1928

PROCEEDINGS

OF THE

ELEVENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

REGINA

23RD, 24TH, 25TH, 27TH AND 28TH AUGUST, 1928

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE

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

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

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

Treasurer .. . .R Murray Fisher, Parliament Buildings, Winnipeg, Manitoba.

Secretary .. . ...John D. Falconbridge, K C., Osgoode Hall, Toronto 2, Ontario.

Local Secretaries.

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

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

British Columbia .. ..Avard V. Pineo, Parliament Buildings, Victoria.

Manitoba.....R. Murray Fisher, Parliament Buildings, Winnipeg.

New Brunswick . .....Cyrus F. Inches, K.C , St. John.

Nova Scotia .. ..Frederick Mathers, K.C., Parliament Buildings, Halifax.

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

Prince Edward Island . W. E. Bentley, K.C., Charlottetown.

Quebec . ...Hon. Ed. Fabre Surveyer, Judges' Chambers, Superior Court, Montreal.

Saskatchewan .. . .Robert W. Shannon, K.C., Parliament Buildings, Regina.

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

Alberta:

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

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

British Columbia:

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

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

HENRY G. LAWSON, 918 Government Street, Victoria.

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

Manitoba:

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

HON. RICHARD W. CRAIG, K.C., Standard Bank Building, Winnipeg.

R. MURRAY FISHER, Legislative Counsel, Parliament Buildings, Winnipeg.

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

New Brunswick:

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

CYRUS F. INCHES, K C, St. John

E. RENÉ RICHARD, Sackville.

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

Prince Edward Island:

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

Quebec:

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

Saskatchewan:

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

MEMBERS EX OFFICIO OF THE CONFERENCE:

Attorney-General of Alberta: Hon. John F. Lymburn, K.C.
Attorney-General of British Columbia: Hon. R. H. Pooley, K.C.
Attorney-General of Manitoba: Hon. W. J. Major, K.C.
Attorney-General of New Brunswick: Hon. J. B. M. Baxter, K.C.
Attorney-General of Nova Scotia: Hon. W. H. Hall, K.C.
Attorney-General of Ontario: Hon. W. H. Price, K.C.
Attorney-General of Prince Edward Island: Hon. A. C. Saunders, K.C.
Attorney-General of Quebec: Hon. L. A. Taschereau, K.C.
Attorney-General of Saskatchewan: Hon T. C Davis, K.C.

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.
1928. August 23-25, 27-28, Regina.

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.

In 1928 most of the time of the Conference was devoted to the discussion of the draft Bills of Sale Act and the draft Assignment of Book Debts Act, and both of these Acts were finally revised and approved.

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 Alberta (1928), 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 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 (1925) 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 Alberta (1928), 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: adopted in Alberta (1928).

1928. Bills of Sale Act; Assignment of Book Debts Act

J. D. F.

PROCEEDINGS.

PROCEEDINGS OF THE ELEVENTH 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 sessions of the Conference:

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

British Columbia:
MESSRS. ELLIS AND LAWSON.

Manitoba:
HON. W. J. MAJOR, K.C., Attorney-General of Manitoba, and MESSRS. PITBLADO, CRAIG AND FISHER.

New Brunswick:
MESSRS. JONES AND RICHARD.

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

Saskatchewan:
HON. T. C DAVIS, K C., Attorney-General of Saskatchewan, and MESSRS. SHANNON AND THOM.

FIRST DAY.

Thursday, 23rd August, 1928.

The Conference assembled at 11.30 a.m. at the Court House, Regina, Saskatchewan, Mr. Pitblado, the President, in the chair.

The Attorney-General of Saskatchewan welcomed the commissioners to Regina and expressed his interest in the work of the Conference.

The President congratulated the commissioners on the good attendance. He noted with regret the absence of the Treasurer of the Conference, Mr. Cottingham having ceased to be a member of the Conference.

Sir James Aikins, K.C., Honorary President of the Conference, read an address, for which the Conference expressed its thanks 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 Secretary laid before the Conference the correspondence which the President and he had had with Mr. Lewis Duncan and Mr. J. C. McRuer on the subject of a draft Sales on Consignment Act. It appeared that a bill prepared by Mr. Duncan, after an investigation made by him as commissioner under the Combines Investigation Act had been passed and brought into force in British Columbia, and passed in Saskatchewan but not brought into force; and that another bill had been prepared by Mr. McRuer, under the instructions of the Canadian Horticultural Council. After discussion, the Conference approved of the position taken by the President, namely, that the object of the Conference is primarily not to initiate new legislation, but to draft uniform Acts and thus facilitate the bringing about the uniformity of provincial legislation upon subjects upon which the provinces have already legislated or desire to legislate. In the present case the Conference was of opinion that it ought not to take any action until requested to do so by a substantial number of the provincial governments; but it was resolved that in the event of three provincial governments expressing a desire that the Conference should undertake the drafting of a uniform Sales on Consignment Act, the President should be authorized to appoint a committee to draft an Act and report at the next meeting of the Conference.

The Conference adjourned at 1 p.m. and reassembled at 2 30 p.m.

The President brought before the Conference the question of the employment of a paid officer to prepare memoranda of case-law and other material for the Conference, to correspond with commissioners in the interval between the annual meetings, etc., and suggested the appointment of a committee to report upon this matter and upon the nomination of officers.

At the request of the Conference the President appointed a committee, as follows: Sir James Aikins, the Attorneys-General of Alberta, Manitoba and Saskatchewan, and Messrs. Craig (convener), Pitblado, Jones, Ellis, Thom and King.

Mr. Fisher, in the absence of the Treasurer, presented the Treasurer's report, which was referred to Messrs. Lawson and Rogers for audit and report.

Mr. Jones was appointed as representative to make a statement on the work of the Conference before the Canadian Bar Association.

The Conference decided to discuss the draft Bills of Sale Act as the next order of business.

Mr. Harris, acting Secretary for Saskatchewan of the Retail Merchants' Association, presented a memorandum and explained the views of the association with regard to mortgages of growing crops and other matters.

The report of the committee on the Bills of Sale Act was then read by Mr. Falconbridge, and the Conference proceeded to discuss the draft Act section by section.

(*Appendix B.*)

At 6 p.m. the Conference adjourned.

SECOND DAY.

Friday, 24th August, 1928.

At 9 30 a.m. the Conference reassembled, and resumed the discussion of the Bills of Sale Act.

(*Appendix B*)

The Conference adjourned at 1 p.m., and reassembled at 2.30 p.m., and resumed the discussion of the Bills of Sale Act.

The Conference adjourned at 4.30 p m., and reassembled at 9 p.m. and resumed the discussion of the Bills of Sale Act.

At 11 p.m the Conference adjourned

THIRD DAY.

Saturday, 25th August, 1928

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

(*Appendix B.*)

The Conference adjourned at 1 p.m., and reassembled at 2.45 p.m. and resumed the discussion of the Bills of Sale Act.

It was decided that the question of mortgages of growing crops, and the question of the registration of debentures of companies should not be dealt with in the draft uniform Act, but should be left to the legislatures of the several provinces.

At 5.30 p.m. the Conference completed its discussion of the Bills of Sale Act, subject to the consideration of redrafts of certain sections to be submitted later.

It was decided then to take as the next order of business the draft Assignment of Book Debts Act. Mr. Fisher read the report of the committee, and the Conference began the discussion of the draft Act, section by section.

(*Appendix C.*)

At 6.30 p m. the Conference adjourned.

FOURTH DAY.

Monday, 27th August, 1928.

The Conference reassembled at 9.45 a.m.

The auditors' report was received and adopted as follows:

REPORT OF TREASURER FOR THE YEAR ENDING JULY 31, 1928.

1927				
Aug.	1	Balance on deposit	$1,491.12	
Sept.	7	Miss Livingstone, Toronto, clerical assistance to Secretary		$61.80
Sept.	7	J. D. Falconbridge, secretarial expenses		10.00
Oct	6	Grant—Ontario	200.00	

Oct. 31	Interest	22.00	
Nov. 3	Stamps and inking pad		5.00
Dec. 27	Carswell Co. (printing proceedings)		202.45
1928			
	Exchange		.25
Mar. 18	Carswell Co. (Bill of Sale draft)		78.28
Apr. 10	Grant—Saskatchewan	200 00	
Apr. 30	Interest	22.11	
June 18	Carswell Co. (Proceedings in C.B.A—Proceedings 1927)		274.39
	Exchange		.70
	Grant—Manitoba	200 00	
	Balance on deposit		1,502.36
		$2,135.23	$2,135.23

Respectfully submitted,

W. R. COTTINGHAM, Treasurer.

Audited and found correct,

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

August 27th, 1928

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.

In the absence of any commissioner from Nova Scotia, Mr. Scott presented the report on the Wills Act, together with a supplementary draft of his own.

(*Appendix D.*)

It was resolved that the Conference should proceed with the completion of a draft Wills Act, and that the subject should be referred to the commissioners for British Columbia, with instruc-

tions to revise the 1926 draft in the light of the 1927 proceedings, and of the reports submitted in 1928.

Mr. Lawson read the report on Defences to Actions on Foreign Judgments.

(*Appendix E.*)

The subject was referred to the Alberta commissioners for further consideration and report.

Mr. Shannon read the report on the Trustee Act.

(*Appendix F.*)

The subject was referred again to the Saskatchewan commissioners, with instructions to procure, if possible, for the use of the Conference, sufficient copies of the reports of the Committee on Comparative Provincial Legislation and Law Reform, as published in the Canadian Bar Association Proceedings for the years 1926 and 1927, in order that the draft Act prepared by that committee might be discussed by the Conference without incurring the expense of reprinting these reports.

The Conference then resumed the discussion of the Assignment of Book Debts Act.

(*Appendix C*)

The discussion of the Assignment of Book Debts Act was completed, subject to the consideration of redrafts of certain sections to be submitted later.

Mr. Scott presented the draft Limitations Act, prepared by the Alberta commissioners.

(*Appendix G.*)

The subject was referred again to the Alberta commissioners, and the commissioners from the other provinces were requested, within six months, to communicate with the Alberta commissioners suggestions as to any objections in principle to, or any alterations of or additions to, the draft Act, and, so far as practicable, to send copies of their suggestions to the other commissioners.

Mr. Jones read a draft section of an Act respecting Proof of Statutes, etc.

(*Appendix H.*)

After discussion, the subject was referred again to the New Brunswick commissioners, with a similar request to the other commissioners to communicate suggestions, as in the case of the Limitations Act.

The Conference adjourned at 1 p.m., and reassembled at 2.30 p m.

The President submitted some correspondence which he had had on the subject of the Bulk Sales Act with the Canadian Manufacturers' Association, the Shoe Manufacturers' Association and the Canadian Credit Men's Association, as well as a memorandum prepared by the Saskatchewan commissioners.

It was ordered that these documents should not be reprinted in the proceedings, but that the subject should be referred to the commissioners for Manitoba in order that they might consult with the attorneys-general of the provinces and with interested parties, and report at the next meeting on the proposed amendments.

The President submitted a letter received by him from Mr. W. L. Scott, K.C., honorary counsel for the Canadian Council on Child Welfare, enclosing a draft Act for the Reciprocal Enforcement of Maintenance Orders. The President was authorized to reply that if the Attorneys-General of Ontario and Quebec should approve of the principle of the proposed legislation, he would appoint a committee of the Conference to consider Mr. Scott's draft and report to the Conference next year.

Mr. Falconbridge submitted redrafts of certain sections of the Bills of Sale Act, which were discussed clause by clause, and adopted as amended.

(*Appendix B.*)

The Conference adjourned at 6.30 p.m., and reassembled at 8.45 p m , and resumed the discussion of the Bills of Sale Act.

Mr. Fisher submitted a redraft of certain clauses of the Assignment of Book Debts Act, which were adopted as amended.

(*Appendix C.*)

At 11.20 p.m. the Conference adjourned.

FIFTH DAY.

Tuesday, 28th August, 1928.

The Conference reassembled at 9 a.m.

The Ontario commissioners were instructed to have the Bills of Sale Act reprinted as revised, and to submit it in galley proof to each provincial board of commissioners so as to give them an opportunity of communicating suggestions as to form.

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 Bills of Sale and Chattel Mortgages," as revised at the present (1928) 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.

(*Appendix B.*)

The Manitoba commissioners were instructed to have the Assignment of Book Debts Act reprinted as revised, and to submit it in galley proof to each provincial board of commissioners, so as to give them an opportunity of communicating suggestions as to form.

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 Assignments of Book Debts," as revised at the present (1928) 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.

(*Appendix C.*)

Mr. King read a report on the Contributory Negligence Act, which was received and adopted.

(*Appendix I.*)

It was resolved that the subject of the Companies Act (Conference proceedings, 1925, p. 11; Canadian Bar Association Year Book, 1925, p. 349) should stand for future consideration.

It was resolved that the next meeting of the Conference should begin five days (exclusive of Sunday) before the next meeting of the Canadian Bar Association and at the same place as the Association.

The commissioners from each province were instructed to direct the attention of the Attorney-General to the various Acts prepared

by the Conference, and to take up with him the question of their enactment.

The Conference expressed its pleasure at the presence of several attorneys-general at the present annual meeting, and, in order to express the Conference's sense of the desirability of having the attorneys-general attending in person the meetings of the Conference, the Constitution of the Conference was amended so as to make the attorney-general of each province of Canada *ex officio* a member of the Conference.

Mr. Shannon was requested to write an article, for publication in the Canadian Bar Review, on the work of the Conference.

Mr. Craig, on behalf of the committee appointed by the President on the first day of the meeting, submitted the following report, which was received and adopted:

Regina, Saskatchewan,
August 28th, 1928.

Your committee on nomination of officers for the ensuing year submits the following recommendations:

Honorary President—Sir James Aikins, K.C, LL.D.
President—Isaac Pitblado, K.C., Winnipeg.
Vice-President—R. W. Shannon, K.C., Regina.
Secretary—John D. Falconbridge, K.C., Toronto.
Treasurer—R. Murray Fisher, Winnipeg.

We understand that the local secretaries are chosen by the commissioners of their respective provinces, and would suggest that any change in the present personnel be notified to the Secretary as soon as possible for inclusion in the annual report.

Your committee has considered the further matter referred to it, namely, the appointment of a paid officer for the assistance of the Conference. We do not recommend the appointment of such an officer at the present time, but suggest that the members of the Conference give consideration to the desirability of such a step and the duties that might be assigned to such an officer, and that further consideration be given to this matter at the next annual Conference.

Respectfully submitted,

R. W. Craig, Chairman.
J. W. Ellis.
J. F. Lymburn.
W. P. Jones.
Francis King.

The Conference expressed its appreciation of the hospitality shown to the visiting commissioners by Sir James Aikins and by the Attorney-General of Saskatchewan and by the Saskatchewan commissioners

The Conference also expressed its thanks to the government of Saskatchewan for the use of the court room in which the meetings of the Conference were held.

At 10.30 a m. the Conference adjourned.

APPENDICES.

A. Address of the Honorary President.
B. Report on Bills of Sale Act, and draft Act.
C. Report on Assignment of Book Debts Act, and draft Act.
D. Report on Wills Act.
E Report on Defences to Actions on Foreign Judgments.
F. Report on Trustee Act.
G. Draft Limitations Act.
H Draft Act respecting Proof of Statutes.
I. Report on Contributory Negligence Act.

APPENDIX A.

ADDRESS OF THE HONORARY PRESIDENT.

Mr. Charles Thaddeus Terry, one of the representatives of the American Bar Association, who was present at the organization meeting of The Canadian Bar Association and was at that time President of the Commissioners on Uniform State Laws, in an address in 1914 said, as we said when this Conference was formed, and now say, "We are not advocating centralization of Government. We are not advising the obliteration of state lines. On the contrary, we would deprecate the former and warn against the latter. Our faith in the dual sovereignty, and the nice checks and balances of our system of government has grown in these latter days, as the assaults upon it from both friends and foes have disclosed at once their futility and the inherent soundness of the object of their attack." As the commissioners are appointed by the several governments of the provinces, they have ever been impressed with the view that their work is a powerful agency in protecting against invasions of provincial jurisdiction and rights and in maintaining the balance between Dominion and provincial authority as adjusted by the British North America Act. To that end, the people should understand the importance of the interdependence among the provinces and vigilantly develop it. If there is to be an assured continuation of local self-government, the provinces must ever assert their sovereignty in all those matters allotted to them by that Act. Otherwise, the powers and privileges so given to them will be appropriated by the federal government under the pressure by the people for easier facilities and unified law and a common order in interprovincial business and trade and transactions and other matters confided to the provinces by section 92 of the Act. If the provinces do not meet such public requirement, the people will take some other means of securing it. I incidentally referred to that subject when speaking to you last year. I think it so important that I may call attention to it again, and say that in my view the pressure for nation-wide laws and regulations in many fields is such that unless definite assistance is given to the provinces in developing a common body of law to be enforced by them, it becomes well-

nigh irresistible. At this period of our constitutional development, the citizens of Canada are thinking in terms of the nation. If there is not a determined effort to have the provinces unify their laws by consent nationally, along progressive lines, there will be an increasing aggressiveness to have the federal Constitution so construed or amended as to enable the Parliament of Canada to enact laws on subjects of general concern, even though exclusive power to legislate on them is conferred on the provinces. The statement made by Edmund Burke applies still and to our provinces as to nations: "It is with nations as with individuals. Nothing is so strong a tie of amity between nation and nation as correspondence in laws, customs, manners and habits of life. They have more than the force of treaties in themselves. They are obligations written in the heart." Let our sense of national unity over-top even convenience of communications, facility of trade, certainty of contract, or advantage of industry and induce such provincial advance toward uniformity through statute law as will obviate a contemplation of such drastic interpretation or a legislative constitutional change. In 1919 a temporary constitution of the Conference was adopted, and so far as I am aware, has not been changed. Let me quote its second paragraph, so that the public may know why this Conference exists and then inquire how those objects have been advanced, what model acts have been prepared, what in the course of preparation and which of them have been passed by the several provinces. Paragraph 2 is:

"The object of the Conference shall be to promote uniformity of law throughout Canada or in such provinces as uniformity may be found practicable, by such means as may appear suitable to that end, and in particular by facilitating (1) the meeting of the commissioners of the different provinces in conference at least once a year; (2) the consideration by the commissioners of those branches of the law with regard to which it is desirable and practicable to secure uniformity of provincial legislation, and (3) the preparation by the commissioners of model statutes to be recommended for adoption by the various provincial legislatures."

The work of the commissioners is in the nature of codification, which may mean the changing of an unwritten or badly written law into a law well written and which is otherwise defined as a complete and systematic and exclusive statement readily accessible of some portion of the law It has nothing to do with the goodness or badness of the law from an ethical or political point of view. It is a question rather of correct form. The portions of the law to

which this Conference devotes chiefly its attention and efforts is commercial and business law, which is within the provincial jurisdictions and which in principle is the same in all the provinces where the basis of it is the English system, and I am told not materially different in the Province of Quebec; and that even there, speaking generally, for the proof of facts concerning commercial matters recourse is had to the English rules of evidence. But the commissioners have had to devote, and will have to devote, much time and mental effort in research, in study and in the sifting of legislation in the provinces also in choosing apt terms in which to express the best. Mr. Lafleur, our eminent jurist, the Vice-President for Quebec, in an address to the Association in 1919, with wit and wisdom, said: "It is unnecessary to state that our merchants and manufacturers, from Halifax to Vancouver, would welcome as an inestimable boon the unification of our commercial laws. No one realizes so keenly as they do that diversity and multiplicity of laws in a great commercial community means a fixed charge on any business for legal advice and litigation, and a corresponding diminution of profits. Really, the only people who might be supposed to object to a simplification of the law are the lawyers themselves, who might be driven out of business. But, while it seems to be regarded as axiomatic that our manufacturers need protective legislation, I have never heard it contended that the activities of the legal profession require any artificial stimulation."

APPENDIX B.

REPORT ON THE BILLS OF SALE ACT.

1. In 1923 the subject of chattel mortgages and bills of sale was referred to the Saskatchewan commissioners for investigation and report. (Conference Proceedings, 1923, p. 15; Canadian Bar Association Year Book, 1923, p. 425).

2. In 1924 the Saskatchewan commissioners reported orally that they had the subject under investigation, and the matter was referred again to them for report. (Conference Proceedings, 1924, p. 13; Canadian Bar Association Year Book, 1925, pp. 282-3).

3. In 1925 the Saskatchewan commissioners submitted a report, pointing out that in all the provinces of Canada except Quebec there are Bills of Sale or Bills of Sale and Chattel Mortgage Acts, differing widely in detail, though having the same general purpose of preventing fraud by means of secret bills of sale or chattel mortgages and having certain general features in common. The report contained a comparative statement of the main provisions of the several provincial statutes. The subject was then referred by the Conference to the British Columbia commissioners with instructions to prepare a draft Act suitable to the needs of all the provinces. (Conference Proceedings, 1925, pp. 16, 68; Canadian Bar Association Year Book, 1925, pp. 354, 406).

4. In 1926 the British Columbia commissioners submitted a draft Bills of Sale Act, which was discussed section by section by the Conference. It was resolved that no provision should be made in the draft Act as to the form, registration, etc., of conditional sales, assignment of book debts, mortgages of growing crops, bonds or debentures of corporations, or charges on rolling stock of railways, but that provision should be made for the registration of bills of sale (including chattel mortgages) of goods when removed from one province into another. The subject was then referred again to the British Columbia commissioners with instructions to redraft the Act in the light of the discussion, and to send copies of the redraft to the commissioners of the other provinces, to the chairman of the

committee of the Canadian Bar Association on Comparative Provincial Legislation and Law Reform and to such representatives of the commercial interests as the British Columbia commissioners should think best or the commissioners from the other provinces might suggest. (Conference Proceedings, 1926, pp. 14, 15, 51; Canadian Bar Association Year Book, 1926, pp. 406, 417, 443).

5. In accordance with the instructions of the Conference the British Columbia commissioners revised the draft Act (which was printed in its revised form in the 1926 Proceedings), and distributed the new draft among representatives of commercial bodies and other interested persons. At the 1927 meeting of the Conference this new draft was discussed section by section, together with the criticisms and suggestions received from various persons, and various changes were made. The draft Act 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 and to report in 1928—the new draft to be submitted in the interval to the representatives of commercial bodies and other persons for criticisms and suggestions; the commissioners from the other provinces being requested to co-operate with the Ontario commissioners by communicating criticisms and suggestions. (Conference Proceedings, 1927, pp. 11-12; Canadian Bar Association Year Book, 1927, pp. 375-6).

6. As a first step towards carrying out these instructions, your present committee, consisting of the Ontario commissioners, provisionally revised the draft Bills of Sale Act in the light of the discussion which took place at the 1927 meeting of the Conference and circulated the revised draft for the purpose of securing criticisms and suggestions.

7. In addition to incorporating in the revised draft the alterations specifically authorized by the Conference in 1927, your committee has redrawn the definitions of "bill of sale," and "mortgage" and inserted a new definition of "sale," and has made consequential changes in the later parts of the Act (for example, ss. 3 and 9). In the draft of 1926 a "bill of sale" is defined as including a sale and a mortgage, and certain transactions of the nature of one or the other, and as excluding certain other transactions, while "mortgage" is very briefly defined and "sale" is not defined at all. The question was raised at the Conference whether it would not be better to define the two transactions "sale" and "mortgage" as distinguished from the instrument—the "bill of sale"—by which the transaction is or may be expressed, and then to define "bill of sale" shortly by reference to "sale" and "mortgage" as already defined. Upon further

consideration your committee has come to the conclusion that this course is preferable to that adopted in the 1926 draft, and that it will simplify the wording of some of the later sections of the Act, in cases where the enacting clause logically relates to the transaction and not merely to the instrument.

8. Your committee, in addition to making many minor changes, has redrawn the definition of "creditors," and has redrawn s. 3 so as to include the subjects which in the 1926 draft were dealt with in ss. 3, 4(1), 10 and 11.

9. It will be observed that whereas in Ontario the Bills of Sale and Chattel Mortgage Act adopts the principle that the bill of sale takes effect from the day of its execution, provided it is registered within the short period allowed by the Act, the proposed uniform Bills of Sale Act adopts the principle that in certain circumstances the bill of sale takes effect only from the time of its registration, provided it is registered within the period of time prescribed by the Act, this period of time being, however, considerably longer than that allowed by the Ontario Act.

10. The question whether the Act should contain a prohibition against, or some restrictions on, the mortgaging of growing crops has not been considered by the present committee, this question having been referred to the commissioners from the western provinces for consideration, with a view of preparing appropriate provisions to be added to the uniform Act by those provinces which desire such provisions.

11. Your Committee now submits the revised draft along with various criticisms and suggestions which have been communicated to the undersigned.

All of which is respectfully submitted,

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

NOTE.—The draft Act is printed below in the form in which it was revised and approved by the Conference in 1928.

UNIFORM BILLS OF SALE ACT

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in August, 1928.)

An Act to make Uniform the Law respecting Bills of Sale and Chattel Mortgages.

SHORT TITLE.

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

INTERPRETATION.

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

(*a*) "Bill of sale" means a document in writing in conformity with this Act evidencing a sale or a mortgage, but does not include a bill of lading, a warehouse receipt, a warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize the possessor of the document to transfer, either by endorsement or delivery, or receive goods thereby represented;

(*b*) "Change of possession" means such change of possession as is open and reasonably sufficient to afford public notice thereof;

(*c*) "Chattels" means goods and chattels capable of complete transfer by delivery, and includes when separately assigned or charged, fixtures and growing crops; but does not include chattel interests in real property or fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed; or growing crops, when assigned together with any interest in the land on which they grow; or a ship or vessel registered under the provisions of the Canada Shipping Act or the Merchant Shipping Act, 1894, and amending Acts or any share in such ship or vessel; or shares or interests in the stock, funds, or securities of a Government, or in the capital of a corporation; or book debts or other choses in action;

(*d*) "Creditors" means creditors of the grantor, whether execution creditors or not, who become creditors before the registration of a bill of sale, or before the registration of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the Bankruptcy Act, and a liquidator of a company under the Winding-up Act of Canada or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed.

(*e*) "Grantee" includes the bargainee assignee, transferee, mortgagee, or other person to whom a bill of sale is made;

(*f*) "Grantor" includes the bargainor, assignor, transferor, mortgagor, or other person by whom a bill of sale is made;

(*g*) "Mortgage" includes an assignment, transfer, conveyance, declaration of trust without transfer, or other assurance of chattels, intended to operate as a mortgage or pledge of chattels, or a power or authority or licence to take possession of chattels as security, or an agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to a charge or security on any chattels is conferred, but does not include:

(i) A mortgage or charge, whether specific or floating, of chattels created by a corporation, and contained:

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

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

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

(ii) Security taken by a bank under section 88 of the "Bank Act" of the Dominion of Canada;

(iii) A power of distress contained in a mortgage of real property;

(*h*) "Proper officer" means the officer in whose office bills of sale are required to be registered in any registration district;

(*i*) "Registered" means filed in accordance with the provisions of this Act;

(*j*) "Registration district" means a district for the registration of bills of sale established under this Act;

(*k*) "Sale" includes a sale, assignment, transfer, conveyance, declaration of trust without transfer or other assurance not intended to operate as a mortgage, of chattels, or an agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any chattels is conferred, but does not include

(i) An assignment for the general benefit of the creditors of the person making the assignment;

(ii) A transfer or sale of goods in the ordinary course of any trade or calling;

(iii) A conditional sale within the meaning of the Conditional Sales Act, or an assignment of a conditional sale.

[NOTE.—In any province in which there is no Conditional Sales Act, insert in clause (iii) a definition of conditional sale similar to that contained in the Uniform Conditional Sales Act revised by the Conference of Commissioners]

(*l*) "Subsequent purchasers or mortgagees" means persons to whom chattels are conveyed or mortgaged

(i) after the making of the sale or mortgage mentioned in section 3;

(ii) after the making of the mortgage mentioned in sections 11, 12 and 13;

as the case may be.

SALE OR MORTGAGE TO BE EVIDENCED BY A REGISTERED BILL OF SALE.

3. (1) Every sale or mortgage which is not accompanied by an immediate delivery and an actual and continued change of possession of the chattels sold or mortgaged shall be absolutely void as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered or are valid without registration, unless the sale or mortgage is evidenced by a bill of sale duly registered; and the sale or mortgage, and the bill of sale, if any, evidencing the sale or mortgage, shall, as against creditors and such subsequent purchasers or mortgagees, take effect only from the time of the registration of the bill of sale.

SCHEDULE, DEFEASANCE OR TRUST TO BE PART OF BILL OF SALE.

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

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

DESCRIPTION OF CHATTELS.

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

TIME AND PLACE OF REGISTRATION.

6. (1) Registration of a bill of sale under this Act shall be effected by filing the bill of sale, together with such affidavits as are by this Act required, within thirty days from the date of its execution, in the office of the proper officer of the registration district in which the chattels comprised in the bill of sale are situate at the date of the execution of the bill of sale. If there are two or more grantors, the date of execution of the bill of sale shall be deemed to be the date of the execution by the grantor who last executes it.

(2) In case the chattels comprised in the bill of sale are situate partly in one registration district and partly in another or other registration district or districts, registration may be effected by filing the bill of sale and affidavits in one registration district, and by filing a duplicate original of the bill of sale and affidavits, or a copy thereof certified by the proper officer of that registration district, in the other or each other registration district.

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

AFFIDAVIT OF EXECUTION.

7. Except as provided by section 24 every bill of sale presented for registration shall be accompanied by an affidavit of an attesting witness, or affidavits of attesting witnesses, of the execution thereof by the grantor, or by the grantors respectively, identifying the bill of sale and stating the date of execution by the grantor, or the respective dates of execution by the grantors, as the case may be.

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

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

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

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

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

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

the bill of sale shall set forth clearly by recital or otherwise, and shall, when presented for registration, be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that it truly sets forth: —

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

(*b*) A copy of the bill of exchange or promissory note endorsed and of the endorsements; or

(*c*) The nature and extent of such other liability incurred by the grantee for the grantor; or

(*d*) The terms or substance of the agreement in respect of the liability to be incurred by the grantee for the grantor;

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

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

(*a*) Repayment of the advances; or

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

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

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

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

AFFIDAVIT OF BONA FIDES ACCOMPANYING BILL OF SALE TO SECURE A DEBT OF ASCERTAINED AMOUNT OR A PRESENT LOAN.

9. Where a bill of sale, other than a bill of sale within the scope of section 8, is given to secure the payment of an ascertained amount due or accruing due from the grantor to the grantee, or of a present advance being made by the grantee to the grantor, it shall, when presented for registration, be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the amount set forth in the bill of sale as being the consideration therefor is justly due or accruing due from the grantor to the grantee, or is a present advance being made by the grantee to the grantor, as the case may be, and that the bill of sale was executed in good faith and for the purpose of securing to the grantee the payment of such amount, and not for the mere purpose of protecting the chattels therein mentioned against the creditors of the grantor, or for the purpose of preventing such creditors from recovering any claims which they have against the grantor.

AFFIDAVIT OF BONA FIDES ACCOMPANYING OTHER BILLS OF SALE.

10. Where a bill of sale is not a bill of sale within the scope of section 8 or section 9, it shall, when presented for registration, be accompanied by an affidavit of the grantee, or one of several grantees, his or their agent, stating that the bill of sale was executed in good faith and for good consideration, as set forth in the bill of sale, and not for the mere purpose of protecting the chattels therein mentioned against the creditors of the grantor, or for the purpose of preventing such creditors from recovering any claims which they have against the grantor.

RENEWAL OF BILLS OF SALE EVIDENCING MORTGAGES.

11. (1) Where a registered bill of sale evidences a mortgage of chattels, it shall, after the expiration of the period of three years from its registration, cease to be valid as against creditors and as

against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered, or are valid without registration, unless, before the expiration of that period, a renewal statement accompanied by the affidavit hereinafter mentioned is registered in accordance with sub-sections 2 and 3.

(2) The renewal statement shall set out the interest of the mortgagee, his executors, administrators or assigns, in the chattels comprised in the bill of sale, and the amount still owing for principal and interest or the extent or amount of the liability still secured thereby, and shall be accompanied by an affidavit of the mortgagee, his executors, administrators or assigns, or his or their agent, or of some one of them, stating that the statement is true and that the bill of sale has not been kept in force for any fraudulent purpose. The renewal statement may be in Form 1 in the schedule, with such variations as the circumstances may require.

(3) The renewal statement accompanied by the affidavit shall be registered,

(i) In the office of the proper officer of the registration district in which the bill of sale or copy thereof was registered, as regards the chattels still situate in that registration district; or

(ii) In case of the permanent removal of any of the chattels comprised in the bill of sale and the registration of a certified copy of the bill of sale pursuant to section 12, in the office of the proper officer of the registration district in which the certified copy of the bill of sale was so registered, as regards the chattels so removed.

(4) A further renewal statement accompanied by an affidavit shall likewise be registered in accordance with sub-sections 2 and 3 within the period of three years from the registration of the first renewal statement, and thereafter within each succeeding period of three years from the registration of the last preceding renewal statement, otherwise the bill of sale shall, after the expiration of any such period, become void to the extent provided in sub-section 1.

(5) If any mistake is made in the renewal statement, the mortgagee, his executors, administrators, or assigns, may after the discovery of the mistake, register an amended statement and affidavit referring to the former statement and clearly pointing out the mistake therein and correcting it.

(6) If before the registration of such amended statement and affidavit any person has in good faith made an advance of money

or given any valuable consideration to the grantor, or has incurred any costs in proceedings taken relying on the accuracy of the renewal statement as first registered, the bill of sale as to the amount so advanced or the valuable consideration given or costs incurred by such person, shall, as against that creditor, purchaser, or mortgagee, stand good only for the amount stated in the renewal statement as first registered, or to the extent or amount of the liability secured stated in the renewal statement as first registered.

REMOVAL OF CHATTELS TO ANOTHER DISTRICT.

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

REMOVAL OF CHATTELS INTO THE PROVINCE.

13 Where chattels subject to a mortgage which was executed at a time when they were situate without the province are permanently removed into the province, the mortgage shall, within thirty days after the grantee has received notice of the place to which the chattels have been removed, be registered as a bill of sale, in the office of the proper officer of the registration district into which the chattels are removed, by filing therein a copy of the mortgage and of all affidavits and documents accompanying or relating to the mortgage proved to be a true copy by the affidavit of some person who has compared the same with the originals, otherwise the grantee shall not be permitted to set up any right of property or right of

possession in or to the chattels so removed as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice.

SUBSEQUENT TAKING OF POSSESSION.

14. A sale or mortgage or a bill of sale which under this Act is void, or has ceased to be valid, as against creditors, or purchasers or mortgagees, shall not, by reason of the fact that the grantee has subsequently taken possession of the chattels sold or mortgaged, be rendered valid as against persons who became creditors, purchasers or mortgagees before the grantee took possession.

REGISTRATION OF ASSIGNMENTS.

15. (1) An assignment of a bill of sale need not be registered, but it may be registered by filing the assignment, accompanied by an affidavit of an attesting witness of the execution thereof, in any office in which the bill of sale is registered.

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

(3) In case the chattels comprised in the bill of sale so assigned are situate partly in one registration district and partly in another or other registration district or districts registration of the assignment may be effected by filing the assignment and affidavit pursuant to sub-section 1 in the office of the proper officer in one registration district, and by filing a duplicate original of the assignment and affidavit, or a copy of the assignment and affidavit certified by the proper officer of that registration district, in the office of the proper officer in the other or each other registration district, and the proper officer in each registration district shall make the like notation of the assignment in the records of his office as are provided by subsection 2.

DISCHARGE OF BILL OF SALE.

16. (1) Where a registered bill of sale evidences a mortgage of chattels, it may be discharged in whole or in part by the registration in the office in which the same is registered of a certificate of

discharge, Form 2, signed by the mortgagee, his executors, administrators, or assigns, and accompanied by an affidavit of an attesting witness of the execution thereof; but no certificate of discharge by an assignee shall be registered unless the assignment has been registered in that office.

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

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

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

REGISTRATION DISTRICTS AND OFFICES.

17. For the purpose of registration of bills of sale, each district in the province shall be a registration district, and the whose office is situate within a registration district shall be the proper officer for the registration of bills of sale in that registration district.

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

EXPIRY OF TIME ON SUNDAY.

18. Where the time for registration of a bill of sale or other document expires on a Sunday or other day on which the office in which the registration is to be made is closed, the registration shall,

so far as regards the time of registration, be valid if made on the next following day on which the office is open.

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

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

TAKING OF AFFIDAVITS.

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

(2) No registered bill of sale or other document shall be held to be defective or void solely on the ground that any affidavit required by this Act was taken and made before a solicitor for any of the parties to the bill of sale or other document, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

AFFIDAVIT IN CASE OF DEATH OF GRANTEE.

21. Any affidavit required by this Act to be made by a grantee or assignee of the grantee may in the event of his death be made by his executor or administrator, or by any of his next of kin, or by the duly authorized agent of the executor or administrator.

AFFIDAVIT, ETC., ON BEHALF OF CORPORATION.

22. Where the grantee or the assignee of a bill of sale is a corporation, every affidavit or statement required or permitted by this

Act to be made or given by the corporation as such grantee or assignee may be made or given by any officer, employee, or agent of the corporation.

AFFIDAVIT OF AGENT OF OFFICER.

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

NO AFFIDAVIT OF EXECUTION BY CORPORATION.

24. Where a bill of sale, certificate of discharge, assignment or other document has been executed by a corporation under the provisions of this Act, no affidavit of an attesting witness shall be required.

RECTIFICATION OF OMISSIONS AND MISSTATEMENTS.

25. Subject to the rights of other persons accrued by reason of any omission or misstatement referred to in this section, a judge of the Court, on being satisfied that the omission to register a bill of sale or renewal statement within the time prescribed by this Act, or any omission or misstatement in any document filed under this Act, was accidental or due to inadvertence or impossibility, or other sufficient cause, may, in his discretion, extend the time for registration or order the omission or misstatement to be rectified on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter or thing as the judge thinks fit to direct. The order or a copy thereof made under this section shall be annexed to the bill of sale or copy thereof on file or tendered for registration, and appropriate entries shall be made in the register.

DEFECTS AND IRREGULARITIES.

26. No defect or irregularity in the execution or attestation of a bill of sale or renewal statement, no defect, irregularity, or omission in any affidavit accompanying a bill of sale or renewal statement or filed in connection with its registration, and no error of a clerical nature or in an immaterial or non-essential part of a bill of

sale or renewal statement shall invalidate or destroy the effect of the bill of sale or renewal statement or the registration thereof, unless in the opinion of the Court or judge before whom a question relating thereto is tried such defect, irregularity omission, or error has actually misled some person whose interests are affected by the bill of sale.

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

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

APPLICATION OF ACT WHERE CROWN IS GRANTEE.

28 In case of a bill of sale in which the Crown or any Minister, Board, Commission, or officer of the Executive Government of the Dominion or of any Province, acting on behalf of the Crown, is the grantee, the provisions of this Act shall apply, except with respect to affidavits of bona fides and with respect to renewal statements.

EVIDENCE OF RECORDS.

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

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

INSPECTION OF RECORDS OF BILLS OF SALE.

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

FEES.

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

(*a*) For filing and registering each bill of sale and accompanying documents cents;

(*b*) For filing and registering verified copy of bill of sale and accompanying documents under section 6(2) or section 12, cents;

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

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

(*e*) For filing and registering certificate of discharge, cents;

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

(*g*) For a general search, cents;

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

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

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

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

APPLICATION OF ACT.

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

(2) Subject to subsection 3, sections 11 to 16, section 18, sections 20 to 26, and sections 28 to 31 shall apply, mutatis mutandis, in respect of all acts or things to be done under this Act by virtue of said sections or any of them, to bills of sale executed before this Act comes into force which have been registered or which are hereafter registered pursuant to any Act for which this Act is substituted, and in respect of which all the requirements of the said Act, including requirements as to renewal, have been complied with.

(3) NOTE.—This subsection should make provision for the proper carrying out of subsection 2 in the particular situation in each province, especially in the application of section 11 to provinces which have now no provision for the filing of renewal statements.

UNIFORM CONSTRUCTION OF ACT.

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

REPEAL.

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

SCHEDULE.

FORM 1.

(Section 11).

Renewal Statement of Chattel Mortgage.

Statement setting out the interest of in the chattels mentioned in the bill of sale dated the day of , 19 , made between of of the one part, and , of , of the other part and registered in the office of of the registration district of , on the day of 19 , and of the amount still owing for principal and interest, or the extent or amount of the liability still secured by the said bill of sale.

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

The amount still owing for principal and interest on the said bill of sale is the sum of $ (*or* the extent or amount of the liability still secured by the said bill of sale is as follows: (*here give particulars*).

(*Signature of Mortgagee or Assignee.*)

County (*or* district of
To wit:

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

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

2. That the bill of sale mentioned in the said statement has not been kept in force for any fraudulent purpose.

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

A Commissioner, etc.

FORM 2.

(Section 16.)

Certificate of Discharge.

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

may be); and that I am the person entitled by law to receive the money, and that such bill of sale is therefore discharged.

Witness my hand, this day of , 19 .

Witness:

(*Signature of Mortgagee or Assignee.*)

(N.B.—An affidavit of execution is required by section 16).

APPENDIX C.

REPORT ON THE ASSIGNMENT OF BOOK DEBTS ACT.

While there appears to have been a demand in some of the commercial circles for it, the occasion for the enactment of legislation respecting the registration of assignments of book debts was the enactment of "The Bankruptcy Act" by the Dominion of Canada, and in particular the provisions of section 63. This section is as follows:

"63. (1) Where a person engaged in any trade or business makes an assignment of his existing or future book debts or any class or part thereof, and is subsequently adjudicated bankrupt or makes an authorized assignment, the assignment of book debts shall be void against the trustee in the bankruptcy or under the authorized assignment, as regards any book debts which have not been paid at the date of the presentation of the petition in bankruptcy or of the making of the authorized assignment.

"(2) This section shall not apply in any province in which there is a statute providing for the registration of such assignment, if the assignment in question is registered in compliance therewith.

"(3) Nothing in this section shall have effect so as to render void any assignment of book debts, due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made *bona fide* and for value, or in any authorized assignment.

"(4) For the purpose of this section 'assignment' includes assignment by way of security and other charges on book debts."

The terms of this section made provincial legislation advisable, and various Provinces passed assignment of book debts statutes: British Columbia in 1922; Ontario, 1923; New Brunswick, 1926; Saskatchewan, Alberta and Nova Scotia in 1927. Each of these Provinces has an "Assignment of Book Debts Act," but Manitoba in 1924 amended the "Bills of Sale and Chattel Mortgage Act" to

include assignments of book debts among the documents which should be registered under that Act.

In 1926 and 1927, when the Conference of Commissioners on Uniformity of Legislation in Canada was considering a uniform "Bills of Sale Act," the question of assignments of book debts was considered, and it was then decided that a uniform "Bills of Sale Act" should contain no provisions relating to the form, registration, etc., of assignments of book debts. (Proceedings 1926, p. 14; 1927, p. 12.) In 1926 it was resolved (Proceedings p. 18) "that the Ontario Commissioners consider and prepare a draft uniform Act covering the assignment of book debts and the registration thereof, and in so doing consider the provisions of the British Columbia Act."

The Ontario Commissioners did considerable work in collating the various provincial statutes and preparing a draft Bill. In 1927 (Proceedings 1927, p. 15) the subject of assignment of book debts was referred to the Manitoba Commissioners with instructions to submit a draft Act next year, and the Manitoba Commissioners were given their draft by the Ontario Commissioners and had the benefit of their work.

As the existing legislation in Saskatchewan, Ontario, Alberta, New Brunswick and Nova Scotia is along the same general lines, the Manitoba Commissioners, following the practice of the Conference, are submitting a draft Bill in which the legislation of these Provinces has been generally followed.

As the basis of provincial legislation in this field is the previously recited section 63 of "The Bankruptcy Act," the Manitoba Commissioners have been guided by the principle that the subject of registration of assignments of book debts should not be dealt with further than is necessary to give effect to the terms of "The Bankruptcy Act." As book debts are a form of commercial securities, the draft Bill, where possible, follows the language of the uniform draft "Bills of Sale Act" which the Conference will consider this year. There is a fairly definite parallelism between the two Bills, but they are treated as separate and not related by cross reference provisions as suggested by the Ontario Commissioners in their draft.

It will be noted that no provision is made for the renewal of registrations, although Alberta so provides. Book accounts vary so from year to year that at the end of any renewal period considerable change must be made in the accounts covered by the assignment, and it would appear futile to provide legislative machinery for renewals as in the case of bills of sale. Also no schedule

of statutory forms has been provided. It is thought that the practice of the various Provinces would require a variation in forms, and that in any event the forms necessary for this Act are simple.

Respectfully submitted,

On behalf of the Manitoba Commissioners,

W. R. COTTINGHAM,
Secretary, Manitoba Commissioners.

Note: The draft Act is printed below in the form in which it was revised and approved by the Conference in 1928.

UNIFORM ASSIGNMENT OF BOOK DEBTS ACT

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in August, 1928.)

An Act to make Uniform the law respecting Assignments of Book Debts.

SHORT TITLE.

1. This Act may be cited as "The Assignment of Book Debts Act."

INTERPRETATION.

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

(a) "Assignee" means any person to whom an assignment of book debts is made;

(b) "Assignment" includes every legal and equitable assignment, whether absolute or by way of security, and every mortgage or other charge upon book debts;

(c) "Assignor" means any person making an assignment of book debts;

(d) "Book debts" means all such accounts and debts whether existing or future as in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;

(e) "Creditors" means creditors of the assignor, whether execution creditors or not, who become creditors before the registration of an assignment, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under The Bankruptcy Act and a liquidator of a company under the Winding-up Act of Canada or under a provincial Act containing provisions for the

winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed;

(f) "Proper officer" means the officer in whose office assignments are required to be registered in any registration district;

(g) "Registered" means filed in accordance with the provisions of this Act;

(h) "Registration district" means a district established under this Act for the registration of assignments;

(i) "Subsequent purchasers" includes any person who in good faith for valuable consideration and without notice obtains by assignment, an interest in book debts which have already been assigned;

(j) "Valuable consideration" includes
  (a) any consideration sufficient to support a simple contract;
  (b) an antecedent debt or liability.

APPLICATION.

3. This Act shall not apply to:
  (a) Any assignment of book debts, whether specific or by way of floating charge, made by a corporation, and contained:
    (i) in a trust deed or other like instrument to secure bonds, debentures, or debenture stock of the corporation; or
    (ii) in any bonds, debentures, or debenture stock of the corporation, as well as in the trust deed or other like instrument securing the same; or
    (iii) in any bonds, debentures, or debenture stock or any series of bonds or debentures of the corporation not secured by any trust deed or other like instrument.
    (NOTE: Provinces that have no provision for registration of trust deeds should so provide.)
  (b) any assignment of book debts due at the date of the assignment from specified debtors;
  (c) any assignment of debts growing due under specified contracts;
  (d) any assignment of book debts included in a transfer of a business made bona fide and for value;

(e) any assignment of book debts, included in any authorized assignment under The Bankruptcy Act.

(NOTE: In some provinces it may be necessary to add other exceptions, e.g., earnings under "The Farm Implement Act" and Marriage Settlements)

REGISTRATION.

4. (1) Save as herein provided every assignment of book debts made by any person engaged in a trade or business shall be absolutely void as against the creditors of the assignor and as against subsequent purchasers unless such assignment is:

(a) in writing;

(b) accompanied by an affidavit of an attesting witness or affidavits of attesting witnesses, of the execution thereof by the assignor, or by the assignors respectively, identifying the assignment and stating the date of execution by the assignor, or the respective dates of execution by the assignors, as the case may be, and a further affidavit of the assignee, or one of the several assignees, his or their agent, stating that the assignment was executed in good faith and for valuable consideration and not for the mere purpose of protecting the book debts therein mentioned against the creditors of the assignor or for the purpose of preventing such creditors from recovering any claims which they have against the assignor;

(c) registered, as hereinafter provided, together with the affidavits within thirty days of the execution of the assignment.

(2) If there are two or more assignors, the date of execution of the assignment shall be deemed to be the date of the execution by the assignor who last executes it.

(3) Every assignment which is required to be in writing and to be registered under this Act shall, as against creditors and subsequent purchasers, take effect only from the time of the registration of the assignment.

5. (1) Registration of an assignment under this Act shall be effected by filing the assignment together with such affidavits as are by this Act required, within thirty days from its execution, in the office of the proper officer of a registration district determined in accordance with the following rules:—

(a) Where the assignor is a corporation incorporated under the laws of the province, in the registration district in which the head office or registered office is situate;

(b) Where the assignor is an extra-provincial corporation having a head office or registered office within the province, in the registration district in which such head office or registered office is situate;

(c) Where the assignor is an extra-provincial corporation not having a head office or registered office within the province, in the registration district of ;

(d) Where the assignor is not a corporation, in the registration district in which the assignor carries on business at the time of the execution of the assignment;

(e) Where the assignor is not a corporation, and at the time of the execution of the assignment carries on business in different registration districts, in any such registration district, and by filing a duplicate original of the assignment and affidavits, or a copy thereof certified by the proper officer of that registration district, in each of the other registration districts.

(2) The proper officer shall cause every assignment filed in his office to be numbered, to be endorsed with a memorandum of the day, hour, and minute of filing, and to be indexed by entering in alphabetical order in a register kept by him the names of the parties to the assignment with their descriptions and the dates of execution and registration of the assignment.

(3) Where the time for registration of any assignment or other document expires on a Sunday or other day on which the office in which the registration is to be made is closed, the registration shall, so far as regards the time of registration, be valid if made on the next following day on which the office is open.

DISCHARGE.

6. (1) An assignment registered under this Act may be discharged in whole or in part by the registration in the office in which the same is registered of a certificate of discharge, signed by the assignee his executors, administrators, or assigns, and accompanied by an affidavit of an attesting witness of the due execution thereof.

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

(3) If there are two or more assignors residing in different registration districts affected by the discharge, the registration may be effected either by filing a duplicate or other original of the certificate of discharge and affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district in the office of the proper officer of each of the other registration districts and each proper officer shall make the like notations of the discharge in the records of his office as are provided by subsection (2).

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

INSPECTION OF RECORDS.

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

REGISTRATION DISTRICTS AND OFFICES.

8. For the purpose of registration of assignments or other documents each district in the province shall be a registration district and the whose office is situate within a registration district shall be the proper officer for the registration of assignments or documents in that registration district.

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

TAKING OF AFFIDAVITS.

9. (1) Affidavits required by this Act may be taken and made before the proper officer of any registration district or before any person, whether within or without the province, authorized to take affi-

davits in or concerning any cause, matter, or thing pending in any court in the province.

(2) No registered assignment or other document shall be held to be defective or void solely on the ground that any affidavit required by this Act was taken and made before a solicitor for any of the parties to the assignment or other document, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

AFFIDAVIT IN CASE OF DEATH OF ASSIGNEE.

10. Any affidavit required by this Act to be made by an assignee may, in the event of his death be made by his executor or administrator, or by any of his next of kin or by the duly authorized agent of the executor or administrator.

AFFIDAVIT ON BEHALF OF CORPORATION.

11. Where the assignee is a corporation, every affidavit required or permitted by this Act to be made or given by the corporation as such assignee may be made or given by any officer, employee or agent of the corporation.

AFFIDAVIT OF AGENT OR OFFICER.

12. Any affidavit made for the purposes of this Act by the agent of an assignee, or of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of the circumstances connected with the assignment, and that he has a personal knowledge of the facts deposed to.

NO AFFIDAVIT OF EXECUTION BY CORPORATION.

13. Where an assignment or certificate of discharge or other document has been executed by a corporation under the provisions of this Act no affidavit of an attesting witness shall be required.

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

14. In case, before the making of any affidavit of execution required by this Act, the attesting witness to an assignment, certificate of discharge or other document dies or leaves the province, or becomes incapable of making or refuses to make such affidavit, a judge of the Court may make an order permitting the

registration of the assignment, certificate of discharge or other document, upon such proof of its due execution and attestation as the judge by the order may require and allow. The order, or a copy thereof, shall be annexed to the assignment, certificate of discharge or other document, as the case may be, and filed therewith; and the registration of the assignment, certificate of discharge or other document, under and in compliance with the terms of the order, shall have the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

RECTIFICATION OF OMISSIONS AND MISSTATEMENTS.

15. Subject to the rights of other persons accrued by reason of any omission or misstatement referred to in this section, a judge of the Court on being satisfied that the omission to register an assignment within the time prescribed by this Act, or any omission or misstatement in any document filed under this Act, was accidental or due to inadvertence or impossibility, or other sufficient cause, may, in his discretion, extend the time for registration or order the omission or misstatement to be rectified, on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter or thing as the judge thinks fit to direct. The order, or a copy thereof, made under this section shall be annexed to the assignment or copy thereof on file or tendered for registration and appropriate entries shall be made in the register.

DEFECTS AND IRREGULARITIES.

16. No defect or irregularity in the execution or attestation of an assignment, or other document; no defect, irregularity, or omission in any affidavit accompanying an assignment or filed in connection with its registration; and no error of a clerical nature or in an immaterial or non-essential part of an assignment shall invalidate or destroy the effect of the assignment or the registration thereof, unless in the opinion of the court or judge before whom a question relating thereto is tried such defect, irregularity, omission, or error has actually misled some person whose interests are affected by the assignment.

EVIDENCE OF RECORDS.

17. Copies of an assignment, certificate of discharge or other document registered or filed under this Act certified by the registra-

tion clerk shall be received as prima facie evidence for all purposes as if the original assignment or document were produced and also as prima facie evidence of the execution of the original assignment or document according to the purport of such copy, and the clerk's certificate shall also be prima facie evidence of the date and hour of registration and filing.

FEES.

18. For services under this Act each registration clerk shall be entitled to receive the following fees:

1. For filing and registering an assignment, cents.
2. For filing and registering a certificate of discharge, cents.
3. For a general search, cents.
4. For any certificate of registration or discharge or other certificate for purposes of this Act, cents.
5. For copy of any document filed under this Act, including certificate, every 100 words, ten cents.

UNIFORM CONSTRUCTION OF ACT.

19. 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.

20. This Act shall come into force on the day of A.D. 192 .

APPENDIX D.

REPORT ON THE DRAFT WILLS ACT AS REVISED IN 1926 AND THE ALBERTA ACT.

I.

The Draft Act will be found in the Proceedings 1926, page 31, and the Alberta Act found in the Acts of 1927, Chapter 21, page 75.

II.

In comparing the two Acts it is well to bear in mind that the Alberta Statute has been enacted and that it would be advisable to adopt it as the model Act rather than to adopt our own draft and require the Alberta Act to be changed unless there is some strong reason for departing from the Alberta Draft. Accordingly, this report will call attention to the points of difference between the two statutes. Some of the points of difference are in matters of minor phraseology, and it is submitted that the Alberta wording should be accepted rather than the wording of the Commission where there is no difference in meaning involved by the use of different phraseology.

III.

The Draft Wills Act clause by clause (corresponding sections of the Alberta Act are indicated in brackets)—

1. (1.) Same.

2. (2.) Alberta uses "Part" instead of "Act." "Part" is necessary if the Alberta scheme of division into parts is followed.

(a) This is missing in the Alberta Act. The reason is that the Alberta Act does not include a section corresponding to Section 34. Accordingly this sub-section should be retained.

(b), (c) and (d). The Alberta Act uses "shall include" instead of "includes." It is submitted that the difference in wording does not affect the question of uniformity at all, and it is a matter of indifference which is chosen.

N.B.—The Alberta Act uses the words "make" and "making" where the Draft Act uses "execute", "executing" and "execution."

Accordingly in the Alberta Act there is a definition of "made" and "making" which should be included if the Alberta phraseology is followed.

3. (3.) (1.) The Alberta Act uses "made in any of the forms permitted by this Act" in lieu of "in accordance with the provisions of this Act." It is submitted that the Alberta wording is preferable. The Alberta section refers to the existing law in order to give disposing power. It is submitted that in this respect the Draft Act is preferable. It is a continuance of a provision that has been in force for ninety years, and its elimination, coupled with that of the old statutes, would be fundamentally unsound. The matter does not affect the principle of uniformity.

(a), (b), (c), (d). The Alberta Act omits these paragraphs. They could very properly be retained without affecting the question of uniformity at all, because the Alberta Act is referring back to the existing law, of which these four paragraphs form a detailed statement.

(2) The Alberta Act does not include this subsection. It could be retained without sacrificing uniformity because it probably does not mean anything and was merely inserted in order to eliminate the doubt in the minds of one or two of the commissioners as to whether an illegitimate person in such a position had testamentary power under the first subsection of this section. It was inserted to eliminate the possibility of a doubt, and its retention cannot do any harm and can do some good.

4. (4.) The Alberta Act uses the word "infant." The wording of the Draft Act is preferable because it eliminates a possible ambiguity.

5. (6.) This section appears as 6 in the Alberta Act. In the first line "the" precedes "naval." In the second clause the phraseology of our own Act is followed. This involves a difference in policy. It is assumed that the word "the" is inserted with the object of restricting the power of members of His Majesty's Forces. If this is the object, the Uniform Act should use the words "His Majesty's" and not the vague word "the." There would then be no doubt as to the meaning of the section. The Commission deliberately decided not so to restrict the power in this section, and if it is still of the same opinion the Alberta Act should not be followed.

7. (7.) Same.

8. (8.) The wording in this section is different in several particulars.

1st. The Alberta Act uses the phrase "is made in a form permitted" rather than "in accordance with the provisions of." This difference does not affect uniformity or the substance of the Acts. It is submitted that in this matter the Alberta Act should be followed.

2nd. The Alberta Act uses "formalities" instead of "execution and attestation thereof" and also instead of "form of execution or solemnity." These are matters that do not affect uniformity or the effect of the statute, and it is submitted that the Alberta form should be followed.

3rd. This section refers to "part" instead of "Act." In the Draft Act the provisions corresponding to Lord Kingsdown's Act are incorporated as sections 14 and 15.

The Act is so drafted as to make it clear that wills made in accordance with the provisions of this section shall be valid both for realty and for personalty and for moveables and immoveables, and that they shall be valid not only as dispositions of the testator's own property but as appointments under a power. This is a matter of policy. The Commission decided to extend the rule enabling wills made in these forms to cover all types of property and to cover testamentary appointments. The Commission recognized that the restriction in Lord Kingsdown's Act to personal property was illogical, unjust and antiquated. The Commission also recognized that it was silly to say that a will executed abroad should be an effective will for every purpose except the exercise of a power of appointment and that such a restriction defeats the general objective of the legislation.

The Alberta Act by the division into parts simply preserves the law as it is together with its unjust, illogical and antiquated results. It also preserves the doubts that exist as to the actual effect of the existing law, and it offers encouragement to litigation.

9. (9.) The Alberta Act uses "made in a form permitted by this part."

10. (10.) Same.

11. (11.) The Alberta Act should be followed because it coordinates with the provision as to holograph wills.

12. (12.) Same.

13. (13.) Same.

14. (15.) See Part II. of Alberta Act and comments above relating to Section 8.

16. (14.) Same.

17. (15.) Same

18. (16.) Note variation in phraseology in Section 16, Alberta Act.

19. Line 2, Alberta Act, Section 17, uses "the" in place of the first "any", "make" in place of "the execution" in the third line. In the fifth and sixth lines, instead of "executed in a manner by this Act required for execution of the will", the Alberta Act uses "made in a form permitted by this Part." Again the word "made" is used in place of "executed" in the seventh line; and in the eighth line after the word "witnesses" and in brackets the Alberta Act inserts "(if required)." The last variation is necessary for holograph wills.

20. (18) 1. In place of "re-execution thereof", the Alberta Act uses "re-signing thereof with the required formalities (if any)."

2. The Alberta Act, Section 18, omits the first "revoked."

21. (19.) Alberta uses "making" instead of "execution."

22. (20.) Same.

23. (21.) Same.

24. (22.) Same.

25. (23.) Same.

26. (24.) Same.

27. (25.) Line two, after the first "or" the Alberta Act inserts "of." In place of the "beneficial interests in such real property would go" Alberta uses "such real property would descend." It is submitted that the Alberta wording is simpler and better, although the difference does not affect uniformity in any way.

28. (26.) The third line. The Alberta Act has "not" in place of "no." This is abviously a misprint and the Draft Act should be followed.

29. (27.) The second last line, Section 27 uses "estate" in place of "property." The Alberta Act is clearly wrong and should not be followed.

30. (28) Same.

31. (29.) Same.

32. (30.) Same.

33. (31.) Last line, Alberta uses "he or she." This should not be followed.

34. This is not included in the Alberta Wills Act. It should be retained and provinces like Alberta which incorporate this provision in other legislation can omit it.

35. (32) Same except in paragraphing and punctuation.

36. The Alberta Act seems to be illogical. This Section is

drafted so as to extend only to wills executed after a given date. The Alberta Act accepts the date of the death of the testator as the test. The following provisions then become unnecessary.

If the Alberta policy is followed in this respect the latter part of the section should be omitted.

Respectfully submitted,

F. F. MATHERS.
J. E. READ.
F. L. MILNER.

Halifax, July, 1928.

SUPPLEMENTARY MEMORANDUM AS TO THE DRAFT WILLS ACT.

(The numbers of the Nova Scotia Memorandum are used.)

3. (2.) This paragraph is perhaps based on a misconception. The subsection referred to was inserted owing to a suggestion to be found at p. 422 of the volume containing the proceedings of The Canadian Bar Association, 1926. It can hardly be conceded that "it does not mean anything." Real Property of an illegitimate dying without issue "if not so devised, bequeathed or disposed of" "would not devolve upon his executor, or administrator or heir at law." This property, therefore, under the terms of the subsection cannot be devised, bequeathed or disposed of, or at any rate the section gives no power to devise, bequeath or dispose of it. The subsection was, however, omitted from the Alberta Wills Act not because it was meaningless, but because The Imperial Wills Act 1837 was then in force in Alberta and section 178 of The Imperial Law of Property Act 1925 enacts that "Section 3 of The Wills Act 1837 shall . . . authorize *and be deemed always to have authorized any person* to dispose of real property or chattels real by will notwithstanding that by reason of illegitimacy or otherwise he did not leave an heir or next of kin surviving him. There was another reason for omission which will be more conveniently discussed at the Conference. It is thought that "personal property" was inserted in the Conference draft to cover the case of chattels real.

5. The restriction in the Alberta Act was due to a disinclination to legislate for armed forces, other than British.

8. That Alberta is not out of sympathy with the provisions of the Conference Act becomes very apparent upon reference to the paragraphs referring to this subject at end of p. 419 and of p. 420

of Proceedings 1926. It should be observed that, speaking generally, the changes made in the Alberta Act were made in the interests of uniformity and not by way of wilful diversion but it was thought wise not to make wide departures from the existing law, except in conjunction with the other provinces, hence the preservation of the existing law."

34. It is suggested that the Conference should reconsider the question of incorporating this section in its Act. It seems unwise to inject into the formal law of Wills questions more frequently arising in cases of intestacy than of testacy.

36. It is not very obvious why the second clause of Alberta section 39 is regarded as either illogical or unnecessary. It was thought that the Act if this clause were omitted would not extend to any will made before it came into operation though, e g., revised by a codicil after the Act came into operation. The intention was to give such wills the benefit of the Act. Note that the first part of the Section is merely negative and that the Act comes into force by proclamation.

W. L. Scott,
Commissioner for Alberta.

APPENDIX E.

REPORT OF COMMITTEE ON DEFENCES TO ACTIONS ON FOREIGN JUDGMENTS.

August 27th, 1928.

To the Secretary of the Commissioners on
Uniformity of Law in Canada.

DEAR SIR,—

Referring to the instructions which were given to the British Columbia Commissioners at the 1927 Conference, we beg to hand you herewith the following:

(1) Copy of letter which was written on behalf of the British Columbia Commissioners to the Attorney-General of each of the Provinces other than Quebec.

(2) Copy of letter in reply from the Legislative Counsel of Alberta to A. V. Pineo.

As no replies have been received from the Attorneys-General of any other of the Provinces, the British Columbia Commissioners have been unable to deduce anything indicating the likelihood of a general agreement, which, under the instructions, was a condition precedent to the drafting of the Act, and therefore have not prepared an Act for submission to the Conference.

Yours truly,

H. G. LAWSON,
for the British Columbia Commissioners.

September 21st, 1927.

The Honourable,
The Attorney-General,

SIR:

Re Uniformity of Legislation—Defences to Actions on Foreign Judgments.

I have the honour to enclose herewith copy of the 1925 Proceedings of the Conference of Commissioners on Uniformity of Legis-

lation, at pages 44-52 of which will be found the report of a Committee appointed by the Conference on the subject of defences to actions on foreign judgments.

The Conference now instructs that this report be placed before the Attorneys-General of the several Provinces in order to ascertain their views on the matters of legislative policy which the report presents for consideration. In the event of the respective Attorneys-General agreeing on uniform principles, the Commissioners for British Columbia are instructed to prepare a draft uniform Act on this subject to be presented to the Conference at its next meeting.

For this purpose, the Commissioners would greatly appreciate it if after reading the report you would advise the undersigned of your views, especially as to the following matters:—

1. Whether, as a general rule, a person who is sued upon a foreign judgment should be permitted to set up all defences which he might have set up to the original action, or whether a draft model Act should specify and define the kinds of defences which he may set up (see paragraph 6 of report);
2. If the principle of specifying and defining the defences be adopted,—
   (a) What defences ought to be specified as being available to a person sued on a foreign judgment;
   (b) Whether any distinction should be made between an action on a judgment obtained in another Province of Canada and an action upon a judgment obtained elsewhere;
   (c) To what extent should the clauses of section 4 of the draft Reciprocal Enforcement of Judgments Act be followed, or to what extent should the ordinary rules of conflict of laws be followed (see paragraphs 6-9 of report).

Your reply in the above is respectfully requested.

I have the honour to be, Sir,

Your obedient servant,

(Sgd) A. V. PINEO,

Secretary.

REGINA, October 27, 1927.

A. V. Pineo, Esq.,
Attorney-General's Dept.,
Parliament Bldgs.,
Victoria, B.C.

DEAR MR. PINEO:

Re Uniformity of Legislation—Defences to Actions on Foreign Judgments.

On September 21st you wrote to the Attorney-General with regard to the above subject and asked him for his views upon certain matters which you set out in detail.

The Attorney-General has been so busy preparing for the Conference which is to take place at Ottawa next week that he was not able to reply to you before. He has now handed your letter to me and asked me to acquaint you with his views, which are as follows:

1. As a general rule a person who is sued upon a foreign judgment should not be permitted to set up all defences which he might have set up to the original action but only certain specified defences, as suggested by the report

2. He does not think that any distinction should be made between an action on a judgment obtained in another province of Canada and an action upon a judgment obtained elsewhere.

3. The clauses of section 4 of The Reciprocal Enforcement of Judgments Act, approved by the Conference and adopted by most of the provinces, should in general be followed, but clause (g) should be omitted.

You do not in your letter refer to the question raised on page 51 of the report of 1925, namely, whether any attempt should be made in the Act respecting defences to actions on foreign judgments to state the cases in which a foreign court has jurisdiction. The Attorney-General is inclined to the view that it would be well to include rules for determining that question, and not to make it necessary to go outside the Act and to consult the authorities on the conflict of laws.

Yours faithfully,

R. W. SHANNON,

Legislative Counsel.

APPENDIX F.

REPORT OF COMMITTEE ON THE TRUSTEE ACT.

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

GENTLEMEN:

At the last meeting of the Conference 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 to be reported upon this year. The Act referred to was the fruit of two years' labour by a very competent committee of Winnipeg lawyers headed by Mr. E. K. Williams, K.C., and of extensive research into the statute law of all the common law provinces of Canada. It was based upon a report made to The Canadian Bar Association in 1926 and published in pamphlet form.

This report contained an exhaustive analysis of the provincial statutes, a comparative table based on the Ontario Trustee Act showing the corresponding sections in The Trustee Acts of the other provinces, tables based upon those Acts showing the corresponding sections of the Ontario Act, or, where there were none such, a reference to the page in the report where the section peculiar to any province was dealt with, a memorandum of the principal cases in Canada, except in Quebec, relating to the duties and obligations o trustees, and finally the recommendations of the committee.

This report constituted a treatise upon the Trustee law of Canada. The draft Act based upon it and brought forward in 1927 has a table showing the principal sources of its respective sections, and comments upon a number of those sections

The Saskatchewan commissioners have examined this draft in the light of the abundant material furnished by the committee which sponsored it They have compared its provisions with those of the English Trustee Act, 1925, the Ontario Act and the Saskatchewan Act, and have considered the reasons given by the committee for adopting, rejecting or varying provisions of the two former which

were the sources of the greater part of the draft. The work done by the committee has been found to be careful, accurate and thorough, and the result a model law of the subject of trustees.

The Saskatchewan commissioners have not thought it desirable to discuss in detail the various points raised in the recommendations attached to the report of 1926 or the comments on particular sections which accompany the draft Act as published in 1927.

It seems to them that the draft might best be dealt with in the usual manner at the next annual meeting after it has been studied by the members. As a preparation for the discussion, the commissioners for each province might examine the Act in the light of their own provincial statutes, noting the differences and forming opinions based upon such a comparison.

R. W. SHANNON,
Secretary.

Regina, August 23, 1928.

APPENDIX G.

AS 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 Actions Act."*

INTERPRETATION (i).

2. In this Act—

(*a*) "Action" shall include an information on behalf of the Crown and any civil proceeding (ii);

(*b*) "Assurance" shall mean any transfer (iii), deed or instrument, other than a will, by which land may be conveyed or transferred;

(*c*) "Heirs" (iv) 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" (iv) shall not mean a rent service or rent reserved upon a lease for years.

(i) These definitions are largely taken from the Ontario Act.

(ii) This definition, together with the inclusion of the limitations of the period for suits against the Crown will, it is presumed,

make the statute apply to a petition of right and also to cases where the Crown seeks to enforce a liability. This is not so under Imperial Acts (Rustomjee v. Rustomjee, 1 Q.B.D 487). Would it be better to make the definition cover these points by its terms?

(iii) The word "transfer" is inserted in the definition of "assurance" by reason fo the existence of the Torrens system

(iv) A definition of the word "heirs" seems necessary, owing to the changes in the law of intestate inheritance.

(v) The exclusion of ordinary rent from the definition of the word "rent" when used in the phrase "land or rent" would seem to be desirable. (See Grant v Ellis (1841) 9 M. and W. 113).

PART 1(i).

PERSONAL ACTIONS.

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

(*a*) *Penal Actions.*

Actions for penalties 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 (ii), not being the person aggrieved, within one year after the cause of action arose.

(*b*) *Actions for Penalties.*

Actions for penalties, damages or sums 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.

(*c*) *Slander actionable* per se (iii).

Actions for defamation by spoken words actionable *per se* within two years of the speaking of the words.

(*d*) *Trespass to the Person* (iv)

Actions for trespass to the person, 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.

(*e*) *Trespass to Property* (v)

Actions for trespass or injuries to real property or chattels, whether direct or indirect, and whether arising from an unlawful act or from negligence, or for the taking away conversion or detention of chattels, within six years after the cause of action arose.

(*f*) *Contracts* (vi).

Actions 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 expressed or implied, or for any money demand or for an account or for not accounting, within six years after the cause of action arose.

(*g*) *Fraudulent Misrepresentation* (vii).

Actions grounded on fraudulent misrepresentation within six years from the time when the plaintiff acted upon the misrepresentation.

(*h*) *Undue Influence.*

Actions grounded on undue influence, within six years from time when such influence ceased.

(*i*) *Mistake, etc.*

Actions grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action or of the time when such cause might with reasonable diligence have been discovered.

(*j*) *Judgments.*

An action on a judgment or order for the payment of money, within ten years after the cause of action arose.

(*k*) *Other Actions* (viii).

Any other action not in this Act specifically provided for 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 statute specially limited.

(i) This part contains most of the provisions of the James 1st Act and all The Common Law Procedure Act It might be well to draw attention to the words written by Sir Frederick Pollock in his book on Torts in 1912: "It has often been remarked that as a matter of policy the periods of limitation fixed by the statutes of James are unreasonably long for usage; but modern legislation has done nothing beyond removing some of the privileged disabilities and attaching special short periods of limitation to some special statutory rights The statutes of limitation ought to be systematically revised as a whole"

In this draft, however, in view of the instructions given by the conference, six years has been retained as the period of limitation for personal actions generally.

(ii) The words "by any person authorized to sue for same" have been introduced to meet the case of Robinson v. Currey, 7 Q.B D 465 which was an action in the provisions of The Gold

and Silver Wares Act which provided that the Goldsmiths Company might sue for penalties, but it was held that the Company was not barred by this provision as it could not be said to be a common informer.

(iii) The limitation of action provided in cases of slander by The Limitation Act 1623 is two years, but it is only applicable to words which are actionable *per se*, whilst in cases of actions of libel, slander of goods and slander of title and slander where the words are not actionable *per se*, the period of limitation is six years (See Law v. Harwood (1628) Cro Car 140).

Nova Scotia has shortened the period for slander to one year. In some of the provinces the periods of limitation of action for libel have been considerably reduced

It would seem to be perhaps advisable to include all forms of defamation in one paragraph and perhaps, not to be unreasonable, to shorten the periods of limitation If this were advisable a paragraph in the following form could be inserted in lieu of the paragraph headed "Slander actionable *per se*" (c) Defamation. "An action of defamation within two years after the cause of action arose, that is to say, in the case of libel, within two years after the publication of the libel, in the case of slander requiring proof of special damage, within two years after the act constituting the slander."

(iv) The period for assault, menace, battery, wounding and imprisonment are in England and Ontario four years and in Nova Scotia one year An action for malicious prosecution must in all these jurisdictions be brought within six years It would seem advisable to group malicious prosecution with false imprisonment. It might well be that it would be advisable to shorten the period in this class of action from four years to two years and to add the action for seduction and the action for criminal conversation where permitted to the list.

(v) The consideration of the reduction of the period in this class of cases from six years to four years is recommended

(vi) In obedience to the instructions to the conference, the distinction between specialties and simple contracts is not preserved.

(vii) See later note on fraudulent concealment.

(viii) There are some actions to which no statutes of limitation are applicable either directly or by analogy, thus no statute of limitation is applicable to a charge on personal property whether by way of vendor's lien or otherwise (Stucley-Stucley v Kekewich (1906) 1 Ch 67 CA), nor to a mandamus nor to an action for the recovery of chattels *in specie* (Mitchell v. Moseley (1914) 1 Ch 438) It should be carefully considered as to whether this state of affairs should continue or not.

4. When the existence of a cause of action has been concealed y fraud of or in some way imputable to the defendant, or some erson through whom he claims, the cause of action shall not be

deemed to have arisen until (*a*) in cases where the plaintiff was entitled to rely upon the defendant from the discovery of the fraud, and (*b*) in any other case from the time when the plaintiff's suspicions having been aroused, he has omitted to make enquiry (i).

(i) This section as to concealed fraud is new It seems very desirable that there should be some such section in the Act, but it must be confessed that there are extraordinary difficulties in drafting a satisfactory section. The chief difficulty consists in determining whether fraud which the plaintiff had means of discovering, but did not in fact discover, should be treated as a sufficient answer to the defendant's plea of the statute The cases upon the point are numerous and unsatisfactory, if not contradictory. The text-book writers seem to be by no means in agreement, thus we find Odgers in his edition of Broom's Common Law holding the theory that where the person has the means of finding out the fraud, he must be treated as having knowledge of the fraud save in the exceptional case of partnership Whereas Salmond in his book on Torts and Ashburner in his book on Equity are of the opinion that actual knowledge is necessary except where the suspicions of the plaintiff were aroused and he wilfully abstained from enquiry. The draft section follows the latter school of thought, but if the principle is adopted by the conference, it will obviously need re-touching The words of Odgers page 1129 are as follows:

It was, before the Judicature Act, the rule "that where the cause of action and the knowledge of the cause of action are contemporaneous, there the statute runs in Courts of Equity as it runs at common law, but that where the existence of the cause of action is concealed from the person who ought to take advantage of it by the fraud of the person who creates it, such person shall not take advantage of the wrong which he himself has done, and that a fresh cause of action accrues from the moment that the fraud is discovered, and that to that fresh cause of action the Statute of Limitations will be applied by the Courts of Equity" And this is now the rule also in actions brought in the King's Bench Division, whether of tort or contract. Thus where the plaintiff brought an action to recover by way of damages money lost by the fraudulent representations of the defendant, which had induced him to purchase shares in a certain company, and the defendant pleaded the Statute of Limitations, the reply of the plaintiff that he did not discover, and had not reasonable means of discovering, the fraud within six years before action, owing to the fact that it had been fraudulently concealed by the defendant, was held good.

Although as a general rule, where the discovery by the plaintiff of his cause of action is prevented by the fraud of the defendant, the statute will begin to run as soon as the plaintiff might, with reasonable diligence, have discovered the fraud,

nevertheless there is an exception to this rule in the case of partners. As between partners the statute will not begin to run until the fraud has been actually discovered. The mere fact that the fraud might have been discovered at an earlier date if reasonable diligence had been used will make no difference, for a partner is entitled to rely on the good faith of his co-partners. The words of Salmond, page 137, are as follows: "In all other cases save that of concealed fraud as thus defined, the statute runs from the time when the cause of action first arises, and it makes no difference whether the cause of action was or was not known to the plaintiff or whether it was or was not discoverable by him It is commonly said that the rule of concealed fraud does not apply when the plaintiff could by the exercise of care and diligence have discovered the fraud. In other words, it is said that the statute runs, not from the time when the cause of action was discovered by the plaintiff, but from any earlier time at which it ought to have been discovered, but there seems to be no decision to this effect and it is difficult to see what duty of care or diligence a person defrauded owes to him who defrauded him."

Ashburner at page 708 says "In cases of concealed fraud the fact that the plaintiff had the means of knowledge does not prevent him from relying upon the concealed fraud The time only begins to run after knowledge of the facts which gave him the right to relief. It is immaterial that he has means of knowledge, unless it can be proved that his suspicions were aroused and that he chose not to enquire It is not open to the person who has been guilty of fraud to say that the defrauded party ought to have been diligent to find him out."

The strongest statement in favour of the principle embodied in the section is to be found in the judgment of Lord Justice Rigby in Betjemann v Betjemann, 64 L J Ch. 645, where he says: "The equitable doctrine came to this that the statute did not run or the law which the court of equity applied in this case did not attribute laches or negligence until the discovery of the fraud, and in none of them (i e cases), so far as I recollect, was it part of the defence that there was no reasonable means of knowledge. What duty is there to enquire? To whom is that duty owed? Certainly not to the person who had committed the concealed fraud, for a man in that position to be allowed to say "But you ought to have enquired; if you had enquired you would have found me out," is utterly opposed to every principle of equity." On the other hand it must be remembered that this case was a partnership case and the Lord Justice may have been speaking *secundum materiam.*

A subsidiary question also arises. Before The Judicature Act in Courts of Common Law fraudulent concealment not amounting to an actionable wrong did not prevent the statute running, whilst Courts of Equity held that the statute only ran

from discovery of the fraud, but The Judicature Act made the equitable rule to prevail in all cases where before the Act there was a concurrent remedy in both Courts, but it has been suggested that the equitable rule does not apply to cases of action which were formerly cognisable solely at common law and in the cases which make such suggestion it has also been questioned whether the rule applies in any case except where the transaction giving rise to the cause of action is of a fraudulent nature Whether there is anything in these suggestions or not, it would appear more reasonable to disregard them.

5. Nothing in this Act shall interfere with any rule of equity in refusing relief on the ground of acquiescence, laches or otherwise (i) (ii).

(i) It seems desirable that the old rule of equity should continue notwithstanding the extension of the Act to equitable cases, e g. in cases of specific performance in which though covered by the Act there should, it is clear, be no sleeping upon one's rights The question whether the period of limitation should not be considerably shortened in all equitable actions should be carefully considered.

(ii) See section 43 for this section in another form.

6. In a case of action of account, no claim in respect of a matter which amounts to more than six years before the commencement of the action shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action (i).

(i) This follows the language common to all statutes except that it omits mention of "any such accounts as concern the trade of merchandise, etc." It is thought that these words need not now be inserted, as they were only necessary by reason of the express exception of such actions from the purview of the James Statute of 1623.

DISABILITIES.

7. Where a person entitled to bring any action mentioned in this part is at the time the cause of action accrues an infant, idiot, lunatic or of unsound mind, the period within such action is to be brought shall be reckoned from the date when such person became of full age or of sound mind (i)

(i) See Ontario Section 50

8. If the person against whom any cause of action mentioned in this part accrues is at such time out of the Province, the person entitled to the cause of action may bring the action within such

time after the return of the absent person to the Province as is hereinbefore limited with respect to such action (i).

(i) Note that these disabilities are those applicable to simple contracts, etc, only. See note to Section 11

9.—(1) Where a person has any such cause of action against joint debtors or joint contractors (i), he shall not be entitled to any time within which to commence such action against any one of them who was within the Province at the time the cause of action accrued by reason only that some other of them was, at such time, out of the Province.

(2) A person having such cause of action shall not be barred from commencing an action against a joint debtor or joint contractor, who was out of the Province at the time the cause of action accrued, after his return to the Province by reason only that judgment has been already recovered against the joint debtor or joint contractor who was at such time within the Province.

(i) This section is derived from the Imperial Mercantile Amendment Act 1856, Section 11 That section, however, only deals with the case of actions against joint debtors, though Section 14 of the same Act deals with contractors and co-debtors. Ontario, Section 52, has extended this section to cover joint debtors whereas Nova Scotia has not made this extension. (Sect. 4, s.s 2)

ACKNOWLEDGMENTS AND PART-PAYMENT.

10.—(1) 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 duly authorized agent of the 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 duly authorized agent 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.

(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 (i)

(i) This is an attempt to codify the law relating to the effect of acknowledgment and part-payment The James 1623 statute contains no provision as to acknowledgments and Lord Tenterden's Act contains no provision as to the nature or construction of the acknowledgment required, but simply requires it to be in writing Tanner v Smart, 6 B & C 603, held that a promise express or implied is a new contract, the consideration for which is the old debt and that such a promise constitutes a new cause of action. Section 13 of the Mercantile Law Amendment Act 1856 provides for the giving of an acknowledgment by an agent. Lord Tenterden's Act had been limited to acknowledgments by the party chargeable It has been held in Edmonds v Goater, 15 Beav 415, that an acknowledgment to an agent has the same effect as an acknowledgment to a principal, but the acknowledgment of a stranger under the James Act is altogether inoperative (Grenfell v. Girdlestone, 2 Y & C 676).

Considerable difficulty has arisen in drafting this section from the fact that the law as to acknowledgments in the case of simple contract debts is different from the law in the case of specialty debts In the case of the latter, the acknowledgment need not amount to a promise (Moodie v Bannister, 4 Drew 432) and any admission even if not made to the creditor, or his agent, is sufficient. Further, in the case of such debts, an acknowledgment cannot operate as a new promise, for a promise by specialty cannot be supported by a promise not by specialty and its real effect was held to be to give a further time during which the action on the specialty could be brought. There seems, however, to be no real reason why the law as to acknowledgments and part payments in both classes of debts should not be the same Careful consideration of this point is recommended

It should be further noticed that the provision of the Civil Procedure Act as to acknowledgments only relates to indentures, specialties or recognizances and therefore it would seem doubtful whether a part payment on account of a simple contract debt within the Act has any effect This question would, of course, be answered by the adoption of the section as drafted.

11. 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 (i).

(i) This and the following section are from Ontario and were taken from Lord Tenterden's Act which deals with acknowledgments and is in terms limited to cases coming within the Act of James Ist and Section 14 of the Mercantile Law Amendment Act which deals with part-payment and applies to both simple contracts and specialties.

The case of specialty debts is provided for by section 5 of the Civil Procedure Act 1833, which provides that a written acknowledgment by the party liable by virtue of a specialty or his agent or by part payment or part satisfaction on account of any principal or interest then action might be brought within twenty years of the acknowledgment or part payment. In Roddam v Morley 1 De G. & J. 1, it was held that what was meant was an acknowledgment signed by the party or parties liable by virtue of such specialty or any of them or his, her or their agent or a part payment by any such person. This decision was confirmed in Read v Price (1909) 2 K B. 724 The effect of the section, therefore, is that an acknowledgment in writing or part payment takes a debt out of the statute as regards the person who makes the acknowledgment or payment and also as regards all other persons liable Section 14 of the Mercantile Law Amendment Act 1856 provides that a part payment by one co-debtor is not to prejudice the others. The position with respect to a specialty debt under the Imperial Statutes therefore seems to be that a written acknowledgment by one co-debtor takes the debt out of the statute as regards all the co-debtors, whereas a payment by one co-debtor does not take the case out of the statute as against the others, and it does not matter whether the persons are liable jointly or successively.

There are other anomalies arising with respect to acknowledgments by payment or otherwise, thus section 14 of the Mercantile Law Amendment Act 1856 does not apply to the Real Property Acts Therefore, a payment of a debt by a devisee of part of the estate of the deceased person will not prejudice the devisees of the other parts, but if the debt is charged upon the land, a part payment by one devisee would prevent the other devisees relying on the statute (Re Lacy Howard v. Lightfoot (1907) 1 Ch. 330) On the other hand, where the persons are successively liable, the payment by one

prevents another from relying on the statute. It is suggested that the law might be made uniform in all these cases and that section 10 of this draft might well be made to read as follows: "Where there are two or more persons jointly or successively liable for the payment of a debt, or executors, or administrators of any such persons ,no such persons or executors or administrators shall lose the benefit of this Act," etc, etc.

12. 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 (i).

(i) Perhaps this provision is beyond the power of our Provincial Legisatures

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

PART II.

REAL PROPERTY (i).

(i) The provisions of the Ontario Statute relating to real property have been in the main adopted.

14. No person shall make an entry or distress, or bring an action to recover or obtain possession of (i) 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 (1874, s. 1.) (i)

(i) The words "taken possession of" have been inserted as in Grant v Ellis, 9 M & W 113. It was said this was the meaning of the word as far as land was concerned.

15.—(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. (1833, s. 3.)

(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. (1833, s. 3.)

(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. (1833, s. 3.)

(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 knowlelge 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. (Ontario s. 5 (4).)

(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. (1833, s. 9.)

(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 tenancy was received, whichever last happens (1833, s. 8.)

(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 (1833, s. 7.)

(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 sub-section (1833, s 7)

(9) Where the person claiming such land or rent, or the person through whom 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 (1833, s 3)

(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. (1833, s. 4.)

(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. (1833, s. 3.)

(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 estate or estates in respect of which such land has been held or the profits thereof or such rents 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. (1874, s. 2.)

16.—(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. (1874(s. 2.)

(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 after-

wards 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. (1874, s. 2.)

(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. (1833, s. 20.)

17. 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. (1883, s. 6.)

18—(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. (1833, s. 10.)

(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. (1833, s 11.)

19. 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. (1833, s. 12)

20. 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 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. (1833, s. 13.)

21. 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. (1833, s. 35.)

22.—(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. (1833, s. 34)

(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 (i). (1833, s. 34.)

(i) Sub-section (2) of this section is new

23. 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 allow-

ance 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. (Ontario, 16.)

ARREARS OF RENT AND INTEREST.

24.—(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 in respect of any legacy whether it is or is not charged upon land, 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. (1833, s. 42.)

(2) This section shall not apply to an action for redemption or similar proceedings brought by a mortgagor or by any person claiming under him (i.) (Ont. 17 (2).)

(i) This sub-section was apparently inserted in the Ontario statute to conform with the ordinary practice referred to in Lloyd v Lloyd (1903) 1, Ch. 385. The words "or similar proceedings" are new. It should be noticed that the words "whether it is or is not charged upon land" are not in the English Act and that there is no provision, express or implied, for disabilities

25. 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 encumbrance on the same land, the person entitled to such subsequent mortgage or encumbrance may recover in such action the arrears of interest which have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or receipt, although such time may have exceeded such term of six years. (1833, s. 42.)

MORTGAGES AND CHARGES ON LAND.

26. 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. (1874, s. 7)

27. Where there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, suc 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. (1874, s. 7.)

28. 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. (1874, s 7.)

29. 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. (1837, s. 1.)

30.—(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. (1874, s. 8.)

(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. (i.)

(i) Though there is no provision for disabilities in this section, yet the provision that there should be a person in existence who is capable of giving the discharge practically provides for two disabilities, lunacy and infancy The words "whether it is or not charged upon land" referring to legacies have been inserted apparently following Sheppard v. Duke, 9 Sim 567. The word "judgment" has been omitted from the Ontario section, perhaps because it would be a sum of money secured by a lien or otherwise charged upon the land. It should be noticed, however, that the English Act which inserts the word "judgment" applies to all judgments whether a charge on land or not Sub-section (2) of this section is, of course, not in the English Act.

It would be well to consider whether this section and section 23, in as much as they deal with sums of money only, would not find a more fitting place under the caption Personal Actions, especially when they deal with judgments and legacies not necessarily charged upon or connected with land

31. 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. (1874, s. 10.)

(Ontario sections relating to dower and estates tail have here been omitted.)

CONCEALED FRAUD.

32. In every case of 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 (i), 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 (1833, s. 26.)

(i) These words have been inserted.

33. 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. (1833, s. 26)

DISABILITIES AND EXCEPTIONS.

In Cases of Land or Rent.

34. 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. (1874, s. 3.)

35. 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. (1874, s. 5.)

36. 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. (1833, s. 18.)

PART III.

TRUSTS AND TRUSTEES.

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

38.—(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.

39.—(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.

PART IV.

ACTIONS BY THE CROWN.

40. Any entry, distress or action shall be made or brought on behalf of His Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after

the right to make such entry or distress or to bring such action shall first accrue to His Majesty.

41. Sections of this Act shall apply to rights of entry, distress or actions asserted by or on behalf of His Majesty.

PART V.

MISCELLANEOUS.

42. 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.

43. 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. (i)

(i) Should the last clause of this section be deleted?

44. 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.

45. The following Acts or parts of Acts are hereby repealed, namely:

46. 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.

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

WALTER S. SCOTT,
Commissioner for Alberta.

APPENDIX H.

DRAFT SECTION RESPECTING PROOF OF STATUTES.

Draft, by the New Brunswick commissioners, of a section respecting Proof of Statutes, etc.

1—(1) Printed copies of statutes, rules of court, ordinances, regulations, proclamations, treaties, gazettes, notices, orders, journals, and other public documents, or extracts therefrom, purporting to be printed by, or by the authority of, the Parliament, Legislature, King's printer, Government printer or official printer, of Great Britain, or of any foreign state, or of any dominion, commonwealth, state, province, colony, territory or possession, within the British Empire, or within any foreign state, or copies, whether printed or not, purporting to be certified as true copies by the legal custodian of the public records from which such copies purport to be made, shall be admitted in evidence as *prima facie* proof of the contents thereof.

(2) It shall not be necessary to prove the signature of any person so certifying, or that such person is such custodian.

APPENDIX I.

REPORT OF COMMITTEE ON THE CONTRIBUTORY NEGLIGENCE ACT.

The Ontario commissioners, to whom the Coneference first referred the proposal for an Act to make uniform the law in Contributory Negligence cases, and who later presented the draft Contributory Negligence Act which the Conference adopted in 1924, have noted the enactment and subsequent judicial interpretation of statutes relating to the subject in some of the provinces; and having recently noted also that other provinces are considering the adoption of similar legislation, and that a question has arisen whether the principle and scope of the model Act should be extended by amendment in certain respects, the Ontario commissioners believe the Conference should reach a conclusion as promptly as possible on the points raised, and venture to present the following report.

In the same year that the Conference adopted the present model the Ontario Contributory Negligence Act, 14 George V, c. 32, was enacted and a copy of this Act is appended to this report. The form and phraseology of the enactment has been subjected to some criticism, and an effort was in fact made to defer its adoption pending the settlement of a model Act by the Conference, but unsuccessfully.

Nova Scotia in 1924 adopted the Ontario Act, but in the following year repealed it and adopted the form approved by the Conference. That form has also been adopted in New Brunswick and British Columbia.

In January last the Attorney-General's Department of Manitoba made inquiry as to the probability of amendment of the Ontario Act, and correspondence with all parties resulted in the suggestion that both these provinces should defer action until the Conference had given the matter further consideration, with special reference to a question which had arisen whether the legislation could or should take a form which would effectively render unnecessary the search for ultimate negligence

One of the Ontario commissioners, in a paper read to The Canadian Bar Association in August of 1927,[1] pointed out that according to two Ontario decisions in 1925,[2] the Ontario Act does not apply where "ultimate negligence" on the part of the defendant is proved, that is where it is proved that after the plaintiff's negligence the defendant could by the exercise of ordinary care have avoided the accident. He also called attention to the decision of the Supreme Court of Canada in 1927,[3] dealing with the New Brunswick Contributory Negligence Act (which follows the present model Act) and applying to a plaintiff's negligence the same tests that would have been applied under the earlier Common Law in order to determine whether it was in fact *contributory* negligence, or—to follow the words of the Statute—whether the damage or loss was in part *caused* by it. Reference was also made to the fact that in Admiralty the highest courts[4] have interpreted and applied the law in the same way since the Maritime Conventions Act which the Conference followed closely on this question of *faute commune* in adopting the present model Act.

The Ontario Commissioners believe the primary purpose of the Model Act was undoubtedly to prevent the bar to recovery which contributory negligence of the plaintiff created. The principal question at issue in 1923 was thus stated:

"If negligence ordinarily entails liability for the amount of the loss occasioned, why does not contributory negligence entail only a liability to contribute to the amount? Why is it that if A suffer through the combined negligence of A and B, A bears the loss and B escapes entirely? Why should B not contribute to the settlement of the loss if he contributed to the cause?"[5]

and Mr. Justice Riddell in Walker v. Forbes[6], referring to the Ontario Act said, at p. 535:

"The statute was passed in order to get rid of what was believed to be an injustice in depriving an injured party of any relief if he by his negligence or act in any way contributed to his injury, no matter how negligent the other party may have been, and it was intended to assimilate the law in our Courts to the law in the Admiralty Courts"

But at the same time much of the criticism of the common law rule was directed against the difficulties arising for judge, jury, and litigants in deciding who had the last chance to avoid the accident, and there would undoubtedly be many advantages gained if legislation could be reasonably devised which would not only remove

the old common law bar to recovery arising from the plaintiff's negligence, but also protect a party against a finding of sole liability based on "ultimate" negligence.

In this view the undersigned have considered the question carefully and they have with some regret reached the conclusion, which they now submit, that it is not reasonably possible to define in terms of general application the point at which negligence prior to the accident passes from the category of extraneous and irrelevant events into the list of things which may fairly be considered to have contributed to the result so as to entail a share of the liability.

The Maritime Conventions Act and the Model Act of this Conference now in question both provide only that two or more whose fault has *caused* the damage should divide the loss in proportion to degree of fault, and the Model Act incorporates the provision of the Maritime Conventions Act that there shall be no liability for any loss or damage except where the fault has *contributed*.

The retention of these safeguards against liability would seem to be in accord with abstract justice as well as with the whole trend of the law of negligence.

Lord Birkenhead in his famous judgment in the Volute case[7] in 1921 classifies contributory negligence cases arising from collision "by land or sea" and concludes after reviewing various decisions:

"Upon the whole I think that the question of contributory negligence must be dealt with somewhat broadly and upon commonsense principles as a jury would probably deal with it. And while no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the party secondly negligent, while not held free from blame under the Bywell Castle rule, might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution. And the Maritime Conventions Act with its provisions for nice qualifications as to the quantum of blame and the proportions in which contribution is to be made may be taken as to some extent declaratory of the Admiralty rule in this respect."

The Ontario Commissioners do not overlook the query of Mr. Justice Newcombe in McLaughlin v. Long[8] in 1927 as to whether the Model Act, enacted in New Brunswick, and drawn from the Admiralty law, necessarily brought with it the application of the

Admiralty provisions of contribution including those expressed by Lord Birkenhead in the above quotation. But it would seem that apart from the old arbitrary rule for division of loss equally where both were in fault, the main principles of the law of negligence were identical in all the courts, and in view of this the Model Act as applied to ordinary actions between individuals cannot well be interpreted on any other line than that taken in any consideration of the Maritime Conventions Act, the language of which it so closely follows.

The Ontario Commissioners therefore believe and recommend that it would be unwise if not impossible to attempt to extend the application of the Model Act so as to prevent examination of the relationship of the alleged negligence to the damage in question, and that the Act should stand as the model recommended to the Provincial Legislatures.

All of which is respectfully submitted.

Dated the 31st day of July, 1928.

FRANCIS KING,
On behalf of the Ontario Commissioners.

[1] "Desirable Changes in the Common Law" by Mr John D. Falconbridge: Canadian Bar Association Year Book, 1927, pp. 195 ff, 5 Can Bar Rev pp 581 ff (October, 1927).

[2] *Walker* v *Forbes*, 1925, 56 O L R. 532; *Ferber* v. *Toronto Transp'n Comm'n*, 1925, 56 O L R 537.

[3] *McLaughlin* v. *Long*, [1927] S C R 303.

[4] *Admiralty Commissioners* v *S S Volute*, [1922] 1 A C 129; *Anglo Newfoundland Development Co* v. *Pacific Steam Navigation Co* (1924) A.C 406.

[5] Opening paragraph of Mr King's paper read to the Ontario Bar Association in 1923: Proceedings of Conference of Commissioners, 1924, p 37; Canadian Bar Association Year Book, 1925, p 305.

[6] *Supra*

[7] *Supra*

[8] *Supra.*

ONTARIO STATUTES, 14 GEO. V., C. 32.

An Act to amend the Law as to Contributory Negligence.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Contributory Negligence Act, 1924.*

2. In this Act "plaintiff" shall include a defendant counterclaiming, and "defendant" shall include a plaintiff against whom a counterclaim is brought.

3. In any action or counterclaim for damages hereafter brought, which is founded upon fault or negligence, if a plea of contributory fault or negligence shall be found to have been established, the jury, or the judge in an action tried without a jury, shall find:—

First: The entire amount of damages to which the plaintiff would have been entitled had there been no such contributory fault or neglect;

Secondly: The degree in which each party was in fault and the manner in which the amount of damages found should be apportioned so that the plaintiff shall have judgment only for so much thereof as is proportionate to the degree of fault imputable to the defendant

4 Where the judge or jury finds that it is not, upon the evidence, practicable to determine the respective degrees of fault the defendant shall be liable for one-half the damages sustained.

5. This Act shall come into force on the 1st day of July, 1924.

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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