 1917, effective June 1, 1918. When the Bill approved by the Conference was received by the Attorney-General of that province this statute was just beginning to be applied in the province. Accordingly the administration appears to have been hesitant about making a change without being assured of the suitability of the Conference's Bill to the commercial requirements of the province. The draft Bill was therefore referred to the late Chief Justice Sir Wm. Meredith. In his report to the Attorney-General the Chief Justice raised three objections; the Hon. W. E. Raney, K.C., then Attorney-General of Ontario, in a letter dated March, 23, 1922, to Mr. J. D. Falconbridge added another, and Mr. R. S. Cassels, K.C., of the Toronto Bar, in a letter to Mr. J. D. Falconbridge, dated April 24, 1922, raised others, some of which he thought might be regarded as probably "finicky," others as "of some importance." These are attached hereto and the criticisms will be indicated and considered hereinafter by your Committee.

The Canadian Credit Men's Trust Association in October, 1922, by correspondence with the Attorney-General of Manitoba complained that the time within which action can be brought attacking a sale in bulk (60 days) is too short and suggested, as a way out of the difficulty, a system of registration, together with advertisement in the Gazette. The Manitoba Attorney-General, being unwilling to introduce in one province amendments to a Uniform Act not first approved by the Conference, instructed your Committee to bring the matter to the attention of the Conference. This was done at the meeting in 1923, when "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 with suggestions as to its amendment." (Proceedings 1923, page 15).

In 1924 Mr. E. K. Williams, K.C., Chairman of the Committee of the Canadian Bar Association on Comparative Provincial Legislation and Law Reform, wrote to the Manitoba Commissioners enclosing copies of the letters of the late Chief Justice of Ontario, of Mr. Raney and of Mr. Cassels and included a list of the provinces which had enacted the Bulk Sales Act approved by the Conference, and a list of cases (later extended into a comprehensive brief made available for your Committee) on Bulk Sales law in Canada, all of which were discussed by the Conference which then resolved as follows: "Referred again to the Manitoba Commissioners with instructions to consider the criticisms of the present Act and the suggested amendments and to report in 1925 with recommendations."

Criticisms Considered.

In this report your Committee refers to the sections and wording of the Conference's draft Bill as shewn at pages 31 to 37 of the 1920 proceedings of the Conference rather than to the enactment of any province, and suggests this as a convenient method for the consideration of amendments proposed to any draft Bill which has been approved by the Conference. The late Chief Justice of Ontario in his letter to the Attorney-General of Ontario above referred to (date Feb. 22, 1922) says:

(1) "I am not enamoured of the legislation. It apparently puts a perfectly solvent man who wishes to sell out in bulk in the position that he cannot receive the purchase price; but it must be paid to a trustee, which involves expense for the incurring of which there is no reason . . . . the man though solvent may not be in a position to pay his debts unless he is able to use the purchase money or part of it for that purpose." In the opinion of your Committee, this criticism applies to any type of Bulk Sale legislation rather than to the draft Bill and overlooks the principle that creditors in the commercial world should be protected. The convenience of the solvent vendor is deferred to the interest of the creditors and to the benefit of credit generally in the commercial life of the province.

(2) "It is not clear whether the Bill applies to a sale by a partner of his interest in the business. It has been decided in Ontario that it does not apply." This decision (apparently *McLennan* v. *Fulton* (1920), 50 D. L. R. 572) was under the Ontario Act. It is submitted that, as paragraph (*e*) of section 2 of the Conference's draft Bill defines "Sale in bulk" as including "the sale of an interest in the business of the vendor" a sale of a partner's interest is within the Act. Your Committee recognizes that in the case of a sale of a partner's interest all the goods remain on the premises and a somewhat different situation arises than if the goods were being removed and therefore places the question before the Conference for its consideration.

(3) "Provision should be made, by amending section 7, for the dispensing with payment to the trustee." His Lordship suggested that this section be amended by inserting after the words "subsection (*c*)" in the third line the words "unless the creditors by their consent waive that being done." The object is to avoid the necessity and expense to the vendor of bringing in a trustee to the sale. But the trustee is to safeguard the interests of the creditors and the creditors if they so desire can assist the vendor in a proper case by means of

the waiver provided in paragraph (*b*) of section 6. Again, the Act is a creditors' Act. Creditors should have the right to force the vendor to go to a trustee authorized to distribute the proceeds of the sale equitably among all creditors and the Act is designed to ensure that. The trustee can best represent all parties. Creditors may sign a consent or waiver against their own interests.

The Hon. Mr. Raney's objection arises from the decision in *Interlake Tissue Mills Co Ltd.* v. *George Everall Co. Ltd.* (1921) 50 O. L. R. 165, holding *inter alia* that "the sale of part of the plant and machinery of a manufacturer (of envelopes) is a sale out of the usual course of the business of the vendor and is a 'sale in bulk' within the meaning of the Act." The sale apparently was of a machine intended to be replaced by something better. This decision was under the Ontario Act of 1917. On the other hand it was decided under the same Act, in *Bank of Montreal* v. *Ideal Knitting Mills Limited*, 55 O. L. R. 410, that the statute must be strictly construed; and where the assets of a business purchased included a machine which the purchaser of the business never used, the subsequent sale of that machine by the purchaser was held not to be within the Act—it could not be said to be a machine with which the debtor "carries on business, trade or occupation." It is submitted that each case must be decided on its own merits and that no definition designed to minutely describe "stock" or "stock in bulk" can be worded which would provide a better method than leaving to the courts in any particular case, the application of the general words used in a statute.

Mr. Cassels' suggestions range from small to important matters. Your Committee deals with all not merely clerical or verbal.

Mr. Cassels says the definition of "creditor" in paragraph (*b*) of section 2 is not wide enough to include all creditors under The Bankruptcy Act. It is your Committee's thought that the Bulk Sales Act could not be complied with if the bankruptcy definition were taken because the claims of certain possible creditors could not be set out in the statement required by section 5. In any event, the defect would seem not to have been serious heretofore as no case has arisen. The Uniform Act distinguishes between creditors who are required to be shewn on the statement to permit the sale to take place and those who are entitled to come in on a distribution. The Uniform Act in its definition of "creditors" follows the Assignments Acts of most of the provinces.

Definition of "stock"—paragraph (*c*) of section 2. Mr. Cassels' very objection to the definition, that it is ambiguous, was thoroughly discussed by the Conference before its adoption, and your Committee does not think any change at present advisable.

The objection to the inclusion of chattels and fixtures is against the avowed policy of the Act. There are classes of businesses where the fixtures comprise almost the entire assets, for instance, in the sale of a certain meat market the fixtures were worth five thousand dollars, but the stock consisted of one day's supply of meat. In a sale of a business of this kind one purchaser might buy the stock and another the fixtures, and creditors should be permitted to follow each.

The use of words "or part thereof" in paragraph (*e*) of section 2 criticized as too wide and "substantial part" suggested as better. Your Committee holds this to be of no advantage because each case must be decided on the particular facts. The same applies to the objection to a sale of an interest in the business. To say how much may be sold raises too involved a question—the sale of a fractional interest might raise the question of a partnership and a new form of ownership. The object is to prevent a sale "out of the usual course of business" to the detriment of the creditors.

Suggestion as to 2(*g*) for the use of a "substantial part" for "some part thereof"—that is, that the trustee should be selected only where a substantial part of the stock and business is. Under the definition a trustee may be selected, *e.g.*, by the vendor, where a very small part of the stock was located—there is a wide range of selection. Your Committee after considering whether the basis of choice of trustee to the sale should be the vendor's "principal place of business" instead of the location of some part of the stock and having in view the different situations in all the provinces, decided it was not desirable to recommend any change.

Section 3 in Mr. Cassels' opinion is "not satisfactory" and needs amendment — *e.g.*, "Sales" in the first line should be "sales in bulk." Your Committee thinks this amendment unnecessary and therefore undesirable. The words "ostensible occupation" are criticized. But they are not seriously objectionable, serve a useful purpose and are sanctioned by long usage. In any event this section is intended merely to define the persons to whom the Act is applicable.

"Commission Merchant" considered—why is he in the Act? Because he usually has a large stock of fixtures the value of which is great in proportion to the stock handled by him, which latter may or may not (usually not) belong to him. Besides the commission merchant may have a substantial interest in a stock of goods by reason of having made advances thereon.

"Manufacturer" considered—what is the reason for including him? The merchant buys and sells—the manufacturer makes and sells. But he who makes and sells often is a retailer and not merely a wholesaler and should be included.

The objection that the definition does not include a company was considered to have no point in view of the provisions of section 5 and of the Interpretation Acts of the various provinces.

Section 4 is objected to as unnecessary. Your Committee thinks this section should be in the Act to make it clear that the wholesaler is not affected thereby, and in other respects *ex abundanti cautela.* Further objections to this section, that the words "assignees for the benefit of creditors" are not wide enough is thought pertinent and it is recommended by the Committee that the words "authorized trustee under The Bankruptcy Act, official receiver or liquidator," be added.

"Such other property" in line 6 of subsection (1) of section 5 should be "any property." Approved—this was a clerical error made when the first draft of 1919 was recast in 1920.

"Executing encumbrance" criticized, but found on reference to Wharton to be a proper legal term.

The words "by attachment garnishment proceedings, contract or otherwise" at the end of this section are justifiable on the ground that it is reported that in some of the Provinces attachment, garnishment proceedings, etc., still have priority.

The use of "as shewn" in paragraphs (*a*), (*b*) and (*c*) of section 6 is necessary to cover the case where the vendor inadvertently omits a creditor's name—without these words such omissions would be fatal to the completion of the sale. What creditors are to be included?—those necessary to enable the sale to be completed. The list is therefore final (which Mr. Cassels questions) as to the purchaser acting in good faith.

The objection to section 7 that the proceeds of the sale should be paid to an authorized trustee named by the creditors rather than to any trustee named by the vendor may be theoretically good but the history of Bulk Sales legislation must be recalled. In the beginning the retail trade strenuously objected and it was only after revision of proposed Bills that the Provincial Legislatures were able to enact at all. It is submitted that the suggestion that the vendor should have no part in naming the trustee is too rigorous and unwise. As a matter of practice, we understand that no difficulty has existed on this score.

Objection to section 8 refers to creditors, already dealt with. This section relates to the distribution of the proceeds of the sale by the trustee and "The Bankruptcy Act" properly applies.

The attention of the Committee has been called to the fact that under section 8 as at present drawn it is not clear what date is to be

taken as the date when the priorities of the different parties are to be determined. An amendment to fix this date as that of the completion of the sale is accordingly recommended.

Section 10—The words "Encumbrance of property by the purchaser" are queried—Use of "Encumbrance" dealt with above.

Objection to stating at one place (line 20) that the purchaser is estopped from denying that the stock in his possession is the stock purchased from the vendor and then later (line 25) declaring that if it is stock purchased subsequently certain results will follow, springs from a failure to analyse the facts to which the law is to be applied. The object is to protect creditors who sold goods to the vendor after the sale in bulk; they as creditors are included with the creditors of the vendor, all being claimants in respect of the whole stock then in possession of the purchaser. The use of the word "goods" in the sixth line from the end does not in any way detract from the meaning of the section and while words "such stock or part thereof" might have been used, your Committee does not think any amendment necessary.

The sixty day period in section 12 is objected to as too short. This is also the objection of the Canadian Credit Men's Trust Association to the Attorney-General of Manitoba. The history of this section and the recommendation of the British Columbia Commissioners at the bottom of p. 30 of the 1920 Proceedings of the Conference shew that the objection is not new. Whether a greater period or a system of registration should be provided for was resolved by the Committee in favour of a six months' period of limitation as provided by the Legislature of British Columbia in 1924. The suggestion is that proceedings other than by action should be included after the word "action" in the third line. The Committee recommends an amendment to this section along the lines set out.

Mr. Cassels' criticism of Section 13 is:

"Only an authorized trustee should be appointed and there should be some provision giving supervision over the terms of the sale."

As to the first objection, by amendments recently made to The Bankruptcy Act, there are no longer authorized trustees under that Act for any specific district or division. An assignment is first made to an officer of the Court who then turns the estate over to some trustee selected by the creditors at their first meeting and this person so selected becomes "an authorized trustee" under the Act. We do not think therefore that there should be any change in section 13 or any change in the definition of "Trustee" in section 2, paragraph (*g*).

Dealing with Mr. Cassels' second objection—He cites a case where a sale was for a small part payment in cash with the balance deferred for five years, during which period the creditors must wait for their money. The illustration cited shows a failure to compare the Ontario Act with the Uniform Act. The Ontario Act legalizes any sale which the vendor chooses to make if the purchaser gets a proper statement of creditors, and if the money is paid to a trustee. The Uniform Act by section 6 provides against any such event.

Respectfully submitted,

W. R. COTTINGHAM,

On behalf of the Manitoba Commissioners.

SUGGESTED AMENDMENTS.

Your Committee accordingly suggests for the consideration of the Conference the following Draft Bill:—

AN ACT TO AMEND THE BULK SALES ACT.

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

1. Section 4 of The Bulk Sales Act is amended by inserting immediately after the word "creditors" in the third line the words "authorized trustees under The Bankruptcy Act, official receivers or liquidators."

2. Section 5 of said Act is amended by substituting for the words "such other" in the sixth line, the word "any."

3. Section 8 of said Act is amended by adding at the end thereof the following: "The priorities of all creditors shall be determined as of the date of the completion of the sale."

4. Section 12 of said Act is amended by substituting for the words "within sixty days" in the fourth line, the words: "or proceedings had or taken, within six months."

5. This Act shall come into force

CORRESPONDENCE APPENDED TO THE COMMITTEE'S REPORT.

February 22, 1922.

My dear Raney,

If the principle of the Bulk Sales Act is approved subject to the verbal corrections I shall mention, I see no reason why the Act as framed by the Commissioners should not be passed.

Section 2 is unnecessary as that is provided for by the Interpretation Act.

The reference to any Judge of the County Court Division in section 13 is wrong. It should read "any Judge of the County or District Court of the County or District."

I am not enamoured of the legislation. It apparently puts a perfect solvent man who wishes to sell out in bulk in the position that he cannot receive the purchase price but it must be paid to a trustee which involves expense for the incurring of which there is no reason.

I do not overlook the fact that that need not be done if all the creditors are paid in full, but the man though solvent may not be in a position to pay his debts unless he is able to use the purchase money or part of it for that purpose.

The question arose in a case in my court as to the application of the Act to a sale by a partner of his interest in the business and we held that it did not apply. It is desirable to make this clear?

Going back to the question of payment to a trustee would it not be well to amend section 7 by providing that the creditors may dispense with the payment to the trustee—this might be done by inserting after the words "subsection C." the words "unless the creditors by their consent waive that being done."

Yours faithfully,

(Sgd.) W. R. MEREDITH.

Ontario: Department of Attorney-General.

Toronto, March 23, 1922.

Dear Mr. Falconbridge,

RE BULK SALES ACT.

I have your letter of the 18th inst. urging the enactment of the Bulk Sales Bill submitted by the Committee on Uniformity of Legislation. I had intended presenting this Bill during the present Session, but on account of several objections which have arisen to it, and having regard to the amount of legislation now before the House, I am disposed to let it stand for further consideration.

Enclosed herewith you will please find copy of a letter from Sir William Meredith, which the Chief Justice is pleased to have forwarded to you. In addition to the objections therein mentioned, another one has been brought to my attention illustrating how the Act with its present definition of "stock" (section 2(*c*)) works a hardship. A man was carrying on a small business and found it

expedient to sell a machine which formed part of his plant, in order, I think, to replace it by something better. He found a purchaser for it and the purchase was carried out without complying with the provisions of the Act. *Interlake Tissue Mills Co. Ltd.* v. *George Everall Co.* (1921), 20 O.W.N. 130, 50 O.L.R. 165. The transaction was attacked by a creditor and Mr. Justice Middleton felt compelled to set aside the sale. His view was that the transaction came within the Act because chattels with which a person carries on his business are included in the definition of "stock," section 2(*c*), and a sale or transfer of stock or part of it is a sale in bulk if it is out of the usual course of business or trade of the vendor.

Such a transaction, it is suggested, should not come within this Act.

Will your Committee, therefore, please reconsider the Bill and submit it to me for presentation next Session.

Yours truly,

(Sgd.) W. E. RANEY.

J. D. Falconbridge, Esq., K.C.,
22 Chestnut Park, Toronto.

Toronto, April 24, 1922.

J. D. Falconbridge, Esq., K.C.,
22 Chestnut Park, Toronto.

My dear Jack,

I now enclose a memorandum of suggestions as to the proposed Bulk Sales Act. Some of these suggestions you will probably think are finicky, but several are, I think, of some importance. At any rate they may be of use showing how the proposed legislation strikes an outsider.

I return the copy of the Act and the correspondence. It is not necessary to say anything as to the criticism of the Chief Justice of Ontario, which will no doubt have due attention. The Attorney-General of Ontario gives in his letter of the 23rd of March quite a wrong impression as to Mr. Justice Middleton's decision, though the objection, perhaps erroneously based on that decision, is entitled to considerable weight. The Attorney-General of Manitoba has also, as I have attempted to point out in the memorandum, gone astray in my view as to the alleged printers' error in section 2(*e*).

I hope you will not think I am bothering you unduly.

Yours sincerely,

(Sgd.) R. S. CASSELS.

Encl.

IN RE BULK SALES ACT.

Section 2(*b*): The definition of "creditor" is not wide enough to include all who are creditors under The Bankruptcy Act, and there would almost certainly be difficulty in working out the provisions of the Act, especially section 8. It should be definitely stated whether the Act is to apply only to such creditors as were recognized under the Ontario Assignments Act or to creditors within the meaning of The Bankruptcy Act. Under the latter Act persons having claims for breach of contract, etc., are treated as creditors.

Section 2(*c*): The definition of "stock" is ambiguous. Would it not be better to leave out the words "Stock of," making the definition read "stock shall mean any goods, wares," etc.

It is not advisable to bring within the Act chattels and fixtures. There is very little chance of a fraudulent sale of fixtures, and chattels by themselves, and if the Act is made to apply to chattels and fixtures, then, having regard to the provisions of section 2(*d*), it would not be possible for an owner of a chattel or fixture which is partially worn out to sell it and replace it with another article.

Section 2(*d*): The word "stock" should not be quotation marks, and the words "or portion thereof" should not be parentheses.

Section 2(*e*): The proposed Act applies to a stock "or part thereof." This seems to be too wide. Would it not be advisable to say "or a substantial part thereof," or some words to that effect; and to change the next clause so as to read, sale, etc., "of a substantial part of the stock of the vendor," instead of "substantially the entire stock," etc.

The restriction on the sale, etc., "of an interest in the business" also goes too far. A merchant might, for instance, in entire good faith and with beneficial results to his creditors, sell a small interest in his business to one of his employees. The clause should be changed and made to read sale, etc., of a "substantial interest," etc.

The words "and sale" at the beginning of the second phrase are out of place as pointed out by the Attorney-General of Manitoba. But they should go in after the words "Sale in bulk" at the beginning of the clause and are necessary. The clause should read: (*e*) "Sale in bulk," and "sale" shall mean, etc.

Section 2(*g*): The proposed Act speaks of the bankruptcy district wherein the stock of the vendor "or some part thereof" is located, or the vendor's business "or some part thereof" is carried on. "Some part thereof" is a very wide expression, and it would be better to say "A substantial part thereof" or words to that effect.

It would be better to allow only an authorized trustee to act as trustee under the Bulk Sales Act. If not, an unsatisfactory trustee may be appointed, and there would at any rate be more likelihood of the provisions of Section 8 being carried out satisfactorily if an authorized trustee were acting.

Why not "appointed trustee" instead of "appointed as trustee?"

The semicolon after the words "Province of" is out of place, and there is a misprint in the word "section" in the third line from the end of the clause.

Section 3 is not, it is submitted, satisfactory. The section would be better as follows:

"The Act shall apply only to sales by persons who buy and sell goods, wares and merchandise." Unless the words "and sale" are kept in section 2(*e*) as above suggested, the words "sales in bulk" will have to be used in this section.

If the section is retained it needs amendment. What is the meaning of "ostensible occupation?" Would it not be better to leave out the words "as their ostensible occupation or part thereof?"

A commission merchant does not buy and sell goods. Why then should a commission merchant be brought within the Act? He cannot make a sale in bulk.

It does not seem reasonable either to include a manufacturer.

The word "persons" includes companies, but it is perhaps doubtful if the words "commission merchants" and "manufacturers" would include "companies" doing business of those kinds.

As Section 3 says the Act shall apply only to certain persons. Section 4 is unnecessary, and it is better to omit it. But if it is retained it should be amended by including authorized trustees, for the words "assignees for the benefit of creditors" have been held not to include an authorized trustee.

Section 5: "Executing any transfer, conveyance or incumbrance of such other property." What do the words "such other property" refer to? There is no antecedent.

What is meant by executing any incumbrance?

The section provides that the statement to be furnished by the vendor shall contain the names and addresses of all the creditors, etc. Again the question as to what is included under the term "creditors" comes up.

Section 5 (1): Why are quotation marks used in this clause speaking of "stock in bulk?"

What is intended to be covered by the words "by attachment, garnishment proceedings, contract, or otherwise?" Would it not be

better to omit the reference to these particular modes of attempting to obtain preference or priority, just leaving the general prohibition?

Section 6: Why "as shewn" in each of the clauses?

What creditors are to be included?

Is the list final as far as the protection of a purchaser acting in good faith is concerned?

Section 7: It would be better to provide that the proceeds of sale, etc., shall be paid, etc., to an authorized trustee to be named by the creditors in the written consent or to an authorized trustee to be appointed under the provisions of Section 13. It is inadvisable to allow the vendor to name a trustee at all, and it is also inadvisable to give an unrestricted choice of trustee.

Section 8: As previously pointed out, the classes of creditors referred to in this section are not the same classes referred to in the definition and in the preceding sections of the Act.

The general words as to rights, liabilities and powers may perhaps be sufficient, but *quære* for instance as to advertising. Must the trustee advertise in the Canada Gazette as he has to do under the Bankruptcy Act? And call meetings? etc., etc.

Section 10: What is meant by an "incumbrance of property by the purchaser?"

The section says the purchaser shall be estopped from denying that the stock in his possession is the stock purchased from the vendor, and then goes on to say that if the stock in his possession was in fact purchased by him from some one other than the vendor of the stock in bulk certain results will follow. It seems inconsistent to say that the purchaser shall be "estopped" and then to make provision for a different state of facts.

Why is there the sudden change to the word "goods" in the sixth line from the end? The word "stock" should be used.

Section 12: Sixty days from the date of sale seems to be a very short time to allow. There ought to be some saving clause, and possibly with an absolute protection after, say, six months. It would be quite easy for a country merchant to make a sale without the fact becoming known for sixty days.

The section is limited to proceedings to declare a sale void, but what about other proceedings such as seizure under execution and interpleader with alleged purchaser? Section 10 contemplates seizure under execution.

And the section says "unless such action" is brought. There should be added "or other proceedings are had or taken."

Section 13: Only an authorized trustee should be appointed and there should be some provision giving some supervision over the terms of the sale. Under the Ontario Act a case has occurred recently where a vendor made a sale at a good price to a purchaser who paid a small part of the purchase money and gave fairly good security for payment of the balance in instalments extending over five years. A trustee was appointed by a judge and the creditors have to wait for five years before obtaining payment as the security must be realized on. And see remarks under section 2(*g*) as to the expression "or any part thereof."

APPENDIX E.

REPORT OF COMMITTEE ON DEFENCES TO ACTIONS ON FOREIGN JUDGMENTS.

1. Last year the New Brunswick commissioners presented a report on the subject of defences to actions on foreign judgments (Proceedings, Conference, 1924, p. 58; Year Book, Canadian Bar Association, 1925, p.). This report was not discussed in detail, owing to lack of time, but the subject was referred to the Ontario commissioners with instructions to report on the law of the several provinces. (Proceedings, Conference, 1924, p. 15; Year Book, Canadian Bar Association, 1925, p.).

2. It will be remembered that the draft of a model Reciprocal Enforcement of Judgments Act, as revised and approved by the Conference last year (Proceedings, Conference, 1924, pp. 14, 60; Year Book, Canadian Bar Association, 1925, pp.), provides, by s. 4(g), that "no judgment shall be ordered to be registered under this Act if it is shown to the registering court that . . . the judgment debtor would have a good defence if an action were brought on the original judgment," and, by s. 7, that if the registration of the judgment is made upon an *ex parte* order, the judgment debtor shall be entitled to have the registration set aside upon any of the grounds mentioned in s. 4, and, by s. 10, that "nothing herein contained shall deprive any judgment creditor of the right to bring an action for the recovery of the amount of his judgment instead of proceeding under this Act." Especially in view of these provisions of the Reciprocal Enforcement of Judgments Act, it appears desirable that a model Act respecting Defences to Actions upon Foreign Judgments should be prepared by the Conference.

3. The enactments now in force in the several provinces, whether in the form of statutes or of rules having the effect of statutes, appear to be as follows:

(*a*) BRITISH COLUMBIA: Order 58A, rule 2, Supreme Court Rules, 1906 (1912 consolidation):

> 2. In any action on a foreign judgment, order, or decree brought in any court in British Columbia, the defendant, upon proof to the satisfaction of the court or a judge that he has taken, or caused to be taken, an appeal or other proceeding in the nature thereof in respect of such judgment, order, or decree shall be

entitled, pending the determination of such appeal or other proceedings upon such terms (if any) as the court or judge may see to impose, to a stay of proceedings, and the application for such stay may be made in a summary way in chambers at any stage of the action.

(*b*) MANITOBA: The King's Bench Act, R.S.M. 1913. c. 46, s. 25, clauses (*l*) and (*m*):

(*l*) A defendant in any action upon a judgment obtained in any court out of the province, or upon a foreign judgment, may plead to the action on the merits, or set up any defence which might have been pleaded to the original cause of action for which such judgment has been recovered: provided always, that the opposite party shall be at liberty to apply to the court or a judge to strike out any such pleading or defence upon the ground of embarrassment or delay;

(*m*) In all actions, suits, causes and proceedings in the courts of this province upon a foreign judgment or upon any other cause of action which arose outside of Manitoba, the right to enforce such judgment or such other cause of action shall be deemed to have accrued in Manitoba, at the time when the right to enforce the same first accrued in the country where such foreign judgment was recovered or where such cause of action arose, and the time within which any such actions, suits, causes or proceedings must be commenced shall run and be computed from the date herein provided for the accrual of the right to commence the same, notwithstanding that the person against whom such action, suit, cause or proceeding is brought was not, at the time of the recovery of such foreign judgment or at the time of the accrual of such cause of action, within or resident or domiciled within Manitoba.

(*c*) NEW BRUNSWICK: An Act respecting Actions on Foreign Judgments, R.S.N.B. 1903, c. 137:

In any action now pending or hereafter to be instituted in any court in this province on a foreign judgment, where the defendant was not personally served with the original process or first proceeding in the suit, within the jurisdiction of the court where the said judgment may be obtained, it shall be competent for the defendant to enter into the subject matter of such foreign judgment and to avail himself of any matter of law or fact which would have been available as a defence, had the

action on which such judgment was had and obtained been originally brought and prosecuted in any of the courts of this province; provided always, that such defence be pleaded or notice thereof be given in like manner as is required by the course and practice of the court in which the action is brought, any law, usage or custom to the contrary notwithstanding.

(*d*) NOVA SCOTIA: Order 35, rule 38, appended to the Judicature Act, Statutes of Nova Scotia, 1919, c. 32:

38. In any action brought in this province against any person domiciled therein, on a judgment obtained in an action in any other province or country to which no defence was made, any defence which might have been made to the original action may be made to the action on the judgment.

(*e*) ONTARIO: The Judicature Act, R.S.O. 1914, c. 56, ss. 50-52:

50. Where an action is brought on a judgment obtained in the province of Quebec in an action in which the service on the defendant or party sued was personal, no defence which might have been set up to the original action may be made to the action on the judgment.

51. Where an action is brought on a judgment obtained in the province of Quebec in an action in which the service was not personal and in which no defence was made, any defence which might have been set up to the original action may be made to the action on the judgment.

52. (1) Where an action is brought on a judgment obtained in the province of Quebec the costs incurred in obtaining the judgment in that province shall not be recoverable without the order of a judge directing their allowance.

(2) Such order shall not be made, unless, in the opinion of the judge, the costs were properly incurred nor if it would have been a saving of expense and costs to have first instituted proceedings in Ontario on the original claim.

(*f*) PRINCE EDWARD ISLAND: The Statutes of Prince Edward Island, 1869, c. 15, s. 5:

5. Whenever a person domiciled in this Island shall be served with summons or mesne process in this Island, to defend or answer a suit, in any other province or country, the record of any judgment obtained in such other province or country, in the suit wherein such summons or mesne process shall have been served, or any exemplification thereof, shall not be conclusive

evidence in any suit to be brought on such judgment in this Island, of the correctness of such judgment, but the defendant in such last mentioned suit may enquire into, contest and dispute all or any of the facts upon which the said judgment is founded, or were the cause of action in the suit in which such judgment was given, as fully as if such judgment in such other colony or country had never been given.

(*g*) QUEBEC: The Code of Civil Procedure of the Province of Quebec (1897), articles 210-213:

210. Any defence which was or might have been set up to the original action, may be pleaded to an action brought upon a judgment rendered out of Canada.

211. Any defence which might have been set up to the original action, may be pleaded to an action brought upon a judgment rendered in any other province of Canada, provided that the defendant was not personally served with the action within such other province or did not appear in such action.

212. Any such defence cannot be pleaded if the defendant was personally served in such province, or appeared in the original action, except in any case involving the decision of a right affecting immovables in this province, or the jurisdiction of a foreign court concerning such right.

213. In any action against a corporation, any service made within another province in conformity with the law thereof is considered as a personal service within the meaning of the two preceding articles.

4. In Alberta and Saskatchewan there appears to be no statute or rule on the subject of defences to actions on foreign judgments, and therefore in those provinces the ordinary rules of Conflict of Laws are to be applied. In British Columbia these rules are subject merely to the right of the defendant to apply for a stay of proceedings if an appeal is pending in the original action. In the other provinces the application of the rules of Conflict of Laws is excluded to a much larger extent.

5. In Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Quebec, a common feature of the statutes or rules is that, as a general rule, subject to certain limitations, they permit a person who is sued upon a foreign judgment to set up defences which might have been set up to the original action.

(*a*) In Manitoba the general rule is subject to a provision authorizing the court or a judge to strike out any such defence upon the ground of embarrassment or delay.

(*b*) In New Brunswick the general rule applies to a case in which the defendant was not personally served in the original action within the jurisdiction of the court where the judgment was obtained.

(*c*) In Nova Scotia the general rule applies to a case in which the defendant is domiciled in the province and no defence was made to the original action.

(*d*) In Ontario the general rule applies to an action upon a judgment obtained in the Province of Quebec in an action in which the service was not personal and in which no defence was made.

(*e*) In Prince Edward Island the general rule applies to a case in which the defendant is domiciled in the province.

(*f*) In Quebec the general rule applies, firstly, to an action upon a judgment rendered in any other province of Canada, if the defendant was not personally served within such other province or did not appear in such action, or if the case involves the decision of a right affecting immovables in Quebec or the jurisdiction of a foreign court concerning such right, and, secondly, to an action upon a judgment rendered out of Canada.

6. Your committee suggests that before giving instructions for the preparation of a draft model statute the Conference should decide (1) whether the general rule expressed in the statutes mentioned in paragraph 5 should be adopted, or (2) whether the draft model statute should specify and define the kinds of defences which may be set up. Your committee recommends the adoption of the second alternative. Some qualification of the general rule in question seems indeed to have been taken for granted last year, when the conference settled the terms of s. 4 of the Reciprocal Enforcement of Judgments Act as follows:

> 4. No judgment shall be ordered to be registered under this Act if it is shown to the registering court that
>
> (*a*) The original court acted without jurisdiction, or
>
> (*b*) The judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdic-

tion of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or

(*c*) The judgment creditor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

(*d*) The judgment was obtained by fraud; or

(*e*) An appeal is pending, or the judgment debtor is entitled and intends to appeal, against the judgment; or

(*f*) The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason would not have been entertained by the registering court; or

(*g*) The judgment debtor would have a good defence if an action were brought on the original judgment.

7. Your committee presumes that it was not the intention of the Conference, after having carefully defined in clauses (*a*) to (*f*) certain cases in which a judgment should not be ordered to be registered, to permit by clause (*g*) a judgment debtor in every case to object to the registration of the judgment on the ground that he would have had a good defence to the original action. In a province in which a person sued upon a foreign judgment is permitted to defend the action on the merits, the result of clause (*g*) would seem, however, to be that the registering court will be obliged, on the demand of the judgment debtor, to try the case *de novo*—the only difference between the trial before the original court and that before the registering court being that the onus of proof is perhaps shifted from the plaintiff to the defendant.

8. If the Conference adopts the recommendation of your committee in favour of the second alternative mentioned in paragraph 6, the Conference, it is suggested, should then decide (1) what defences ought to be specified as being available to a person sued on a foreign judgment, and (2) whether any distinction should be made, such as is made in Quebec, between an action upon a judgment obtained in another province of Canada, and an action upon a judgment obtained in the United Kingdom or the United States or elsewhere.

9. The question will naturally arise, to what extent clauses (*a*) to (*f*) of s. 4 of the Reciprocal Enforcement of Judgments Act should

be followed, or to what extent the ordinary rules of Conflict of Laws should be followed, as to the defences which may be set up to an action upon a foreign judgment. In other to facilitate the discussion of this question by the Conference, the committee quotes the following rules from Dicey on Conflict of Laws, 3rd edition, 1922, pp. 429 ff.:

Rule 104. Any foreign judgment which is not pronounced by a court of competent jurisdiction is invalid.

Rule 105. A foreign judgment is invalid which is obtained by fraud.

Rule 106. A foreign judgment is possibly invalid when the court pronouncing the judgment refuses to give such recognition to the law of other nations as is required by the principles of private international law.

Rule 107. A foreign judgment may sometimes be invalid on account of the proceedings in which the judgment was obtained being opposed to natural justice (*e.g.* owing to want of due notice to the party affected thereby). But in such a case the court is (generally) not a court of competent jurisdiction.

Rule 110. A foreign judgment, which is not an invalid foreign judgment under rules 104 to 107, is valid, and is hereinafter termed a valid foreign judgment.

Rule 112. A valid foreign judgment is conclusive as to any matter thereby adjudicated upon, and cannot be impeached for any error either (1) of fact or (2) of law.

Rule 114. Subject to the possible exception hereinafter mentioned, a valid foreign judgment *in personam* may be enforced by an action for the amount due under it if the judgment is (1) for a debt, or definite sum of money, and (2) final and conclusive, but not otherwise.

Provided that a foreign judgment may be final and conclusive, though it is subject to an appeal, and though an appeal against it is actually pending in the foreign country where it was given.

Exception. An action (*semble*) cannot be maintained on a valid foreign judgment if the cause of action in respect of which the judgment was obtained was of such a character that it would not have supported an action in England.

Sub-rule. A valid foreign judgment does not of itself extinguish the original cause of action in respect of which the judgment was given.

10. The committee further suggests for the consideration of the Conference the question whether the proposed draft model statute should contain any provision, similar to that in force in Manitoba, on the subject of limitation of actions upon foreign judgments. Your committee is inclined to think that if any such provision is desirable it should be part of a general statute relating to limitations.

11. Another question which might be considered by the Conference is whether any attempt should be made in the Act respecting Defences to Actions on Foreign Judgments to state the cases in which a foreign court has jurisdiction—a question which is left open in the Reciprocal Enforcement of Judgments Act. Dicey on Conflict of Laws, 3rd edition, 1922, pp. 393 ff., states the following rules:

> Rule 95.—In an action *in personam* in respect of any cause of action, the courts of a foreign country have jurisdiction in the following cases:—
>
> *First Case.* Where at the time of the commencement of the action the defendant was resident (or present?) in such country, so as to have the benefit, or be under the protection, of the laws thereof.
>
> *Second Case.* Where the defendant is, at the time of the judgment in the action, a subject of the sovereign of such country (?).
>
> *Third Case.* Where the party objecting to the jurisdiction of the courts of such country has, by his own conduct, submitted to such jurisdiction, *i.e.,* has precluded himself from objecting thereto—
>
> (*a*) by appearance as plaintiff in the action, or
>
> (*b*) by voluntarily appearing as defendant in such action, or
>
> (*c*) by having expressly or impliedly contracted to submit to the jurisdiction of such courts.
>
> Rule 96. In an action *in personam* the courts of a foreign country do not acquire jurisdiction either—
>
> (1) from the mere possession by the defendant at the commencement of the action of property locally situate in that country, or
>
> (2) from the presence of the defendant in such country at the time when the obligation in respect of which the action is brought was incurred in that country.

By Rule 94, Rule 95 is to be read subject to rules 92 and 93, as follows:

Rule 92. The courts of a foreign country have no jurisdiction over, *i.e.*, are not courts of competent jurisdiction against—

(1) any sovereign,

(2) any ambassador, or other diplomatic agent, accredited to the sovereign of such foreign country.

Rule 93. The courts of a foreign country have no jurisdiction—

(1) to adjudicate upon the title, or the right to the possession, of any immovable not situate in such country, or

(2) (semble) to give redress for any injury in respect of any immovable not situate in such country (?).

All which is respectfully submitted.

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

Osgoode Hall,
Toronto. June, 1925.

APPENDIX F.

MEMORANDUM AS TO UNIFORM WILLS ACT.

PREPARED BY THE NOVA SCOTIA COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

1. Reference is made to the following:

Draft Wills Act.	Proceedings of the Conference 1923, page 45. Proceedings of the Canadian Bar Association 1923, page 455.
Memorandum prepared by the Alberta Commissioners.	Proceedings of the Conference 1924, page 64.
Letter to the Attorney-General of Manitoba, referred to in Proceedings of the Conference 1924, page 15.	Set forth in Appendix to this Memorandum.

2. The matter of a Uniform Wills Act has been before the Conference since the 2nd September, 1918, and the preliminary work has been so extensive, and the Draft Act so carefully prepared, that there is little left to be done.

3. The Draft Act, Section 2(*b*), lines 5, 6, 7 and 8 should, it is suggested, read "all property by law devolving upon the executor or administrator, and not being real estate;" (*c*) line 4, following "testament" insert "of the custody and tuition of any child," or else omit "disposition by will and testament" in lines 3 and 4.

4. The Draft Act, Section 3, line 1: "any" would seem to be preferable to "every;" line 6: insert "or heirs at law" before "including."

(*a*) (*b*) (*c*), omit "All."

(*d*) Substitute the following: "The estates, interests and rights and other real and personal property to which the testator may be entitled at the time of his death, notwithstanding that he has become entitled to the same subsequent to the execution of his will."

5. The Draft Act, Section 5 (1)(2) and (3): Substitute—

(1) Any member of His Majesty's naval, military, air or marine forces when in actual service, or any mariner or seaman

when at sea or in course of a voyage, 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) Such member of His Majesty's naval, military, air or marine forces shall be considered to be in actual service after he has taken some step under the orders of a superior officer in view of and preparatory to joining the forces engaged in hostilities.

(3) The fact that any such member of His Majesty's naval, military, air or marine forces, or such mariner or seaman, is an infant at the time he makes his will shall not invalidate the same.

6. The Draft Act, Section 11. Refer to the Memorandum of the Alberta Commissioners.

7. The Draft Act, Section 14. The alternative draft suggested in the memorandum of the Alberta Commissioners modifies the existing law in that it requires the local form for chattels real. This is in accordance with the general principles of Conflict of Laws, and removes an anomalous exception introduced unwittingly by Lord Kingsdown's Act. Section 16 of "The Wills Act" in force in Nova Scotia, Chapter 146 Revised Statutes of Nova Scotia 1923, is as follows:

16. Every will made out of the province (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 Nova Scotia, 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 same was made; or

(*c*) by the law of the place where the testator was domiciled when the same was made; or

(*d*) by the law then in force in the place where he had his domicile of origin.

It will be observed that the Nova Scotia Section is not limited to British subjects. Paragraph (*d*) of Section 14 of the Draft Wills Act implies that a British subject must have his domicile of origin in His Majesty's Dominions to get the benefit of the Section.

8. The Draft Act, Section 15. The suggestion in the memorandum of the Alberta Commissioners to insert after the words "no will" the words "whether of a British subject or of a foreigner"

may be questioned. A departure of this nature from the language of the existing law might well react upon the interpretation of other Sections; *e.g.*, it might be contended that Section 18 of the Draft Act was limited to wills of British subjects.

9. The Draft Act, Section 16. The suggestion in the memorandum of the Alberta Commissioners may be questioned upon the same grounds.

10. The Draft Act, Section 19. Refers to the memorandum of the Alberta Commissioners. This Section makes no provision for cancelling a will by drawing lines across a will or any part thereof.

11. The Draft Act, Section 33. Refer to the memorandum of the Alberta Commissioners, and to the letter to the Attorney-General of Manitoba in the appendix hereto. The attention of the Nova Scotia Commissioners has been directed by Mr. W. R. Cottingham, one of the Manitoba Commissioners, to the decision of the Appellate Division of the Supreme Court of Ontario in *Re Guthrie,* 56 Ontario Law Reports, page 189. The principle of that decision is stated in the judgment of Smith, J.A., a copy of that judgment being contained in the appendix hereto. If the draft section in the memorandum of the Alberta Commissioners is accepted it will change the law in this respect.

12. The Draft Act, Section 35. Refer to the memorandum of the Alberta Commissioners. Why should not the principle of Subsection 1 of Section 35 of the Draft Act be extended to all personal property?

13. The Draft Act, Section 36. Refer to the memorandum of the Alberta Commissioners. This Section should only apply to real estate where real estate devolves upon the personal representatives.

Sections 33 and 35 of the Wills Act of Nova Scotia are as follows:

> 33. If the testator at the time of his death was liable to perform any contract for the sale and conveyance of any real or personal property, the executors of his will shall, notwithstanding any devise or bequest of the real or personal property to which such contract refers, be deemed trustees thereof so far as is necessary for performing such contract, and shall have power to execute the necessary conveyances for the performance thereof; and the executors shall hold the purchase money subject to such uses and purposes as are in such will expressed respecting such real or personal property or such purchase money, or otherwise, for the use and benefit of the estate of the testator.

35. (1) Where lands are willed to be sold by executors and part of them refuse to be executors and to accept the administration of the will, all sales by the executors that accept such administration shall be as valid as if all the executors had joined.

(2) The foregoing subsection shall have the same force and effect as though the same had been contained in "The Wills Act" when originally enacted, and shall be so construed.

If the matters referred to in those sections are not dealt with in the Uniform Devolution of Estates Act, it is submitted they should be dealt with in the Uniform Wills Act.

Respectfully submitted,

F. F. MATHERS.
J. L. RALSTON.
J. E. READ.

Halifax, N. S.
July, 1925.

APPENDIX TO MEMORANDUM AS TO UNIFORM WILLS ACT.

Judgment of Smith, J.A., *Re Guthrie*, 56 Ontario Law Reports, at page 195.

The facts are set out and the authorities fully discussed in the judgment of my brother Ferguson, with which I agree. In addition, I wish to point out the very material difference that a very slight difference in the wording of a will may make under the rule thus established. If a testator by his will makes a gift to all his children, naming them, and some of them die in his lifetime, leaving children who survive the testator, the share that those so dying would have taken had they survived goes to their representatives under Sec. 37 of the Wills Act; but, if the gift is to all his children without naming them, all goes to the children of the testator who survive him, and the above section of the Wills Act does not apply. The distinction is founded on the law of lapse. In the former case there is a gift to the individual children by name, and there is a lapse as to children dying in the testator's lifetime, whereas in the latter case, as the will speaks from the death of the testator, the gift is to those of the class only who survive him, so that there is no lapse, because there was no gift whatever to the children dying in his lifetime. In the *Harvey*

case, [1893] 1 Ch. 567, Chitty J., refers to doubts that may have arisen as to the correctness of the rule laid down in *Olney* v. *Bates*, 3 Drew. 319, and subsequent cases which he follows, and he agrees with Jarman that it greatly narrows the practical operation of sec. 33 of the Wills Act, but considers it too late then to reopen the question. It will be seen that the rule rests on the technical rules of law relating to gifts to a class, and has nothing to do with the probable intentions of the testator. The ordinary testator would probably be surprised to learn that it might make a vast difference in the effect of a gift to be divided among all his children, whether or not they were named. The text in Jarman and remarks of Chitty, J., referred to, indicate that there was room for doubt as to the soundness of the early decisions that have been followed until the law has become established by them. The English cases having been long followed in our own Courts, the rule laid down cannot now be altered except by legislation.

Letter to the Attorney-General of Manitoba, Dated 17th March, 1924.

(Referred to Proceedings Conference of 1924, p. 15).

Mr. John Queen has proposed a bill amending the Wills Act which I would commend to your support.

The Wills Act 1837 (Imp.) s. 33, which has been embodied in all our provincial Wills Acts, and is s. 31 in our Act, provides:

> "Where any person being a child or other issue of the testator, to whom any real or personal estate 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 the death of such person had happened immediately after the death of the testator, unless a contrary contention appear by the will."

The intention was of course to give the property devolving by will on a deceased child of the testator to the issue of such child. But it is badly drawn and in case the child has become bankrupt the property goes not to his issue, but to the trustee in bankruptcy, defeating what undoubtedly would be the testator's wish, and also the intent of the legislators. There is only one case reported where this effect was given the Act, probably only one case because the effect of the Act is so perfectly clear. In *Re Pearson, Smith* v. *Pearson* (1920), 1

Ch. 247, 2 Canadian Bankruptcy Reports 68. The interpretation of Sterling, L.J., to the same effect. In *Re Scott* (1901), 1 Q.B. 288, is quoted in the former case.

Queen's bill substitutes the following for s. 31 of the Manitoba Wills Act:

> "Where any person being a child or other issue of the testator to whom any real or personal estate 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 real or personal estate so devised or bequeathed shall, unless a contrary intention appear by the will, be deemed to have been devised or bequeathed to the issue of such deceased child in equal proportions."

The words "or other issue" should follow "child" in the last line.

As the law now stands, the devisee may contract with consideration, the property will be bound by the contract. Likewise, his disposition of it by will is binding. The testator expected him to survive and intended that he should have disposing power; and the statute gave validity to the exercise of the power by the devisee. The suggested amendment would take away that power and confer the property on the devisee's children without his power to control it. Is it wise to do so? Would it be better to amend so as to directly meet the evil by adding s. 31?

> "Provided that such property shall not pass to any assignee or trustee for benefit of creditors, or official receiver, custodian or trustee in bankruptcy nor become available to any execution creditor or garnishor,"
>
> or
>
> "and in the absence of any gift or testamentary disposition of or contract with respect to such real or personal property by such beneficiary of the testator or to the extent that any residue, remainder, equity or benefit of, in or arising out of such property remains undisposed of as aforesaid by such beneficiary, such real or personal property and any property rights into which the same have been converted so far as they remain undisposed of as aforesaid by such beneficiary of the testator shall be deemed to have been devised or bequeathed in equal portions to the issue of such beneficiary of such testator."

These would preserve disposal rights to the beneficiary to the testator. Is it desirable to do so?

Mr. A. C. Campbell, K.C., and myself have had some discussion and correspondence in reference to this.

Mr. Campbell has written as follows:

"Taking the other side of the argument. The statutory variation depends on there being issue. In view of this could the legislature have had any other intention than to benefit the issue? Does not this question eliminate from the mind of the legislators the contractual power of the intermediate as to strangers?

"As to the intermediate's dispositive power by will among the issue, I suggest the following: "Where any person being a child or other issue of the testator to whom any real or personal estate 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 real or personal estate so devised or bequeathed shall, unless a contrary intention appear by the will, be deemed to have been devised or bequeathed to such one or more of the issue of such person as such person should by will appoint and in default of such appointment, among them *per stirpes* and not *per capita*, but in case such person shall have made his will under which such issue are intended to benefit and there be no specific appointment among such issue of such real and personal estate so devised or bequeathed then such person shall be deemed to have appointed the same among such issue in proportions in which they are intended to benefit under such will.

"I have used the words 'are intended to benefit' instead of the word 'benefit' so that even if the will were on account of debts, funeral and testamentary expenses ineffective to pass anything to the children the will would still be effective as to the estate of the grandfather."

and I have replied as follows:

"In reference to your letter of the 6th. I am not very strong on pressing the right of the beneficiary to contract away the prospective benefit of the will. Yet the real complaint to be removed is the passing to the receiver or trustee in bankruptcy of the share in the estate, where the testator would strenuously object to such result of his will. I thought it better to amend only to meet that mistake in the present Act.

"If your view be accepted, would it not be better to alter your suggested clause as follows:

"Where a testator devises or bequeaths to a child or other of his issue, hereinafter called the beneficiary, any real or personal property for any estate or interest not determinable at or before the death of such testator, and such beneficiary dies in the lifetime of the testator leaving issue and any of the issue of such beneficiary are living at the time of the death of the testator, such real or personal property so devised or bequeathed to such one or more of the issue of such beneficiary as the latter shall appoint by will or otherwise and in case of such appointment as if the testator firstly above mentioned had devised and bequeathed the same to such appointee or appointees in the proportions in which they are intended to benefit under the last will or other appointment of such beneficiary and in default of such appointment such real and personal property shall be deemed to have been devised and bequeathed to the issue of such beneficiary in equal proportions *per stirpes* and not *per capita.*"

APPENDIX G.

MEMORANDUM FOR THE LOCAL SECRETARIES OF THE CONFERENCE WITH REGARD TO CERTAIN CONVENTIONS BETWEEN GREAT BRITAIN, AND FRANCE, BELGIUM, ETC.

Osgoode Hall, Toronto,
May 7th, 1925.

Please find enclosed a copy of a convention entered into between the United Kingdom and Belgium respecting legal proceedings in civil and commercial matters.

I understand that similar conventions have been entered into between the United Kingdom on the one hand, and France, Italy, and Czecho-Slovakia on the other.

The Colonial Office has enquired whether it is desired that these conventions should be extended to Canada under the terms of Article 14(*b*), and this inquiry has been communicated by the Under-Secretary of State for Canada to the Attorneys-General of the several provinces.

I understand that Ontario and Manitoba have replied in similar terms, namely, that it is not considered desirable to pass upon the question until the matter has been submitted to the Conference of Commissioners, and until the Conference has made recommendation.

The Attorney-General for Ontario has now requested me to bring the matter before the Conference of Commissioners at its next meeting, and I am forwarding this memorandum in order that each local board may have an opportunity of consulting its government in advance of the meeting, so that the subject may be placed on the agenda and adequately considered if the Conference should so desire.

JOHN D. FALCONBRIDGE.

CONVENTION BETWEEN THE UNITED KINGDOM AND BELGIUM RESPECTING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS.

SIGNED AT LONDON, JUNE 21, 1922.

[*Ratifications exchanged at London, February* 22, 1924.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor

of India, and His Majesty the King of the Belgians, being desirous to facilitate the conduct of legal proceedings between persons resident in their respective territories, have decided to conclude a Convention for this purpose and have accordingly nominated as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: The Right Honourable the Earl of Balfour, K.G., O.M., Lord President of His Privy Council;

His Majesty the King of the Belgians: Monsieur C. Leurquin, Officer of the Order of Leopold, Councillor of the Court of Cassation, and Monsieur V. Kinon, Officer of the Order of Leopold, Knight of the Order of the Crown, Director-General of the Ministry of Justice;

Who, having communicated their full powers, found in good and due form, have agreed as follows:—

I.—*Preliminary*

Article 1.

This Convention applies only to civil and commercial matters.

II.—*Service of Judicial and Extra-Judicial Documents.*

Article 2.

When judicial or extra-judicial documents drawn up in one of the contracting States are to be served on persons in the territory of the other, such documents may, at the option of the party interested, be transmitted to the recipients in either of the ways provided in Articles 3, 4 and 5.

Article 3.

(*a*) The request for service is addressed:—

In Belgium, by the British Consul to the "Procureur du Roi" within whose jurisdiction the recipient of the document is;

In England, by the Consul-General of Belgium in London to the Senior Master of the Supreme Court of Judicature in England.

(*b*) The request, containing the name of the authority from whom the document transmitted emanates, the names and descriptions of the parties, the address of the recipient and the nature of the document in question, shall be drawn up in one of the languages employed in the State applied to. The authority who receives the request shall send to the consular authority the documents proving the service or explaining the reason which has prevented such service.

Service shall be effected by the competent authority of the State applied to. Such authority, except in the cases provided for in paragraph (*c*) of this Article, may limit its action to effecting service by the transmission of the document to the recipient if he is willing to accept it.

If the authority to whom a document has been transmitted is not competent to deal with it, such authority will of its own motion transmit the document to the competent authority of its own State.

(*c*) If the document to be served is drawn up in one of the languages employed in the State applied to, or is accompanied by a translation in one of such languages, the authority applied to, should a wish to that effect be expressed in the request, shall serve the document in the manner prescribed by its municipal law for the service of similar documents, or in a special form which is not incompatible with such law. Should such wish not be expressed, the authority applied to will endeavour to affect service in the matter provided in paragraph (*b*).

The translation provided for in the preceding paragraph shall be certified as correct by a diplomatic or consular agent of the State making the request or by an official or sworn translator of one or other of the two States.

(*d*) The execution of the request for service can only be refused if the State in whose territory it is to be effected considers it such as to compromise its sovereignty or safety.

(*e*) Proof of service shall be furnished by a certificate from the authority of the State applied to, setting forth the fact, the manner and the date of such service.

If the document to be served has been forwarded in duplicate the certificate shall appear on one of the copies, or be attached to it.

Article 4.

The document to be served may also be delivered to the recipient, whatever his nationality, in person without the application of any compulsion and without the intervention of the authorities of the State in whose territory service is to be effected:—

(*a*) By the diplomatic or consular agents of the State making the request; or

(*b*) By an agent appointed, either generally or in any particular case, by the tribunals of the State making the request.

The document shall be drawn up in one of the languages of the State in whose territory service is to be effected, or shall be accom-

panied by a translation in one of these languages unless the recipient is a national of the State making the request.

Article 5.

Documents drawn up by the competent officials in one of the two States may also be transmitted by post to recipients who are established or resident in the territory of the other State.

Article 6.

The provisions of Articles 2, 3, 4 and 5 do not prevent the persons concerned from effecting service directly through the competent officials or officers of the country in which the document is to be served.

Article 7.

No fees of any description shall be payable by one State to the other in respect of the service.

Nevertheless, in the case provided for in Article 3, the State making the request must pay to the State applied to any charges which are payable under the local law to the persons employed to effect service. These charges are calculated in accordance with the tariff in force for nationals of the State applied to. Repayment of these charges is claimed by the judicial authority applied to from the consular authority making the request when transmitting the certificate provided for in Article 3(*e*).

III.—*Taking of Evidence.*

Article 8.

When a Court in one of the contracting States orders that evidence is to be taken in the territory of the other State, this may be done in either of the ways prescribed in Articles 9 and 11.

Article 9.

(*a*) The Court may, in accordance with the provisions of its law, address itself by means of a "commission rogatoire" to the competent authority of the other contracting State, requesting it to undertake within its jurisdiction either a judicial enquiry or some other judicial act.

(*b*) The "commission rogatoire" shall be drawn up in one of the languages of the authority applied to, or accompanied by a translation in one of those languages certified as correct by a diplomatic or consular officer of the State making the request, or by an official or

sworn translator of one of the two States. If it is not accompanied by a translation, this may be made by the State applied to.

(*c*) The "commission rogatoire" shall be transmitted:—

In England, by the Consul-General of Belgium in London to the Senior Master of the Supreme Court of Judicature in England;

In Belgium, by the British Consul to the "Procureur du Roi" within whose jurisdiction the "commission rogatoire" is to be executed.

(*d*) It shall be incumbent upon the judicial authority to whom the "commission rogatoire" is addressed to give effect to it by the use of the same compulsory measures as in the execution of a commission emanating from the authorities of the State applied to.

(*e*) The consular authority of the State making the request will, if he so desires, be informed of the date and place where the proceedings will take place, in order that the interested party may be able to be present.

(*f*) The execution of the "commission rogatoire" can only be refused:

(1) If the authenticity of the document is not established;

(2) If in the State applied to the execution of the "commission rogatoire" does not fall within the functions of the judiciary;

(3) If the State applied to considers it such as to affect its sovereignty or safety.

(*g*) In case the authority applied to is without jurisdiction, the "commission rogatoire" will be forwarded without any further request to the competent authority of the same State in accordance with the rules laid down by its law.

(*h*) In every instance where the "commission rogatoire" is not executed by the authority applied to, the latter will at once inform the consular authority of the State making the request, stating the grounds on which the execution of the commission has been refused, or the judicial authority to whom the commission has been forwarded.

(*i*) The authority which executes the "commission rogatoire" will apply, so far as the procedure to be followed is concerned, the law of its own country.

Nevertheless, an application by the authority making the request that some special procedure may be followed shall be acceeded to, provided that such procedure is not incompatible with the law of the State applied to.

Article 10.

No fees of any description shall be payable by one State to the other in respect of the execution of "commissions rogatoires."

Nevertheless, the State making the request repays to the State applied to any charges and expenses payable to witnesses, experts, interpreters, or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges payable to any person whom the competent judicial authority may have deputed to act in cases where the municipal law permits this to be done.

The repayment of these expenses is claimed by the authority applied to from the authority making the request when transmitting to it the documents establishing the execution of the "commission rogatoire." These charges are calculated in accordance with the tariff in force for nationals of the State applied to.

Article 11.

(*a*) The evidence may also be taken, without the intervention of the authorities of the State in whose territory it is to be taken, by a diplomatic or consular agent of the State before whose Courts the evidence is to be used, or by some other person named by the said Courts.

(*b*) The agent appointed to take the evidence may request named individuals to appear as witnesses, to produce any document, and to take an oath, but he has no compulsory powers.

(*c*) Summonses to appear issued by the agent will be drawn up in one of the languages of the State where the evidence is to be taken, or accompanied by a translation into one of those languages, unless the recipient is a national of the State making the request. Every summons shall state expressly that there is no compulsion to appear.

(*d*) The evidence may be taken in accordance with the procedure laid down by the law of the State in which the evidence is to be used, and the parties will have the right to be represented by barristers or solicitors of that State.

Article 12.

The fact that an attempt to take evidence by the method laid down in Article 11 has failed owing to the refusal of any witnesses to appear, to give evidence, or to produce documents does not preclude an application being subsequently made in accordance with Article 9.

IV.—*General Provisions.*

Article 13.

Any difficulties which may arise in connection with the operation of this Convention shall be settled through the diplomatic channel.

Article 14.

(*a*) The present Convention shall come into force three months after the date on which ratifications are exchanged and shall remain in force for three years after its coming into force. In case neither of the High Contracting Parties shall have given notice to the other six months before the expiration of the said period of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties shall have given such notice.

(*b*) This Convention shall not apply to any of the Dominions, Colonies, Possessions or Protectorates of the two High Contracting Parties, but either High Contracting Party may at any time extend, by a simple notification, this Convention to any such Dominion, Colony, Possession or Protectorate.

Such notification shall state the date on which the Convention shall come into force, the authorities to whom judicial and extra-judicial acts and "commissions rogatoires" are to be transmitted, and the language in which communications and translations are to be made.

Each of the High Contracting Parties may, at any time after the expiry of three years from the coming into force of the extension of this Convention to any of its Dominions, Colonies, Possessions or Protectorates, terminate such extension on giving six months' previous notice.

(*c*) This Convention shall also not apply to Scotland or Ireland; but His Britannic Majesty shall have the right to extend the Convention to Scotland or Ireland on the conditions set forth in the preceding paragraph in respect of Dominions, Colonies, Possessions or Protectorates.

In witness whereof the Undersigned have signed the present Convention and have affixed thereto their seals.

Done in duplicate at London, the 21st day of June, 1922.

(L.S.) BALFOUR.
(L.S.) CH. LEURQUIN.
(L.S.) V. KINON.

APPENDIX H.

REPORT ON CHATTEL MORTGAGES AND BILLS OF SALE.

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

GENTLEMEN,—

Your Committee, consisting of the Saskatchewan Commissioners, has investigated the subject of chattel mortgages and bills of sale, referred to it at the annual meeting held in 1923, and begs to report as follows:

All the provinces except Quebec have Bills of Sale or Bills of Sale and Chattel Mortgage Acts, and these have certain general features in common, though they differ widely in detail. Their purpose is to prevent fraud by means of secret bills of sale or chattel mortgages, and to this end provision is usually made that the instrument of sale or mortgage must be registered within a specified time after its execution. Where no time is limited, reliance is placed upon the provision that the instrument becomes effective, as regards creditors and subsequent purchasers and mortgagees in good faith, only when registered. Some of the statutes speak of "filing," but in this report "registration" includes filing.

The subject is dealt with in the following statutes: R.S. Alberta, 1922, c. 151; R.S. British Columbia, 1924, c. 22; Manitoba, C.A. 1924, c. 17; R.S. New Brunswick, 1903, c. 142; R.S. Nova Scotia, 1923, c. 201; R.S. Ontario, 1914, c. 135; R.S. Saskatchewan, 1920, c. 200, and the statutes of Prince Edward Island for 1860, c. 9. The following statement has been compiled from those enactments and any amendments made thereto up to and including 1924, with the exception of those which may be contained in statutes of Prince Edward Island, many of which are not available.

INSTRUMENTS AFFECTED.

Similar forms of expression are found in Manitoba, New Brunswick and Ontario where the Acts refer to mortgages and sales, and in Alberta and Saskatchewan which speak of mortgages and sales, assignments and transfers of goods and chattels. Another form of expression is used in British Columbia, Nova Scotia and Prince

Edward Island, the subject matter of the Acts in these provinces being bills of sale of personal chattels.

Time of Registration.

The time within which the instrument must be registered varies from 5 to 30 days. In Nova Scotia and Prince Edward Island there is no time limit, the instrument taking effect only from the date of registration.

Place of Registration.

The place of registration differs. In Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, the instrument is registered in the district in which the chattels are situated, while in New Brunswick, Nova Scotia and Prince Edward Island registration takes place in the district in which the grantor resides. When the grantor is a non-resident, then, in New Brunswick registration is required in the county where the goods may be; in Nova Scotia in the district where they are at the date of execution of the instrument; in Prince Edward Island, with the prothonotary of the Supreme Court.

Registration Clerks' Duties.

The duties of these officials in recording instruments vary slightly in the different provinces.

Non-registration—Priorities.

In general, instruments not registered within the time limited are absolutely null and void as against creditors of the bargainor or mortgagor and subsequent purchasers or mortgagees in good faith for valuable consideration.

The creditors to be protected are execution creditors in British Columbia, New Brunswick and Prince Edward Island; elsewhere they are the general creditors. Liquidators, assignees, receivers and trustees are included in British Columbia; assignees in insolvency or for the general benefit of creditors in New Brunswick; the same in Ontario, and also liquidators, and creditors suing on behalf of themselves and other creditors; and in Saskatchewan, creditors so suing and trustees in bankruptcy.

To the words "subsequent purchasers or mortgagees in good faith for valuable consideration" Saskatchewan adds, "whose conveyances or mortgages have been duly registered or are valid without registration." In Nova Scotia no reference is made to mortgagees.

The consideration is required only to be "good," not necessarily "valuable," in Manitoba. In New Brunswick and Ontario, in the case

of bills of sale the nature of the consideration is not specified, good faith only being mentioned.

In Manitoba and Nova Scotia, instruments of sale or mortgage, and in Alberta, New Brunswick and Saskatchewan chattel mortgages, become operative and take effect, except as between the parties thereto, from and after the time of registration. In British Columbia a registered instrument is declared to have priority over an unregistered instrument and as among registered instruments priority is determined by the dates of registration. In Ontario all instruments, when registered, operate and take effect from the day and time of execution and not from the date of registration.

Proof of Registration.

The provisions as to what constitutes proof of registration are similar. A copy of the instrument, certified by the registration official, is *primâ facie* evidence of registration. In some cases the seal of the court is also required. British Columbia and Nova Scotia have no provision.

Territorial Effect of Registration.

In Alberta and Saskatchewan, an instrument has effect only in the district wherein it is registered. The other provinces have no similar provision.

Affidavits Accompanying Instrument.

All the provinces except Nova Scotia require an affidavit of execution and an affidavit of good faith by the grantee. Nova Scotia requires only an affidavit of good faith by the grantor.

In Alberta, Ontario and Saskatchewan, the affidavit of good faith is not necessary where the Crown is the mortgagee.

Registration Where New District Formed.

In British Columbia and Manitoba provision is made for the transfer to the new district of all documents (or transcripts thereof) affecting chattels situated therein. In Alberta, Ontario and Saskatchewan the old registration continues valid until renewal (in the case of mortgages) becomes necessary, when the renewal statement is filed in the new district. There is no provision in New Brunswick, Nova Scotia and Prince Edward Island.

Renewals.

In Alberta and Saskatchewan every chattel mortgage must be renewed before the expiry of two years from the date of its registra-

tion, and annually thereafter; in Manitoba, every two years; in Ontario and New Brunswick, annually; in Nova Scotia, every three years. There are no provisions respecting renewals in British Columbia or Prince Edward Island.

Generally the affidavits of renewal may be made by the next of kin, executor or administrator of a deceased mortgagee, or by an assignee or his next of kin, executor or administrator; and in some cases the affidavit may also be made by an agent.

In Alberta, Ontario and Saskatchewan the renewal provisions do not apply where the mortgage is made to the Crown.

Assignments.

Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan have similar provisions covering the registration of assignments. British Columbia provides that an assignment need not be registered. No reference to the subject in Nova Scotia and Prince Edward Island.

Discharge and Satisfaction.

Generally speaking, a mortgage may be discharged in whole or in part by filing in the office in which the same is registered a certificate of satisfaction signed by the mortgagee, his executors or administrators, but in Manitoba and Ontario the certificate may also be signed by an assignee. In British Columbia and Prince Edward Island the registrar enters satisfaction on the instrument, if satisfied that the debt has been discharged.

The duties of registrars in registering discharges of mortgage are similar.

In Alberta, Manitoba and Saskatchewan, any person filing a discharge is entitled to receive a certificate from the registration clerk.

Mortgages to Secure Bonds or Debentures.

1. *Special Affidavit.*—Manitoba, New Brunswick, Ontario and Saskatchewan provide for mortgages by incorporated companies to secure bonds or debentures, and require a special form of affidavit. The other provinces have no provision.

2. *Time for Registration.*—In Ontario, within 30 days if the head office of the company is outside the province. In Manitoba, New Brunswick and Saskatchewan, within the same time as in the case of ordinary mortgages.

3. *Renewals.*—These four provinces have the same provisions regarding the contents of renewal statements.

In Manitoba, Ontario and Saskatchewan, renewal is unnecessary, where the by-law authorising the issue of bonds or debentures, or a copy, is registered with the mortgage.

Mortgages to Secure Future Advances or to Indemnify Indorsers.

Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and Saskatchewan have similar provisions making these mortgages as valid and binding as other mortgages. The maximum times for repayment, and the time within which the mortgage must be registered, differ.

These provinces, except Nova Scotia, require an affidavit of execution and an affidavit of *bona fides,* the various provisions respecting their contents being practically the same. Nova Scotia requires only the latter affidavit, which is taken by the grantor and not by the grantee as in the other provinces.

No provision in British Columbia and Prince Edward Island.

Sale or Mortgage of Railway Equipment.

There are similar provisions in Alberta, Manitoba, Ontario and Saskatchewan covering the certifying and registration of instruments affecting railway equipment. Ontario refers only to mortgages. In Alberta and Saskatchewan the instrument is registered in the office of the Registrar of Joint Stock Companies and in Manitoba and Ontario in the office of the Provincial Secretary. British Columbia requires registration with the Registrar of Joint Stock Companies as well as in the proper county court.

Nova Scotia, New Brunswick and Prince Edward Island have no provision.

Assignment of Book Debts.

The Alberta, Manitoba and Saskatchewan Acts extend to an assignment by a person engaged in trade or business of his existing or future book debts. In the two former provinces, the provision is general; in Saskatchewan, it applies to retailers only. The subject is covered in British Columbia by The Assignment of Book Accounts Act (R.S.B.C. 1924, c. 16); in Ontario, by The Assignment of Book Debts Act, 1923 (Statutes of 1923, c. 29), and in Prince Edward Island, by The Assignment of Book Debts Act, 1924 (Statutes of 1924, c. 11).

Conveyances of Growing or Future Crops.

Alberta, Manitoba and Saskatchewan forbid the conveyance as security of future or growing crops except for certain limited purposes.

Alberta.—The conveyance may be made to secure (1) the purchase price and interest thereon of seed grain; (2) the purchase price of meat, groceries, flour, clothing or binder twine; (3) money borrowed for the purpose of paying for repairs to machinery or for paying the wages of labourers engaged in sowing or harvesting the crop.

Manitoba.—The Act only extends to No. (1).

Saskatchewan.—The Act only extends to Nos. (1) and (2).

New Brunswick, Nova Scotia, Ontario and Prince Edward Island have no provisions. In British Columbia the expression, "personal chattels," includes growing crops when separately assigned or charged.

Removal of Goods.

To Another District.

Alberta, Manitoba, Ontario and Saskatchewan have similar provisions. In the event of a permanent removal of the chattels to another district before the mortgage is discharged, a certified copy of the mortgage, and of the affidavits and documents relating thereto, must be filed in the district to which the chattels have been removed. The time within which this must be done, varies.

In Nova Scotia re-registration is required only where the grantor is not resident in the province.

British Columbia, New Brunswick and Prince Edward Island have no provision.

Notice Required.

Alberta and Saskatchewan prohibit the removal of chattels into another district unless notice of intention to do so is given to the mortgagee not less than 20 days prior to removal.

No provision in other provinces.

Bringing Goods into the Province.

In Saskatchewan, when chattels subject to a bill of sale or chattel mortgage executed outside the province are permanently removed into the province from the place where they were when the instrument was executed, a copy of the bill of sale or mortgage must be filed in the district into which the goods have been brought within three weeks of the removal.

Procedure under Mortgage on Default.

Alberta and Saskatchewan have provisions setting forth the circumstances under which the chattels comprised in a mortgage or conveyance are liable to seizure by the grantee.

No provision in other provinces.

Description of Property.

Alberta, Manitoba, New Brunswick, Ontario and Saskatchewan provide that every instrument to which the Act applies, must contain such sufficient and full description of the chattels comprised therein that the same may be readily and easily known and distinguished.

No provision in other provinces.

False Statements.

In Alberta and Saskatchewan, if the consideration for which the instrument is made is not truly expressed therein, it is absolutely void as against creditors of the mortgagor and as against subsequent purchasers or mortgagees in good faith for valuable consideration.

No provision in other provinces.

Omissions and Errors.

Alberta, British Columbia, Manitoba and Saskatchewan provide for the rectification, by order of a judge and subject to the rights of third parties intervening, of omissions to register and other omissions and mis-statements if accidental or due to inadvertence or impossibility in fact.

No such provision in other provinces, but in Ontario an error in a renewal statement may be remedied by registering an amended statement within two weeks after the error is discovered.

Time Expiring on Sunday or a Holiday.

Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan.—If the time for registering or filing an instrument expires on a Sunday or other day on which the registration office is closed, the registering or filing may be properly done on the day on which the office shall next be open. The other provinces leave this detail to the operation of their Interpretation Acts.

Agents' General Authority.

New Brunswick, Ontario and Saskatchewan provide that an authority for the purpose of taking or renewing an instrument may be a general one to take or renew all instruments to the mortgagee.

No provision in other provinces.

Affidavit—Before Whom Taken.

All the provinces except Ontario set forth the persons who may administer the affidavits required under the Acts.

Affidavits of Corporations.

Alberta, British Columbia, Manitoba, Ontario and Saskatchewan detail the officers of a corporation who may make affidavits when the corporation is mortgagee.

No provision in other provinces.

Fees.

All the Acts provide for the payment of fees in respect of the various services thereunder.

Forms.

All the Acts contain forms, either in the body of the Act or in a schedule.

Miscellaneous.

In addition there are many other provisions which are found in one or other of the provinces. While these are too numerous to detail in this report, they should be considered if it is decided to draft a uniform Act.

R. W. Shannon.
D. J. Thom.

Regina, August 1, 1925.

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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