1926

PROCEEDINGS

OF THE

NINTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

SAINT JOHN

27TH, 28TH, 30TH AND 31ST AUGUST, 1926

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

Honary 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.

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 D. Falconbridge, K.C., Osgoode Hall, Toronto 2.

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. PINERO, 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.
HON. JOHN C. ELLIOTT, K.C., Parliament Buildings, Ottawa.
(Commissioners appointed under the authority of the Statutes of Ontario, 1918, c. 20.)
ARTHUR W. ROGERS, Parliament Buildings, Toronto 5.

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.

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.
1926. August 27-28, 30-31, St. John.

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.

In 1926 the Conference considered a draft Wills Act, a draft Bills of Sale Act and a draft Devolution of Real Property Act, and referred them again to committees for further consideration and report.

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: adopted (except statutory condition 17) in Alberta (1926), British Columbia (1924), Manitoba (1925), Ontario (1924), and Saskatchewan (1925).

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

1924. Contributory Negligence Act: adopted in British Columbia (1925), New Brunswick (1925), Nova Scotia (1926), and Saskatchewan (1924).

1925. Intestate Succession Act: adopted in British Columbia (1925) and New Brunswick (1926).

J. D. F.

PROCEEDINGS.

PROCEEDINGS OF THE NINTH 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 sittings of the Conference:

Alberta:

HON. J. F. LYMBURN, K.C., Attorney-General of Alberta, and MR. SCOTT.

British Columbia:

MESSRS. ELLIS, PINEO AND LAWSON.

Manitoba:

MESSRS. PITBLADO AND COTTINGHAM.

New Brunswick:

MESSRS. JONES, FRIEL AND INCHES.

MESSRS. J. A. CREAGHAN, E. R. RICHARD AND RALEIGH TRITES, Commissioners for the revision of the statutes of New Brunswick, also attended sittings of the Conference.)

Nova Scotia:

MESSRS. MATHERS AND READ.

Ontario:

SIR JAMES AIKINS AND MESSRS. KING AND ROGERS.

Saskatchewan:

MESSRS. SHANNON AND THOM.

FIRST DAY.

Friday, August 27th, 1926.

The Conference assembled at 10 a.m., at the Admiral Beatty Hotel, St. John, New Brunswick, Mr. Pitblado, the president, in the chair.

Mr. Pitblado expressed his appreciation of the splendid attendance, noting that several of the commissioners had come a great distance to be present, all in indication of a continued interest in the work of the Conference.

Mr. W. P. Jones, K.C., welcomed the commissioners to New Brunswick and the maritime provinces.

Sir James Aikins, honorary president, read an address for which the Conference expressed its thanks and which was ordered to be printed in the proceedings.

(*Appendix A.*)

In the absence of Mr. Falconbridge, Mr. Cottingham was appointed to take the minutes of the Conference.

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

The treasurer's report was received and referred to Messrs. Lawson and Rogers for audit.

Oral reports of the work of various committees of the Conference were received. It was then decided to proceed first with the draft Wills Act prepared by the Nova Scotia commissioners, their report thereon and the memorandum thereon of the Alberta commissioners. The draft was read by Mr. Read and discussed section by section.

(*Appendix B.*)

At 12.45 p.m. the Conference adjourned.

At 2.15 p.m. the Conference reassembled and resumed the discussion of the draft Wills Act.

At 4.30 p.m. the Conference adjourned.

SECOND DAY.

Saturday, August 28th, 1926.

At 9.30 a.m. the Conference reassembled.

The president read to the Conference certain correspondence he had received as follows:

(1). (a) A letter from Irwin Hilliard, K.C., Morrisburg, Ontario, addressed to the honorary president and other officers of the Conference requesting an amendment of the Life Insurance Act in the interest of a beneficiary, who being the deserted wife of an insured,

has kept up the insurance premiums in order to prevent the insured from designating another beneficiary.

(*Appendix C.*)

(b) Letters from Mr. H. J. Sims, K.C., of Kitchener, Ontario, and R. Leighton Foster, Superintendent of Insurance, Ontario, respectively regarding an amendment of the Life Insurance Act designed to avoid the possibility of double taxation for succession duties upon insurance moneys under the Succession Duty Act of Saskatchewan.

(*Appendix C.*)

It was the opinion of the Conference that the question raised by these letters did not appear to have such general application as to warrant amendments to the Act at the present time and the correspondence was accordingly ordered tabled.

(2) A letter to the president from Mr. Pineo submitting copies of a letter from the official administrator at Vancouver to himself with comment thereon by Mr. Shannon respecting certain sections of the Intestate Succession Act.

(*Appendix D.*)

The Conference after discussion appointed Messrs. Pitblado, Shannon and Pineo a committee to consider the questions raised and report thereon to the Conference at its present meeting.

(3) A letter to the president from Mr. Pineo submitting a copy of a letter from Messrs. Abbott, McRae & Co., barristers, of Vancouver, to the Attorney-General of British Columbia respecting the registration under the Conditional Sales Act of conditional bills of sale given by a corporation.

(*Appendix E.*)

The Conference after discussion appointed Messrs. Pineo, Thom and King a committee to consider the question indicated in the correspondence and report to the Conference at its present meeting.

Consideration of the draft Wills Act section by section was then resumed.

At 1.00 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled and resumed its consideration of the draft Wills Act. The Nova Scotia commissioners were requested to consider certain details and report upon them later.

At 4.20 p.m. the Conference adjourned to reassemble at 8.30 p.m.

At 8.30 p.m. the Conference reassembled with Mr. King in the chair during the temporary absence of the president and the vice-president. The draft Bills of Sale and Chattel Mortgages Act was read by Mr. Lawson and considered section by section by the Conference.

(*Appendix F.*)

In discussion it was tentatively agreed that in the draft Uniform Bills of Sale Act no provision should be made for the form, registration, etc., of the following:

1. Conditional sales;
2. Assignment of book debts;
3. Mortgages upon growing crops;
4. Bonds and debentures of corporations; and
5. Charges upon rolling stock of railways;

but that provision should be made for the registration of bills of sale (including chattel mortgages) upon goods when removed from one province into another.

At 11.30 p.m. the Conference adjourned.

THIRD DAY.

Monday, August 30th, 1926.

At 9.30 a.m. the Conference reassembled.

Consideration of the draft Bills of Sale Act was continued.

At 1.00 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled.

The principles tentatively agreed upon the Saturday evening previous were affirmed after due discussion, and it was resolved as follows:

That the Conference thanks the British Columbia commissioners for their work in preparing a draft Bills of Sale Act and refers this subject to them again to re-draft the Act in the light of the discussions at this meeting.

It was also resolved as follows:

That copies of the re-draft be sent to the commissioners of the other provinces, to the chairman of the committee of the Canadian Bar Association on Comparative Provincial Legislation and Law Reform and to such representatives of the commercial interests as the British Columbia commissioners think best or the commissioners of the other provinces may suggest.

At 4.00 p.m. the Conference adjourned to reassemble at 8.30 p.m.

At 8.30 p.m. the Conference reassembled, the vice-president, Mr. Shannon, in the chair.

The draft Devolution of Real Property Act submitted by the Saskatchewan commissioners was read and the Conference proceeded to discuss the same section by section.

(*Appendix G.*)

At 11.30 p.m. the Conference adjourned.

FOURTH DAY.

Tuesday, August 31st, 1926.

At 9.30 a.m. the Conference reassembled.

The auditors' report was received and adopted. The treasurer's report for the period since the report was submitted in 1925 (Proceedings, 1925, page 12) was as follows:

1925.			
Aug. 1.	Balance on deposit	$ 1,679.02	
Oct. 1.	Exchange on transfer of deposit to Bank of Montreal, Fort Rouge Branch (Acct. No. 1252) Winnipeg		$ 2.10
Oct. 6.	R. J. Russell, Winnipeg, typing for annual meeting 1925		2.50
Oct. 14.	J. L. Donovan, Winnipeg, typing for annual meeting 1925		5.00
Oct. 14.	Province of Ontario (grant)	200.00	
Oct. 31.	Bank interest	4.19	
Nov. 5.	Henderson Bros., Winnipeg, for stationery		16.55

1926.		
Jan. 21. Province of Alberta (grant)	200.00	
Mar. 15. Print-Litho Co., Halifax, for printing draft Wills Act		54.60
Exchange		.15
Apr. 20. Province of Saskatchewan (grant)	200.00	
Apr. 30. Bank interest	29.07	
May 12. Carswell Co., Toronto, for printing Proceedings 1924-25		740.41
June 15. Postage and cheque stamps		2.00
July 31. Balance on deposit		1,488.97
	$2,312.28	$2,312.28

Audited and found correct.

H. G. LAWSON,
A. W. ROGERS,
Auditors.

Aug. 31, 1926.

The Conference then received oral reports from the commissioners as to the uniform Acts adopted by their provinces and the reasons for the non-adoption of some of the Acts in some provinces. The president submitted a written report received by him from Mr. Pineo pursuant to the request of last year (Proceedings 1925, page 16) showing that British Columbia had adopted all the Acts approved by the Conference.

Mr. Pineo asked whether anything had been done in respect of the correspondence submitted by him last year respecting the Bulk Sales Act (Proceedings 1925, page 13). An oral report thereon was then made to the Conference by the president on behalf of the Manitoba commissioners. The acting secretary was thereupon instructed by the Conference to write Mr. Pineo advising him that the Conference was unwilling to suggest that the Act be amended as requested (to make directors of a corporation vendor personally liable for false statements) because:

(a) The Bulk Sales Act is a legislative infringement on the right of an individual or corporation to sell its goods. The conduct of the vendor should not be *unduly* restricted as it would be by the proposed amendment, otherwise the legislatures would not pass the Act.

(b) If actual fraud occurs the directors who are actually party to it must be liable at common law.

(c) A corporation vendor must remain liable to the creditor whose name was omitted from the statement just as an individual vendor is liable.

(d) The correspondent overlooks the fact that the declaration must be made by some person having personal knowledge of the circumstances and that such person may be criminally liable for a false statement made by him.

(e) It is impossible to get Acts passed which will obviate an isolated evasion of the law, and legislation should not be passed to cover merely some isolated case which may never arise again.

(f) No legislature would be likely to pass such an amendment if the effect was explained to it.

The committee (Messrs. Pitblado, Shannon and Pineo) appointed Saturday, August 28th, to consider the correspondence respecting the Intestate Succession Act, reported that an amendment should be made to the Act and on motion of Mr. Shannon it was resolved:

That an amendment of the uniform Intestate Succession Act (Proceedings, 1925, p. 26) be recommended to the legislatures of the several provinces of Canada for enactment, to obviate a possible question which might arise under the present wording of section 16 in which illegitimate children of a deceased sister of an intestate might be held to inherit, although legitimate children of the same mother might not take by representation; and that for this purpose section 16 be amended to read as follows:—

"16. Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit through the mother, if dead, any real or personal property which they would have taken if the children had been legitimate."

The committee (Messrs. Pineo, Thom and King) appointed Saturday, August 28th, to consider the correspondence respecting the Conditional Sales Act, reported that the question raised was too important to be properly considered in the time allowed and accordingly on motion of Mr. Pineo it was resolved:

That subsection (6) of section 3 of the Conditional Sales Act be referred to a committee composed of Hon. Mr. Lymburn and Messrs. Thom, King and Pineo, to recommend such alteration as should be thought advisable in view of the fact that some corporations have their head office and chief place of business in different districts in the province.

The Conference then proceeded to consider various matters before it. On the motion of Mr. Read it was resolved:

That the report of the committee of the Canadian Bar Association on Comparative Legislation and Law Reform on "The Trustee Law of Canada" (printed copies of which had been distributed amongst the members of the Conference) be referred to the commissioners of the various provinces for study during the coming year and that if the Canadian Bar Association recommends the preparation of a draft Uniform Trustee Act by its said committee the Manitoba commissioners be instructed to assist the said committee in so doing.

Respecting defences to actions on foreign judgments and the Companies Act, it was decided to leave them committed as last year (Proceedings, 1925, pages 14 and 11 respectively).

It was decided that for the present no action should be taken respecting mechanics liens and succession duties.

Respecting the registration of assignments of book debts it was resolved:

That the Ontario commissioners consider and prepare a draft uniform Act covering the assignment of book debts and the registration thereof and in so doing consider the provisions of the British Columbia Act.

Mr. King was appointed to make a report to the Canadian Bar Association on the work of the Conference.

At 1.00 p.m. the Conference adjourned.

At 2.15 p.m. the Conference reassembled.

Mr. Read advised the Conference that the Nova Scotia commissioners were ready to resume the discussion of the Wills Act. It being the opinion of a majority of the Conference that the time was not ripe for the submission to the various legislatures of a new Wills Act, on motion of Mr. Pineo it was resolved:

That the committee (Nova Scotia) in charge of the draft Uniform Wills Act be instructed to prepare a memorandum of such draft sections as are not now found uniformly throughout the Wills Acts of the several provinces, and that these sections, accompanied by such explanatory memoranda as may be thought necessary, be distributed to the various commissioners as soon as possible and reported to the Conference at its next session; no further action to be taken in the meantime towards the completion of a draft Uniform Wills Act.

Mr. Inches on behalf of the New Brunswick commissioners submitted a statement of the law of the several provinces respecting statutes as evidence (see Proceedings 1925, page 16).

(*Appendix H.*)

On motion of Mr. King it was resolved:

That the statement be referred to the New Brunswick commissioners for the preparation of a draft uniform section to be inserted in the Evidence Act of each province; such draft section to provide for the admission in evidence to prove their contents of Imperial, Canadian, provincial and foreign statutes and rules of court procedure.

It was suggested by Mr. Cottingham that the Conference consider the advisability of a uniform Act respecting limitations of actions. After discussion, on motion of Mr. King it was resolved:

That the Alberta commissioners be requested to prepare a report on the law of the several provinces on limitations of actions for submission at the next meeting of the Conference.

The Conference then resumed consideration of the draft Devolution of Real Property Act. After some time spent thereat it appeared that the Conference was not unanimous as to the advisability of approving of this draft at the present session.

Mr. Pineo moved (seconded by Hon. Mr. Lymburn) as follows:

Resolved that the draft Uniform Devolution of Real Property Act be not finally approved at this sitting of the Conference, but that a revised draft be printed and distributed to the commissioners; and that the opinion of at least two experienced counsel be taken as to the draft generally, and their report be furnished to the commissioners before the next annual meeting of the Conference.

Mr. King moved (seconded by Mr. Scott) in amendment and it was resolved:

That the draft Devolution of Real Property Act be not finally approved at this meeting of the Conference but that a revised draft be printed and distributed to the commissioners.

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. Falconbridge.
Treasurer—Mr. Cottingham.

It was resolved that Mr. Falconbridge, in performing the duties of recording and corresponding secretary, shall have authority to employ such secretarial assistance as he may require, same to be paid for out of the funds of the Conference.

It was also 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 acting secretary was instructed to prepare a report of the proceedings so that the same might be published in pamphlet form by the secretary and copies sent to the other commissioners as heretofore.

The following resolution was adopted:

Resolved that the acting secretary be instructed to write to the Honourable Mr. Justice Ford of Edmonton, a member of this Conference and treasurer from its organization until his resignation in 1925, extending to him the congratulations of the Conference on his elevation to the bench.

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, the members of the St. John Bar and their wives and the New Brunswick commissioners.

At 4.00 p.m. the Conference prorogued.

APPENDICES.

A. Address of the Honorary President.
B. Draft Wills Act.
C. Letters re The Life Insurance Act.
D. Letters re The Intestate Succession Act.
E. Letter re The Conditional Sales Act.
F. Draft Bills of Sale Act.
G. Draft Devolution of Real Property Act.
H. Statutes as Evidence: Extracts from Statutes.

APPENDIX A.

ADDRESS OF THE HONORARY PRESIDENT.

At the request of the president, I am making a pro-presidential address. If it is expected that such an address will review the work done by the Conference in the preceding year, there will be disappointment. Such a review, however, is not necessary, because of the excellent statement given by the capable recording secretary. Each year the preface of the report of the proceedings of the commissioners prepared by Mr. Falconbridge gives an admirable résumé of the work done from time to time. A particularly valuable feature of the preface is the table attached, showing the Acts recommended and the provinces adopting them and dates of adoption.

The Conference of Commissioners has earned for itself an assured place in the law making machinery of the country and has achieved a very large measure of success in the work which it set before itself when it came into existence.

It may be opportune at this time to consider to what extent the Conference can increase its usefulness and how it can better co-operate with the Canadian Bar Association so as to avail itself of the resources which the Bar Association is only too anxious to place at its disposal.

It is well known that an outstanding contribution made by the commissioners thus far has been the Uniform Life Insurance Act. That means no detraction from the excellence of the work done on other statutes and model Acts. Many of the others dealt with by the Conference, such as the Legitimation Act, the Warehousemen's Lien Act, the Conditional Sales Act, to mention only a few, have been comparatively short, not involving an abnormal amount of research.

The Life Insurance Acts of the province which had to be considered in preparing the Uniform Act were bulky, and besides a consideration of the statutes there was a large volume of case law to be dealt with. Even with the assistance of the Superintendents of Insurance and the various insurance companies and their counsel who appeared at many sittings of the commissioners, the work

extended over a period of some years and the Uniform Act submitted was the result of a canvass of the situation from every conceivable angle.

May I suggest that as much as possible the precedent set in dealing with the Life Insurance Act be followed in dealing with the other Acts to be considered by the commissioners.

In our desire to turn out each year a substantial body of work, do not let us lose sight of the necessity of careful and painstaking draftsmanship and of the desirability of ascertaining the views of the various sections of the community most vitally interested in the subjects of the proposed legislation under consideration.

The Conference has on hand at the present time and has had for a number of years a consideration of the Companies Act, and it is hoped that a draft Act or Acts will be brought into existence shortly, but I should like to make special reference at this time to a matter which is coming before the commissioners for the first time and which constitutes in some respects a departure from previous practice.

At the request of the commissioners the Canadian Bar Association, through its Committee on Comparative Provincial Legislation and Law Reform, is placing before the commissioners a report on the trustee law of the various provinces. This report is sufficiently comprehensive to be practically a brief on the subject. It has been printed and distributed to the members of the Association attending the present Annual Meeting. In the course of its preparation the Bar Associations of every province have been communicated with and an attempt has been made to ascertain the views of the profession in the various provinces. At the present meeting of the Association on the presentation of the report a further effort will be made to get expressions of opinion and it was with the idea of crystalizing the discussion that the report has been distributed in advance. It is hoped that from the discussion at the annual meeting many useful and important questions will be raised for the consideration of the commissioners.

There is made available to the commissioners and the members of the Bar Association generally in this report a comprehensive memorandum of the Canadian case law on this very important subject. This is the first time that a brief of the case law has been made available to the commissioners. When the Bulk Sales Act was being considered by the Manitoba commissioners two years ago the Committee of the Bar Association placed before the Manitoba Commissioners a comprehensive brief on the Bulk Sales Act, but this was used merely for purposes of dealing with the criticisms of the Act

and was not made available to the commissioners or to the Bar Association generally.

After the views and criticisms of the members of the Bar Association are obtained at the forthcoming meeting, might it not be advisable to place the report in the hands of the various trust officers associations with a request that they make such suggestions as occur to them, having in mind their daily business experience and intimating that the commissioners will be pleased to hear representatives of their associations at the next meeting of the commissioners.

As I said before, the report on the Trustee Act is the first example of close co-operation between the commissioners and the Canadian Bar Association. The committee of the Bar Association has endeavoured to deserve the confidence of the commissioners and the Canadian Bar Association believes that it has made a very advanced step towards co-operation and expressed the hope through me that each new subject of outstanding importance which the commissioners desire to deal with can be treated in the same way, so that there will be made available in the proceedings of the commissioners and of the Canadian Bar Association comprehensive statements of the law of the various provinces on the subjects dealt with by the commissioners, thus evolving in our own yearly publications what will eventually become the best encyclodaedia of Canadian law, because it will contain not only statute law and case law, but an exact comparative statement of similarities and dissimilarities, and will, in addition, provide a valuable source book to which the profession may in the future resort.

APPENDIX B.

REPORT OF COMMITTEE ON A DRAFT UNIFORM WILLS ACT.

1. The Draft Uniform Wills Act was prepared by the Alberta commissioners, and it will be found in the report of the Proceedings of the Conference of Commissioners, 1922, page 62. It will also be found in the Report for 1923, page 45. The Draft was referred to the Nova Scotia commissioners in 1924 for report. The memorandum submitted by them will be found in the Proceedings for 1925, page 53. Reference should also be made to the memorandum of the Alberta commissioners, Proceedings for 1924, page 64.

The draft, together with the different memoranda, were considered by the conference at Winnipeg, in 1925. (See Proceedings, 1925, pages 14, 15).

The revised draft, embodying in detail the results of the work of the Commission in 1925, was prepared by the Nova Scotia commissioners, drafted and circulated among the commissioners in January, 1925. The commissioners were instructed to obtain the opinions of the law department of their respective provinces with regard to the question of policy involved in section 36, namely, whether the revised Act should apply to wills executed before, by persons dying after the coming into force of the Act.

2. The commisioners had difficulty in getting definite rulings on the question of policy submitted to the law departments and only two provinces, namely British Columbia and Nova Scotia, have submitted final reports. In both cases the law departments and the commissioners personally were unanimous in taking the view that the Act should only apply to wills executed after it had come into force.

It is submitted that there is no good reason for seeking uniformity in this detailed question of policy. If one province desires to make the Act retroactive, there is no reason why it should not do so. If any province desires that it shall apply only to future wills there can be no sound reason for asking the province to make the Act retroactive.

3. The Alberta commissioners have submitted the memorandum which is attached hereto, giving a very valuable commentary upon the draft in its present form. It is unnecessary to deal with all the points raised by this memorandum but there are one or two questions of special importance suggested. (1) In the draft as adopted in 1925 the clause providing for the holograph will is inserted as an exceptional provision attached to but not forming a part of the general scheme of the Act. The Alberta commissioners have criticized this point of form and have noted that the clause should be redrafted so as to fit into the general scheme of drafting. This would require the redrafting of a number of other sections referred to in their memorandum.

There can be no answer to the contention of the Alberta commissioners if it is contemplated that the holograph clause will be accepted by the provinces generally. On the other hand it is probable that some of the provinces will reject the clause as involving too radical a change in the existing law. In its present form the clause can be dropped without affecting the rest of the Act.

4. The memorandum prepared by the Alberta commissioners gives sound reasons for the reconsideration of the policy of section 34. Mr. R. W. Shannon, K.C., has pointed out that a further change should be made in section 34 so as to apply the policy of the section to the lien for the unpaid balance of purchase money on property purchased by a testator. He has pointed out that this is covered in England by 30 & 31 Vict., c. 69, s. 2, which is in the following terms:

> "In the construction of the said Act," (that is Locke King's Act), "and of this Act the word 'mortgage' shall be admitted to extend to any lien for unpaid purchase money upon any lands or hereditaments purchased by the testator."

The whole section redrafted to extend to personalty and also to liens for unpaid purchase money will read as follows:

> 34. (1) Where any person dies entitled to or seised of any estate or interest in any real or personal property which at the time of his death is charged with the payment of any sum or sums of money by way of mortgage or is subject to any lien for unpaid purchase money upon such property purchased by such person, and such person had not by his will or by deed or other document signified any contrary or other intention, the person or persons to whom such property descends or the devisees thereof shall not be entitled to have the mortgage debt discharged or satisfied out of any other property of such person;

but the property so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) In the construction of any will or deed or other document to which this section relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal property, or a charge of or direction for the payment of debts upon or out of residuary real and personal property, or residuary real property, shall not be deemed to be a declaration of an intention contrary to or other than the rule in subsection (1) hereof unless such contrary or other intention be further declared by words expressly or by necessary implication referring to all or some of the testator's debts charged by way of mortgage on some part of his freehold or leasehold property.

(3) Nothing herein contained shall affect or diminish any right of the mortgagee or vendor of such real or personal property to obtain full payment or satisfaction of his debt out of the other property of the person so dying as aforesaid or otherwise."

It may be questioned whether the words "purchased by such persons" in the fifth line of the section should not be deleted.

JOHN E. READ,
For the Nova Scotia Commissioners.

MEMORANDUM

Re Draft Uniform Wills Act.

Section 2 (*b*): Would it not be as well to write "share" instead "shares" in the last line and to insert the word "other" between the words "all" and "property" in the sixth line of this paragraph?

Section 3 (*a*): Inasmuch as the word "executed" has a sort of technical reference to attestation and the draft Act now includes holograph wills, it might be as well to use the word "made" instead of the word "executed." In that event the first two lines of this section might be made to read—"Every person may devise, bequeath

or dispose of by will, made in accordance with the provisions of this Act." If this idea finds favour it must be noted that there are many places throughout the Act where "making" may well be substituted for "execution." "Made" has the advantage of covering the requirements as to holograph wills as well as signature with all the formalities required by law. (See Re Elcom (1894), 1 Ch. 303 at p. 312).

(*b*) Should not the words "heirs at law" be "heir at law?"

(*c*) It might be well to consider as to whether this section could not conveniently close with the words "heir at law."

I do not think that in the year 1926, much is gained by the enumeration of specific genera of property.

Section 6: I cannot help thinking that it would be better to couch the reference to a holograph will in negative language to agree with the language used with respect to the ordinary English will. The section would then read—"Except as in this Act otherwise provided, no will shall be valid unless:

(1) It is in writing, etc.; or

(2) It is a holograph will, written wholly in the handwriting of the testator and signed by him."

Section 7 (2) Paragraph (*c*): Owing to the existence of holograph wills, I would suggest that this paragraph should read in one of the two following ways:

(*c*) "That in the case of a will other than a holograph will, the signature is placed among the words of the testimonium clause, etc.;" or

(*c*) "That the signature is placed among the words of a testimonium clause or of a clause of attestation, or follows or is after or under a clause of attestation, either with or without a blank space intervening or follows or is after or under or beside the name of a subscribing witness."

Section 8: (*a*) The English Wills Act so far as personal estate is concerned, only applies to wills of persons domiciled in England at the time of their death. (See Barretto v. Young, [1900] 2 Ch. 389 at p. 343). The result is that an appointment contained in a will admitted to probate only by virtue of Lord Kingsdown's Act, or the *jus gentium* does not get the benefit of subsection (2) of this Act and any such will must be executed in exact accordance with the terms of the document creating the power.

In this draft Act, Lord Kingsdown's Act is reproduced. Does the fact of the inclusion of that Act in the draft Act, widen the class of wills to which this section 8 refers? This point should, I think, be made clear.

(*b*) Is it intended that section 8 should operate in the case of holograph wills? Present language does not appear apt with respect to them. Personally, I cannot see any reason why this section should not operate both in the cases of wills which are valid merely by virtue of Lord Kingsdown's Act (section 14 of the draft Act) and also in the case of holograph wills. If this opinion were adopted, the points could be made clear by drafting a section somewhat as follows:

"8 (1) No appointment made by will in exercise of any power shall be valid unless the same is made in accordance with the provisions of this Act.

(2) Every will executed in accordance with the provisions of this Act shall, so far as respects the form thereof, be a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will in exercise of such power should be made in some additional or other form of execution or solemnity."

If on the other hand, it is desired to keep our Act as far as possible uniform with the English Act, it would seem more proper not to incorporate the provisions of Lord Kingsdown's Act is this Act, but to adopt them as a Substantive Act.

The question as to the scope of the Act emerges in several later sections.

Section 9: I would suggest that the language here be changed to "Every will made in accordance with the provisions of this Act."

I note that the suggestion made by the Alberta Commissioners that the Ontario provision which provides that when a British subject executes a will in Ontario, it is good no matter what his domicile is, if made according to the law of Ontario, be included, has not been adopted.

If then our draft is left as it is and it is held as I presume it would be that the Act by analogy to the English Act from which it is copied, only applies to persons domiciled in the Province enacting it, then there is no provision made for wills which are made within the Province by persons not domiciled there.

(*a*) So that if a person domiciled in France or in a Province of Canada which does not adopt the uniform Act makes a will outside the Province in accordance with the law of the Province, it is per-

fectly good; whereas if the same person makes a similar will inside the Province it is bad. Again, if a domiciled Frenchman makes a will within the Province with respect to real property, he must make it in accordance with the draft Act; whereas, if he makes it outside the Province, he has the choice of that form and two others.

(*b*) In view of the existence of section 15, it is hard to see what is the good of retaining the words "whatever is the domicile of the testator at the time of making the same or at the time of his death." Again the words "in this Province" seem to be unnecessary words. Their existence is probably to be accounted for by the language of Lord Kingsdown's Act occasioned by the difference in English and Scots law. Further, I think it is a pity to change the word "Form" in Lord Kingsdown's Act to the word "mode."

Section 18: 18(*a*) should read, I think:

"18(*a*) By another will made in accordance with the provisions of this Act."

18(*b*) clearly needs redrafting to cover the case of holograph wills, if such be the intention.

Section 26: In the case of some of the Provinces, it is questionable whether this section is necessary or advisable.

Section 27: In view of the provisions vesting real estate in the personal representative, would it not be well to refer here to "the beneficial interest in such real property."

Section 32: I prefer the original draft, namely: "Either as a *persona designata* or as a member of a class." I do not think the proper opposition is between named persons and members of a class. Named persons may often form a class. Thus—"Amongst all the children of A.B. and the said Y.Z." constitutes a class gift; whilst a gift to "The children of A.B. to wit, B.C. & D." is not a class gift, but a gift to individuals. If the Latin term which possesses some exactness is disliked, I would suggest the substitution of the words "as an individual."

The question as to whether the doctrine of this section should extend to appointments, should be considered.

Section 35: "There are not any such person or persons as aforesaid." Surely grammar demands that this should either be "There is not any such person or persons as aforesaid," or "There are not any such persons or person as aforesaid."

WALTER S. SCOTT.

FURTHER MEMORANDUM

Re Draft Uniform Wills Act.

Section 3. I think there should be a subsection added to this section in the following language:

"(2) This section shall authorize a bastard or any other person, whether he left an heir or any next of kin surviving him or not, to dispose of real estate by his will."

This subsection appears in Part 9 of the English Law of Property Act, 1922, as section 156, subsection (13), and is carefully exempted from the effect of the repeal of that part by The Administration of Estates Act, 1925.

The reason for its insertion is quite obvious.

Section 34. I notice that the suggestion of the Nova Scotia Commissioners that this section should be made to apply to all property, has not been adopted. I would draw attention to the fact that this extension has been made by section 35 of the English Administration of Estates Act, 1925. Under these circumstances I think that the suggestion might well be reconsidered. If it were adopted, the section could well run as follows:

"34 (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by his will disposes of, any interest in property, which at the time of his death is charged with the payment of money by way of mortgage, and the deceased has not by will, deed or other document, signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

"(2) Such contrary or other intention shall not be deemed to be signified—

(*a*) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real or personal estate, or his residuary real estate; or,

(*b*) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

"(3) Nothing in this section shall affect the right of a person entitled to the charge to obtain payment or satisfaction thereof, either out of the other assets of the deceased or otherwise."

WALTER S. SCOTT.

DRAFT WILLS ACT.

(As revised by the Nova Scotia Commissioners after discussion by the Conference.)

An Act to make Uniform the Law Respecting Wills.

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

Short Title.

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

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

(*a*) "Mortgage" includes any charge whatsoever, whether equitable, statutory or of any other nature, including any lien or claim upon freehold or leasehold property for unpaid purchase money, and "mortgagee" and "mortgage debt" shall have similarly extended meanings;

(*b*) "Personal property" includes leasehold estates and other chattels real, and also moneys, shares of Government and other funds, securities for money (not being real property), debts, *choses in action,* rights, credits, goods and all other property which by law devolves upon the executor or administrator (not being real property) and any shares or interest therein;

(*c*) "Real property" includes messuages, lands, rents and hereditaments, whether corporeal, incorporeal or personal and any undivided share thereof, and any estate, right or interest (other than a chattel interest) therein:

(*d*) "Will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

3. (1) Every person may devise, bequeath or dispose of by will in accordance with the provisions of this Act all real and personal property to which he is entitled at the time of his death, either at law or in equity, and which if not so devised, bequeathed or disposed of would devolve upon his executor or administrator or heirs at law, including therein:

(*a*) Estates *pur autre vie,* whether there is or is not any special occupant thereof and whether the same are corporeal or incorporeal hereditaments ;and

(*b*) Contingent, executory or other future interests in any real or personal property, whether the testator is or is not ascertained as the person or one of the persons in whom the same may respectively become vested, and whether he is entitled thereto under the instrument by which the same were respectively created or under any disposition thereof by deed or will; and

(*c*) Rights of entry for conditions broken and other rights of entry; and

(*d*) Such of the same estates, interests and rights respectively and other real and personal property as the testator may be entitled at the time of his death, notwithstanding that he becomes entitled to the same subsequent to the execution of his will.

(2) This section shall authorize an illegitimate person or any other person, whether he left an heir or any next of kin surviving him or not to dispose of all real and personal property.

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

5. (1) The will of a member of naval, military, air or marine forces when in actual service, or of any mariner or seaman when at sea or in course of a voyage, may be made by a writing signed by him or by some other person in his presence and by his direction without any further formality or any requirement as to the presence of or attestation or signature by any witness.

(2) Such member of naval, military, air or marine forces shall be deemed to be in actual service after he has taken some steps under the orders of a superior officer in view of and preparatory to joining the forces engaged in hostilities.

(3) The fact that such member of 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. Except as in this Act otherwise provided no will shall be valid unless it is in writing and executed in manner hereinafter mentioned, that is to say:

(*a*) It shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction; and

(*b*) Such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(*c*) Such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

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

(2) No such will shall be affected by the circumstance—

(*a*) That the signature does not follow or is not immediately after the foot or end of the will; or

(*b*) That a blank space intervenes between the concluding words of the will and the signature; or

(*c*) That the signature is placed among the words of a testimonium clause or of a clause of attestation or follows or is after or under a clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness; or

(*d*) That the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or

(*e*) That there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

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

8. (1) No appointment made by will in exercise of any power shall be valid unless the will is executed in accordance with the provisions of this Act.

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

9. Every will executed in accordance with the provisions of this Act shall be valid without any other publication thereof.

10. If any person who attests the execution of a will is at the time of the execution thereof or becomes at any time afterwards

incompetent as a witness to prove the execution therof, such will shall not on that account be invalid.

11. If any person attests the execution of a will to whom or to whose then wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal property (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, estate, interest, gift or appointment shall so far only as concerns the person attesting the execution of such will or such wife or husband or any person claiming under such wife or husband, be null and void, and the person so attesting shall be competent as a witness to prove the execution of the will or the validity or invalidity thereof;

Provided that where there are two competent witnesses to the will beside such person, such devise, legacy, estate, interest, gift or appointment shall not be null or void.

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

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

14. (1) Every will made within 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 both real and personal property, be held to be well executed for the purposes of being admitted to probate if the same is made according to the form prescribed by this Act.

(2) Every will made outside this 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 both real and personal property, be held to be well executed for the purposes of being admitted to probate if the same is made according to the form prescribed by the law either—

(*a*) Of this province, or

(*b*) Of the place where the testator was domiciled when the will was made, or

(*c*) Of the place where the will was made.

(*d*) Of the place where the testator had his domicile of origin.

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

16. Every will shall be revoked by the marriage of the testator except—

(*a*) Where it is declared in the will that the same is made in contemplation of such marriage; or

(*b*) Where the will is made in exercise of a power of appointment and the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator in case he died intestate.

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

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

(*a*) By another will executed in a manner sanctioned by this Act; or

(*b*) By some writing declaring an intention to revoke the same and executed in a manner in which a will is by this Act required to be executed; or

(*c*) By burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

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

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

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

21. No conveyance or other act of or relating to any real or personal property affected by a will and made or done subsequently to the execution of the will shall prevent the operation of the will with respect to such estate or interest as the testator had power to dispose of by will at the time of his death.

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

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

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

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

(2) In like manner a bequest of the personal property of the testator or any bequest of personal property described in a general manner shall be construed to include any personal property or any personal property to which such description will extend, as the case

may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power, unless a contrary intention appears by the will.

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

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

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

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

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

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

32. Where any person being a child or other issue of the testator to whom, either as an individual or as a member of a class, any real or personal property is devised, or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall, undess a contrary intention appears by the will, take effect as if it had been made directly to the persons amongst whom and in the shares in which such person's estate would have been divisible if he had died intestate and without debts immediately after the death of the testator.

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

34. (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by his will disposes of, any interest in freehold or leasehold property, which at the time of his death is charged with the payment of money by way of mortgage (including a lien or claim for unpaid purchase money), and the deceased has not by will, deed or other document, signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

(*a*) by a general direction for the payment of debts or of all the debts of the testator out of his personad estate, or his residuary real or personal estate, or his residuary real estate; or,

(*b*) by a charge of debts upon any such estate; unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section shall affect the right of a person entitled to the charge to obtain payment or satisfaction thereof, either out of the other assets of the deceased or otherwise.

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

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

36. This Act shall not extend to any will made before the day of , one thousand nine hundred and , and every will re-executed or re-published, or revived by any codicil, shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed, re-published or revived.

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

NOTE.—(1) A repeal section appropriate to the needs of the province should be inserted.

(2) Holograph wills.—Some of the provinces may desire to provide for holograph wills. This can be done either by inserting a second sub-section to section 6 or by adding a substantive section. The Manitoba legislation can be referred to (sec. 10 of chap. 174, Revised Statutes Manitoba, 1902). Caution should be exercised in inserting such a provision because it may involve the redrafting of other sections of the Act.

APPENDIX C.

Morrisburg, Ont, July 20th, 1926.

Sir James Aiken, K.C.,
Lieut.-Governor, Manitoba,
Winnipeg, Man.

Re The Uniform Life Insurance Laws.

Dear Sir,—

The Canadian Bar Association has done a good work in unifying the Life Insurance Laws of Canada.

I am interested in a matter that these laws which are embodied in The Life Insurance Act of Ontario (which is the same as your own Provincial Act) do not provide for. If you will look at section 144, you will find provision made for the insured where the wife or husband of the insured acts badly; but there is no provision for the beneficiary who is deserted by a husband for a period of say ten years, and the beneficiary has kept up and paid the insurance premium, hoping ultimately to receive the benefit thereof at her husband's death. In such Insurance Companies as the I. O. F. or the late A. O. U. W., the wife frequently kept up the insurance.

I have a case where the husband left his wife and family about 20 years ago. For a year he sent money home to his wife, and then quit. He took up with another woman, and our latest information is that he and this other woman have gone to the United States. In the meantime, during all these years the struggling wife has paid the premium, and now, according to law, this husband might designate one of the children as a beneficiary.

I would like an amendment such as copy enclosed, say 144A, that in such a case where the wife is a beneficiary and has been deserted by her husband, and in the meantime, say for ten years, has kept up the insurance, that she can apply to the Court and be subrogated to all the rights of the insured.

The case I have in mind, the children have now all grown up except one, which the mother is keeping at school, and it would be a great loss to this woman if she could not be protected.

I am sending a copy of this letter to Mr. John D. Falconbridge, and to the President, Vice-President, Treasurer and Corresponding Secretary of the Conference of Commissioners on Uniformity of Legislation in Canada.

Yours truly,

I. HILLIARD.

144A. Where the wife of the husband, whose life is insured, is designated as beneficiary and has been deserted by her husband for a period of ten years, and in the meantime all the premiums of the insurance have been paid by the wife out of her earnings or property, then the Court, on the application of the wife and on such terms as may seem fit, may declare the designated beneficiary entitled to all the rights of the insured, and to claim the benefit of the provisions of this Act as if she were the insured.

Kitchener, Ont., August 20th, 1926.

Isaac Pitblado, Esq., K.C.,
President Conference of Commissioners
on Uniform Legislation,
St. John, N.B.

Re Uniform Life Insurance Act.

Dear Mr. Pitblado.—

The Succession Duty Act of Saskatchewan provides that not only shall the estates of persons dying domiciled in that province be subject to Succession Duty, but also in cases when an insurance contract is made there, and insurance moneys are, as a matter of law, payable in that province, notwithstanding the fact that the policy-holder is domiciled at the time of his death in some other province or country. In my opinion this amounts in many cases to double taxation. So far as I know, Saskatchewan is the only province that has assumed to pass such a law. To my mind it is all wrong. Saskatchewan is trying to collect duty both going and coming.

In the case of life insurance moneys trouble is arising owing to the claims of the Succession Duty Departments of Saskatchewan as well as of the province where the policy-holder resided at the time of his death. I think Succession Duty should only be collected by the province in which the insured is domiciled when the policy becomes a claim. The Succession Duty Department of Saskatchewan, in claiming duty on an estate where the policy-holder dies domiciled in some other province, contend that it is entitled by reason of the provision in the Uniform Life Insurance Act to the effect that insurance moneys are payable in the province where the contract is deemed to have been made. See sec. 42, sub-sec. (2). As a matter of law, the Department is probably right in its contention, and furthermore, I think it must be conceded that the province has the right to pass the legislation in question.

In order to overcome the difficulty it has been suggested by the Canadian Life Insurance Officers' Association that the present provision in the Uniform Act which reads "Insurance money shall be payable in the province in lawful money of Canada" should be amended so as to read "Insurance money shall be payable in the province in which the insured was resident at the time of his death in lawful money of Canada." For years the present provision appeared in all of the provincial Life Insurance Acts with the single exception of British Columbia or Manitoba. It was carried into the Uniform Act without any change.

The Uniform Act is drafted on the principle that the law of the province where the policy-holder is living when the contract is made should govern, no matter where he may move to subsequently. To amend the Act as suggested would disturb one of its basic principles. I consider the Saskatchewan law unfair and I am of the opinion that if proper representations were made to the Attorney-General of that province, he might be inclined to advise its repeal. In case this is not done, an amendment to the Uniform Act as above suggested might be seriously considered.

In June last a meeting of the Premiers, Attorneys-General and Provincial Treasurers of the various provinces took place at Ottawa for the purpose of considering among other things, the co-ordination of the provincial Succession Duty Acts. I do not know what decision was arrived at. Possibly the Saskatchewan difficulty was dealt with. This information may be in your hands by the time of the meeting of the Commissioners on Uniform Legislation at St. John.

I am forwarding a copy of this letter to Mr. R. Leighton Foster, Superintendent of Insurance for Ontario, who I believe is also Secre-

tary of the Association of Provincial Insurance Superintendents. He may feel inclined to write to you on the subject.

Yours very truly,

H. J. SIMS.

Toronto, August 25, 1926.

Isaac Pitblado, Esq., K.C.,
President, Conference of Commissioners
on Uniform Legislation.
St. John, N.B.

Re Uniform Life Insurance Act.

Dear Mr. Pitblado:—

I have before me a copy of Mr. Sims' letter to you of the 20th instant, with respect to the Saskatchewan Succession Duty law. He suggested that I might express my views to you.

I respectfully suggest that your Conference should not this year make any definite recommendation looking to an amendment of the Uniform Life Act to cover the difficulty raised by Mr. Sims, in view of the fact that the difficulty seems to be presently confined to the one province, viz., Saskatchewan; that the subject-matter is more peculiarly within the scope of the Succession Duty Act than the Life Insurance Act; and that it is, in my opinion, ill-advised except as a last resort to advise any amendment to the Life Insurance Act, so long as there is some other way of accomplishing the same purpose.

I attended the Premiers' conference in Ottawa the first week in June to which Mr. Sims referred and I know that a resolution was adopted looking to the appointment of a conference of representatives from every province to deal with the question of Succession Duty law and regulation. Mr. Pineo from British Columbia was also present and can advise you more definitely as to this. [Mr. Pineo here stated that he had no recollection of this.] It seems to me that Mr. Sims' suggestion might well be turned over to this committee for at least twelve months in order to see if they can arrange some solution. If all other avenues fail, then another year, your Conference

and our Association may be able to agree upon some constructive suggestion.

May I take the opportunity afforded by this letter to respectfully request that I be advised of any proceedings of your Conference with respect to insurance legislation this year prior to our Conference which meets in Victoria the week of September 21st, 1926. I enclose an extra copy of our programme for your convenience. You might be good enough to pass this request along to the Secretary of your Conference if anything develops.

Wishing you every success, I am,

Yours faithfully,

R. LEIGHTON FOSTER.

Secretary-Treasurer,
Association of Superintendents of
Insurance of the Provinces of
Canada.

APPENDIX D.

Saint John, N.B., August 27th, 1926.

Isaac Pitblado, Esq., K.C.,
President, Conference of Commissioners,
on Uniformity of Legislation.

Re Intestate Succession Act.

My Dear Pitblado:—

British Columbia, being in most cases the pioneer province in the adoption of the Uniform Acts of our Conference, frequently experiences difficulties which perhaps necessarily follow from the adoption of new and untried statutes. The resulting criticisms naturally reach me personally, being both a member of the Conference and Legislative Counsel of the Province. In one or two instances I have passed these along to the Conference (e.g., criticisms of Bulk Sales Act, submitted in 1925, as to which I am hoping for enlightenment at the present sittings).

Attached is a copy of a recent communication from an official administrator at Vancouver with reference to the Uniform Intestate Succession Act of last year, which our legislature at once adopted. A copy was furnished to Mr. Shannon, and a copy of his reply is attached.

I should be greatly obliged if you would let me have your personal views as to the points raised, either following the obtaining of the views of the members of the Conference or otherwise as you think best.

Yours sincerely,

A. V. PINEO.

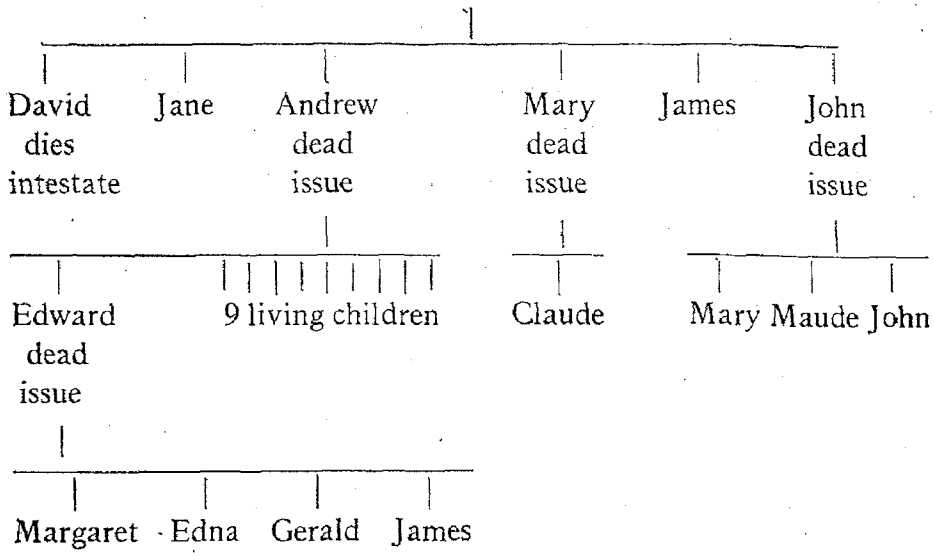
315 Cordova Street West,
Vancouver, B.C., Aug. 10th, 1926.

Mr. A. V. Pineo,
Parliament Buildings,
Victoria, B.C.

Dear Mr. Pineo:—

I am in receipt of your favour of the 9th inst.

The first point is in connection with sec. 116. I will illustrate with the case that arose, leaving out the names of the members of the family who predeceased the intestate, leaving no issue. David McKay, a man over 80, died leaving no father, mother, widow or issue and so came under sec. 116. The family tree was as follows:—



I am advised that sec. 116, "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," means that the share of a deceased brother of an intestate must be divided among his living children and no account may be taken of the issue of one of his deceased children. In the case in point I am advised that I must divide Andrew's share among his 9 living children and not into 10 parts, distributing one of the parts among Edward's four children.

This strikes me as unjust in principle and intolerably so when we take into account the effect sec. 124 would have if these four children instead of being born in lawful wedlock were the illegitimate children of a dead daughter of Andrew. Sec. 124 states that illegitimate

children shall inhert through their mother, if dead, any property which she would have taken, if living. Clearly a daughter of Andrew, if living, would share in his portion. Thus under sec. 124, if dead leaving illegitimate children, her children would divide her share; but if dead leaving legitimate children to whom sec. 124 would not apply her children would not share. This is surely penalizing legitimacy a little heavily.

Another point needing clarifying is the phrase "next of kin" in sec. 118. Is "next of kin" in 118 synonymous with "next of kin" in sec. 117, where it is used exclusively of relatives farther removed from the intestate than his brothers or sisters or their children and thus does the restriction in the last clause of sec. 118 apply only to those who come under sec. 117?

I have had some persons argue that "next of kin" in sec. 118 is not so limited and that the restriction in the last clause of sec. 118 is therefore not limited to those who come under sec. 117 but is to be applied to those who come under sec. 116 as well. I do not agree with this view, but I must admit that the matter would be much more definite if sections 117 and 118 were combined into one section.

As a remedy for the defect in sec. 116 I would suggest that the section be changed to read:

"116. If an intestate dies leaving no widow or issue or father or mother, his estate shall be distributed per stirpes among his brothers and sisters."

I trust the above may be helpful to you.

Yours truly,

(Sgd.) W. H. MacINNES.

Regina, August 17th, 1926.

A. V. Pineo, Esq.,
Legislative Counsel,
Victoria, B.C.

Re Uniform Intestate Succession Act.

Dear Mr. Pineo:—

I have read the memorandum furnished by your official administrator describing the difficulties he has encountered in the application

of this Act. I will take the sections to which he refers in their order.

Section 116 alters the law as it was laid down in section 120 of your Revisted Statute, but it follows the law of Alberta, Manitoba, Nova Scotia and Saskatchewan. It harmonizes, moreover, with a provision of the Statute of Distribution, now to be found in section 119, that there shall be no representation beyond brothers' and sisters' children. This provision has been generally adopted throughout Canada.

With regard to the expression " next of kin " in sections 117 and 118, quite obviously the words are used in the same sense in both places. Section 117 states that, under certain circumstances, the estate " shall go to the next of kin," and section 118 proceeds to tell what shall happen " where the estate goes to the next of kin," that is, in the case provided for by section 117. I cannot see any possibility of misunderstanding here.

The exception, however, which correspondent takes to section 124 is, I think, well founded. In its present form this section does discriminate against legitimate children, e.g., of a deceased brother or sister. I would therefore alter the section to read thus:

"124. Illegitimate children and their issue shall inherit from and through the mother, as if the children were legitimate."

As for bringing this matter before the Conference we will have a good deal to do and to think of at the meetings, but you might mention it to me in St. John.

With kind regards, I am

Yours faithfully,

(Sgd.) R. W. SHANNON,

Local Secretary.

APPENDIX E.

Saint John, N.B., Aug. 27th, 1926.

Isaac Pitblado, Esq., K.C.
President, Conference of Commissioners
Uniformity of Legislation.

Re Conditional Sales Act.

My Dear Pitblado:—

Referring to the first paragraph of my letter of this date re Bulk Sales Act, I now beg to hand you copy of letter recently received by the Attorney-General of British Columbia from Messrs. Abbott, MacRae & Co. of Vancouver, covering difficulties which they have experienced in connection with the Uniform Conditional Sales Act.

I would appreciate it if the advice of the Conference could be had at the present sittings as to whether or not any amendment of the Act is recommended to meet the points raised.

Yours sincerely,

A. V. PINEO.

Bank of Nova Scotia Building,
Vancouver, B.C., Canada,
August 6th, 1926.

The Honourable the Attorney-General,
Parliament Buildings,
Victoria, B.C.

Dear Sir:—

We desire to call your attention to a doubt which appears to exist in regard to the interpretation of sub-section 6, section 3, "Condi-

tional Sales Act," in respect to the registration of Conditional Bills of Sale given by a corporation.

Sub-section 2 of section 3 provides that these Conditional Sale Agreements should be registered in the district in which the buyer resides. Sub-section 6 provides that "in case the buyer is a corporation, the place where its head office, or its chief agency or place of business in the province, is situate shall be considered its residence."

We have had several instances in which companies executing Conditions Bills of Sale have had their head office and chief place of business in separate districts, and in these cases have had difficulty in determining in which registration district the Conditonal Sale Agreement should be registered, or whether it should be registered in both.

We have also had difficulty in determining in certain instances what was meant by head office, as there are companies whose registered office and head office are in different cities.

Yours truly,

ABBOTT, MACRAE & CO.

APPENDIX F.

REPORT OF COMMITTEE ON A UNFORM ACT RESPECTING CHATTEL MORTGAGES AND BILLS OF SALE.

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

Gentlemen,—Your Committee, consisting of the British Columbia Commissioners, was instructed by the Conference at its last meeting to prepare a draft Act on the subject of Chattel Mortgages and Bills of Sale suitable to the needs of all the provinces. The reference of this subject to your Committee followed the presentation of a report prepared by the Saskatchewan Commissioners under previous instructions from the Conference (Proceedings, 1925, pp. 16, 68).

At the inception of its work your Committee found from reading the exceedingly concise and comprehensive report of the Saskatchewan Commissioners, in connection with the existing Acts, that considerable diversity exists in the present methods of dealing with this subject; so much so that your Committee was inclined to think it a waste of time and labour to draft an Act before the Conference had given adequate consideration to the above-mentioned report and had settled at least some of the details to be incorporated in a Uniform Act.

After further consideration, in view of the express instruction of the Conference, and with the hope that the discussion of the subject by the Conference would be facilitated by having before it the details of a draft Act, your Committee has prepared the accompanying draft which is now submitted for your consideration.

For the reasons above referred to this draft is tentative only, and will no doubt require extensive revision. Your Committee has not thought it necessary at this stage to prepare any forms to accompany the draft Act, but would suggest for consideration the addition of a schedule embodying at least forms of renewal statement and of discharge.

Respectfully submitted.

J. N. ELLIS,
A. V. PINEO,
H. G. LAWSON,
British Columbia Commissioners.

Victoria, June 30th, 1926.

UNIFORM BILLS OF SALE ACT.

(As reprinted for further consideration after preliminary discussion of draft by the Conference.)

An Act to make Uniform the Law respecting Mortgages and Sales of Personal Chattels.

SHORT TITLE.

1. This Act may be cited as the "Bills of Sale Act."

INTERPRETATION.

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

"Actual and continued change of possession" means such change of possession as is open and reasonably sufficient to afford public notice thereof:

"Bill of sale" includes bills of sale, chattel mortgages, assignments, transfers, declarations of trust without transfers, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon is conferred, but shall not include the following, that is to say, any:—

(*a*) Assignment for the general benefit of the creditors of the person making the assignment:

(*b*) Mortgage or charge, whether specific or floating, of personal chattels created by a corporation, and contained:—

(i) In a trust deed or other like instrument to secure bonds, debentures, or debenture stock of the corporation; or

(ii) In any bonds, debentures, or debenture stock of the corporation, as well as in the trust deed or other like instrument securing the same; or

(iii) In any bonds, debentures, or debenture stock or any series of bonds or debentures of the corporation not secured by any trust deed or other like instrument:

(*c*) Security taken by a bank under section 88 of the "Bank Act" of the Dominion of Canada:

(*d*) Marriage settlement:

(*e*) Transfer or assignment of any ship or vessel or any share thereof:

(*f*) Transfer or sale of goods in the ordinary course of business of any trade or calling:

(*g*) Bill of lading:

(*h*) Warehouse-keeper's certificate:

(*i*) Warrant or order for the delivery of goods; or other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of such document to transfer or receive goods thereby represented:

(*j*) Conditional sale within the meaning of the "Conditional Sales Act," or any assignment of a conditional sale:

"Creditors" means execution creditors of the grantor, an assignee in insolvency of the grantor, a liquidator of the grantor in a compulsory winding-up proceeding where the grantor is a corporation, a trustee in bankruptcy of the grantor, and other persons levying on or seizing under process of law personal chattels comprised in a bill of sale:

"Grantee" includes the bargainee, assignee, transferee, mortgagee, or other person to whom a bill of sale is made:

"Grantor" includes the bargainor, assignor, transferor, mortgagor, or other person by whom a bill of sale is made:

"Mortgage" includes a conveyance intended to operate as a mortgage of personal chattels:

"Personal chattels" means goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops; but does not include chattel interests in real estate nor fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed; nor growing crops, when assigned together with any interest in the land on which they grow; nor shares or interests in the stock, funds, or securities of any Government, or in the capital or property of any corporation; nor choses in action:

"Proper officer" means the officer in whose office bills of sale are required to be registered in any registration district:

"Registered" means registered in accordance with the provisions of this Act:

" Registration district " means a registration district for the registration of bills of sale established under this Act.

SALES OF PERSONAL CHATTELS REQUIRED TO BE IN WRITING.

3. Every sale, assignment, or transfer of personal chattels made either absolutely or conditionally, and whether subject or not subject to any trust, which is not accompanied by an immediate delivery and an actual and continued change of possession of the personal chattels sold, assigned, or transferred, and which is not a sale, assignment, or transfer coming within the classes of subjects enumerated in clauses (a) to (i) in the definition of " bill of sale " in section 2, shall be in writing, otherwise the sale, assignment, or transfer shall be absolutely void as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been registered or are valid without registration.

REGISTRATION OF BILLS OF SALE.

4. (1) Every bill of sale of personal chattels made either absolutely or conditionally, and whether subject or not subject to any trust, which is not accompanied by an immediate delivery and an actual and continued change of possession of the personal chattels comprised in the bill of sale shall be registered in the manner and within the time and together with the affidavits prescribed by this Act.

(2) Every schedule annexed to a bill of sale or referred to therein shall be deemed to be a part of the bill of sale, and shall be registered therewith.

(3) If a bill of sale is subject to any defeasance or trust, the defeasance or trust shall be deemed to be a part of the bill of sale, and the defeasance or a declaration of the trust shall be registered with the bill of sale.

(4) If registration of a bill of sale is effected by filing a copy of the bill of sale, that copy shall include a copy of every schedule, defeasance, and declaration of trust required by this section to be registered with the bill of sale.

TIME AND PLACE OF REGISTRATION.

5. (1) Registration of a bill of sale under this Act shall be effected by the filing of the bill of sale, or a copy thereof, together with such affidavits as are by this Act required, before the expiration of the period of days from the date of the execution of the bill of sale, in the office of the proper officer of the registration

district in which the personal chattels comprised in the bill of sale are situate at the time of the execution of the bill of sale. If there are two or more grantors, the date of execution of the bill of sale shall be deemed to be the date of the execution by the grantor who last executes the bill of sale.

(2) In case the personal chattels comprised in the bill of sale are situate partly in one registration district and partly in one or more other registration districts, registration may be effected either by filing the bill of sale, or copy, and affidavits pursuant to subsection (1) in each of the registration districts, or by filing the bill of sale, or copy, and affidavits pursuant to subsection (1) in one of the registration districts and by filing a copy of the bill of sale and affidavits, verified by the certificate of the proper officer of that registration district, in the office of the proper officer of each of the other registration districts.

(3) The proper officer shall cause every bill of sale, or copy, and affidavits filed in his office pursuant to this Act to be numbered, and to be endorsed with a memorandum of the day, hour, and minute of their filing, and to be indexed by entering in alphabetical order in a register kept by him the names of the parties to the bill of sale with their descriptions, the dates of execution and registration of the bill of sale, and the amount (if any) of the consideration for which the bill of sale was made.

AFFIDAVIT OF EXECUTION.

6. Every bill of sale or copy of a bill of sale for registration under this Act shall be accompanied by an affidavit of an attesting witness to the bill of sale of the due execution thereof, identifying the bill of sale or copy and stating the date of the execution.

RECITALS IN BILL OF SALE TO SECURE ADVANCES, ETC., AND ACCOMPANYING AFFIDAVIT.

7. (1) Where the bill of sale is given to secure the grantee:—

(*a*) Repayment of any advances to be made by him under an agreement therefor; or

(*b*) Against loss or damage by reason of the endorsement of any bill of exchange or promissory note; or

(*c*) Against loss or damage by reason of any other liability incurred by the grantee for the grantor; or

(*d*) Against loss or damage by reason of any liability to be incurred under an agreement by the grantee for the grantor,—

the bill of sale shall set forth fully by recital or otherwise, and the bill of sale or copy for registration shall be accompanied by an

affidavit of the grantee, or one of several grantees, his or their agent, stating that it truly sets forth the terms, nature, and effect:—

(*a*) Of the agreement entered into between the parties in respect of the advances; or

(*b*) Of the endorsement; or

(*c*) Of such other liability incurred by the grantee for the grantor; or

(*d*) Of the agreement in respect of the liability to be incurred by the grantee for the grantor; and

in all cases the affidavit shall state that the bill of sale truly sets forth the extent or amount of the liability incurred or to be incurred and to be covered by the bill of sale.

(2) The affidavit shall also state that the bill of sale was executed in good faith and for the purpose of securing the grantee:—

(*a*) Repayment of the advances; or

(*b*) Against loss or damage by reason of the endorsement; or

(*c*) Against loss or damage by reason of the liability incurred by the grantee for the grantor; or

(*d*) Against loss or damage by reason of the liability to be incurred by the grantee for the grantor, under the agreement therefor;

as the case may be, and was not made for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or of preventing such creditors from recovering any claims which they have against the grantor.

AFFIDAVIT OF BONA FIDES ACCOMPANYING BILL OF SALE TO SECURE A DEBT.

8. Where the bill of sale is other than a bill of sale within the scope of section 7, and is given to secure the payment or for the payment of an amount due or accruing due from the grantor to the grantee, the bill of sale or copy for registration shall be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the amount set forth in the bill of sale as being the consideration thereof was at the time of making the bill of sale justly and honestly due or accruing due from the grantor to the grantee, as the case may be, that the bill of sale was executed in good faith and for the purpose of:—

(*a*) Securing to the grantee the payment of such amount; or

(*b*) Payment to the grantee of such amount;

and was not made for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or

of preventing such creditors from recovering any claims which they have against the grantor.

AFFIDAVIT OF BONA FIDES ACCOMPANYING OTHER BILLS OF SALE.

9. Where the bill of sale is other than a bill of sale within the scope of section 7 or 8, the bill of sale or copy for registration shall be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the sale, assignment, or transfer in respect of which the bill of sale was made is bona fide and for good consideration, as set forth in the bill of sale, and that the bill of sale was not made for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or of preventing such creditors from recovering any claims which they have against the grantor.

UNREGISTERED BILLS OF SALE VOID AS AGAINST CERTAIN PERSONS.

10. (1) A bill of sale which is by this Act required to be registered shall be absolutely void,—

(*a*) As against any subsequent purchaser claiming from or under the grantor in good faith, for valuable consideration and without notice, who obtains delivery of the personal chattels before the bill of sale is registered; and

(*b*) As against any subsequent purchaser or mortgagee claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyance or mortgage of the personal chattels is registered before the bill of sale is registered; and

(*c*) As against all persons who become creditors before the bill of sale is registered.

(2) Every such bill of sale, unless it is registered, shall, upon the expiration of the time for registration prescribed by this Act, or if the time for registration is extended by a Judge, then upon the expiration of such extended time, be absolutely void as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been registered or are valid without registration.

PRIORITY OF REGISTERED BILLS OF SALE.

11. In case two or more registered bills of sale comprise in whole or in part the same personal chattels, they shall have priority in the order of their registration respectively as regards such personal chattels.

RENEWAL OF BILLS OF SALE.

12. (1) Where a registered bill of sale consists of a mortgage of personal chattels, the bill of sale shall cease to be valid as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been registered or are valid without registration, after the expiration of the period of two years from the registration of the bill of sale, unless before the expiration of that period a renewal statement, Form 1, setting out the interest of the grantee, his executors, administrators, or assigns, in the personal chattels comprised therein, and the amount still due for principal and interest thereon, and of all payments made on account thereof is registered in the office of the proper officer of the registration district in which the bill of sale is registered, or, in case of the permanent removal of the goods and the registration of a certified copy of the bill of sale pursuant to the provisions of section 13, of the registration district in which the certified copy has been so registered, accompanied by an affidavit of the grantee, his executors, administrators, or assigns, or his or their agent, or of some one of them, stating that the statement is true and that the bill of sale has not been kept on foot for any fraudulent purpose.

(2) A further renewal statement and affidavit shall be registered in like manner as provided in subsection (1) before the expiration of the period of two years from the registration of the last renewal statement under this section, otherwise the bill of sale shall cease to be valid as against the creditors of the grantor and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been registered or are valid without registration.

(3) If any bona-fide error or mistake is made in the renewal statement, either by the omission to give any credit or by any miscalculation in the computation of interest or otherwise, the statement and the bill of sale therein referred to shall not be invalidated if the grantee, his executors, administrators, or assigns, within two weeks after the discovery of the error or mistake registers an amended statement and affidavit referring to the former statement and clearly pointing out the error or mistake therein and correcting the same.

(4) If before the registration of such amended statement and affidavit any creditor or purchaser or mortgagee in good faith for

valuable consideration has made any bona-fide advance of money or given any valuable consideration to the grantor on the faith of the amount due on the bill of sale being as stated in the renewal statement and affidavit as first registered, or has incurred any costs in proceedings taken on the faith of the amount due on the bill of sale being as stated in the renewal statement and affidavit as first registered, the bill of sale as to the amount so advanced or the valuable consideration given or costs incurred by the creditor, purchaser, or mortgagee shall, as against that creditor, purchaser, or mortgagee, stand good only for the amount stated in the renewal statement and affidavit as first registered.

REMOVAL OF CHATTELS TO ANOTHER DISTRICT.

13. (1) Where a registered bill of sale consists of a mortgage of personal chattels, and where, before the payment and discharge of the bill of sale, personal chattels comprised therein are permanently removed into a registration district other than the one in which the personal chattels comprised in the bill of sale were situate at the time of its execution, and where the grantee before removal of the personal chattels had notice of their intended removal to the place to which they are removed, the bill of sale shall, within thirty days after such removal, be registered in the office of the proper officer of the registration district into which the personal chattels are removed, by filing therein a copy of the bill of sale and of all affidavits and documents accompanying the bill of sale or filed on the registration or renewal thereof, verified by the certificate of the proper officer in whose office the bill of sale is registered or was last renewed, otherwise the bill of sale shall in respect of the personal chattels so removed cease to be valid as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been registered or are valid without registration.

(2) Where the grantee did not before the removal of the personal chattels have such notice, the bill of sale shall nevertheless cease to be valid as provided in subsection (1) unless registration in the manner provided in that subsection is effected within thirty days after the grantee has received notice of the place to which the personal chattels have been removed.

(3) Where the bill of sale is not so registered within six months after such removal, the bill of sale shall thereupon cease to be valid as provided in subsection (1), although the grantee neither consented to the removal nor had notice of the removal.

REMOVAL OF CHATTELS INTO THE PROVINCE.

14. (1) Where personal chattels subject to a mortgage which was executed at a time when the personal chattels were situate without the Province are permanently removed into the Province, and where the mortgagee before removal of the personal chattels had notice of their intended removal to the place to which they are removed, the mortgage shall, within thirty days after such removal, be registered as a bill of sale, in the office of the proper officer of the registration district into which the personal chattels are removed, by filing therein a copy of the mortgage and of all affidavits and documents accompanying or relating to the mortgage proved to be a true copy by the affidavit of some person who has compared the same with the originals, otherwise the mortgage shall not be permitted to set up any right of property or right of possession in or to the personal chattels so removed as against the creditors of the mortgagor or as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice.

(2) Where the mortgagee did not before the removal of the personal chattels have such notice, the mortgage shall nevertheless cease to be valid as provided in subsection (1) unless registration in the manner provided in that subsection is effected within thirty days after the mortgagee has received notice of the place to which the personal chattels have been removed.

(3) Where the mortgage is not so registered as a bill of sale within six months after such removal, the mortgage shall thereupon cease to be valid as provided in subsection (1), although the mortgagee neither consented to the removal nor had notice of the removal.

REGISTRATION OF ASSIGNMENTS.

15. (1) An assignment of a bill of sale may be registered by filing the assignment in the office in which the bill of sale is registered, accompanied by an affidavit of an attesting witness of the due execution thereof.

(2) The proper officer in whose office an assignment accompanied by the affidavit of execution is filed shall note the fact of such assignment against each entry in the books of his office respecting the registration of the bill of sale, and shall make a like notation upon the bill of sale or copy filed in his office.

(3) In case the personal chattels comprised in the bill of sale so assigned are situate partly in one registration district and partly in one or more other registration districts, registration of the assignment may be effected either by filing a duplicate or other original

of the assignment and affidavit pursuant to subsection (1) in each of the registration districts, or by filing the assignment and affidavit pursuant to subsection (1) in one of the registration districts and by filing a copy of the assignment and affidavit, verified by the certificate of the proper officer of that registration district, in the office of the proper officer of each of the other registration districts, and each proper officer shall make the like notations of the assignment in the records of his office as are provided by subsection (2).

DISCHARGE OF BILL OF SALE.

16. (1) Where a registered bill of sale consists of a mortgage of personal chattels, the bill of sale may be discharged in whole or in part by the filing in the office in which the same is registered of a certificate of discharge, Form 2, signed by the grantee, his executors, administrators, or assigns, and accompanied by an affidavit of an attesting witness of the due execution thereof; but no certificate of discharge by an assignee shall be filed unless the assignment has been registered.

(2) The proper officer in whose office a certificate of discharge accompanied by the affidavit of execution is filed shall note the fact of such discharge against each entry in the books of his office respecting the registration of the bill of sale, and shall make a like notation upon the bill of sale or copy filed in his office.

(3) In case the personal chattels affected by the discharge are situate partly in one registration district and partly in one or more other registration districts, the discharge of the bill of sale may be effected either by filing a duplicate or other original of the certificate of discharge and affidavit pursuant to subsection (1) in each of the registration districts, or by filing the certificate of discharge and affidavit pursuant to subsection (1) in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district, in the office of the proper officer of each of the other registration districts, and each proper officer shall make the like notations of the discharge in the records of his office as are provided by subsection (2).

(4) The proper officer in whose office the certificate of discharge is filed shall on request furnish a certificate of the entry of the discharge in the records of his office.

REGISTRATION DISTRICTS AND OFFICES.

17. For the purpose of registration of bills of sale, each district in the Province shall be a registration district, and the whose office is situate within a registration district shall

be the proper officer for the registration of bills of sale in that registration district.

(*Note.*—In each Province a subsection should be inserted here making appropriate provisions as to the effect of changes in the judicial or other districts on which registration districts are based.)

EXPIRY OF TIME ON SUNDAY.

18. Where, under the provisions of this Act, the time for registering or filing any bill of sale or other paper expires on a Sunday or other day on which the office in which the registering or filing is to be made or done is closed, the registering or filing shall, so far as regards the time of doing the same, be valid if done on the next following day on which the office is open.

POWER OF JUDGE TO PERMIT PROOF OF EXECUTION OTHERWISE THAN BY AFFIDAVIT OF WITNESS.

19. In case, before the making of the affidavit of execution required by this Act, the attesting witness to any bill of sale dies or leaves the Province, or becomes incapable of making or refuses to make such affidavit, it shall be lawful for any Judge of the Court to make an order permitting the registration of the bill of sale, upon such proof of the due execution and attestation of the bill of sale as the Judge by the order may require and allow. An office copy of the order shall be annexed to the bill of sale or copy, as the case may be, and filed therewith; and the registration of the bill of sale, under and in compliance with the terms of the order, shall have the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

DESCRIPTION OF PERSONAL CHATTELS.

20. Every bill of sale required to be registered shall contain such sufficient and full description of the personal chattels comprised therein that the same may be thereby readily and easily known and distinguished.

TAKING OF AFFIDAVITS.

21. (1) All affidavits required by this Act may be taken and made before the proper officer of any registration district or before any person, whether within or without the Province, authorized to take affidavits in or concerning any cause, matter, or thing pending in any Court in the Province.

(2) No registered bill of sale shall be held to be defective or void solely on the ground that any affidavit required by this Act was taken and made before a solicitor for any of the parties to the bill

of sale, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

AFFIDAVIT IN CASE OF DEATH OR ASSIGNMENT.

22. (1) Any affidavit required by this Act to be made by a grantee may in the event of his death be made by his executor or administrator, or by the agent of the executor or administrator.

(2) In case a bill of sale has been assigned, any affidavit required by this Act to be made by the grantee, other than an affidavit prescribed by section 7, 8, or 9, may be made by the assignee, or one of several assignees, or by the executor or administrator of an assignee, or by the agent of the assignee, executor, or administrator.

AFFIDAVIT, ETC., ON BEHALF OF CORPORATION.

23. (1) Where the grantee or assignee of a bill of sale is a corporation, every affidavit, statement, or certificate required or permitted by this Act to be made or given by the corporation as such grantee or assignee may be made or given by the president, vice-president, manager, assistant manager, local or branch manager, secretary, treasurer, or agent of the corporation, or by any person duly authorized by resolution of its directors in that behalf.

(2) A general authority to take or renew all or any bills of sale to the grantee shall be sufficient authority for any of the purposes of subsection (1).

CONTENTS OF AFFIDAVIT OF AGENT OR OFFICER.

24. Where an affidavit is made for the purposes of this Act by the agent of a grantee, assignee, executor, or administrator, or by an officer or agent of a corporation, it shall state that the deponent is aware of the circumstances connected with the bill of sale or with the renewal of the bill of sale, as the case may be, and that he has a personal knowledge of the facts deposed to.

RECTIFICATION OF ERRORS AND OMISSIONS.

25. Subject to the rights of other persons accrued by reason of any error or omission referred to in this section, any Judge of the Court, on being satisfied that the omission to register a bill of sale or renewal statement within the time prescribed by this Act, or the omission or misstatement of the name, residence, or occupation of any person in any document filed for purposes of any registration under this Act, was accidental or due to inadvertence or impossibility, may, in his discretion, order the omission or misstatement to be rectified by extending the time for registration or by the insertion in the register of the true name, residence, or occupation,

on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter or thing as the Judge thinks fit to direct. An office copy of any order made under this section shall be annexed to the bill of sale or copy thereof on file or tendered for registration.

DEFECTS AND IRREGULARITIES.

26. No defect or irregularity in the execution or attestation of a bill of sale, no defect, irregularity, or omission in any affidavit accompanying a bill of sale or filed in connection with its registration, and no error of a clerical nature or in an immaterial or non-essential part of the copy of a bill of sale shall invalidate or destroy the effect of the bill of sale or the registration thereof, unless in the opinion of the Court or Judge before whom a question relating thereto is tried such defect, irregularity, omission, or error has actually misled or was likely to mislead some person whose interests are affected by the bill of sale.

APPLICATION OF ACT TO BILLS OF SALE OF SUBSEQUENTLY ACQUIRED PERSONAL CHATTELS.

27. The provisions of this Act shall extend to bills of sale of personal chattels, notwithstanding that the personal chattels may not be the property of or may not be in the possession, custody, or control of the grantor, or any one on his behalf, at the time of the making of the bill of sale, and notwithstanding that the personal chattels may be intended to be delivered at some future time, or that the same may not at the time of the making of the bill of sale be actually procured or provided, or fit or ready for delivery, and notwithstanding that some act may be required for the making or completing of the personal chattels, or rendering the same fit for delivery.

APPLICATION OF ACT WHERE CROWN IS GRANTEE.

28. In case of a bill of sale in which the Crown or any Minister, Board, Commission, or officer of the Executive Government of the Dominion or of any Province, acting on behalf of the Crown, is the grantee, the provisions of this Act as to affidavit of bona fides and the provisions of this Act with respect to renewal of registration shall not apply.

EVIDENCE OF RECORDS.

29. (1) Every certificate furnished by the proper officer touching any matter dealt with by this Act shall be received for all purposes as prima facie evidence of the facts set out in the certificate; and every copy of any document filed or registered under this Act, certi-

fied by the proper officer, shall be received as prima facie evidence for all purposes as if the original document were produced.

(2) No proof shall be required of the signature or official position of any proper officer in respect of any certificate produced as evidence pursuant to this section.

INSPECTION OF RECORDS OF BILLS OF SALE.

30. Upon payment of the prescribed fees, every person shall have access to and be entitled to inspect the books of any proper officer containing records or entries of bills of sale or documents registered or filed under the provisions of this Act; and no person shall be required, as a condition of his right thereto, to disclose the name of the person in respect of whom such access or inspection is sought; and every proper officer shall, upon request accompanied by payment of the prescribed fees, produce for inspection any bill of sale or document so registered or filed in his office.

FEES.

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

(*a*) For filing and registering each bill of sale and accompanying documents, dollars and cents:

(*b*) For filing and registering verified copy of bill of sale and accompanying documents under section 5 (2) or section 13, dollar and cents:

(*c*) For filing and registering renewal of bill of sale, cents:

(*d*) For filing and registering assignment of bill of sale, cents:

(*e*) For notice to Registrar under section 15 (3) or section 16 (3), cents:

(*f*) For notation of assignment or discharge in records under section 15 (3) or section 16 (3), cents:

(*g*) For any certificate of registration or discharge or other certificate for purposes of this Act, cents:

(*h*) For searching each name, cents:

(*i*) For the production for inspection of any bill of sale or renewal registered under this Act or any former Act relating to bills of sale, cents:

(*j*) For copy of any document filed under this Act, or any former Act relating to bills of sale, including certificate, every hundred words, ten cents:

(*k*) For any other service not herein specifically provided for, such sum as the Lieutenant-Governor in Council may prescribe.

UNIFORM CONSTRUCTION OF ACT.

32. 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.

APPLICATION OF ACT.

33. (1) Except as provided in this section, this Act shall apply only to bills of sale executed after this Act comes into force.

(2) Subject to subsection (3), sections 12 to 16, section 18, sections 21 to 26, and sections 28 to 31 shall apply, mutatis mutandis, to bills of sale executed before this Act comes into force which have been registered or which are hereafter registered pursuant to any Act for which this Act is substituted, in respect of all acts or things to be done under this Act by virtue of said sections or any of them.

(3) NOTE.—This subsection should make provision for the proper carrying out of subsection (2) under the particular situation in each Province, especially in the application of section 12 to Provinces which have now no provision for the filing of renewal statements.)

REPEAL.

34. (NOTE.—Provision should be made for repeal of Act for which this Act is to be substituted, care being taken to preserve the former for purposes of registration of bills of sale executed before the latter comes into force.)

SCHEDULE.

FORM 1.

(Section 12.)

Renewal Statement.

Statement exhibiting the interest of in the personal chattels mentioned in the mortgage dated the day of , 19 , made between of of the one part, and , of , of the other part and registered as a bill of sale in the office of of the registration district of , on the day of 19 , and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said is still the mortgagee of the said personal chattels, and has not assigned the said mortgage (*or* the said is the assignee of the said mortgage by virtue of an assignment thereof 19), (*or as the case may be*).

No payments have been made on account of the said mortgage (*or* the following payments, and no other, have been made on account of the said mortgage:

19 , January 1, Cash received..... $

The amount still due for principal and interest on the said mortgage is the sum of $, made up as follows: (*here give the items*).

(*Signature of Mortgagee or Assignee.*)

County (*or* district of
To wit:

I, , of the of in the of , the mortgagee named in the mortgage mentioned in the foregoing (*or* annexed) statement (*or* assignee of the mortgagee named in the mortgage mentioned in the foregoing (*or* annexed) statement) (*as the case may be*), make oath and say:

1. That the foregoing (*or* annexed) statement is true.

2. That the mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

Sworn before me at ,
in the of ,
this day of , 19 .
A Commissioner, etc.

FORM 2.

(Section 16.)

Certificate of Discharge.

To the of the Registration District of .

I, , of , do certify that has satisfied all money due, or to grow due on a certain mortgage made by to , which mortgage bears date the day of , 19 , and was registered as a bill of sale (or *in case the mortgage has been renewed* was last renewed), in the office of the of the registration district of, on the day of , 19 , as No. (*here mention the date of registration of each assignment thereof, and the names of the parties, or mention that such mortgage has not been assigned, as the fact may be*); and that I am the person entitled by law to receive the money, and that such mortgage is therefore discharged.

Witness my hand, this day of , 19 .

Witness:

(*Signature of Mortgagee or Assignee.*)

APPENDIX G.

Draft Devolution of Real Property Act, prepared by the Saskatchewan Commissioners.

BILL.

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

[Assented to 192 .]

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 Devolution of Real Property Act.*

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.

2. "Court" means the Court of or a judge thereof.

3. "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person.

Imp. Act 12 and 13 Geo. V. c. 16, s. 188 (18) in part, and see Ont. s. 2.

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

Imp. Act. 60 and 61 Vic. c. 65, s. 1 (5); R.S.B.C. c. 5, s. 106 (4).

4.—(1) Real property 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 invested in his personal representative from time to time as if it were personal property vesting in him.

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

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

Imp. Act. 60 and 61 Vic. 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) and (2); R.S. Sask. c. 73, s. 3 (1) and (2) 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 property as trustee for the persons by law beneficially entitled thereto, and those persons shall have the same right to require a transfer of real property as persons beneficially entitled to personal property have to require a transfer of such personal property.

Imp. Act. 60 and 61 Vic. c. 65, s. 2 (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, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration, or dealings before probate in the case of personal property, and with respect to costs and other matters in the administration of personal property in force before the commencement of this Act, and all powers, duties, rights, equities, obligations, and liabilities of a personal representative in force at the commencement of this Act with respect to personal property, shall apply and attach to the personal representative and shall have effect with respect to real property vested in him.

Imp. Act. 12 and 13 Geo. V. c. 16, s. 156 (4) in part; B.C. s. 107 (2); Man. s. 21 (4); Ont. s. 4; Sask. 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 property 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 property;

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

Imp. Act. 60 and 61 Vic. c. 65, s. 2 (3); B.C. s. 107 (3); Man. s. 21 (5); and see Ont. s. 5; Sask. s. 5; and Alta. s. 2 (*e*).

8. When any part of the real property of a deceased person vests in his personal representative under this Act, the 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 was interested, shall, while the estate remains in the

personal representative be deemed in law the heir of the deceased, 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; and see Imp. Act 12 and 13 Geo. V, c. 16, s. 156 (3).

9.—(1) At any time after the date of probate or letters of administration, the personal representative may convey the real property to any person entitled thereto, and may make the conveyance either subject to a charge for the payment of any money which the personal representative is liable to pay, or without any such charge; and on such conveyance, subject to a charge for all moneys (if any) which the personal representative is liable to pay, all liabilities of the personal representative in respect of the real property shall cease, except as to any acts done or contracts entered into by him before such conveyance.

Imp. Act. 60 and 61 Vic. c. 65, s. 3 (1); B.C. s. 108 (1).

(2) At any time after the expiration of one year from the date of probate or of letters of administration, if the personal representative has failed, on the request of the person entitled to any real property, to convey the real property to that person, the court may, if it thinks fit, on the application of that person and after notice to the personal representative, order that the conveyance be made, and in default may make an order vesting the property in such person as fully and completely as might have been done by a conveyance thereof from the personal representative.

See Imp. Act. 60 and 61, Vic. c. 65, s. 3 (2); B.C. s. 108 (2); and see Man. C.A. 1924, c. 54, s. 2.

(3) If, after the expiration of such year, the personal representative has failed, with respect to the real property or any portion thereof, to either convey the same to a person entitled thereto or sell and dispose of it, the court may, on the application of any person beneficially interested, order that the real property or portion 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, may refer the matter to the (*Master in Chambers or local master, or as the case may be*) directing a sale of the real property or portion upon such terms of cash or credit, or partly one and partly the other, as may be deemed advisable.

See Man. C. A. 1924, c. 54, ss. 2 and 4.

10. The personal representative may sell the real property 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 it shall not be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

Man. s. 25 (1); Ont. s. 21 (1); Sask. s. 11 (1).

11. Where there are two or more personal representatives a conveyance, mortgage, lease or other disposition of real property devolving under this Act shall not be made without the concurrence therein of all such representatives or an order of the court; save that where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance, mortgage, lease or other disposition of the real property may be made by the proving executor or executors for the time being, without an order of the court, and shall be as effectual as if all the persons named as executors had concurred therein.

Imp. Act 12 and 13 Geo. V, c. 16, s. 156 (4) and see B.C. s. 107 (2) and (4); Man. s. 21 (4); Ont. s. 4; Sask. s. 4.

12.—(1) Subject to the provisions hereinafter contained, no sale of real property 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, the court may, upon proof satisfactory to it 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.

Man. s. 25; Ont. ss. 21 (2) and 22; Sask. ss. 11 (2) and 12.

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 the court.

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, divide or partition and convey the real property of the deceased person, or any part thereof, to or among the persons beneficially interested.

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

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

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

(*b*) lease the real property, with the approval of the court, for a longer term;

(*c*) raise money by way of mortgage of the real property for the payment of debts, or for payment of taxes on the real property to be mortgaged, and, with the approval of the court, for the payment of other taxes, the erection, repair, improvement or completion of buildings, or the improvement of lands, or for any other purpose beneficial to the estate.

(2) Where infants or lunatics are interested, the approvals or order required by sections 12 and 13 in case of a sale shall be required in the case of a mortgage, under clause (*c*) of subsection (1) of this section, for payment of debts or payment of taxes on the real property to be mortgaged.

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

16. The rights and immunities conferred by this Act upon personal representatives are in addition to, and not in derogation of, the powers conferred by any other Act.

17. Nothing in this Act shall alter any duty payable in respect of real property or impose any new duty thereon.

Imp. Act 12 and 13 Geo. V, c. 16, s. 156 (12); B.C. s. 109.

18. 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.

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

MEMORANDUM

Re Draft Devolution of Real Property Act.

Section 4 (2): I prefer the new form of this subsection as contained in the English Administration of Estates Act, 1925, namely: "A testator shall be deemed to have been entitled at his death to any interest in real property passing under any gift contained in his will which operates as an appointment under a general power to appoint by will."

The present section is insufficient to cover the case where the general power of appointment is not executed but operates by virtue of The Wills Act.

I would like to see added to this section the provision of subsection (3) of section 1 of the English Act, as follows:

> "The personal representative shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate."

The present draft and the older English Act had no provision constituting the personal representative the representative of the deceased in regard to real estate. They merely vested the real estate in the personal representative, a provision which in my opinion was insufficient to make the executor, etc., a representative of the deceased with regard to real estate in the same manner as he was under the older law, with regard to personal estate.

I would further suggest that subsection (3) of section 2 of The Administration of Estates Act, 1925, might well be embodied in our Act. It has always seemed to me that the old Part 1 of The Land Transfer Act, was of an exceedingly hazy nature when one came to consider the rights of creditors and legatees, etc., in real property vested in the personal representative. The subsection I refer to runs as follows:

> "Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real property shall not, save as hereinafter provided, affect—
>
> (*a*) Any rule as to marshalling or as to administration of assets;
>
> (*b*) the beneficial interest in real property under any testamentary disposition;
>
> (*c*) any mode of dealing with any beneficial interest in real property or the proceeds of sale thereof;

(*d*) the right of any person claiming to be interested in the real property to take proceedings for the protection or recovery thereof against any person other than the personal representative."

Paragraph (*d*) seems to be of importance in cases where the personal representative has not entered upon leaseholds or perhaps other real property.

Section 7: This section reserves the superior nature of real estate. The Administration of Estates Act, 1925, removes this superiority and I think that we might well follow the example. The section of the English Act to which I have referred is section 34, and runs as follows:

"34.—1 Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the First Schedule of this Act.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect to all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II. of the First Schedule of this Act."

The First Schedule is as follows:—

"FIRST SCHEDULE"

PART I.

Rules as to Payment of Debts where the Estate is Insolvent.

1. The funeral, testamentary, and administration expenses have priority.

2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured credi-

tors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

PART II.

Order of Application of Assets where the Estate is Solvent.

1. Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed, but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid. .....

3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4. Property of the deceased charged with or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed, rateably according to value.

7. Property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateably according to value.

8. The following provisions shall also apply—

(*a*) The order of application may be varied by the will of the deceased.

(*b*) This part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets."

With respect to this whole question, I should say that I think we could do worse than adopt the rules contained in the First Schedule, both with respect to solvent estates and insolvent estates. I presume there is nothing to stop the Provinces legislating on this subject.

I think the right of retainer and the right to prefer should go. In Alberta the right of preference is distinctly taken away by section 43 of The Trustee Act and I presume it is also removed in some, if not all, of the other Provinces.

As germane to this subject, I would also like to see section 32 of the English Act inserted. I think the insertion of this section would dispose of many questions which may arise as to legal and equitable assets. Even apart from this the section is of value as making clearer the position of the creditors of a deceased person.

Section 32 of the English Act is as follows:

32.—(1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power (including the statutory power to dispose of entailed interests) disposes by his will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

This subsection takes effect without prejudice to the rights of incumbrancers.

(2) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action or under the process.

I notice that the word "towards" of the English Act has been changed to "toward." I prefer "towards" and agree with Fowler who says of the propositions, the "s" form is the prevailing one and the other tends to become literary on the one hand and provincial on the other.

Section 9: Difficult questions are likely to arise where a personal representative conveys property which he ought not to have conveyed. These questions are dealt with by section 36 of The Administration of Estates Act, 1925.

Deleting all reference to an assent and with some other minor modifications, the sections run as follows:

"36.—(5) Any person in whose favour a conveyance of property is made by a personal representative may require that notice of the conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(6) A statement in writing by a personal representative that he has not made a conveyance in respect of any property, shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that a conveyance has not been given or made in respect of the property to which the statement relates, unless notice of a previous conveyance affecting that property has been placed on or annexed to the probate or administration.

A conveyance by a personal representative of property to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous conveyance affecting that property has been placed on or annexed to the probate or administration) operate to transfer or create the property expressed to be conveyed in like manner as if no previous conveyance had been made by the personal representative.

A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

"(7) A conveyance by a personal representative in respect of property shall, in favour of a purchaser, unless notice of previous conveyance affecting that property has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the conveyance is made is the person entitled to have the property conveyed to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the property conveyed or any charge thereon.

"(8) A conveyance of property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for."

" 38.—(1) A conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

"(2) Notwithstanding any such conveyance the court may, on the application of any creditor or other person interested—

(*a*) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

(*b*) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes;

(*c*) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;

(*d*) making any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act.

"(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act."

Section 10: Is this section really necessary?

Section 14: I think our Act insufficiently deals with the question of appropriation. I very much prefer the English section 41. That section with the appropriate amendments runs as follows:

"41.—(1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of the appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that—

(i) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;

(ii) an appropriation of property, whether or not being an investment authorised by law or by the will if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following contents:—

(*a*) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;

(*b*) when made in respect of any settled legacy share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income:

If the person whose consent is so required as aforesaid is an infant or a lunatic the consent shall be given on his behalf by the official guardian, or the.....as the case may be;

(iii) no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;

(iv) if, independently of the personal representative, there is no trustee of a settled legacy share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy share or interest, provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purpose of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary: and may make any conveyance which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of appropriation, and of any person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy,

share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents, if any, had been given.

(8) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at that date of the appropriation, also an annuity, and "purchaser" means a purchaser for money or money's worth.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which testator exercises a general power of appointment and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise."

Section 16: I suggest adding the words "or by will" to this section.

WALTER S. SCOTT.

APPENDIX H.

STATUTES AS EVIDENCE.

GREAT BRITAIN.

An Act to facilitate the admission in evidence of statutes passed by the Legislatures of British possessions and protectorates, including Cyprus. (21st August, 1907).

Be it enacted by the King's most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) Copies of Acts, ordinances, and statutes passed (whether before or after the passing of this Act) by the Legislature of any British possession, and of orders, regulations and other instruments issued or made, whether before or after the passing of this Act, under the authority of any such Act, ordinance, or statute, if purporting to be printed by the Government printer, shall be received in evidence by all courts of justice in the United Kingdom without any proof being given that the copies were so printed.

(2) If any person prints any copy or pretended copy of any such Act, ordinance, statute, order, regulation, or instrument which falsely purports to have been printed by the Government printer, or tenders in evidence any such copy or pretended copy which falsely purports to have been so printed, knowing that it was not so printed, he shall on conviction be liable to be sentenced to imprisonment with or without hard labour for a period not exceeding twelve months.

(3) In this Act—

The expression "Government printer" means, as respects any British possession, the printer purporting to be the printer authorized to print the Acts, ordinances, or statutes of the Legislature of that possession, or otherwise to be the Government printer of that possession;

The expression "British possession" means any part of His Majesty's Dominions exclusive of the United Kingdom, and where

parts of those Dominions are under both a central and a local legislature, shall include both all parts under the central legislature and each part under a local legislature.

(4) Nothing in this Act shall affect the Colonial Laws Validity Act, 1865.

(5) His Majesty may by Order in Council extend this Act to Cyprus and any British Protectorate, and where so extended this Act shall apply as if Cyprus or the protectorate were a British possession, and with such other necessary adaptations as may be made by the Order.

2. This Act may be cited as the Evidence (Colonial Statutes) Act, 1907.

British Columbia.

Sections 27 and 31 of Evidence Act (R.S.B.C. 1924, c. 82) contain some reference to Imperial and Provincial Acts. These sections read as follows:—

"27. Judicial notice shall be taken of all Acts of the Imperial Parliament, of all ordinances made by the Governor in Council or the Lieutenant-Governor in Council of any Province or Colony which, or some portion of which, forms part of Canada, and of all the Acts of the Legislature of any such Province or Colony whether enacted before or after the passing of the 'British North America Act, 1867.'"

"31. Imperial Proclamations, Orders in Council, Treaties, Orders, Warrants, Licenses, Certificates, Rules, Regulations, or other Imperial Official Records, Acts, or Documents, may be proved:—

(*a*) In the same manner as the same may from time to time be provable in any court in England; or

(*b*) By the production of a copy of the Canada Gazette or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same or a notice thereof; or

(*c*) By the production of a copy thereof purporting to be printed by the King's Printer for Canada."

Alberta.

Section 27 of the Alberta Evidence Act runs as follows:—

"Copies of Statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be printed by or under the authority of the Parliament of Great Britain and Ireland or of the Imperial Government or by or under the authority of the

Government or of any legislative body of any dominion, commonwealth, state, province, colony, territory, or possession within the King's dominions, shall be admitted in evidence to prove the contents thereof."

SASKATCHEWAN.

Section 3 of chapter 44 of the Revised Statutes of Saskatchewan, 1920. Chapter 44 is the Saskatchewan Evidence Act, and the section mentioned is as follows:—

"3. In any proceedings or matters, whenever it becomes necessary or expedient to prove or give in evidence any statute of the Imperial Parliament, any statute or ordinance of Canada, of this Province or of the late Province of Canada or of the North-West Territories or of any Province or Territory forming part of Canada, whether such statute or ordinance was passed before or after the passing of the British North America Act, 1867, any copy of any such statute or ordinance purporting to be printed and published by the King's Printer or the Government Printer for Great Britain or Canada or for such Province or Territory shall be receivable and received in evidence to prove the contents thereof in every court or tribunal having cognizance of such proceedings."

MANITOBA EVIDENCE ACT.

R. S. M. c. 57, s. 32.

"The Courts of this Province and every judge and officer thereof may take judicial notice of the laws of any Province or portion of Canada, or of any portion of the colony or dependency thereof, or of any part of the United Kingdom of Great Britain and Ireland, or any colony or dependency thereof, or of any part of the United States of America; and for the purpose of ascertaining the same, such court, judge or officer may refer to any books of statutes, reports of cases and works upon legal subjects as it or he may deem authentic, or may require evidence upon oath, declaration or affirmation, oral or written, or by certificate or otherwise, as may seem proper. In all cases it shall be the function of the court, and not of a jury, to determine such laws when brought in question."

ONTARIO.

Revised Statutes of Ontario, 1914, chapter 78, section 22.

"Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices

thereof, and other public documents purporting to be printed by or under the authority of the Parliament of Great Britain and Ireland or of the Imperial Government, or by or under the authority of the government of any legislative body of any dominion, commonwealth, state, province, colony, territory or possession within the King's dominions, shall be admitted in evidence to prove the contents thereof."

QUEBEC.

Extract from a Letter from Mr. Justice Surveyer.

"The Legislative Enactments on the subject you refer to are the following: *Civil Code, Article* 1207: The following writings executed or attested with requisite formalities by a public officer having the authority to execute or attest the same in the place where he acts, are authentic and make proof of their contents without any evidence of the signature or seal appended to them, or of the official character of such officer being necessary, that is to say:

Par. 1: Copies of the Acts of the Imperial Parliament and of the Parliament of this Province, and copies of the Edicts and Ordinances, and of the Ordinance of the Province of Quebec, and of the Statutes of Upper Canada, and of the Statutes and Ordinances of the Province of Lower Canada, printed by the printer duly authorized by Her Majesty the Queen, or by any of her predecessors.

In addition, section 11 of the Act respecting Revised Statutes, 1925, being 15 George V., chapter 8, reads as follows:—

'Copies of the said Revised Statutes, purporting to be printed by the King's Printer, shall be received as evidence of the said Revised Statutes and of their contents.'

Section 37 of chapter 1 of the Revised Statutes, 1925, is in the following terms:—

'Every copy of a statute which appears to have been printed by the King's printer shall, unless there be proof to the contrary, be considered as authentic proof of the existence and contents of such statute. (R. S. 1909, 59).'"

NEW BRUNSWICK.

The Consolidated Statutes of New Brunswick, 1903, chapter 127, section 58:—

"58. All proclamations, treaties, and Acts or Statutes of any legislature or other governing body of any foreign State, Canadian Province, or British colony, and all written enactments or laws of

the same, and all other Acts of State of such foreign State, Canadian Province, or British Colony, and all judgments, decrees, orders and other judicial proceedings of any Court of Justice in the United Kingdom of Great Britain and Ireland, or in any foreign State, or in any Province of Canada, or in any British colony, and all affidavits, pleadings and other legal documents filed or deposited in any such Court, may be proved in any Court, either by examined copies, or by copies authenticated as hereinafter mentioned, that is to say:—If the document sought to be proved be a proclamation, treaty, Act or Statute of any legislature or other governing body of any foreign State, Canadian Province, or British colony, the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the foreign State, Canadian Province or British colony to which the original document belongs, and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any British, foreign, Canadian or Colonial Court, or an affidavit, pleading or other legal document filed or deposited in any such Court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the said British, foreign, Canadian or Colonial Court in which the original document is filed or deposited, or in the event of souch Court having no seal, to be signed by the Judge, or if there be more than one Judge, by any one of the Judges of the said Court, and such Judge shall attach to his signature a statement in writing on the said copy, that the Court whereof he is a Judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where the seal is necessary, or of the signature or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement. C. S. c. 46, s. 12."

Nova Scotia.

The Nova Scotia legislation is section 3 of chapter 225, R. S. 1923, "The Evidence Act," and is as follows:

"Evidence of any statute of the Imperial Parliament,, of the Parliament of Canada, of this Province, or of any province, colony, or territory, may be given in any court by the production of a copy of such statute or ordinance, purporting to be printed and published

by the King's Printer, or the Government Printer for Great Britain or Canada, or for such province, colony, or territory."

PRINCE EDWARD ISLAND.

"34. The production of what purports to be a copy of the Statutes or Acts of Assembly or Legislature of any Province of the Dominion of Canada, or of the late Province of Upper and Lower Canada, or of Newfoundland, or of any Province hereafter formed and made part of the Dominion of Canada, and whether of a public or private nature, and purporting to be printed and published by the printer authorized to print and publish the same, shall be received and taken in all Courts of this Province, and by all persons having by law or by consent of parties authority to hear, receive and examine evidence as proof of the contents thereof."

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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