

1927

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PROCEEDINGS

OF THE

TENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

TORONTO

19TH, 20TH, 22ND AND 23RD AUGUST, 1927

## Conference of Commissioners on Uniformity of Legislation in Canada.

### OFFICERS OF THE CONFERENCE.

<i>Honorary President</i>	Hon. Sir James Aikins, K.C., Winnipeg, Manitoba.
<i>President</i>	Isaac Pitblado, K.C., Winnipeg, Mani- toba.
<i>Vice-President</i>	Robert W Shannon, K.C., Regina, Sask- atchewan.
<i>Treasurer</i>	W Randolph Cottingham, K.C., Parlia- ment Buildings, Winnipeg, Manitoba
<i>Secretary</i>	John D. Falconbridge, K.C., Osgoode Hall, Toronto 2, Ontario

### *Local Secretaries.*

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

<i>Alberta</i>	Walter S Scott, K.C., Parliament Build- ings, Edmonton.
<i>British Columbia</i>	Avard V. Pineo, Parliament Buildings, Victoria.
<i>Manitoba</i>	W. Randolph Cottingham, K.C., Parlia- ment Buildings, Winnipeg.
<i>New Brunswick</i>	Cyrus F. Inches, K.C., St John
<i>Nova Scotia</i>	Frederick Mathers, K.C., Parliament Buildings, Halifax
<i>Ontario</i>	John D. Falconbridge, K.C., Osgoode Hall, Toronto 2.
<i>Prince Edward Island</i>	W E Bentley, K.C., Charlottetown.
<i>Quebec</i>	Hon. Ed Fabre Surveyor, Judges' Cham- bers, Superior Court, Montreal
<i>Saskatchewan</i>	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:*

HON. JOHN F. LYMBURN, K C , Attorney-General of Alberta,  
Edmonton.

WALTER S. SCOTT, K C , Legislative Counsel, Parliament Build-  
ings, Edmonton

(Commissioner appointed under the authority of the Stat-  
utes of Alberta, 1919, c. 31).

*British Columbia*

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

AVARD V. PINEO, Legislative Counsel, Parliament Buildings,  
Victoria

HENRY G LAWSON, 918 Government Street, Victoria.

(Commissioners appointed under the authority of the Stat-  
utes of British Columbia, 1918, c 92).

*Manitoba:*

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

HON RICHARD W CRAIG, K.C., Standard Bank Building, Win-  
nipeg.

W RANDOLPH COTTINGHAM, K C , Legislative Counsel, Parlia-  
ment Buildings, Winnipeg.

(Commissioners appointed under the authority of the Stat-  
utes 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 Stat-  
utes of New Brunswick, 1918, c 5).

*Nova Scotia:*

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

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

FRANK L. MILNER, K.C., Amherst, N.S.

(Commissioners appointed under the authority of the Stat-  
utes of Nova Scotia, 1919, c 25)

*Ontario:*

HON 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.

ARTHUR W. ROGERS, Parliament Buildings, Toronto 5.

(Commissioners appointed under the authority of the Stat-  
utes of Ontario, 1918, c. 20).

*Prince Edward Island:*

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

*Quebec:*

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

*Saskatchewan.*

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

DOUGLAS J. THOM, K.C., Regina

## PREFACE.

The independent action of the several 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.

1927 August 19-20, 22-23, Toronto

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.

In 1927 much of the time of the Conference was devoted to the discussion of the draft Bills of Sale Act, which was again referred to a committee. The Conference also revised and approved a model uniform Devolution of Real Property Act.

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 (amended, 1925): adopted in Alberta (1922), British Columbia (1921), Manitoba (1921) and New Brunswick (1927).

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 (amended, 1927): adopted in British Columbia (1922), and New Brunswick (1927).

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 (amended, 1925): 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), and Nova Scotia (1926)
1925. Intestate Succession Act (amended 1926): adopted in British Columbia (1925), Manitoba (1927) with slight modifications, and New Brunswick (1926). Provisions similar in effect are in force in Alberta.
1927. Devolution of Real Property Act.

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## PROCEEDINGS.

### PROCEEDINGS OF THE TENTH 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.* MR. LYMBURN (Attorney-General of Alberta) and MR SCOTT.

*British Columbia.* MR LAWSON

*Manitoba.* MESSRS. PITBLADO, CRAIG AND COTTINGHAM

*New Brunswick.* MESSRS JONES, FRIEL AND INCHES.

*Nova Scotia.* MR READ

*Ontario:* SIR JAMES AIKINS AND MESSRS ELLIOTT, FAICONBRIDGE AND ROGERS

*Saskatchewan.* MESSRS SHANNON AND THOM

THE HON W. H. PRICE, K C , Attorney-General of Ontario, THE HON J. A. CROSS, K C , Attorney-General of Saskatchewan, and THE HON W. J. MAJOR, K.C., Attorney-General of Manitoba, also attended some of the sessions

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### FIRST DAY.

Friday 19th August, 1927.

The Conference assembled at 10 15 a.m. at the King Edward Hotel, Toronto, Ontario, Mr Pitblado, the president, in the chair

The Attorney-General of Ontario welcomed the members of the Conference to Ontario and assured them that the draft Acts prepared by the Conference would receive the serious and favourable consideration of the Government. He also suggested that a conference of Attorneys-General, to be held in November next, should consider the subjects upon which the several provinces would be prepared to adopt uniform legislation, and should invite the co-operation of the Conference of Commissioners.

The Honorary President, Sir James Aikins, read an address, which was much appreciated, and which was ordered to be printed in the proceedings

(*Appendix A.*)

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

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

A letter from the Shoe Manufacturers' Association relating to the Bulk Sales Act, adopted by the Conference in 1920, and suggesting certain amendments, was referred to the Manitoba commissioners with instructions to report next year.

Preliminary oral statements were then received as to the reports which would be available for consideration

It was decided that the subject of the Companies Act (Conference Proceedings, 1925, pp. 11, 14, Canadian Bar Association Year Book, 1925, p. 349) should stand for further consideration next year

It was then decided to proceed with the further consideration of the draft Bills of Sale Act, as revised at last year's meeting (Conference Proceedings, 1926, p. 52, Canadian Bar Association Year Book, 1926, p. 444), and widely distributed since last meeting.

Mr. Lawson submitted letters received by the British Columbia commissioners, containing criticisms and suggestions offered on behalf of various commercial bodies and other persons. It was decided to discuss the draft act section by section, and to consider the criticisms and suggestions in connection with the relevant sections

The Conference then proceeded with the discussion of the Act, section by section

At 1 p.m. the Conference adjourned, reassembling at 2.45 p.m., and resuming the discussion of the Bills of Sale Act.

At 4.30 the Conference adjourned, reassembling at 9.30 p.m., and resuming the discussion of the Bills of Sale Act.

At 11.30 p.m. the Conference adjourned

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## SECOND DAY.

Saturday, 20th August, 1927

At 9.30 a.m. the Conference reassembled, and resumed the discussion of the Bills of Sale Act.

At 1 pm. the Conference adjourned, reassembling at 2 30 p m and resuming the discussion of the Bills of Sale Act.

The Bills of Sale Act, as revised at the present meeting was then referred to the Ontario commissioners for further consideration in the light of the discussion at the meeting, with instructions to prepare a new draft, to submit it to commercial bodies and other interested persons for criticisms and suggestions, and to report next year. The commissioners from the other provinces were requested in the meantime to give especial attention to the Bills of Sale Act, to consult commercial bodies and other interested persons, and to communicate criticisms and suggestions to the Ontario commissioners.

The Conference also decided to adhere to its former decision (Conference Proceedings, 1926, p. 14, Canadian Bar Association Year Book, 1926, p 406) that the subject of Assignment of Book Debts should be dealt with in a separate act, and should be excluded from the Bills of Sale Act.

Mr Thom was appointed as the representative of the Conference to present a statement of the work of the Conference before the Canadian Bar Association.

At 6 p m. the Conference adjourned

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### THIRD DAY.

Monday, 22nd August, 1927.

At 9 30 a.m. the Conference reassembled

Mr. Shannon, on behalf of the Saskatchewan commissioners, submitted a revised draft of the Devolution of Real Property Act.

*(Appendix B)*

He also submitted certain correspondence had with the British Columbia commissioners with regard to criticisms by Mr. A. G. Smith, Registrar of Titles at Vancouver, and Mr. H. J. Crane, Inspector of Legal Offices of British Columbia, of the draft act as reported to this Conference in 1925, as well as a letter from Mr G. W. Holmes, Master of Titles at Toronto, and Mr. Holmes' suggested redraft of certain sections.

It was decided to discuss the new draft section by section, and to consider the criticisms and suggestions in connection with the relevant suggestions.

The draft was accordingly discussed section by section, and during the discussion of the sections referred to in Mr. Holmes' letter, Mr. Holmes was present and took part in the discussion.

Pursuant to appointment Mr. N. B. Douglas, Dominion Secretary of the Retail Merchants Association of Canada, addressed the Conference and read a memorandum with regard to the draft Bills of Sale Act. This memorandum was referred to the Ontario commissioners, to whom the Bills of Sale Act had been already referred. It was ordered that copies of the new draft to be prepared by the Ontario commissioners should be submitted to Mr. Douglas and other persons interested prior to the next meeting of the Conference.

The Conference adjourned at 12.40 p.m., and reassembled at 3.30 p.m. and resumed the discussion of the Devolution of Real Property Act.

The following resolution was then adopted:—

Resolved by the Conference of Commissioners on Uniformity of Legislation in Canada that the draft of a model Act entitled "An Act to make uniform the law respecting the Devolution of Real Property of Deceased Persons", as revised at the present (1927) annual meeting of the Conference, be approved and adopted, and that this draft Act be now recommended to the legislatures of the several provinces for enactment.

Mr. Cottingham submitted to the Conference the question of amending the Intestate Succession Act, as revised and approved by the Conference in 1925 (Conference Proceedings, 1925, p. 26; Canadian Bar Association Year Book, 1925, p. 364), so as to provide that a widow should be entitled to a fixed minimum sum, and that only the residue, after deducting such fixed minimum sum, should be divided between the widow and the child or children. After discussion, a motion to amend the Intestate Succession Act accordingly was lost.

Mr. Scott, commissioner from Alberta, then submitted a report on the subject of Limitation of Actions, together with a draft Limitations Act.

*(Appendix C)*

The report was read, and an explanation was given of certain features of the draft Act.

The Conference adjourned at 5.30 p.m., and reassembled at 8.30 p.m. and resumed the discussion of the Limitations Act.

By way of instructions to the draftsman and to assist him in preparing a revised draft Act for submission to the Conference next year, the Conference discussed the questions asked in the report, and provisionally answered them as follows:—

## TABLE I

- Question 1—Second alternative.  
 Question 2—No  
 Question 3—Yes, but retaining six years as the period of limitation for personal actions generally.  
 Question 4—To be further considered.  
 Question 5—No.

## TABLE II.

- Question 1—Yes.  
 Question 2—Yes.  
 Question 3—The mortgagee's rights should expire simultaneously.

## TABLE IV.

- Question 1—Yes, except that there should be no provision as to the absence of the plaintiff.

## TABLE V.

- Question 1—Yes  
 Question 2—Yes.  
 Question 3—Yes.

The subject of Limitation of Actions was then referred to the Alberta commissioner with instructions to submit a revised draft Act next year

Some discussion took place on the question raised by the letter from the Attorney-General of British Columbia, referred to in the address of the Honorary President. Representatives of various provinces gave some explanation for the failure of their provinces to adopt the draft Acts of the Conference, and plans were discussed for making the work of the Conference more effective in this respect

The treasurer's statement, with the auditors' report appended, was then adopted as follows:—

## REPORT OF TREASURER FOR YEAR ENDING JULY 31st, 1927

1926		
Aug. 1	Balance on deposit	\$ 1,488 97
Aug 27	Grant (Nova Scotia)	200 00
Sept 27	Dalhousie Law School <i>re</i> Wills Act	\$ 3 00
	Exchange	0 15
Oct 12	Grant (Ontario)	200 00
Oct 30	Interest	22 81
1927		
Feb 26	Carswell Co., Printing Proceedings	313 83
Mar 24	Carswell Co., Printing Proceedings	327 09
Apr 18	Grant (Sask.)	200 00
Apr. 30	Interest	25 41
July 13	Stamps	2 00
July 31	Balance on deposit	1,491 12
		<hr/>
		\$2,137 19
		<hr/>
		\$2,137 19
		<hr/>

Certified correct,

W. R. COTTINGHAM,  
Treasurer.

Audited and found correct,  
August 22, 1927.

C. F. INCHES,  
H. G. LAWSON,  
Auditors

The New Brunswick commissioners made an oral report with regard to Statutes as Evidence, and the subject was referred again to them for report next year

The subject of Assignment of Book Debts was referred to the Manitoba commissioners with instructions to submit a draft Act next year

The subject of Defences to Actions on Foreign Judgments was referred to the British Columbia commissioners with the same instructions as were given to the Ontario commissioners in 1925 (Conference Proceedings, 1925, p. 14; Canadian Bar Association Year Book, 1925, p. 352) Authority was given to the president to refer this subject to another committee, if it should appear to him necessary to do so

The draft Trustee Act, prepared by the Committee of the Canadian Bar Association on Comparative Provincial Legislation and Law Reform was referred to the Saskatchewan commissioners for report next year.

It was resolved that the secretary should have authority to employ such secretarial assistance as he might require, to be paid for out of the funds of the Conference.

The secretary was also instructed (1) 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 expense of the publication of the addendum to be paid by the Conference, and (2) to prepare a report of the proceedings of the Conference and have the same published in pamphlet form and send copies to the other commissioners

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 Aikins, and by the Attorney-General of Ontario and the Ontario commissioners

The officers of the Conference for the ensuing year were elected as follows —

Honorary President—Hon Sir James Aikins

President—Mr Pitblado

Vice-President—Mr. Shannon.

Secretary—Mr. Falconbridge.

Treasurer—Mr. Cottingham.

At 11 20 p m the Conference adjourned.

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#### FOURTH DAY.

Tuesday, 23rd, August, 1927.

At 9.30 a.m. the Conference reassembled.

Mr. Read submitted the report of the Nova Scotia commissioners on the subject of Wills.

(*Appendix D.*)

After discussion of the report it was resolved that the commissioners from each province should send to their Attorney-General a copy of the Draft Wills Act and of this report, and ask for an expression of views of the policy to be pursued with regard to the points raised in the report and with regard to the advisability of adopting a new Act in the province; and that the commissioners from each province should communicate the result of their correspondence with the Attorney-General to the Nova Scotia commissioners, who should report further to the Conference next year.

On behalf of the committee appointed last year (Conference Proceedings, 1926, pp. 17, 49; Canadian Bar Association Year Book, 1926, pp. 409, 441) with regard to a difficulty experienced in complying with the Conditional Sales Act, s 3, sub-s. 6 (see Conference Proceedings, 1922, p 42; Canadian Bar Association Year Book, 1922, p 348); case of an incorporated company having its head office and its chief place of business in different districts in the province, Messrs. Lymburn and Thom submitted the following report, which was adopted —

“Your Committee begs to report that the difficulty experienced in complying with the provisions of sec. 3 sub-sec. (6) of the Act in regard to the place of residence of an incorporated company can be best overcome by deleting sub-sec. (6) and inserting the following as sub-sec. (2) of said sec 3, namely:

“If the buyer is an incorporated company such copy shall be filed with the proper officer of the Registration District of

*(here insert name of district)”*

“This amendment will necessitate the changing of the numbers of the sub-secs of sec 6 following.”

At 10 30 a m the Conference adjourned

#### APPENDICES.

- A Address of the Honorary President.
- B Devolution of Real Property Act.
- C Report on Limitation of Actions, and draft Limitations Act
- D Report on the Wills Act.



**APPENDIX A.**

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## ADDRESS OF THE HONORARY PRESIDENT.

As the Honorary President of this Conference and a complimentary Commissioner appointed by the Ontario Government, and as I have always taken an interest in this most useful public body, I was asked by your president to make to you a few remarks at the opening of this Tenth Annual Meeting. Why does not the president himself give such an opening address? No one could do it better. I have known your president intimately for over 40 years, and especially as a student-at-law and articled clerk in my firm's office, as a partner in that firm in later years, and as the head of another large law partnership; I have known him as the president of the Manitoba Law Society, as a public-spirited citizen, for years honorary secretary of the University of Manitoba and later the Chairman of its Board of Governors. I have known him as an athlete. I not only admire him but esteem him. Because of his excellence as a learned and experienced lawyer, his wide knowledge of human affairs and practical business and his willingness to serve for the community's benefit, he is thoroughly equipped for the presidency of this Conference. His instinct for practical efficiency, his concentration in professional activity, have, I think, disinclined him to make formal addresses, though he is an excellent speaker and a good writer, a *primus inter pares*. In thought, I naturally associate with your president his fellow commissioners in this Conference. The officers of The Canadian Bar Association and many of its members who know your work are profoundly gratified with what you have done, and what you aspire to accomplish, the more so because you are all of its membership and give so willingly and efficiently your time and trained talents in carrying forward one of the leading purposes mentioned in its charter: "To promote . . . uniformity of legislation throughout Canada so far as consistent with the basic systems of law in the respective Provinces." If this distinguished body, so intimately connected with the Association did not persist in that work, it would not be done effectively or perhaps not at all, and Canada, and particularly the citizens having property or business

or family connections in more than one province, would suffer by reason of the diversity in statutory laws relating to them.

I do not intend by this any reflection upon the Committee of the Association on Comparative Provincial Legislation and Law Reform. It is of those appointed by the Association one of the most active and useful. The Manitoba members of it, as a special committee presided over by Mr. E. K. Williams, K.C., have recently gone under a mountain of work, a camel's load, in digesting the trustee laws of the provinces, and, at the request of the Association, in drafting a uniform Trustee Act, now placed before you to review.

The provincial governments do not seem to be conscious of the fact that divergencies and variations in provincial legislation and laws on the same subjects and similar principles are making easy federal encroachment on provincial rights. Unless the provinces adopt uniformity on subjects which, while coming within local jurisdiction, affect the whole nation, there will be a demand for the central government to take up such subjects and provide laws regulating the same. The story of the dwarfing of state jurisdictions and the swelling of the federal in the nation to the south of us should make us vigilant to preserve our important liberties through local governments. The general comfort of the people maintained by suitable regulation made by themselves locally is transcendent to national name and fame for bigness among other countries. Uniformity in all provincial laws is not practicable, so not desirable, for local differentiating conditions call for suitable local laws. But uniformity in laws of general concern is not alone fine in theory, but practical and economical. Legislators and governments and, indeed, citizens generally should clear their minds of prejudice against such uniform legislation merely because it may make some alterations in the provincial laws, though not in the principle of them.

The people of Canada and particularly those engaged in commercial pursuits do not fully or even approximately appreciate the purposes of this Conference or what you have accomplished. One reason is that you have not advertised or made them known. That the model Acts on subjects of provincial legislation, yet of nation-wide importance, have not been more extensively adopted by the provincial governments is due to a lack of knowledge concerning the Conference, of its personnel and its work, and to that deadly preventive of improvement, apathy. Class selfishness and group interests have also arrested progress in the adoption of the Acts. The noise they make is quite out of proportion to the merits of their claims, the importance of which are too often measured by the noise

they make. In the early history of Winnipeg a French Canadian, who kept a hotel on Lombard Street, Winnipeg, served excellent meals. It was there I was first given a dish of well cooked frogs' legs. It is said that a homesteader, knowing that they were a food appreciated by some of the guests, interviewed the proprietor and offered to supply him with a million frogs' legs. The proprietor replied that he would take a hundred. The best the homesteader could do after wading around the swamp near his house all day was to find a dozen frogs. He, therefore regretfully told the hotel proprietor that he had been estimating the number of his frogs by the noise and thought he had a million. Unfortunately, such classes and groups will not see that there are really some principles of government about which the people should contend rather than about their personal interests.

The Argentine appreciates the benefit of uniformity of legislation in respect of its laws and I am told recently appropriated \$15,000 to pay the expenses of a conference of the Bar Associations to consider such uniformity.

Because life has become more complicated in recent years, the law governing that life is necessarily more diversified and difficult. There is, therefore, greater need of standardizing and simplifying it, which is one of the purposes of this Conference. To abandon persistent pursuit of so good an ideal would show lack of faith in the co-ordinated strength and action of the lawyers of Canada.

The appalling number of fatalities and physical injuries and the destruction of property caused by motor vehicles, the rapidity and frequency of their passing from one place or province to another, their use as accessories to the commission of offences and crimes, seem to urgently require the uniformity or standardizing throughout Canada of regulations touching such motors and their road use, the ownership of them, their registration, transfer, leasing, the title to them, the issue of licenses to the owner or operator and the record of such licenses, and provisions relating to a multitude of other things, with a view of protecting the lives of the people and their property. Such a uniform motor vehicle code has already been recommended by the American Conference on Uniform State Laws, and I think should be studied by this one.

I received recently a letter from the Honourable the Attorney-General of British Columbia to the effect that his Province had adopted and passed all the uniform Acts recommended by this Conference while other provinces had not, with the result that changes were thus made without producing uniformity, and greater diver-

gencies might thereby be caused. His point is well taken and there should be greater activity in presenting to the governments and legislatures the model Acts and the reasons why they should be made law.

Unfortunately, this Conference has not alone the power to do this, and it may well call upon the Canadian Bar Association to provide for the appointment of special committees, representing the Association in each province, for the purpose of co-operating with the members of this Conference in urging upon the several Governments the adoption of the model Acts. To the same end, it is also very desirable that the department of the Attorney-General in each province should have a representative official of that department active in the Conference.

In your several provinces you are distinguished as leaders in your spheres and in your professional life. The nation has no more valuable asset than the tried experience of men who have served the public well and who have its confidence, whose knowledge of affairs is disinterestedly subject to the public call on occasions of special importance. The conditions of our Canadian life, if we allow them to do so, develop and promote leadership, and with that leadership a reservoir of ability on which to draw as occasion requires. When democracy does not encourage leadership, it dwarfs one of its most potent agencies for good.

**APPENDIX B.**

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DEVOLUTION OF REAL PROPERTY ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in August, 1927.

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

[Assented to 1927.]

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:  
 (a) "Lunatic" includes an idiot and a person of unsound mind.

R.S. Ont. c. 119, c. 2.

(b) "Court" means the Court of \_\_\_\_\_ or a judge thereof.

(c) "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. 5, 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 vested in his personal representative from time to time as if it were personal property vesting in him.

(2) 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

(3) The personal representative shall be the representative of the deceased in regard to his real property to which he was entitled for an interest not ceasing on his death as well as in regard to his personal property.

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

Imp. Act 15 Geo 5, c 23, ss 1 and 3 (2), 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 15 Geo. 5, c. 23, s 2, 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. 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 the 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.

Imp Act 15 Geo. 5, c 23, s. 2 (3).

8. 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).

9. 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 5, c. 16, s. 156 (3).

10.—(1) 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 real 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.

(2) If, after the expiration of such year, the personal representative has failed, with respect to the real property or any portion thereof, either to convey the same to a person entitled thereto or to 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.

11 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).

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 ascertained, 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 as respects such contingent interests and interests not yet vested, and shall be binding upon such lunatic, non-concurring persons and beneficiaries not yet ascertained

(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*) 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.

*Note.*—Any province desiring to do so may insert a provision exempting small estates from the operation of this section.

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 or any part thereof for any term not exceeding one year;
- (b) lease the real property or any part thereof, with the approval of the court, for a longer term;
- (c) raise money by way of mortgage of the real property or any part thereof 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.—(1) A person purchasing real property in good faith and for value from the personal representative, or from a person beneficially entitled thereto to whom the same has been conveyed by the personal representative, shall hold the same freed and discharged from all debts or liabilities of the deceased owner except such as are specifically charged thereon otherwise than by his will, and, where

the purchase is from the personal representative, freed and discharged from all claims of the persons beneficially interested.

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

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

Ont. s. 24 (2).

17. 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; but 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 5, c. 16, s. 156 (4) and see B.C. s. 107 (2) and (4); Man. s. 21 (4); Ont. s. 4; Sask. s. 4.

18. 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, or by the will.

19. 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. 5, c. 16, s. 156 (12); B.C. s. 109.

20. This Act is subject to the provisions of (*the Dower Act or any Act of the kind*).

21. 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.

22. This Act shall come into force on the \_\_\_\_\_ day of

**APPENDIX C.**

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**REPORT ON LIMITATION OF ACTIONS***Provincial Statutes of Limitations.*

All the provincial statutes of limitations appear to be based upon the English statutes chiefly amongst which are the Limitations Act of 1623, which is chiefly applicable to simple contract and tort, the Civil Procedure Act of 1833, which is chiefly applicable to specialties; the Real Property Limitations Act, 1833, the Real Property Limitation Act, 1874, which in the main is concerned with the reduction of periods of limitation, prescribed by the Real Property Limitations Act, 1833.

Most of the provincial statutes include the provisions of the English Prescription Act of 1832.

British Columbia, Alberta, Saskatchewan, may be placed in a separate group in regard to legislation as to real actions, inasmuch as the British Columbia Act closely follows the phraseology of the various English Acts, whilst these acts are applicable in their exact language to Alberta and Saskatchewan, either by virtue of the date of their passing, or in the case of the Real Property Limitation Act, 1874, by express legislation.

New Brunswick and Nova Scotia may be said to form another class in that the change in the periods of limitation, effected by the Real Property Limitation Act, 1874, have not been made in these jurisdictions.

Ontario and Manitoba have embodied the effect of most of the provisions contained in both the acts of 1833 and of 1874.

With regard to personal actions, British Columbia closely follows the English legislation. Nova Scotia and Ontario follow that legislation fairly closely, but make many changes in the periods of limitation. Manitoba does not appear to have any special legislation with regard to personal actions, whilst Saskatchewan and Alberta have somewhat complicated the question of what the periods of limitation are, in the case of personal actions, by legislating as to merchants' accounts, bills, notes and contracts, without dealing with actions of tort or specialties and thus raising the question as to whether the

other portions of the Limitations Act, 1623, or of the Civil Procedure Act are applicable to these provinces.

With respect to prescription, it should be noted that British Columbia, Nova Scotia, Ontario and New Brunswick, follow the English law on the subject except with respect to light. A right cannot be acquired to it by prescription, except with respect to Nova Scotia, and there only outside the limits of Halifax or any incorporate town. Manitoba appears not to have adopted expressly the Prescription Act, but forbids the acquisition of a right to light by prescription. In Alberta and Saskatchewan there is an express provision that no right to the access or use of light or any other easement right in gross or *profit à prendre* is to be acquired by prescription.

Owing to the fact that so much of the law of limitation of actions is derived from English Law, it might be convenient in the first place to set out in a very general way the effect of the English Law on the subject, as the statutes are many, involved, and often obscure.

#### TABLE I

##### GENERAL EFFECT OF ENGLISH LEGISLATION

1. The period of limitation is:
  - (a) In the case of a claim to recover money due upon a deed or to enforce a special contract or to recover the personal estate of an intestate, twenty years.
  - (b) In the case of a claim to recover land or money charged on land or rent or legacy, twelve years.
  - (c) In the case of trespass to the person, four years.
  - (d) In the case of slander or statutory penalties or damages, two years.
  - (e) In the case of a claim for neglected public duties, six months.
  - (f) In the case of any other claim, a period of six years.
2. A written acknowledgment or payment by a person in possession of land or liable to a debt or damages for a breach of contract will cause the period of limitation to recommence, provided that, in the case of a simple contract, a promise to pay may be reasonably inferred.
3. An acknowledgment or payment by one co-owner, co-debtor, co-executor or co-administrator, will not prevent the period running in favor of the others, but an acknowledgment by one executor prevents the period running in favor of the estate.

- 4 An acknowledgment or payment to one joint claimant, prevents the period of limitation running against the others where there has been concealed fraud on the part of a defendant or someone through whom he claims, the period does not run against the plaintiff until the fraud has been discovered or might with reasonable diligence have been discovered.
- 5 Except in the case of claims to arrears in rent and interest and to redeem a mortgagee in possession, the period does not begin to run during infancy or insanity.
6. When the right to bring an action to recover land or rent is barred, the title is extinguished, but it is not extinguished in any other case.

Some general questions have to be answered before any proper attempt at drafting legislation on this subject can be made:

- 1 Is a greater benefit to be obtained from following closely the various English statutes, so getting the benefit of the decisions of the courts on vexed questions, or is it better to sacrifice this advantage and endeavour to simplify the law generally, remove anomalies and attempt to embody the effect of the English decisions in the draft?
2. Is there any solid reason at the present time for preserving the distinction made between specialties and simple contracts?
3. Cannot the various periods of limitation be considerably reduced in number? In Canada today there are at least the following periods: twenty years, ten years, six years, five years, four years, two years, one year, six months. Could this number, without any great sacrifice of propriety or any great loss be reduced to ten years, five years and one year?
4. Is there any real reason why the law should continue to be that when the right to take an action for the recovery of land is barred, the title to the land is extinguished, but when the right to take an action to recover a chattel is barred, the title to such chattel is not extinguished?
- 5 Should limitation of action and prescription be dealt with in the same Act?

#### TABLE II.

##### PROVISIONS OF THE MORE IMPORTANT ENGLISH ACTS.

###### *Imperial Limitation Act, 1623.*

21 Jac. 1 C. 16.

- 1 (a) Actions of trespass *quare clausum fregit*;

(b) All actions of trespass, detinue, action *sur trover* and replevin, for taking away of goods and cattle;

(c) All actions of account (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants),

[Note: Under the provisions of the Mercantile Law Amendment Act, 1856, all actions of account or for not accounting and suits for such accounts as concern the trading of merchandise between merchant and merchant, their factors or servants, are to be commenced within six years after the cause of such action or suits.]

(d) All actions on the case, other than slander;

[Note: The Statute extends to all actions upon an unsealed written or parol contract for the recovery of debt or damages (Bac Abr Limitations D 2.4)]

(e) All actions of debt grounded upon any lending or contract without specialty;

[Note: (1) A simple contract debt, though secured by a charge on land, is barred in six years (Barnes v Glenton, [1899] 1 Q B 885)

(2) The Statute extends to all actions upon an unsealed written or parol contract for the recovery of debt or damages (Bac. Abr Limitations D 2.4)

(3) Actions upon specialty must under the terms of the Civil Procedure Act, 1833, be brought within twenty years after the cause of such actions or suits, but not after]

(f) All actions of debt for arrearages of rent;

[Note: The Statute has no application to arrearages of rent reserved by deed]

must be taken within four years next after the cause of such actions or suits, and not after;

(g) All actions of assault, menace, battery, wounding and imprisonment;

must be taken within four years next after the cause of such actions or suit and not after;

(h) Actions upon the case for words or slander;

must be taken within two years next after the words spoken, and not after.

[Note: The Limitation as to slander does not extend to an action for words actionable only in respect of such damages]

2. The Act excepts periods of disability caused by infancy, marriage, lunacy, imprisonment, and absence beyond the seas, when these disabilities occur in plaintiffs, except in the case of "actions upon the case, other than for slander." The savings are extended to defendants by 4 and 5 Anne, C. 16, section 19.

Under the provisions of the Mercantile Law Act, 1856, absence beyond the seas and imprisonment no longer constitute disability

[Notes: (General)

- (1) The Statute extends to defences of set-offs, as well as actions.
- (2) The Statute does not apply to a petition of right
- (3) The Statute does not apply when the Crown seeks to enforce a liability ]

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*The Real Property Limitations Act, 1833*

C. 27.

1. Section 2 provides that no person shall make an entry or distress or bring an action to recover any *land or rent*, but within twenty years next after the time at which the right to make such entry or distress, or bring such action, first accrued to the person through whom he claims

[Note Section 2 was repealed by the Real Property Limitation Act, 1874, but re-enacted by section 1 of that Act, in practically the same language, with the change of twenty years to twelve ]

2. Section 40: No action or suit or other proceeding shall be brought to recover—
  - (a) Any sum of money secured by any mortgage, judgment or lien or otherwise charged upon or payable out of any land or rent, at law or in equity or
  - (b) Any legacy;
 but within twenty years next after a present right to receive the same, etc, etc.

[Note Section 40 was repealed by the Real Property Limitation Act, 1874, but re-enacted by section 8 of that Act in practically the same language, with a change from twenty to twelve years ]

[Note: Under the provisions of the Law of Property Amendment Act, 1860, an action to recover the estate of an intestate must be brought within twenty years ]

3. Section 42 provides that no arrears of *rent* or of *interest* in respect of any sum of money charged upon or payable out of any *land or rent* or in respect of any legacy or any damages in respect of such arrears of rent or interest shall be recovered by any *distress, action or suit*, but within six years or next after an acknowledgment of the same in writing shall have been given

to the person entitled thereto, or his agent, signed by the person by whom the same was payable or his agent.

[Note: The Statute, 3 and 4 William 4th, chapter 27, section 2, does not apply to rent reserved on a demise, and consequently "rent" in Real Property Limitation Act, 1874, section 1, does not apply to rent incident to the reversion under an ordinary lease (Grant v Ellis, 1841, 9 M & W 113)]

Civil Procedure Act, 1833.

C 42.

Section 3 provides that:

- (a) All actions of debt for rent upon an indenture of demise,
- (b) All actions of covenant (not being a covenant to pay in a mortgage deed of lands) or debt upon any bond or other specialty;
- (c) All actions of debt or *scire facias* upon any recognizance; must be sued within *twenty years* after the cause of such action or suit
- (d) All actions of debt upon any award where the submission is not by specialty; or for any fine due in respect of any copyhold estate; or for any escape or for money levied upon any *feri facias*;  
must be sued within six years after the cause of such action or suits.
- (e) All actions for penalties, damages or sums of money given to the party aggrieved by any Statute now or hereafter to be in force;  
must be sued within two years after the cause of such actions or suits.

[Notes (1) Covenant for arrears of rent may be brought within twenty years under the Civil Procedure Act, 1833, c 42, section 3, and is not limited to six years by the Real Property Limitations Act 1833, c 27, section 43 (Paget v Foley, 1836, 2 Bing. N C 679)

(2) A declaration in debt upon a statute is a declaration upon a specialty, and it not the less so because the facts which bring the defendant within the liability are facts *de hors*, that must constantly arise in actions for liabilities arising out of Statutes. An Action upon Statute is an action upon a specialty and is clearly comprehended within the words of that section "debt upon any bond or other specialty" though a bond is the plainest and simplest kind of specialty and a Statute the highest ]



*Real Property Limitation Act, 1874.*

1. Section 1 provides that after the commencement of the Act, no person shall make an entry or distress, or bring an action or suit to recover any land or rent, but within twelve years after the right accrues.

[Note: This section has the effect of reducing the Civil Procedure Act period of twenty years to twelve, as far as rent, other than conventional rent, is concerned, so that an *action* for the recovery of a rent of inheritance must be brought within twelve years.]

2. Section 8 provides that no action or suit shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within twelve years next after the present right to receive the same shall have accrued, etc., etc.

[Notes: (1) Probably "at law or in equity" belong to "action or suit"

(2) The effect of section 1 of the Real Property Limitation Act, 1874, upon section 3 of the Civil Procedure Act, 1833, is to cut down the period within which a covenant to pay a rent charge can be enforced, so that after the expiry of twelve years from the last payment without acknowledgment, the remedy on the personal covenant is gone as well as the remedy against the land on which the money was charged (*Shaw v Crompton*, [1910] 2 K B 370.)

(3) Section 8 of the Real Property Limitation Act, 1874, makes twelve years a bar to any action upon the covenant, since it is an action to recover money charged upon land. In other words, "sum of money secured by any mortgage" means a sum which is secured and not a sum of money so far as it is secured. (*Sutton v. Sutton*, 1882, 22 Chancery Division, 511.)

(4) The period of twenty years for the recovery of the estate of an intestate imposed by the Law of Property Amendment Act, 1860, remains twenty years.]

Some of the questions which are suggested by this table, in addition to those already propounded, are the following:

1. Is it right that a simple contract debt, though secured upon land, must be sued for within six years, whereas if it is charged upon land at the commencement the period is twelve years?
2. Should the Statutes apply to proceedings by and against the Crown in case of personal actions?
3. Should an action on the covenant be permitted to be taken, after distress and foreclosure have been barred?

## TABLE III.

COMPARATIVE TABLE OF THE ENGLISH, NOVA SCOTIA, AND  
ONTARIO ACTS.*Limitations Act, 1623.*

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
1 (a) Actions of trespass <i>quare clausum fregit.</i> 6 years.	2(d) pt. Actions for direct in- juries to real property 6 years	49(1) (g) pt. Action for trespass to to land 6 years.
1 (b) Trespass, <i>detinue</i> , action <i>sur trover, replevin</i> for taking away of goods or cattle 6 years	2(d) pt. Actions for direct injuries to or personal property, actions for the taking away or conver- sion of property, goods, and chattels. 6 years	49(1) (g) pt Trespass to goods or <i>detinue replevin.</i> 6 years

(a) Trover is an action of trespass on the case.

1(c) Actions of account. 6 years	2(2) 6 years	50 6 years
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Both Nova Scotia and Ontario include section 9 of the Mercantile Law Amendment Act, 1856, which extends action to cover merchants' accounts.

1(d) Actions on the case other than slander. 6 years	2(1) (d) pt. Actions for libel, malic- ious prosecution and the arrest, seduction, criminal conversation. Actions for all other causes which would formerly have been brought in the form of action called trespass on the case, except as herein excepted. 6 years.	49(1) (g) pt. Action upon the case, other than slander 6 years
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(a) Note with respect to Nova Scotia definition that there were many actions on the case other than trespass on the case, such as deceit on the case and case in the nature of nuisance. Malicious prosecution is conspiracy on the case; seduction is an action on the case per *quod servitium amisit*

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
1(e) Actions of debt ground- ed upon any lending or contract without spe- cialty. 6 years	2(1) (d) pt All actions grounded upon lending or contract, expressed or implied, without specialty. 6 years	49(1) (g) Simple contract or debt grounded upon any lending or contract without specialty. 6 years.

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
1(f)		49(1) (g)
All actions of debt for arrearages of rent		Debt for arrears of rent.
6 years		6 years

N.B. The Act has no reference to specialties

1(g)	2(1) (a) pt	49(1) (j)
All actions of assault, menace, battery, wounding and imprisonment.	Assault, menace, battery, wounding, imprisonment or	Assault, battery, wounding or imprisonment
4 years.	1 year	4 years

(a) "Menace" appears to be the action referred to by Comyn Battery (D)  
 "So trespass lies, if a man threaten another with his life and members,  
*ita quod ad propria venire non audeat*"

1(b)	2(1) (a) pt	49(1) (i)
Actions upon the case for words or slander.	or slander.	An action upon the case for words
2 years	1 year	2 years

#### *Civil Procedure Act.*

3(a)	2(1) (c) pt	49(1) (a)
Actions of debt for rent upon an indenture of demise	Action for rent upon an indenture of demise	Action for rent upon an indenture of demise
20 years	20 years	20 years

3(b)	2(1) (c) pt	49(1) (b)
Actions of covenant or debt upon any bond or other specialty	Actions upon a bond or other specialty	An action upon a bond or other specialty except upon a covenant contained in an indenture mortgage made on or after the first day of July, 1894.
20 years	20 years	20 years.

Ontario here embodies the effect of *Sutton v Sutton* (*see supra*), but does not cover the case where the covenant is contained in a separate instrument. Here also, the period is twelve years (*see Fearnside v Flint*, 22 C.D., 579), and the principle would seem to apply to other charges on land

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
3(c)		49(1) (c)
Actions of debt or <i>scire facias</i> upon any recognizance.	Actions upon or recognizance	Action upon a recognizance.
20 years	20 years	20 years.

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
3(d)	2(1) (d) pt	49(1) (d) (e) and (f)
All actions of debt upon any award where the submission is not by specialty or for an escape, or for money levied upon any <i>feri facias</i>	All actions upon any award where the submission is not by specialty, or for money levied by execution	(d) An action upon an award where the submission is not by specialty (e) An action for an escape (f) An action for money levied on execution
6 years	6 years	6 years
3(e)	2(1) (b)	49(1) (b)
All actions for penalties, damages or sums of money given to the party aggrieved by any statute now or hereafter to be in force.	Actions for penalties, damages or sums of money given to the party aggrieved by any statute	An action for a penalty, damages or a sum of money given by any statute to the Crown or the party aggrieved
2 years.	2 years	2 years

<i>English Act</i>	<i>Ontario</i>
31 Eliz c 5. s 5	
Actions for any forfeiture upon any statute penal, if forfeiture limited to queen within two years, if limited to queen, and to any other which shall prosecute in that behalf, within one year	An action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same not being the person aggrieved
The Act applies to actions brought by common informer alone (Dyer v Best LR 1 Ex 152), but see doubts in Robinson v Currey, 7 QBD, 465 This point is cleared up in Ontario section	1 year.

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*Real Property Limitations Act, 1833.*

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
s. 40 (re-enacted 1874, s 8)	s 22 Do	22
(a) Sum of money secured by any mortgage, judgment, or lien or otherwise charged upon or payable out of any land or rent, at law or in equity	20 years.	Any sum of money secured by any mortgage or lien or otherwise charged upon or payable out of any land or rent or to recover any legacy, whether it is or is not charged upon land.
(b) Any legacy		10 years.
12 years		NB Judgment omitted
(a) In Sutton v. Sutton <i>supra</i> all the judges appear to have thought that the words "at law or in equity" belong to the words "No action, suit or other proceeding" which appear at the beginning of the section		
(b) "Legacy" means any legacy whether charged upon land or not This is made clear in the Ontario section		

- (c) "Judgment" means a judgment, whether the effect of the judgment is to charge land or not (*see Jay v Johnstone*, (1893) 1 Q.B. 25), though not, of course, a foreign judgment, an action on which is an action on a simple contract
- (d) The Ontario Act 24(2) provides:  
 "(2) Notwithstanding the provisions of subsection (1), a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff, or other officer to whom it is directed, shall remain in force so long as such execution or other process remains in the hands of such sheriff or officer for execution and is kept alive by renewal or otherwise"

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
Sec 42	25	2
Arrears of rent or interest in respect of any sum of money charged upon or payable out of any land or rent or in respect of any legacy	(Includes Dower) 6 years	18 Do
6 years		Adds after "legacy" "whether it is or is not charged upon land" 6 years
		Adds as exception "Action for redemption brought by a mortgagor or any person claiming under him."

- (a) It might be better to change Ontario wording to cover analogous actions.
- (b) "In a foreclosure action the mortgagee can only recover six years' arrears of interest, even if there is a covenant in the mortgage deed to pay interest. The same rule applies to analogous proceedings taken by a mortgagee to recover interest, such as a petition or other proceeding to obtain out of court the proceeds of the sale of the mortgaged property, but not when the proceedings are taken by the mortgagor or debtor and the mortgagee is simply resisting  
 "In a redemption action a mortgagor can only redeem on payment of all arrears of interest. If the proceeds of the sale of mortgaged premises have been paid into court, and the mortgagor or his representatives apply for payment of the surplus after satisfaction of the mortgage debt and interest, such proceedings are analogous to a redemption action, and the application will only be granted on the mortgagor paying all arrears of interest.  
 "If a mortgagee sells the mortgaged property under a power of sale, he is entitled to retain all arrears of interest." (Halsbury. Vol. 19, page 101, par. 184.)
- (c) In *Mason v. Broadment*, 33 Beav. 296, the V.C. said:  
 "The intention of the Legislature, I think, was that if a man

chose to let interest run into arrear for more than six years, and then come to a Court of Justice to recover the interest, he should only be entitled to recover six years' interest; but it does not follow that the Legislature intended that a mortgagor who has lost his legal right, and comes to the Court insisting on his equity to redeem, should be allowed—although he has failed to pay the interest which he ought to have paid for more than six years—to redeem on payment only of six years' interest. There would be no justice in such a construction of the Statute. Is the omission of the mortgagor to pay the interest which he ought to have paid less culpable than the omission of the mortgagee to demand and enforce payment of it?" (1903, 1 Ch page 402).

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*Real Property Limitation Act, 1837*

<i>English Act</i>	<i>Nova Scotia</i>	<i>Ontario</i>
s 1	s 23	s 23
Any person entitled to or claiming under any mortgage may make an entry or bring an action within 12 years after the last payment although more than 12 years has elapsed after the right to make an entry or bring an action.	Ditto: save that the period is 20 years	Ditto: save that the period is 10 years.

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*Real Property Limitation Act, 1874.*

<i>English Act</i>	<i>Do</i>	<i>Do</i>
s 1	20 years.	10 years
Entry or distress or action for land or rent 12 years.		
<i>English Act</i> s 7 (1833, s 28)	<i>Do</i>	<i>Ontario</i> s 20
After the mortgagee has obtained possession or receipt of the profits of any land or receipt of any rent comprised in the mortgage, the mortgagor and any person claiming through him can only bring an action to redeem the mortgage within 12 years next after the time at which the mortgagee obtained such possession and receipt, unless in the meantime an acknowledgment of the title of the mortgagor has been given.	Ditto	save that the period is 10 years

*Law of Property Act, Amendment Act, 1860*

Personal estate or any part of personal estate of an intestate  
20 years

*Crown Suits Act, 1769.**English Act*

Claims to real property and chattels real (other than franchises and liberties) are barred at the expiry of sixty years from the time at which they arose or from the last receipt of rent in respect thereof

*Intestate Estates Act, 1884*

Claims by or against the Crown in respect of personal estate of a deceased person, must be brought within 20 years

## TABLE IV.

COMPARISON OF STATUTORY PROVISIONS RELATING TO  
DISABILITIES.*Limitation Act, 1623, Sec 6.*

## DISABILITIES:

Infancy

Marriage

Lunacy

Imprisonment

Absence beyond seas

Abolished as far as plaintiffs are concerned  
by Mercantile Law Amendment Act, Section 10.

The Limitation Act section does not apply to actions on the case, other than slander

The section only applies to plaintiffs, but by 4 and 5 Anne c 16, s. 19, it is extended to defendants beyond the seas. This last section does cover actions upon the case.

By Mercantile Law Amendment Act, 19 and 20 Victoria c. 97, sections 10 and 11—

Plaintiff not to have further time by reason of one joint debtor being beyond seas, and that the period of limitation is to run as to

joint debtors, though some beyond seas. Judgment against present party not to bar action against another on his return.

This section applies to—

Limitation Act, 1623  
 Queen Anne's Act  
 Real Property Limitation Act, 40, 41, 42  
 The Civil Procedure Act, 3.

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*Real Property Limitations Act, 1833*

Sections 16 and 17.

Infancy	}
Absence beyond seas	
Lunacy	

Right to make entry or distress or action to recover *land or rent* within *twenty years*, and *total of forty*.

Repealed by Sec. 3 of Real Property Limitation Act, 1874.

12 years	30 total
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Section 2 of the Real Property Limitations Act, 1833, limits right to make an entry or distress to twenty years.

Repealed by section 9 of Real Property Limitation Act, 1874.

Sections 16 and 17 repealed by Real Property Limitation Act, 1874, sec. 3, impose disabilities.

Section 40 limits right to recover sum of money secured by mortgage judgment when upon *land or rent* or any legacy, to twenty years. Repealed by section 8 of R.P.L. 1874

There is no provision for disabilities, but express provision that there must be a person capable of giving a discharge practically provides for lunacy and infancy. There is no provision for the disability of persons liable to pay money.

Section 42 limits right to recover arrears of rent or interest in respect of any sum of money charged upon or payable out of any land or rent or in respect of any legacy to six years. There is no provision for disabilities, express or implied. No repeal.



*Civil Procedure Act:*

Sec. 3:  
 Infancy  
 Marriage  
 Lunacy  
 Absence beyond seas. }

Sec. 4: Plaintiffs have six years after removal of disability, and where defendants are absent, have six years from return.

*Real Property Limitation Act, 1874*

Sec 1 substitutes for sec 2 of Act of 1833

Sec. 3: Infancy  
           Coverture  
           Lunacy }

Sec. 4. Plaintiff has no extra time by reason of absence beyond seas.

Sec. 8 substitutes for sec. 40 of Act of 1833

1 This table suggests the following query: Should there be express provision for disabilities in all cases both of the persons who have a right to receive money and of the persons liable to pay the same?

## TABLE V.

COMPARISON OF STATUTORY PROVISIONS RELATING TO  
ACKNOWLEDGMENTS*Limitation Act, 1623.*

There is no provision as to acknowledgments, but the law was that a debt might be taken out—

- (1) by an express unconditional promise to pay;
- (2) by an unconditional acknowledgment of the debt;
- (3) by a promise to pay on the fulfilment of a condition, or on the expiration of a specified time, or the happening of a certain event, on such fulfilment, expiration or happening

In general the acknowledgment must be made to the creditor or his agent.

The acknowledgment can only be of a debt—apparent acknowledgment by one executor good.

Lord Tenterden's Act, 1828—

The acknowledgment must be in writing and signed by party chargeable

Mercantile Law Amendment Act, adds "duly authorized agent."

Civil Procedure Act—

Recognizes acknowledgments in case of specialties.

Qy. Whether acknowledgment can have any effect in other cases comprised in the Act Under the Act, the acknowledgment is to be "by party liable or his agent" but these words are to be read as if they were "the party or parties liable or any of them, or his or their agent." The acknowledgment here not to be made to the person entitled (see *Moodie v Bannister* (1859) 4 Drew, 432).

R P L. Act, 1833, s. 40

R.P.L. Act 1874, s 8.

Acknowledgment by person liable or his agent, to other party or his agent.

R P L. Act, 1833, s. 42.

Acknowledgment given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent.

R P L. Act, 1833, s 2.

R P L. Act, 1874, s. 1

By section 14 of the 1833 Act (not repealed by 1874 Act), the acknowledgment must be by the person in possession, to the person entitled or his agent; an acknowledgment by an agent is no good.

*Part-payments*

Part-payment might be made by duly authorized agent

Part Payment cannot be made to a stranger

Civil Procedure Act—

Payment must be by party liable or his agent, and apparently may be made to the person entitled or his agent.

Sec. 14—Co-contractors or co-debtors not to lose benefit of Statute “by reason only of payment” by any or co-contractor or co-debtor. (Either Jas or C.L.P.)

N.B.—Real Property Act is not mentioned.

R.P.L. Act, 1833, s. 40.

R.P.L. Act, 1874, s. 8.

The Act does not say by whom the payment is to be made, but it must be made either by the debtor himself, or by someone directly or indirectly authorized to act on his behalf, or by someone who as owner of land which is charged with the debt, makes a payment in respect of the debt in order to preserve his interest in the land

R.P.L. 1833, s. 42. (Arrears)

There is no provision as to part-payment

R.P.L. Act, 1833, s. 2.

R.P.L. Act, 1874, s. 1:

*Co-Debtors*

Simple contract debts. H. 59.

A written acknowledgment by one co-contractor does not bind others. (Lord Tenterden’s Act, 1828, s. 1).

Specialty Debts. H. 81.

A written acknowledgment binds others liable whether jointly or successively.

(Read v. Price (1909) 2 K.B. 724).

This by reason of the construction put upon section 5 of the Civil Procedure Act (see above).

Section 14 of the Mercantile Law Amendment Act, 1857, refers to part-payments only, and provides with reference to Limitations Act, 1623, and the Civil Procedure Act, 1863, that no contractor, co-debtor, executor or administrator is to lose benefit of Acts, by reason of part-payment on the part of another.

N.B. That section 14 of Mercantile Law Amendment Act does not apply to R.P.L. Act, 1874, section 8

This table raises several questions: Should there not be in all cases a provision, as by whom and to whom acknowledgments or payments may be made and also a provision that an acknowledgment or part-payment by an agent or to an agent, is to be good? Should not the anomaly that an acknowledgment by one co-contractor in the case of a simple contract-debt does not bind the others, whereas, in the case of a specialty debt it does, be removed?

TABLE V  
COMPARATIVE TABLE OF THE NUMBERS OF THE SECTIONS OF PROVINCIAL STATUTE OF LIMITATION.

Imperial Act	British Columbia	Nova Scotia	Ontario	Manitoba	New Brunswick
31 Eliz. c. 5. AN ACT CONCERNING INFORMERS.					
LIMITATION OF ACTION, 1623.					
S. 3 List of actions barred.*	(pt.) 3	2 pt.	49	....	c. 138 2 and 4
S. 4 Limitation after judgment or outlawry reversed.	6	....	....	....	c. 138 s. 12
S. 5: Plaintiff barred in trespass, <i>quare clausum fregit</i> , where defendant disclaims and offers amends and issue is found for defendant.	7	....	....	....	....
S. 7 Disabilities.	8	3	51	....	c. 138, s. 11
* Alberta and Saskatchewan simply provide that all actions for recovery of merchants' accounts, bills, notes, and all actions grounded upon any lending or other contract are to be commenced within six years.					
4 AND 5 ANNE, c. 16.					
S. 19 Action may be taken against any person on his return from beyond seas.	9	4(1)	52	....	....
THE CROWN SUITS ACT 1769 AND 1861.					
S. 1	49	20	4	....	c. 139, s. 1

TABLE V—Comparative Table of the Numbers of the Sections of Provincial Statute of Limitation—*Continued.*

Imperial Act	British Columbia	Nova Scotia	Ontario	Manitoba	New Brunswick
Lord Tenterden's Act.	STATUTE OF FRAUDS AMENDMENT ACT, 1828.				9 Geo. IV: 14.
S. 1: Acknowledgments to be in writing or part-payment.	12	5(1) (2)	55, 56, 57	....	c. 138, s. 5, 7, 18
	Bar against one contractor not to bar against others.				
S. 2 Repealed by S.L.R. 1890.	....	6	....	....	....
S. 3 Endorsements on notes not be proof of payment.	14	8	58	....	....
S. 4: Limitation Act, 1623, and Lord Tenterden's Act to apply to set-offs.	....	57	59	....	c. 138, s. 9
	REAL PROPERTY LIMITATIONS ACT, 1833.				3 and 4, Wm. IV. c. 27. <sup>45</sup>
S. 1. Definitions.	15	....	....	2	2
S. 2. Recovery of land or rent. Repealed by R.P.L. Act, 1874, s. 9. Provisions contained in R.P.L. Act, 1874, s. 1.	16	9	5	4	3
S. 3: Times of accrual of action.	17	10(a) to (e)	6(1) (2) (3) (ii)	5(a) (b) (c) (g)	4
			(9)	(i)	
S. 4. Remaindermen, where advantage of forfeiture is not taken to have new right when his estate comes into possession.	18	....	6(10)	5(b)	5
S. 5: When estate becomes an estate in possession. Repealed by R.P.L. Act, 1874, s. 9, and provisions contained in s. 2 of that Act.	19	....	6(12)	5(j)	6
			7(1) (2)	6, 7	
S. 6: Administrator.	20	11	8	9	7

S. 7 Accruer of right tenant at will.	21	10(f)	6(7) (8)	5(f)	8
S. 8 Accruer of right of reversion where tenancy from year to year.	22	10(g)	6(6)	5(2) 5(e)	9
S. 9 Accruer of right where rent amounting to 20s., under written lease has been wrongfully received.	23	6(5)	....	5(d)	10
S. 10: Entry not to be possession.	24	12	9	10	11
S. 11 Continual claim not to preserve action.	25	13	10	11	12
S. 12 Possession of one joint tenant, etc., not possession of others.	26	14	12	13	13
S. 13 Possession of relation.	27	15	13	14	....
S. 14. Acknowledgment to be equivalent to possession.	28	16	14	15	14
S. 15 Spent.	....	....	....	....	15
Ss. 16 and 17: Disabilities. Repealed by R.P.L. Act, 1874, s. 9, and provisions contained in ss. 3-5 of that Act.	29, 30	18, 19	40, 41	35, 36	16, 17
S. 18: No future time for succession of disabilities.	31	....	42	37	18
S. 19: Beyond seas.	....	....	....	....	19: U. S. A. and Canada not to be beyond the seas.
S. 20: Where right to estate in possession barred, right of same person to future estates barred.	32	....	7(3)	8	20
S. 21: Barring of tenant in tail bars remaindermen he could have barred.	33	....	29	26	....

TABLE V—Comparative Table of the Numbers of the Sections of Provincial Statute of Limitation—*Continued.*

Imperial Act	British Columbia	Nova Scotia	Ontario	Manitoba	New Brunswick
S. 22 Adverse possession to tenant in tail to run on against remaindermen.	34	....	30	27	....
S. 23 Possession under assurance by tenant in tail, when remainders barred. Repealed by R.P.L. Act, 1874, s. 9, and provisions contained in s. 6 of that Act.	35	....	31	28	....
S. 24 Equitable rights.	36	....	....	29	21
S. 25 Time dates from conveyance by express trustee.	37	27	48	30	22
S. 26. Concealed fraud.	38	28, 29	32, 33	31, 32	23
S. 27. Saving of acquiescence.	39	30	3	33	24
S. 28: Mortgagor. Repealed by R.P.L. Act, 1874, s. 9, and provisions contained in s. 7 of that Act.	40	....	20, 21, 22	20, 21, 22	25
S. 34. Extinction of right at end of period.	41	21	16	17	26
S. 35 Receipt of rent to be receipt of profits.	42	17	15	16	27
S. 39. Descent, cast, etc.	....	....	11	12	....
S. 40. Money charged on land. Repealed by R.P.L. Act, 1874, s. 9, and provisions contained in s. 8 of that Act.	43	22	24	24	29
S. 41 Arrears of dower.	44	24	28	....	31
S. 42. Arrears of rent interest.	45	25	18, 19	18, 19	....

	THE CIVIL PROCEDURE ACT, 1833.				3 and 4, Wm. IV, c. 42.
S. 3 Specialties.	50	2 pt.	49 pt.	....	c. 138 1, 2
S. 4 Disabilities.	51	3 N.S. deals with specialties together with simple contract, etc.	31 Ontario deals with specialties together with simple contract, etc.	....	c. 138, s. 11
S. 5 Acknowledgments in writing or by part payments.	52	7	54	....	....
S. 6. Limitation after judgment or outlawry reversed.	54	....	....	....	c. 138, s. 12

REAL PROPERTY LIMITATION ACT, 1837.

S. 1: Mortgagees may sue within 12 years.	48	23	23	23	30
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19 and 20 Vict. c. 97

THE MERCANTILE LAW AMENDMENT ACT, 1856.

S. 9: Merchants' accounts.	4	2(2)	50	....	....
S. 10: Absence beyond seas and imprisonment not to be a disability under Statute of Limitation, 1623, Queen Anne Act, or 3 and 4 Wm. IV, cc. 27, 42.	46	Under s. 3, absence from province is a disability in a plaintiff.	51 Under Ont. law, absence from province is not a disability in a plaintiff.	....	....
S. 11 Period to run against joint debtors though one or more beyond seas.	10, 47, 55	4(2) (3)	53(1) (2)	....	....
S. 13: Acknowledgments signed by agents under Lord Tenterden's Act to be good.	13	5(1)	54	....	....
S. 14: Part-payments under 1623 Act, 1833, c. 42, not to prevent bar in favour of other contractors.	5, 53	....	56	....	c. 138, s. 6



TABLE V—Comparative Table of the Numbers of the Sections of Provincial Statute of Limitation—*Continued.*

Imperial Act	British Columbia	Nova Scotia	Ontario	Manitoba	New Brunswick
THE LAW OF PROPERTY ACT AMENDMENT, 1860.					
S. 13: Claims to estates of intestates, 20 years.	....	....	....	....	....
THE SUPREME COURT OF JUDICATURE ACT, 1873.					
S. 25: Claims by <i>cestui que</i> trust and express trustee not to be barred.	....	....	....	....	....
REAL PROPERTY LIMITATION ACT, 1874.					
S. 1: Contains provisions of s. 2 of R.P.L. Act, 1833.	16	9	5	4	3
S. 2: Contains provisions of s. 5 of R.P.L. Act, 1833.	19	....	6(12) 7(1) (2)	6, 7 5(j)	6
S.3, s. 4, s. 5: Contain provisions of R.P.L. Act, 1833, ss. 16 and 17.	29, 30	18, 19	40, 41	35, 36	16 and 17
S. 6: Contains provisions of s. 23 of R.P.L. Act, 1833.	35	....	31	28	....
S. 7: Contains provisions of s. 28 of R.P.L. Act, 1833.	40	....	20, 21, 22	20, 21, 22	25
S. 8: Contains provisions of s. 40 of R.P.L. Act, 1833.	43	22	24	24	29
S. 9: Repealing section.	....	....	....	....	....
S. 10: Time for recovering charges not to be merged by express trust.	....	....	25	25	....

THE TRUSTEE ACT, 1888.

S. 8. 26 ..... 47(2) (3) (4) ....

PUBLIC AUTHORITIES PROTECTION ACT, 1893.

S. 1. 11 J.P. Constables, 6 R.S.O. ....  
 months, R.S.N.S., c. 89, s. 13  
 c. 45, s. 3. J.P.  
 R.S.N.S., s. 43, s.  
 11.

PRESCRIPTION ACT, 1832.

S. 1. Profits <i>a prendre</i> .	1	....	34	....	1
S. 2. Easements. Watercourse.	2	31	35	....	2
S. 3. Light.	3	32	37	....	9
	(None)	(Does not apply to Halifax or any incorporated town).	(None)		None save those acquired before April 10, 1875
S. 4: Periods and interruption.	4	33	36	....	3
S. 5. Pleading.	5	....	....	....	4
S. 6. No. From less period.	6	34	38. Does not affect profits <i>a prendre</i> .	....	5
S. 7: Disabilities.	7	35	43	....	6
S. 8. Exclusion of terms of years.	8	36	44	....	7

51

S. 39 of Ontario provides that rights of carrying wires and cables must originate in grant.  
 S. 45 of Ontario makes an exception of rights over land of Crown not duly surveyed and laid out.  
 In both Alberta and Saskatchewan it is provided that no right to the access and use of light or any other easement right in gross or profit *a prendre* shall be acquired by any person by prescription.

## ACQUISITION OF TITLE BY PRESCRIPTION.

Rè: Title by Prescription.

It is thought that it would be well in a Statute of Limitations to deal with the question as to how far land which is part of a registration system can be acquired by adverse possession.

It would appear that out of twenty-two jurisdictions which have a land title system, seven forbid the acquisition of rights by possession, four of these seven being the provinces of Ontario, British Columbia, Manitoba and Saskatchewan, whilst in Manitoba the title of a mortgagee is protected against the owner in the same way as the title of the owner himself and the mortgagee's rights over the land are not affected by mere lapse of time.

In eight jurisdictions the statutes provide expressly for acquisition of title by possession, whilst in seven jurisdictions, two of them being the Province of Alberta and the North-West Territory, there is no express enactment as to the effect of long possession or limitation statutes.

In four jurisdictions there is definite machinery for putting the adverse possessor on the register, whilst in one case only, namely, England, can the inchoate rights of a person in adverse possession be defeated by the registration of a successor to the registered owner against whom a title under the statutes of limitation is being acquired, though it seems probable that in many of the other jurisdictions, the statutory period may begin to run afresh against each successive registered owner from the date of his registration.

It has been suggested that the type of statute which prohibits all acquisition of title by length of possession must eventually prove unworkable, since under such enactments land may remain in perpetuity as the registered property of a person who has long abandoned all claims to it, whilst the type which makes registration possession void against a *bona fide* purchaser from a registered owner, seems to trench more than necessary on the vital principle of guaranteed title. J. E. Hogg, in volume XV of the Journal of the Society of Comparative Legislation, suggests the following as an appropriate section:

1. A title to registered land shall not be acquired by any length of possession.
2. Where a person would but for the preceding sub-section have acquired a title to registered land by length of possession subsequent to first registration and exclusive of any possession prior to first registration, he may apply to be registered as owner of

the land in place of the then registered owner, and the register may be rectified accordingly.

3. No such right to rectification shall arise unless such length of possession has subsisted subsequently to the latest registration of a transaction for value with the land and exclusively of any possession prior to such latest registration.
4. The last preceding sub-section does not apply in any case where no transaction for value has been registered.
5. This section does not apply to land registered with possessory title only.

WALTER S. SCOTT,  
*Commissioner for Alberta.*

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### AN ACT RESPECTING THE LIMITATION OF ACTIONS.

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

#### SHORT TITLE.

1. This Act may be cited as *The Limitation of Action Act*.

#### INTERPRETATION.

2. In this Act—
  - (a) "Action" shall include an information on behalf of the Crown and any civil proceedings;
  - (b) "Assurance" shall mean any transfer, deed or instrument, other than a will, by which land may be conveyed or transferred;
  - (c) "Heirs" shall include the persons entitled beneficially to the real estate of a deceased intestate;
  - (d) "Land" shall include messuages and all other hereditaments, whether corporeal or incorporeal, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any freehold estate, any possibility, right or title of entry or action, and any other interest now or formerly capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency; and

- (e) "Rent" shall include all annuities and periodical sums of money charged upon or payable out of land, but when used in the expression "land or rent" shall not mean a rent service or rent reserved upon a lease for years

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PART I.

REAL PROPERTY.

3. No person shall make an entry or distress, or bring an action to recover or obtain possession of any land or rent, but within ten years next after the time at which the right to make such entry or distress or to bring such action, first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing the same

4.—(1) Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at the time of such last dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.

(2) Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, such right shall be deemed to have first accrued at the time of such death.

(3) Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance, to him or some person through whom he claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such assurance has been in such possession or receipt, such right shall be deemed to have first accrued at the time at which the person so claiming, or the person through whom he claims, became entitled to such possession or receipt by virtue of such assurance

(4) In the case of land granted by the Crown, of which the grantee, his successors in title or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some part thereof, and of which some other person not claiming to hold under such grantee has been in possession, such possession having been taken while the land was in a state of nature, then, unless it is shown that such grantee or person claiming under him while entitled to the land had knowledge of the same being in the actual possession of such other person, the lapse of ten years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land, but the right to bring an action shall be deemed to have accrued at the time that such knowledge was obtained; but no such action shall be brought or entry made after twenty years from the time such possession was taken.

(5) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum, or value of \$4 or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled

(6) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tendency was received, whichever last happens.

(7) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right

of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time and if the tenant was then in possession such tenancy shall be deemed to have been determined.

(8) No mortgagor or *cestui que trust* shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of the next preceding subsection.

(9) Where the person claiming such land or rent, or the person through he claims, has become entitled by reason of any forfeiture or breach of condition, such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken.

(10) Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same became an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

(11) Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, including therein an executory devise and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

(12) A right to make an entry or distress or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which the same became an estate or interest in possession, by the determination of any estates or estate in respect of which such land has been held or the profits thereof or such rent have or has been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, has, at any time previously to the creation of the estate or estates which have been determined, been in the possession or receipt of the profits of such land, or in receipt of such rent.

5.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of such land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled to possession has become vested in possession, whichever of those two periods is the longer.

(2) If the right of any such person to make such entry or distress, or to bring any such action, has been barred, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any instrument, will or settlement executed or taking effect after the time when the right to make an entry or distress or to bring an action for the recovery of such land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any such entry or distress, or bring any such action, to recover such land or rent.

(3) Where the right of any person to make an entry or distress, or to bring an action to recover any land, or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period which is applicable in such case, and such person has, at any time during such period, been entitled to any other estate, right, interest or possibility, in reversion, remainder, or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or by any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession.

6. For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

7.—(1) No person shall be deemed to have been in possession of any land, within the meaning of this Act, merely by reason of having made an entry thereon.



(2) No continual or other claim upon or near any land shall preserve any right of making an entry or distress or bringing an action.

8. Where any one or more of several persons entitled to any land or rent as joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them.

9. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or his agent, signed by, the person in possession or in receipt of the profits of such land, or in the receipt of such rent, such possession or receipt of or by the person by whom such acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time, at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

10. The receipt of the rent payable by any lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act.

11.—(1) At the determination of the period limited by this Act, to any person for making an entry or distress, or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress or action respectively might have been made or brought within such period, shall be extinguished.

(2) Subject to the rights of the Crown and of lessors, any person who, or whose predecessors in title has or have taken possession of such land or rent claiming to hold it as his or their own, and has or have held it for a period of ten years continuously, shall acquire the interest in such land or rent of all persons whose title is extinguished under the provisions of this section, except in so far as he is an express trustee for any such person.

12. Notwithstanding any other provision of this Act, no right to the access or use of light, or to any easement, right in gross or profit *a prendre* shall be acquired by any person by prescription or upon the theory of a lost grant, and it shall be deemed that no such right has heretofore been acquired by custom, prescription or a lost grant.

13. Nothing in the foregoing sections shall apply to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any allowance for roads, heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or any municipal corporation or other public body, or to any lands vested in any municipal corporation by virtue of tax enforcement or tax recovery proceedings; but nothing in this section contained shall be deemed to affect or prejudice any right, title or interest heretofore acquired by any person

*Arrears of Rent and Interest.*

14.—(1) No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action, but within six years next after the same respectively has become due, or next after any acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent.

(2) This section shall not apply to an action for redemption brought by a mortgagor or by any person claiming under him.

15. Where any prior mortgagee or other encumbrancer has been in possession of any land, or in receipt of the profits thereof, within one year next before an action is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt, although such time may have exceeded such term of six years

*Mortgages and Charges on Land.*

16. Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his

mortgage, the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage, but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or to some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought, but within ten years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

17. Where there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, such acknowledgment, if given to any such mortgagors or persons, or his or their agents, shall be as effectual as if the same had been given to all such mortgagors or persons.

18. Where there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the person or persons so signing, and the person or persons claiming any part of the mortgage money or land or rent by, from or under him, or them, and any person or persons claiming any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons as have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage.

19. Any person entitled to or claiming under a mortgage may make an entry or bring an action to recover such land, at any time within ten years next after the last payment of any part of the principal money or interest secured by such mortgage, although more

than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued.

20.—(1) No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of such land or rent, or to recover any legacy, whether it is or is not charged upon land, but within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom the same is payable, or his agent, has been given to the person entitled thereto or his agent and in such case no action shall be brought but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was made or given.

(2) A charge created by the receipt of a copy of an execution or other writ affecting land by a Registrar of Land Titles shall be enforceable only so long as the judgment or order upon which such execution or other writ is enforceable and so long as such execution or other writ is kept alive by renewal or otherwise.

21. No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable or so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

#### *Concealed Fraud.*

22. In every case of a concealed fraud of or in some way imputable to the person setting up this Part as a defence, or of some other person through whom such first mentioned person claims, the right of any person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was or, with reasonable diligence might have been first known or discovered.

23. Nothing in the next preceding section shall enable any owner of land or rent to bring an action for the recovery of such land or rent, or for setting aside any conveyance thereof, on account of fraud

against any purchaser in good faith for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know, and had no reason to believe, that any such fraud had been committed.

*Disabilities and Exceptions.*

*In Cases of Land or Rent.*

24. If at any time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under any of the disabilities hereinafter mentioned, that is to say: infancy, idiocy, lunacy or unsoundness of mind, such person, or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover such land or rent at any time within five years next after the time at which the person to whom such right first accrued ceased to be under any such disability, or died, whichever of those two events first happened.

25. No entry, distress or action, shall be made or brought by any person who, at the time at which his right to make any entry or distress, or to bring an action, to recover any land or rent first accrued, was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which such right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such twenty years, or although during the term of five years from the time at which he ceased to be under any such disability, or died may not have expired.

26. Where any person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person.

## PART II.

## TRUSTS AND TRUSTEES.

27. This part shall apply to a trust created by an instrument or an Act of this Legislature heretofore or hereafter executed or passed.

28.—(1) In this section "trustee" shall include an executor, an administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, and shall also include a joint trustee.

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:

(a) all rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee;

(b) if the action is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this section had been pleaded.

29.—(1) Where any land or rent is vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring an action against the trustee or any person claiming through him to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and

not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

(2) Subject to the provisions of the next preceding section no claim of a *cestui que trust*, against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

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### PART III.

#### PERSONAL ACTIONS.

30. The following actions shall be commenced within but not after the time respectively hereinafter mentioned:

- (a) An action for rent upon an indenture of demise;
- (b) An action upon a bond or other specialty;
- (c) An action upon a recognizance—  
within twenty years after the cause of action arose.
- (d) An action on a judgment or order for the payment of money within ten years from the date of the judgment or order;
- (e) An action for injury to the person whether arising from an unlawful act or from negligence or founded upon false imprisonment or malicious prosecution or otherwise howsoever, within two years after the cause of action arose;
- (f) An action grounded upon accident, mistake, misrepresentation, fraud or other equitable ground of relief within three years from the discovery of the ground of action, and in no case but within six years after the cause of action arose except in the case of misrepresentation or fraud concealed by the wrongdoer and then within one year after the discovery of such concealed misrepresentation or fraud, or three years from the discovery of the ground of action, whichever is the longer period;
- (g) An action of defamation, whether libel or slander, within one year of the publication of the libel or the speaking of the slanderous words, or where special damages are alleged, within one year after the happening of such damage;
- (b) An action for a penalty, damages or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of action arose;

- (i) An action for a penalty imposed by any statute brought by any informer suing for himself alone or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose;
- (j) Any other action within six years after the cause of action arose.

*Alternatives for Section 30—*

*No. 1—*

The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

*Penal Actions.*

- (a) An action for a penalty imposed by any statute brought for any informer suing for himself alone or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.
- (b) An action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, or partly to one and partly to the other, within two years after the cause of action arose.

*Defamation.*

- (c) An action of defamation, whether libel or slander, within one year of the publication of the libel or the speaking of the slanderous words, or where special damage is alleged, within one year of the happening of such damage.

*Wrongs to the Person*

- (d) An action for assault, battery, wounding or other injury to the person, whether arising from an unlawful act, or from negligence, or for false imprisonment, or for malicious prosecution, within two years after the cause of action arose.

*Injuries, etc., to Property.*

- (e) An action for injuries to property, real or personal, whether arising from an unlawful act, or from negligence, or for conversion, or detention of personal property, within four years after the cause of action arose.



*Contracts.*

- (f) An action for the recovery of money, whether as a debt, damages or otherwise, on a recognizance, bond, covenant or other specialty, or on a simple contract, whether express or implied, or for any money demand or for an account, within six years after the cause of action arose.

*Equitable Remedies.*

- (g) An action grounded upon accident, mistake, misrepresentation, fraud or other equitable ground of relief, within three years from the discovery of the ground of action, and in no case but within six years after the cause of action arose, except in the case of misrepresentation or fraud concealed by the wrongdoer, and then within one year after the discovery of such concealed misrepresentation or fraud.

*Judgments.*

- (b) An action on a judgment or order for the payment of money, within ten years after the cause of action arose

*Other Actions.*

- (i) Any other action, within six years after the cause of action arose.

No. 2—

(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:

- (a) An action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.
- (b) An action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of the action arose.
- (c) An action upon the case for words, within two years after the words spoken.
- (d) An action for assault, battery, wounding or imprisonment, and any action in the nature of an action for trespass to the person within four years after the cause of action arose.

(e) Any action in the nature of an action of trespass *quare clausum fregit*, trespass *de bonis asportatis*, *detinue*, *trover*, *replevin*, case, account or debt (whether grounded on simple contract or specialty), including debt in an award whether the submission is by specialty or otherwise, debt on recognizance, debt for an escape, or debt for money levied on a writ of *feri facias*; any action for the recovery of a legacy for a share of the estate of a deceased person and any other personal action for the commencement of which no special period is prescribed by this Act, within six years after the cause of action arose.

(2) Nothing in this section shall extend to any action where the time for bringing the action is by any statute specially limited.

31. A complaint or information under any statute of the Province shall be laid within and not after six months after the cause of complaint has arisen, or the offence has been committed.

32. A judgment or order for the payment of money shall not be enforced but within ten years of the date thereof.

33. Nothing in this Act shall extend to any action, complaint or information where the time for bringing the action or laying the complaint or information is by statute specially limited.

34. In the case of an action of account, or for not accounting, or for such accounts as concerns the trade of merchandise between merchant and merchant, their factors and servants, no claim in respect of a matter which arose more than six years before the commencement of the action, shall be enforceable by action by reason only of some other matter or claim comprised in the same account, having arisen within six years next before the commencement of the action.

35. Where a person entitled to bring any action at the time the action accrues, is an infant, idiot, lunatic or of unsound mind, the period within which such action should be brought shall be reckoned from the date when such person became of full age or of sound mind.

36. Whenever—

(a) any person who is or would have been but for the effluxion of time liable to an action for debt, or his duly authorized agent, promises his creditor or the agent of the said creditor in writing to pay such debt; or

- (b) a written acknowledgment of such debt is given by the said person or his duly authorized agent to his creditor or the agent of the said creditor, and a promise to pay the amount remaining unpaid can be reasonably inferred from such acknowledgment; or
- (c) a part payment is made on account of any principal or interest to a creditor or his agent by a debtor or his agent acting within the scope of his authority, and a promise to pay the amount remaining unpaid can be reasonably inferred from such part-payment—

then such promise or inferred promise shall constitute a new cause of action arising at the date of the promise, acknowledgment or part-payment upon which action may thereafter be commenced.

*Suggested addition to Section 36—*

(2) No promise to pay shall be inferred from a part-payment of a debt other than a promise to pay so much of the said debt as is not at the date of the said part-payment barred by the operation of this Act.

(3) Whenever an obligation or liability has, under the provisions of this Act, become unenforceable by way of a personal action, such obligation or liability shall thereupon become completely extinguished and the creditor shall have no right to appropriate any moneys on account thereof, but nevertheless he may enforce any security for such obligation or liability against any property, real or personal, comprised in such security.

37. Where there are two or more joint debtors or joint contractors, or joint obligors, or covenantors, or executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor, or covenantor, or executor or administrator shall lose the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed, or by reason of any payment of any principal or interest made, by any other or others of them.

38. In actions commenced against two or more such joint debtors, joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, or executors or administrators is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given to the plaintiff as to

the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff.

39. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act.

40. This Part shall apply to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off or counter-claim on the part of any defendant

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#### PART IV.

##### MISCELLANEOUS.

41. The provisions of this Act shall apply to all causes of action whether the same arose before or after the coming into force of this Act, but no action shall be barred merely by its operation until the expiry of six months from its coming into force:

Provided that all actions that would have been barred by effluxion of time during such six months under the provisions of the law existing immediately prior to the coming into force of this Act, shall be barred as if such law were still existing.

42. Nothing in this Act shall interfere with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act.

43. In calculating the time within which an action or other proceeding must be commenced as fixed by this Act or any other statute, the time during which such action or proceeding was barred by the provisions of shall be excluded from such calculation.

**APPENDIX D.****REPORT ON THE WILLS ACT.****MEMORANDUM DEALING WITH THE PROBLEM OF UNIFORMITY IN THE LAWS GOVERNING WILLS.**

1. This problem has been before the Conference of Commissioners on Uniformity of Legislation in Canada since the second day of September, 1918, and it has been the subject of extensive study and consideration by commissioners representing most of the Canadian provinces and by the Commission as a whole. It has been specifically referred in turn to the commissioners of Alberta, Prince Edward Island, Ontario and Nova Scotia.

2. The first draft Act was prepared by the Alberta commissioners and it was presented to the Conference in 1922 (Proceedings, 1922, pp 18, 19, 62).

3. This draft was referred back to the Alberta commissioners and it was reprinted in the 1923 proceedings. (Proceedings, 1923, pp. 9, 14, 15, 45).

4. At the 1924 meeting a memorandum prepared by the Alberta commissioners was presented to the Conference, and the whole matter was referred to the commissioners from Nova Scotia together with a letter addressed to the Attorney-General of Manitoba and the question raised by that letter (Proceedings 1924, pp. 15, 64). The letter will be found printed in the 1925 Proceedings at page 57.

5. At the 1925 meeting the original draft prepared by the Alberta commissioners, together with their memorandum and the memorandum prepared by the Nova Scotia commissioners, were considered and discussed, and the draft was revised, and the whole matter was referred back to the Nova Scotia commissioners with instructions to prepare a new draft based upon the revision made by the Conference. (Proceedings, 1925, pp. 14, 15, 53).

6. At the 1926 meeting the revised draft of a Uniform Wills Act was considered, together with informal memoranda presented by the commissioners from Alberta and Nova Scotia. This revised draft

and these memoranda are not printed in the proceedings. The draft was considered in detail and revised, and it will be found in its final form at page 32 of the 1926 Proceedings. The Conference at the 1926 meeting was of the opinion that the time was not ripe for the submission to the various legislatures of a new Wills Act, and 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 Act 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". (See Proceedings, 1926, pp. 12, 13, 14, 18, 24 and 32).

The object of these instructions was that a memorandum should be prepared exhibiting in detail specific legislative problems relating to Wills that require consideration by our provincial legislatures. The Conference was of the opinion that while the subject of Wills generally should not at this stage be submitted, there were certain specific problems that did require legislative action.

7. The following specific problems should be submitted for the consideration of our provincial governments:—

(a) Holograph wills The Commissioners were divided as to the questions of policy involved, but they were of the opinion that they should be considered by our legislatures. Holograph wills have already been adopted by Alberta and Manitoba. Reference may be made to the Alberta Wills Act, 1927, c. 21, s. 5 (V), and to the Manitoba Wills Act, R.S. Man. 1913, c. 204, s. 10.

A provision for holograph wills may be made in two ways,— First, it may be enacted as an independent substantive statute enabling the making of such wills and applying to such wills *mutatis mutandis* the provisions of the general Wills Act. Second, it may be incorporated in the general Wills Act as an integral part of the Act. In such a case it is necessary that other sections of the Act should be redrafted so as to co-ordinate with the provision enabling holograph wills. An examination of the Alberta Act, 1927, c. 21, s. 5 (B), indicates the way in which such a provision may be incorporated. Sections 12 and 17 of the same Act illustrate the necessity for redrafting related provisions.

(b) The statutory provisions dealing with the avoidance of lapse in gifts to children or other issue of the testator require consideration by the provincial governments.

B. C. R. S. 1911, c. 241, s. 30. Man. R. S. 1913, c. 204, s. 31. N. B. R. S. N. S. R. S. 1923, c. 146, s. 32. Ont. R. S. 1914, c. 120, s. 37. Sask. R. S. 1920, c. 74, s. 35. P. E. 1.

These sections which are based on the English Wills Act—7, Will. IV & 1 Vict. c. 26, s—present two problems. First, the section is designed to prevent lapse in gifts to children of the testator. In the general law when a gift is made and the donee dies before the testator, the gift fails or lapses. When a gift is made by a testator to named individuals there is an absolute failure of the gift when the individuals predecease the testator. On the other hand when the gift is made to a class, there is no actual lapse of the gift, but the share of a member who predeceases the testator enures to the benefit of the other members of the class. These sections prevent a lapse where the donees are children named as individuals. On the other hand when a testator makes a gift to his children as a class, the common law applies and the shares of children who predecease the testator do not go to their issue but enure to the benefit of the surviving children. This rule seems to disappoint what would ordinarily be the desire of a testator, and it has been severely criticized by our Courts. See *Re Guthrie*, 56 O.L.R. Judgment of Smith, J.A., at p. 195. (Proceedings, 1925, p. 56).

This result can be presented by redrafting the sections as in s. 32 of the draft Act revised. See Proceedings, 1926, p. 38. See also the provisions of the Alberta Act, 1927, c. 21, s. 30.

The second problem is indicated by the letter addressed to the Attorney-General of Manitoba (Proceedings, 1925, p. 57). The general intention of a testator in making gifts to children or their issue would be to benefit his own stock. The existing legislation as cited above makes the gift that is saved from lapse by the provisions of the statute go into the estate of the deceased child. It may thus be given over to a stranger or swallowed up by claims of creditors. The suggestion made is that such gifts should go as if the deceased child had died intestate, and without debts immediately after the death of the testator. This would carry out the general intention to benefit issue. This was covered in the draft Act. See the draft Section 32, Proceedings, 1926, p. 38, and also Section 30 of the Alberta Act, 1927, c. 21.

JOHN E. READ,

On behalf of the Nova Scotia Commissioners.

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF  
LEGISLATION IN CANADA.

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