

1929

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PROCEEDINGS

OF THE

TWELFTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION  
IN CANADA

HELD AT

QUEBEC

AUGUST 30, 31, AND SEPTEMBER 2, 3, 4, 1929

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

### OFFICERS OF THE CONFERENCE.

<i>President</i>	Isaac Pitblado, K.C., Winnipeg, Manitoba
<i>Vice-President</i>	Robert W. Shannon, K.C., Regina, Saskatchewan
<i>Treasurer</i>	.....R Murray Fisher, K.C., Parliament Bldgs, Winnipeg, Manitoba
<i>Secretary</i>	John D Falconbridge, K.C., Osgoode Hall, Toronto 2, Toronto.

### *Local Secretaries.*

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

<i>Alberta</i>	Walter S. Scott, K.C., Parliament Buildings, Edmonton
<i>British Columbia</i>	Avard V. Pineo, Parliament Buildings, Victoria
<i>Manitoba</i>	R. Murray Fisher, K.C., Parliament Buildings, Winnipeg.
<i>New Brunswick</i>	Cyrus F Inches, K.C., St. John
<i>Nova Scotia</i>	Frederick Mathers, K.C., Parliament Buildings, Halifax
<i>Ontario</i>	John D. Falconbridge, K.C., Osgoode Hall, Toronto 2
<i>Prince Edward Island</i>	W. E Bentley, K.C., Charlottetown.
<i>Quebec</i>	Hon. Ed. Fabre Surveyer, Judges' Chambers, Superior Court, Montreal.
<i>Saskatchewan</i>	.....Robert W. Shannon, K.C., Parliament Buildings, Regina.

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

*Alberta:*

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:*

AVARD V PINEO, Legislative Counsel, Parliament Buildings, Victoria

HENRY G. LAWSON, 918 Government Street, Victoria.

WILLIAM J. BAIRD, 501 Pacific Building, Vancouver.

(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, K.C., Legislative Counsel, Parliament Buildings, Winnipeg.

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

*New Brunswick*

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

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.

SIDNEY E. SMITH, 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:*

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.

ALLAN M. DYMOND, K.C., Legislative Counsel, Parliament  
Buildings, Toronto 5.

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

*Prince Edward Island:*

WILLIAM E. BENTLEY, K.C., Charlottetown

*Quebec:*

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

*Saskatchewan:*

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

DOUGLAS J. THOM, K.C., Regina

## 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. M. A. MacPherson, 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 inter-provincial 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.  
 1929 August 30-31, September 2-4, Quebec

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 of 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

In 1929 the Wills Act was further discussed, and finally revised and approved. The Conference also discussed the subjects of limitations of action and proof of statutes.

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 and 1929): 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, New Brunswick (1926), and Saskatchewan (1928) Provisions similar in effect are in force in Alberta.
1927. Devolution of Real Property Act: adopted in Alberta (1928), and Saskatchewan (1928).
1928. Bills of Sale Act adopted in Alberta (1929), and Saskatchewan (1929).
1928. Devolution of Real Property Act: adopted in Alberta (1929), and Saskatchewan (1929)
1929. Wills Act.



## PROCEEDINGS.

PROCEEDINGS OF THE TWELFTH 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:*

MR. SCOTT.

*British Columbia:*

MESSRS. PINEO, LAWSON AND BAIRD.

*Manitoba:*

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

*New Brunswick:*

MESSRS JONES, INCHES AND RICHARD.

*Nova Scotia:*

MESSRS. MATHERS AND SMITH.

*Ontario*

MESSRS. KING, FALCONBRIDGE AND DYMOND.

*Prince Edward Island:*

MR. BENTLEY.

*Saskatchewan:*

MESSRS. SHANNON AND THOM.

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### FIRST DAY.

The Conference assembled at 10.30 a.m. at the Chateau Frontenac; Quebec, Mr Shannon, the Vice-President, in the chair.

Messrs. Scott, Mathers and Smith were appointed a committee to prepare a resolution with regard to *the late Sir James Aikins*, first president of the Conference and, more recently, honorary president.

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

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

Mr. Fisher presented the *Treasurer's Report*, which was referred to Messrs. Richard and Smith for audit and report.

Dr. Scott was appointed representative of the Conference to make a *statement before The Canadian Bar Association* on the work of the Conference.

On the arrival of the President, Mr. Pitblado, he took the chair, and read his *Presidential Address*. The Conference adopted a resolution of thanks to the President and ordered that his address should be printed in the proceedings

(Appendix A.)

Messrs. King, Craig, Thom, Mathers, Jones, Bentley, Scott and Lawson were appointed a committee to consider the question of appointing a *paid officer* to assist in the work of the Conference, and the *nomination of officers* for the ensuing year, and to report thereon at the present meeting.

With regard to the *Sales on Consignment Act* (Conference Proceedings, 1928, p. 12; Canadian Bar Association Year Book, p. 252), the President reported that he had not received requests for action from three Provincial governments, and the Conference decided that no further action should be taken at present.

With regard to the *Reciprocal Enforcement of Maintenance Orders* (Conference Proceedings, 1928, p. 17; Canadian Bar Association Year Book, p. 257), the President reported that he had received no requests for action, and the Conference decided that no further action should be taken at present.

With regard to the *Bulk Sales Act* (Conference Proceedings, 1928, p 17; Canadian Bar Association Year Book, p 257), it was decided that no further action should be taken at present or until further requests for amendment should be received.

The question having been raised as to the procedure to be adopted in the case of proposals being made in any province for the *amendment of a uniform statute adopted by the Conference*, the Conference adopted the following resolution:

Resolved, that in the case of any Province which has adopted a Uniform Act recommended by this Conference, if proposals are made for the amendment of the Act, the services of the Conference shall be made available, if requested, in advising as to the policy and form of the proposed amendments; and that the President may appoint a committee of members to consider the matter and to report thereon at the next meeting of the Conference, or, where the matter does not admit of delay until the next meeting of the Conference, the President may appoint a committee of members, of which he shall be *ex officio* the Chairman, to advise on the matter forthwith, and

Further resolved, that the Secretary be instructed to advise the Deputy Attorney-General or the Legislative Counsel of each Province of this resolution, and to invite the submission from time to time of all proposed amendments to the President of the Conference, with a view to securing uniformity of amendments so far as possible.

Messrs. Pineo, Mathers and Richards were appointed a committee to consider certain amendments made in British Columbia to the *Conditional Sales Act*, and to report thereon at the present meeting

The Secretary having drawn the attention of the Conference to a *Table of Model Uniform Statutes* (suggested, proposed, reported on, drafted or approved, as appearing in the printed Proceedings of the Conference, 1918 to 1928), prepared by Mr. Pineo, the Conference expressed its indebtedness to Mr. Pineo, and ordered that the table should be supplemented by the addition of references to the proceedings of the present meeting, and should be printed in the proceedings.

(Appendix E)

With regard to *Mechanics' Liens* (Conference Proceedings, 1926, p. 18; Canadian Bar Association Year Book, 1926, p. 410), it was decided that no further action should be taken.

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

It was then decided to proceed with the discussion of the draft *Wills Act*, as revised in 1926 and printed in the proceedings for 1926, pp. 31 ff (Canadian Bar Association Year Book, 1926, pp. 423 ff).

Mr. Pineo read the report of the British Columbia commissioners, which was accompanied by a memorandum of the British Columbia commissioners, and a memorandum of the Alberta commissioners.

(Appendix B.)

The Conference then proceeded to discuss the draft *Wills Act* section by section.

At 6 p.m. the Conference adjourned.

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## SECOND DAY.

Saturday, August 31st, 1929.

The Conference reassembled at 10 a.m. and resumed the discussion of the draft *Wills Act*.

The Conference adjourned at 1 p.m., and reassembled at 8.15 p.m.

The revision of the *Wills Act* was completed except as to the following matters

Messrs. Pineo, Scott and Dymond were appointed a committee to consider and report upon the question whether some of the sections should apply to wills made before the coming into force of the Act.

Subsection 2 of section 3 was referred to Mr. Pineo for re-drafting

It was resolved that sections 14 and 15 (based on Lord Kingsdown's Act) should be put in a separate Part II, and that they should be considered along with a memorandum to be furnished by Mr. Falconbridge

The Conference adjourned at 11.30 p.m.

## THIRD DAY

Monday, September 2nd, 1929.

The Conference reassembled at 9.30 a.m.

Mr. Pineo submitted a redraft of section 3 of the *Wills Act*, which was discussed and adopted as further amended.

The Conference then proceeded to discuss the draft section relating to the *Proof of Statutes*, as revised last year (Conference Proceedings, 1928, p. 89; Canadian Bar Association Year Book, 1928, p. 329).

It was resolved to add provisions corresponding with sections 27 and 31 of the British Columbia Act (Conference Proceedings, 1926, p. 82; Canadian Bar Association Year Book, 1926, p. 474).

Mr. Pineo submitted a redraft of the section as revised in 1928.

The Conference adjourned at 1 p.m., and reassembled at 2.15 p.m. and resumed the discussion of the section relating to the *Proof of Statutes*.

After discussion Mr. Pineo's redraft was referred to the New Brunswick commissioners for consideration and report

The Conference then proceeded to the discussion of the draft *Limitations Act* as submitted last year (Conference Proceedings, 1928, p. 66; Canadian Bar Association Year Book, 1928, p. 306), the draft having been prepared in conformity with the answers given by the Conference in 1927 to the questions asked by the draftsman in his report of that year (Conference Proceedings, 1927, p. 14; Canadian Bar Association Year Book, 1927, p. 378).

The Conference adjourned at 4.25 p.m., and reassembled at 8.15 p.m., and resumed the discussion of the *Limitations Act*.

Upon a motion to reconsider the decision of the Conference in 1927 to make no distinction between simple contracts and specialties, it was resolved to adhere to that decision, except that the period of limitation for covenants to pay in mortgages of real or personal property should be ten years.

The Conference adjourned at 10.45 p.m.

## FOURTH DAY

Tuesday, September 3rd, 1929.

The Conference reassembled at 9.30 a.m., and resumed the discussion of the *Limitations Act*.

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

Mr. Pineo submitted the report of the committee appointed to consider and report on amendments of the uniform *Conditional Sales Act*.

The report was adopted.

(Appendix C.)

Mr. Falconbridge submitted a memorandum, including a redraft of sections 14 and 15 of the *Wills Act*, for incorporation in Part II of the Act under the heading "Conflict of Laws"

The redraft was discussed and revised, and as amended was adopted.

(Appendix B)

The committee appointed to consider whether the Act should be made applicable to wills made before the coming into force of the Act having reported, it was resolved, after discussion, that section 32 should apply to the wills of persons dying after the coming into force of the Act, and that the other sections of the Act should apply only to wills made after the coming into force of the Act, and that the repeal of the existing *Wills Act* should be qualified accordingly.

It was resolved that the provision relating to holograph wills should be retained for the use of those provinces which desire to adopt it.

The following resolution was then adopted:

Resolved, that the draft *Wills Act* be referred to the Commissioners for Alberta with instructions to revise the draft in the light of the discussion at the present meeting, and that the Commissioners for British Columbia be instructed to assist in the work of revision; and

Further resolved, that the revised draft be printed and that copies be sent to all members of the Conference, and that if within two months thereafter the revised draft is not disapproved by one-fourth of the members who have attended the present meeting it shall be deemed to be approved by the Conference, and shall be recommended to the Legislatures of the several provinces of Canada for enactment.

(Appendix B.)

The Conference adjourned at 6 p.m.

## FIFTH DAY

Wednesday, September 4th, 1929

The Conference reassembled at 9 30 a.m

Mr Smith presented the *Auditors' Report*, which was adopted, as follows:

REPORT OF THE TREASURER OF THE CONFERENCE OF COMMISSIONERS  
ON UNIFORMITY OF LEGISLATION IN CANADA FOR THE  
YEAR ENDING JULY 31ST, 1929

1928

Aug. 1	Balance on deposit	\$1,502.36	
Sep. 5	Grant—British Columbia	200 00	
Sep 10	Miss Livingstone, Toronto, clerical assistance to Secretary		\$47 50
	Exchange		15
	Mr. J. D Falconbridge, secretarial expenses		25.00
	Exchange		15
Oct. 31	Bank interest	21 51	

1929

Jan. 18	Saturday Post, Winnipeg, 150 reports on Assignments of Book Debts Act		60 00
Feb 1	Carswell Co, 10 galley proofs and 1,000 copies <i>Bills of Sale Act</i>		81 63
	Carswell Co., 10 galley proofs and 1,000 copies <i>Assignment of Book Debts Act</i>		63.35
Mar 25	Carswell Co, 500 copies 11th Annual Meeting		295 13
Apr 10	Grant—Saskatchewan	200 00	
30	Bank interest	22 82	
May 30	Carswell Co, 3,000 copies Report of Conference printed in Canadian Bar Association Year Book		354 75
	Balance on deposit		1,019.03
		<hr/>	<hr/>
		\$1,946 69	\$1,946.69

Respectfully submitted,

R. M FISHER, Treasurer.

Audited and found correct,

E. R. RICHARD,  
SIDNEY SMITH,

*Auditors.*

August 30th, 1929

Upon the report of the committee appointed to prepare a resolution respecting the late *Sir James Aikins*, the following resolution was adopted:

Resolved, that we desire to place on record our deep and abiding sense of loss occasioned by the death of Sir James Aikins, our first President

To us he was in turn a wise counsellor, a true and cheery friend and a generous and mindful host

The memory of Sir James, of his wide culture, his true humanity and his deep attachment to the cause that underlies our existence as a Conference, will not easily pass from us

The President was requested to communicate the resolution to Lady Aikins and to Mr. G. H. Aikins, K.C.

The following resolutions respecting *Mr. Justice Jenks* and *Mr. J. F. Mahoney* were adopted

Resolved, that this Conference desires to place on record its deep sense of the loss to the Bench and Bar of Canada and of Nova Scotia suffered through the death within the past week of the Hon Mr Justice Jenks and Hon J F Mahoney, formerly members of our body, and our sincere sympathy with their bereaved relatives.

The following report was received and adopted:

Your Committee on Nomination of Officers for the ensuing year submit the following recommendations.

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

Your committee has considered the proposal referred to it for *the appointment of a paid officer* to assist the Conference, but finding that members of the Conference have not given the question the full consideration suggested in the Report of the Nominating Committee in 1928, and are not yet prepared to take any



definite action, your committee recommends that the matter stand over until the next meeting.

Your Committee also suggests that the Conference may think it desirable to refer the matter to a special committee in the meantime.

FRANCIS KING  
D. J. THOM  
W. G. SCOTT  
H. G. LAWSON  
W. E. BENTLEY  
R. W. CRAIG.

The Conference being of opinion that a committee should be appointed, as suggested in the last clause of the committee's report, the President appointed Mr King (convener) and Messrs. Craig and Pineo a committee to consider the matter and report next year.

It was further resolved, that in case the committee appointed to report on the matter of a paid officer of the Conference decides to recommend the appointment, the committee be requested to take into consideration the matter of expense and endeavour to ascertain from the Attorneys-General of the several Provinces if the money required to meet the expense involved will be made available

The Treasurer was instructed to endeavour to obtain from each of the provinces a contribution of \$200 each year, including the present year.

Mr. Shannon was requested to furnish the editor of the CANADIAN BAR REVIEW with an account of the proceedings of the present meeting.

The New Brunswick commissioners having submitted a printed redraft of the section respecting *Proof of Statutes*, the redraft was, after some discussion and amendment, referred to the New Brunswick commissioners for further revision in the light of the discussion at the present meeting, and of the ensuing Imperial Conference, and for report next year.

(Appendix D)

Mr. Pineo, under instructions from the Attorney-General of British Columbia, suggested the *Registration of Partnerships* as a subject which should be dealt with by the Conference, and read a summary of the divergencies of legislation in the several provinces

The subject was referred to the Nova Scotia commissioners, with instructions to draft a uniform model statute and report next

year, the draft to be circulated among the other commissioners in the interval for their suggestions and criticisms.

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

*The Limitations Act* was referred again to the Alberta commissioners for revision in the light of the discussion at the present meeting and report next year.

The subject of *Defences to Actions on Foreign Judgments* was referred to the Saskatchewan commissioners for further consideration and report

The question as to what action should be taken with regard to the *Trustee Act* (Canadian Bar Association Proceedings, 1926, pp. 236ff; 1927, pp. 251ff) was discussed, and the following resolution was adopted:

Whereas a committee of the Conference, having carefully examined the draft *Trustee Act* prepared by the Committee on Comparative Provincial Legislation and Law Reform of The Canadian Bar Association, reported to the Conference in 1928 that "The work done by the committee has been found to be careful, accurate, and thorough. and the result a model law on the subject of trustees";

And whereas the further examination of the draft Act by the members of the Conference generally during the past year has apparently confirmed this report of the committee,

And whereas a full discussion of this lengthy and important draft Act, section by section, according to the usual practice of the Conference, would probably take the entire time of the Conference for at least two annual sessions, and would involve the postponement of subjects now in hand;

And whereas as the result of enquiries made, the Conference finds it is doubtful whether there is any general demand for a new uniform Act on this subject.

And whereas the committee of The Canadian Bar Association has intimated that it still has under consideration the question of trustee investments and other important topics of trust law.

Therefore resolved that the further consideration of the draft Act by the Conference be deferred; but that upon receipt of advice from the Attorneys-General of three or more provinces approving of the policy of adopting the new draft Act in substitution for existing legislation, and requesting the Conference to proceed with

the matter, the Conference will then arrange to devote the time necessary for the detailed consideration of the draft Act.

On the subject of the *Contributory Negligence Act*, the following resolution was adopted:

Resolved, that as the Model Act relating to Contributory Negligence approved by the Conference in 1924, when introduced in the Ontario Legislative Assembly by the Attorney-General as Bill 62 of 1929, was held over on account of many suggestions from members of the Ontario Bar for amendment of its language and extension of its scope so as to cover explicitly cases which involve (as in the case of motor vehicles) the rights and liabilities of masters and/or servants, employers and/or employees, owners and/or drivers and/or passengers, and to provide also for apportionment of liability between wrong-doing defendants liable to an innocent plaintiff, and as the Act has been adopted in only three of the provinces, and this Conference has been asked by the Ontario commissioners for instructions, the model act be referred to the Ontario commissioners in order that they may give it further consideration in the light of the various suggestions received and report to the next Conference any amendments deemed advisable.

It was resolved that the *next meeting of the Conference* should be held five days (exclusive of Sunday) before the next meeting of The Canadian Bar Association and at the same place

The Conference expressed its grateful appreciation of the hospitality of the Prime Minister of Quebec, the President of the Conference, and the members of the Quebec Bar.

At 4.30 p.m. the Conference adjourned.

#### APPENDICES.

- A. Presidential Address.
- B. Report on draft Wills Act, and text of model uniform statute as revised and approved.
- C. Amendments of the uniform Conditional Sales Act.
- D. Draft sections on Proof of Statutes.
- E. Table of Model Uniform Statutes (suggested, proposed, reported on, drafted or approved, 1918-1929).

## APPENDIX A.

## PRESIDENTIAL ADDRESS.

In calling to order this, the Twelfth Annual Meeting of the Conference of Commissioners of Uniformity of Legislation in Canada, I do so with feelings of sadness and regret, as I realize that our beloved Honorary President—Sir James Aikins—is no longer with us. It was due to the efforts of Sir James that this organization came into existence. He was its first President and continued in that office for a number of years, and after he retired from the presidency and became Honorary President, he always continued to take a deep interest in the work of the Conference, and had a keen sense of appreciation of the value of the work which we were trying to accomplish; and for many years he has honoured us by delivering an address at the opening of our Conferences. We miss him today. His remarkable ability and fervent intellectual activity made him an outstanding figure wherever he met with other men, and while we miss him for these qualities of mind and intellect, we miss him above all for the kindly disposition, the friendly spirit, the broad human interest and the willingness to serve, which he always displayed. I am sure that we all feel that a dear friend has gone from our midst. May I suggest that a committee be appointed to draw up a suitable resolution expressive of our appreciation of his services to this body and of the keen sense of loss which we all feel.

Before entering upon the work of the Conference, may I briefly re-state our objects and aims. This Conference, as has been pointed out on many occasions, is an offshoot of The Canadian Bar Association and was brought into being by that Association to effectuate one of its main objects, namely:

“To promote the administration of justice and uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the respective provinces.”

Please note the language—“so far as is consistent with the preservation of the basic systems of law in the respective provinces”

It is accordingly *not* the object of this Conference to attempt to interfere in any way with the form of jurisprudence peculiar to any province and more particularly with the civil code system of Quebec, and it may be noted that the language of the clause which

I have just read from the Constitution of the Canadian Bar Association was from the draft of the Honourable Mr. Doherty (then Minister of Justice) and representing the Bar of the Province of Quebec at the organization meeting of The Canadian Bar Association. The language in which this clause was framed was intended to make that point very clear. Subject to that qualification, our objects are set forth in our constitution as follows:

“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.”

Our work has largely to do with the business and commercial interests of the Dominion, and in this connection I would like to quote again (as has been done on former occasions) the words of Mr. Eugene Lafleur, K.C., our eminent confrère and one of the most outstanding members of the profession in Canada, which he used in an address before The Canadian Bar Association some years ago.

“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 the 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.”

I have re-stated the objects and aims of our Association because, as we are meeting today in the old City of Quebec, I want our friends in this province to be assured that there is nothing sinister in the work or activities of this Conference. We have no wish to interfere in any way with the existing system of jurisprudence

in this province, or to dictate in any way what laws this province should pass.

It has frequently been asked, what work has the Conference accomplished. The answer to that question is to be found in the preface prepared by our Honorary Secretary, which is to be found in our printed proceedings year by year. If one looks up the preface to the proceedings of the 1928 Conference, one will find a large number of subjects which have been considered by the Association, and mention is made of some eleven or twelve model Acts which have been prepared by the various Conferences. I think one can say, looking at the subjects which have been under consideration and the model Acts which have been prepared, and considering the number of these Acts which have been adopted by the various provinces of Canada, that our Conference has had a most important part to play in the legislative enactments of the various provinces, and I believe that the work so far accomplished has been of great good to the business and commercial interests of the Dominion.

In addition, however, to the direct results which have been brought about by our various Conferences, it seems to me that there are a number of other important functions. Our various Conferences have—

1. Brought the members of the Bar of the different provinces of Canada closer together in their attempts to plan and formulate the language of the legislative enactments of the different provinces.

2. They have brought into closer sympathy the law officers of the different provinces who have been appointed Commissioners to the Conference. That I believe is a good thing and tends to bring about greater working harmony between the provinces themselves.

3. Our Conferences have been a constant source of education along legal lines to those who have been privileged to attend these sessions, and the attention and care given to the language and form of Statutes have tended to bring about more careful legislative drafting not only in our own model acts but also in the other legislative enactments of the various provinces.

I feel therefore that these indirect influences of our various Conferences have been of great good in furthering the best interests of the Dominion of Canada as a whole. There is more team play than formerly.

In aiming at uniformity of provincial legislation we have also aimed at uniformity of judicial construction and in preparing our model acts we have always inserted the clause—"This Act shall be

so interpreted and construed as to effectuate its general purpose to make uniform the law of those provinces which enact it."

From time to time one is asked what is the usefulness or the value of such a clause. In inserting this clause in our uniform acts we have done so having in mind the experience of the American Bar Association and their Conferences of Commissioners on Uniformity of Law. A similar clause is inserted in their uniform acts

The Honourable Mr. Justice Hughes when on the Supreme Court of the United States said in respect of a uniform act of the Conference of Commissioners on Uniform Law in the United States the following.

"It is apparent that if these uniform Acts are construed in the several States adopting them according to the former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It is to prevent this result that the Uniform Warehouse Receipts Act expressly provides (section 57), "This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it" This rule of construction requires that in order to accomplish the beneficent object of unifying as far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform Act, that it should not be regarded merely as an offshoot of local law"

The principle enunciated by Mr. Hughes is the principle which our Conference has in mind when inserting the clause in question.

And now in conclusion may I call attention to the fact that we miss today some members of our Conference who have been most efficient and useful members for a long time and may I particularly mention our good friend Mr. Jos. N. Ellis, K.C., of British Columbia, who since our last Conference has been appointed a judge of the province of British Columbia. We miss his genial presence and his great ability at our Conference today and extend to him our congratulations on his judicial appointment and our hope that he may be long spared to bring to his judicial duties the same ability and energy that he displayed when at the bar and while a member of this Conference. We also extend greetings to those new members who are with us today for the first time and hope that they will appreciate the aims and objects of the Conference and will enjoy the work which we are attempting to perform

**APPENDIX B.**

## REPORT OF COMMITTEE ON REVISION OF DRAFT WILLS ACT.

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

GENTLEMEN,—At the 1926 Conference the draft Wills Act was discussed section by section (see 1926 Proceedings, pages 12, 13 and 14), but as it was the opinion of the majority of the Commissioners that the time was not ripe for the submission to the various Legislatures of a new Wills Act, it was resolved that the Nova Scotia Commissioners be instructed to prepare a memorandum of such draft sections as are not found uniformly throughout the Wills Acts of the several Provinces, and that these sections, accompanied by such explanatory memoranda as might be thought necessary, be reported to the Conference at its next session, and that in the meantime no further action be taken towards the completion of a draft Act. (See 1926 Proceedings, page 18.) It appears, however, that the draft was revised by the Nova Scotia Commissioners along the lines of the discussion by the Conference, and was reprinted in this revised form in the 1926 Proceedings at page 31.

The Nova Scotia Commissioners submitted a report to the 1927 Conference and it was then resolved that the Commissioners from each Province should send to their Attorney-General a copy of the draft Wills Act and of the report, and ask for an expression of views on the policy to be pursued with regard to the points raised in the report and with regard to the advisability of adopting a new Act in the Province; and that the Commissioners from each Province should communicate with the Nova Scotia Commissioners, who should report further to the Conference in 1928. (See 1927 Proceedings page, 16.)

The Nova Scotia Commissioners reported to the 1928 Conference, drawing attention to the new Alberta Wills Act and recommending that it be adopted as the model Act rather than the draft considered by the Commissioners, and drawing attention to the points of difference between the two Acts. The printed report does not disclose what response (if any) was made by the respective Attorneys-General to the request for directions as to policy. A supplementary



memorandum was also submitted by the Commissioner for Alberta. (See 1928 Proceedings, pages 55 and 59.)

The 1928 Conference referred the matter to the British Columbia Commissioners as a Committee to complete a draft Wills Act by revising the 1926 draft in the light of the 1927 proceedings and the reports submitted in 1928.

Your Committee in undertaking this work has assumed that the Conference was of opinion that the revised draft of 1926 should be substantially followed rather than the Alberta Wills Act of 1927. The concurrence of your Committee in this opinion has been materially strengthened by the further consideration which it has given to the matter. The uniform draft was carefully considered by the Commissioners at the 1925 and 1926 Conferences and was then practically approved as a model Act. Adoption of the Alberta Act as a model would involve considerable departure from principles fully discussed and approved, and would necessitate detailed reconsideration by the Conference

Your Committee has also acted on the understanding that it is the wish of the Conference that provisions as to holograph wills be inserted in the draft Act, available for those Provinces which desire to enact them.

In accordance with the foregoing your Committee begs to submit for the consideration of the Conference the following proposed alterations in the draft.

(NOTE.—All section references are to the draft of 1926 as revised and reprinted in the 1926 Proceedings, at page 31.)

SECTION 5 (3), LINE 2.—Strike out the words “an infant” and substitute the words “under the age of twenty-one years” This is recommended as being uniform with the expression already used in section 4, which was approved by the Nova Scotia Commissioners. (See Proceedings, 1928, page 56.)

SECTION 6.—Number the present section as subsection (1), and add the following subsection:—

“(2.) A holograph will, wholly in the handwriting of the testator and signed by him, may be made without any further formality or any requirement as to the presence of or attestation or signature by any witness.” (This begins with words found in the Alberta Act, s. 5 (b), and ends with words found in the draft Act, s. 5 (1.)

SECTION 11 —Strike out the proviso (being the last three lines of the section), and substitute the following.—

“Provided that where the will is sufficiently attested without the attestation of any such person, or where no attestation is necessary, the devise, legacy, estate, interest, gift, or appointment shall not be null or void.”

This follows the Alberta Act, as recommended by the Nova Scotia Commissioners (1928 Proceedings, at page 57), the words “or where no attestation is necessary” being necessary to meet the case of holograph wills.

SECTION 19, LINE 8—Insert after the word “witnesses”, the words “(if required)” This amendment was recommended by the Nova Scotia Commissioners as necessary for holograph wills (1928 Proceedings, at page 58).

The NOTE numbered (2) at the end of the revised draft of 1926, referring to holograph wills, should be deleted when the draft is again reprinted with provisions for holograph wills inserted. If considered advisable, a note could be substituted calling attention to those portions of the final draft which should be omitted by any Province which does not desire to adopt the provisions for holograph wills.

As the alterations to be made in the draft by these amendments are few in number your Committee did not think it necessary to have the draft reprinted at this stage. The draft can be revised for reprinting in the 1929 Proceedings after all alterations have been finally passed on by the Conference.

Respectfully submitted,

On behalf of the British Columbia Commissioners,

A. V. PINEO,

*Secretary*

Victoria, B C, May 16th, 1929.

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#### MEMORANDUM RE DRAFT UNIFORM WILLS ACT

(Being notes made by British Columbia Commissioners during the preparation of their Report for the 1929 Conference.)

The draft Act as printed in the 1926 Proceedings at page 31 appears to be a revised draft prepared by the Nova Scotia Commissioners after discussion by the Conference but without any express direction of the Conference for its preparation. Presumably the Conference will examine this draft section by section before giving it final approval.

In connection with this examination it is suggested that the Conference might give some consideration to several minor details of drafting referred to below.

Section 2 contains a definition of "mortgage," "Mortgagee," and "mortgage debt." The word "mortgage" is used only once in the Act (Sec 34(1)); and although it is defined as "including any lien or claim upon freehold or leasehold property for unpaid purchase money," when used in section 34 it is followed by "(including a lien or claim for unpaid purchase money)". It seems hardly necessary to have a separate definition of this word when it is used only once, but if the definition be retained it is certainly unnecessary to repeat part of the definition in section 34

The purpose of the definition of the words "mortgagee" and "mortgage debt" is not apparent, as they are not found elsewhere in the Act. If the definition be retained, the expression "mortgage debt" might well be used instead of the word "charge" in section 34 (1), in the last line of clause (b) of subsection (2) of section 34, and in subsection (3) of this section.

The following analogous expressions are found in the draft Act:—

"in accordance with the provisions of this Act" (s 3 (1));

"executed in accordance with the provisions of this Act" (ss 8 (1)(2), 9);

"executed in manner hereinafter mentioned" (s 6);

"Executed in a manner sanctioned by this Act" (s 18 (a));

"executed in manner in this Act required" (s 20 (1));

"executed in a manner by this Act required for the execution of the will" (s. 19);

"executed in a manner in which a will is by this Act required to be executed" (s. 18 (b));

"made according to the form prescribed by this Act" (s. 14 (1));

"made according to the form prescribed by the law" (s. 14 (2)).

In line with the recommendation of Dr Scott as to section 18(a), found on page 29 of the 1926 Proceedings, and for the purpose of uniformity of expression throughout the Act, it is suggested that the expressions in certain of these sections should be altered to read as follows.—

Section 6—"executed in accordance with the following provisions";

Section 14 (1)—"executed in accordance with the provisions of this Act";

Section 14 (2)—“executed in accordance with the provisions of the law”;

Section 18 (a)—“executed in accordance with the provisions of this Act”;

Section 18 (b)—“executed in accordance with the provisions of this Act respecting the execution of a will”;

Section 19—“executed in accordance with the provisions of this Act respecting the execution of the will”;

Section 20 (1)—“executed in accordance with the provisions of this Act”.

The words “executed” and “made” are to some extent used interchangeable throughout the draft Act. It would appear from section 9 that execution (without other publication) is the final act in the making of a will. In view of this it is suggested that in section 14 “executed” be substituted for “made” in the first lines of subsections (1) and (2) and in clauses (b) and (c) of subsection (2), and that “executing” be substituted for “making” in the second lines of subsections (1) and (2); and that in section 36 “executed” be substituted for “made” in the first and fourth lines

It is also suggested that in view of sections 9 and 20 the word “re-published” in the third and fifth lines of section 36 is meaningless and should be deleted.

In section 14 (2) the word “or” should be inserted at the end of clause (c).

The expression “held” is used in sections 14(1)(2) and 15; the expression “deemed” in sections 5 (2), 7 (1), 19, 34 (2), 35, and 36; and the expression “construed” in sections 22, 24, 25 (1)(2), 26, 27, 28, 29, 30, and 37. It is suggested that the expression “deemed” be substituted for “held” in the sections in which the latter occurs.

Attention is called to the excessive use of the word “such” as a demonstrative, equivalent to “the” or “that” (e.g. in section 29 where it occurs seven times). The word is used 56 times in the draft Act, including its unobjectionable use in three instances in the expression “such . . . as”. It is suggested that the substitution of the word “the” or “that” in nearly every instance would improve the language of the draft.

If the Conference decides finally to adopt the draft Wills Act, it is further suggested that, at the time of its revision for reprinting, proper marginal notes be supplied to all sections (See rules adopted by Conference, 1919 Proceedings at pp. 29, 30)

Victoria, May 16th, 1929.

A. V. P.

## MEMORANDUM RE WILLS ACT.

(Prepared by Mr. Scott)

I cannot but think that there is some misunderstanding as to the revised draft Wills Act, prepared in 1926. At the 1926 Conference, it was distinctly understood that the Nova Scotia Commissioners would revise the Act in accordance with the views of the Conference for the use of any Province which should desire to introduce a Wills Act. Alberta, as a Province with that desire, is under great obligation to the Nova Scotia Commissioners for their action in this regard. The expressed opinion of the Commissioners in 1926 that the time was not ripe for the submission to the various legislatures of a new Wills Act was, I think a euphemism for our general feeling that some serious problems had not been solved, among others, the problem as to what wills were included in the various sections, and the problem of the holograph will

In drafting the Alberta Act, I attempted to solve these difficulties by a division into parts, and by dealing with the holograph will as therein set out. I submitted my draft to Messrs. Read, Shannon, Cottingham and Pineo, all of whom made valuable suggestions with respect to it. From the letters of these gentlemen, I gather that, in the opinion of many of them, the draft surmounted the difficulties alluded to above, and some others.

The amendments to the 1926 draft proposed by the British Columbia Commissioners seem to me to leave untouched the difficulties that occasioned the jettison of the draft Act.

Roughly speaking, wills may be classified for the purpose of this note into:

1. Provincial wills;
2. Jus gentium wills;
3. Kingsdown wills.

The form of provincial wills is prescribed by the Act. There is a direction that Kingsdown wills may be admitted to probate, but that does not make them effectual in any other way than that which results from being admitted to probate, while there is no mention of jus gentium wills.

The draft Act deals with:

1. The form of wills;
2. The capacity or incapacity of testators,
3. The interpretation of wills.

The difficulty is perhaps best illustrated by specific instances. Does section 4, relating to the incapacity of an infant testator,

apply to a Kingsdown will of a person not domiciled in the Province? If it be replied that it does not (and it is difficult to see what other reply could be given), the question as to whether section 15, relating to the revocation of wills applies, emerges. As far as the drafting of the Act is concerned, there does not seem to be any good reason why the connotation of the word "will" in both sections should not be considered to be the same, and yet to hold the section does not apply would be to change the law of wills to a very considerable and undesirable extent.

It appears to have been thought at one stage of the consideration of the draft Act that a Kingsdown will could be brought within the scope of any section of the Act, by the use of some such words as "executed in accordance with the provisions of this Act," but it later appeared that such a device would not serve the purpose for which it was intended, for it is impossible to say without doubt, that a Kingsdown will is executed in accordance with the provisions of the Act, though possibly, but not certainly, it is executed in a manner sanctioned by the Act. Section 8 (1) aptly illustrates the difficulty "no appointment made by a will in exercise of any power should be valid unless the will is executed in accordance with the provisions of this Act." If the words cover a Kingsdown will, they clearly throw doubt on the efficacy of a jus gentium will in exercising a power of appointment, though under the present law such a will can clearly exercise the power if no additional formalities are required or if any that are required are complied with.

Questions of this nature crop up all over the draft, and the answer to them is uniformly obscured by the inclusion of Lord Kingsdown's Act in the English Act, so that the composite Act becomes as it were a codifying Act with jus gentium wills left out. Prolonged consideration of the question has led me to the conclusion that it is simply impossible to draft a satisfactory Act, via the way of including Kingsdown wills and excluding jus gentium wills. The only feasible methods seem to me to be

1. The redrafting of the whole Act, carefully stating what sections are to refer to Kingsdown wills and what to jus gentium wills;

2. The drafting of the Act in parts

The first method has the great drawback of offering too many opportunities for error, while the second method by in fact leaving two distinct Acts relieves from the mention of jus gentium wills and preserves the whole English case law.

If the second method should be adopted I would recommend the discarding of "executed in accordance with the provisions" and the substitution of "admissible to probate under the law of the Province," where *jus gentium* wills and Kingsdown wills are intended to be included

SECTION 3: I would suggest cutting out "in accordance with the provisions of this Act." The essence of the section is the statement of what may be disposed of, and the negative words of section 6 sufficiently bar out wills not executed in accordance with the provisions of this Act.

SECTIONS 4, 6 & 7 Clearly refer to provincial wills only.

SECTION 5: Was it intended to take away the existing powers of soldiers, etc., to make a nuncupative will?

SECTION 8 (1). Strike out "is executed in accordance with the provisions of this Act" and insert "is admissible to probate under the law of the Province." These words cover.

- 1 Provincial wills;
2. Kingsdown wills;
3. *Jus gentium* wills.

SECTION 8 (2). It is suggested that "executed in accordance with the provisions of this Act" be struck out and "made in a form permitted by this Part" inserted. This would cover only provincial wills, just as the English section covers only English wills.

The English subsection probably covers wills made in English form no matter by whom made, i.e., whether made by a person domiciled in England or not, and perhaps this should be stated in the section. The reason for stating that the subsection applies to such wills is to be found in the anomalous rule established by *D'Huart v. Harkness*, that a will executed in accordance with the Wills Act is a valid exercise of the power, irrespective of the domicile of the testator, though a person domiciled abroad could not make a will in the form of the Wills Act, i.e., apart from the provisions of the Kingsdown Act.

The word "made" seems preferable to "executed" since it covers what is ordinarily known as "attestation" and "execution." The word "executed" met with disapproval from Lord Brougham, when used with reference to a will, as being more appropriate to a deed. In some sections of the draft Act, such as section 8 (2), the words "execution" and "attestation" appear to mean something different, whilst in sections 10 and 11, "execution" is clearly contrasted with the word "attestation" whereas "duly executed" or "executed in accordance with the provisions of this Act" are meant to include "attestation," etc.

SECTION 9: "made in a form permitted by this Part" is suggested here

SECTION 11 What is the operation of this section upon holograph wills and soldiers' wills?

It is suggested that the original form of the proviso be again considered. There might well be "two competent witnesses" left, and yet the will might be insufficiently attested. The older form also permits the insertion of the words "or no attestation is necessary."

SECTION 12: Were the words "or the wife or husband of such creditor" omitted per incuriam in the English Act, after "creditor" where it appears for the second time?

SECTION 14: It is suggested that the section should not be extended to cover real property or if it is so extended that it be made clear that the Province is not legislating with respect to land outside its limits. This extension is not at the present made in any Province. It is also suggested that there is no demand for any advance on the principles introduced by Kingsdown's Act. The only advisable change seems to be the insertion of "except chattels real" after "personal property" or the alteration of the definition of the latter words.

SECTION 15: To the wills of what persons does this section apply? When standing in its place in Lord Kingsdown's Act, the will of an alien was included (*Groos, in Estate of, 1904, p 269*).

SECTION 16. Reconstruction is asked for the suggestion that the words "if then domiciled in Alberta," should be inserted, though of course, if the suggestion as to parts is adopted this would probably be unnecessary, though perhaps even then advisable.

SECTION 21: Should not the initial words here be "No conveyance of or other act relating to" It is also suggested that "comprised" might well be restored.

SECTION 29: Should not the word "for" (in the expression "for the purposes") be deleted?

SECTION 32: Reconsideration is asked as to the suggested insertion of appointments. (See section 33, page 68, Report 1924).

SECTION 34. It is suggested that this section really has to do with administration of estates and should not be made a part of a Wills Act, as it will be more generally brought into operation in cases of intestacy

SECTION 36: It is not quite clear why the British Columbia Commissioners desire to delete the words "or republished" These words would seem to be necessary to fix the date of a will to which a codicil is added after the appointed date.



MEMORANDUM OF REDRAFT OF SECTION 14 OF THE  
DRAFT WILLS ACT OF 1926.

(Prepared by Mr. Falconbridge)

PART II.

CONFLICT OF LAWS.

38 (1) In this Part:

(a) "Immovable property" includes real property and a leasehold or other interest in land;

(b) "Movable property" includes personal property other than a leasehold or other interest in land

(2) Except as herein otherwise provided the mode of execution, the validity and the effect of the will, so far as it relates to immovable property, shall be governed by the law of the place where the property is situate.

(3) Except as herein otherwise provided the mode of execution, the validity and the effect of a will, so far as it relates to movable property, shall be governed by the law of the place where the testator was domiciled at the time of his death

(*Note*—Subsecs. 1, 2 and 3 are intended to state exactly the prevailing rules of conflict of laws, apart from Lord Kingsdown's Act or other statute. These rules, it is submitted, should be set out, in order to make intelligible the subsequent provisions of the section, and of course these rules should not be tampered with except in so far as the conference may desire to make alternative validating provisions in subsequent subsections.)

(4) A will made within the province, whatever was the domicile of the testator at the time of the execution of the will or at the time of his death, shall, so far as it relates to movable property, be held to be well executed and be admissible to probate, if it is executed in accordance with the provisions of Part I or in accordance with the law of the place where the testator was domiciled when the will was executed.

(5) A will executed outside the province, whatever was the domicile of the testator at the time of the execution of the will or at the time of his death, shall, so far as it relates to movable property, be held to be well executed and be admissible to probate, if it is executed in accordance with the provisions of Part I or if it is executed in accordance with the law

- (a) of the place where the testator was domiciled when the will was executed,
- (b) of the place where the will was executed, or
- (c) of the place where the testator had his domicile of origin.

(*Note*—Subsecs. 4 and 5 are intended to reproduce, for the purpose of discussion, certain provisions of Lord Kingsdown's Act, with three substantial changes: (1) They are not confined, as Lord Kingsdown's Act is, to wills of British subjects; (2) They do not include wills of leaseholds, which were illogically, and perhaps inadvertently, included in Lord Kingsdown's Act by the use there of the words "personal estate;" (3) The second alternative method of execution mentioned in subsec 4 is not mentioned in Lord Kingsdown's Act. In view of the rules of conflict of laws which distinguish between immovable and movable property and not between real property and personal property, there appears to be no reason for making any provision as to wills of leaseholds unless it is made applicable also to real property. It is further submitted that if it is desired to provide for alternative modes of execution of a will of immovables (real property and leaseholds), this should be done by a separate subsection expressed in appropriate language, regard being had to the rule stated in subsec 2, namely, that the law of the situs, not that of the domicile governs. It would be futile to make provision for the execution of a will of immovables situate outside the province except as authorized by the law of the situs, and therefore any additional provision should be confined to immovables situate in the province.)

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

(*Note*—This subsection is in the same words as sec 15 of the draft Wills Act of 1926, and reproduces one provision of Lord Kingsdown's Act.)

## UNIFORM WILLS ACT

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in September, 1929.)

*An Act to make Uniform the Law Respecting Wills.*

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

*Preliminary.*

## SHORT TITLE.

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

## INTERPRETATION.

2 In this Act, unless the context otherwise requires, "Will" includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

## PART I.

*General.*

## PROPERTY DISPOSABLE BY WILL.

3. Any person may devise, bequeath or dispose of by will all real and personal property whether acquired before or after the making of his will to which at the time of his death he is entitled either at law or in equity for an interest not ceasing at his death, including therein.

## ESTATE PUR AUTRE VIE.

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

## CONTINGENT INTERESTS.

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

## RIGHTS OF ENTRY.

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

## INFANT.

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

## SOLDIERS. ETC.

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

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

(3) The fact that the member of naval, military, air or marine forces, or the mariner or seaman, is under the age of twenty-one years at the time he makes his will shall not invalidate it.

## EXECUTION OF WILL.

6. (1) Except as in this Act otherwise provided no will shall be valid unless it is in writing and executed in accordance with the following provisions:—

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

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

(c) At least two of such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

## HOLOGRAPH WILL.

(2) A holograph will, wholly in the handwriting of the testator and signed by him, may be made without any further formality or any requirement as to the presence of or attestation or signature by any witness.

## PLACE OF SIGNATURE.

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

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

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

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

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

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

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

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

## WILL EXERCISING POWER OF APPOINTMENT.

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

## NO PUBLICATION.

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

## INCOMPETENCY OF WITNESSES.

10. If any person who attests the execution of a will is at the time of the execution thereof or becomes at any time afterwards incompetent as a witness to prove the execution thereof, the will shall not on that account be invalid.

## GIFT TO ATTESTING WITNESS.

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

Provided that where the will is sufficiently attested without the attestation of any such person, or where no attestation is necessary, the devise, legacy, estate, interest, gift, or appointment shall not be null or void.

## CREDITOR AS WITNESS TO PROVE EXECUTION.

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

## EXECUTOR AS WITNESS TO PROVE EXECUTION

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

## REVOCATION BY MARRIAGE.

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

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

(b) Where the will is made in exercise of a power of appointment and the real or personal property thereby appointed

would not in default of such appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator in case he died intestate.

#### NO REVOCATION BY PRESUMPTION.

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

#### REVOCATION IN GENERAL

16 No will or any part thereof shall be revoked otherwise than,

(a) By marriage, as hereinbefore provided; or

(b) By another will executed in accordance with this Act;

or

(c) By some writing declaring an intention to revoke the same and executed in accordance with the provisions of this Act respecting the execution of a will; or

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

#### EXECUTION OF ALTERATIONS.

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

#### REVIVAL.

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

## PARTIAL REVIVAL.

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

## SUBSEQUENT CONVEYANCES, ETC.

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

## WILL SPEAKING FROM DEATH.

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

## LAPSED AND VOID DEVISES.

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

## INCLUSION OF LEASEHOLDS IN GENERAL DEVISE.

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

## EXERCISE OF GENERAL POWER OF APPOINTMENT BY GENERAL GIFT.

23. (1) Unless a contrary intention appears by the will, a general devise of the real property of the testator or of the real property of the testator in any place or in the occupation of any



person mentioned in his will or otherwise described in a general manner shall be construed to include any real property or any real property to which the description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of the power

(2) Unless a contrary intention appears by the will, a bequest of the personal property of the testator or any bequest of personal property described in a general manner shall be construed to include any personal property or any personal property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of the power.

#### DEVISE WITHOUT WORDS OF LIMITATION.

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

#### DEVISE TO "HEIR."

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

#### MEANING OF "DIE WITHOUT ISSUE," ETC.

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

## UNLIMITED DEVISE TO TRUSTEES.

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

## DEVISE TO TRUSTEES OTHERWISE THAN FOR A TERM

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

## DEVISES OF ESTATE TAIL.

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

## GIFTS TO ISSUE PREDECEASING TESTATOR

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

#### ILLEGITIMATE CHILDREN.

31. Every illegitimate child of a woman shall be entitled to take under a testamentary gift by or to her or to her children or issue the same benefit as he would have been entitled to if legitimate, unless a contrary intention appears by the will.

#### PRIMARY LIABILITY OF MORTGAGED LAND.

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

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

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

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

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

(4) In this section "mortgage" includes an equitable mortgage and any charge whatsoever, whether equitable, statutory or of any other nature, including any lien or claim upon freehold or leasehold property for unpaid purchase money, and "mortgage debt" has a meaning similarly extended.

#### EXECUTOR AS TRUSTEE OF RESIDUE.

33 (1) When any person dies after the passing of this Act having by will appointed any person executor thereof, such executor shall be deemed a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled thereto, in the event of intestacy in respect thereof, unless it appears by

the will that the person so appointed executor was intended to take such residue beneficially.

(2) Nothing in this section shall affect or prejudice any right to which the executor, if this Act had not been passed, would have been entitled, in cases where there is not any person who would be so entitled.

## PART II.

### *Conflict of Laws.*

#### IMMOVABLE PROPERTY.

34. (1) In this Part:

(a) Immovable property includes real property and a leasehold or other interest in land;

#### MOVABLE PROPERTY.

(b) Movable property includes personal property other than a leasehold or other interest in land.

#### LEX LOCI REI SITAE.

(2.) The manner of making, the validity and the effect of a will, so far as it relates to immovable property, shall be governed by the law of the place where the property is situate.

#### LEX DOMICILII.

(3) Subject to the provisions of this Part, the manner of making, the validity and the effect of a will, so far as it relates to movable property, shall be governed by the law of the place where the testator was domiciled at the time of his death.

#### WILLS OF MOVABLE PROPERTY MADE WITHIN THE PROVINCE.

35. (1) A will made within the province, whatever was the domicile of the testator at the time of the making of the will or at the time of his death, shall, so far as it relates to movable property, be held to be well made and be admissible to probate, if it is made in accordance with the provisions of Part I, or if it is made in accordance with the law in force at the time of the making thereof:

(a) Of the place where the testator was domiciled when the will was made; or

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

## WILLS OF MOVABLE PROPERTY MADE OUTSIDE THE PROVINCE.

(2) A will made outside the province, whatever was the domicile of the testator at the time of the making of the will or at the time of his death, shall, so far as it relates to movable property, be held to be well made and be admissible to probate, if it is made in accordance with the provisions of Part I, or if it is made in accordance with the law in force at the time of the making thereof:

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

(b) Of the place where the will was made, or

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

## CHANGE OF DOMICILE.

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

## PART III.

*Supplementary.*

## CONSTRUCTION OF ACT.

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

## APPLICATION OF ACT.

38 (1) Except as provided in subsection (2), this Act shall apply only to wills made after this Act comes into force, and for the purposes of this Act a will which is re-executed or revived by any codicil shall be deemed to be made at the time at which it is so re-executed or revived.

(2) In the case of any person dying after this Act comes into force, section 30 shall apply to his will whether it was made before or after this Act comes into force

## REPEAL

39. (1) Except as provided in subsection (2), the (cite here the existing Wills Act) is repealed.

(2) The said Act shall continue in force, as if unrepealed, in respect of wills made before this Act comes into force.

**APPENDIX C.****REPORT OF COMMITTEE ON AMENDMENTS TO THE  
UNIFORM CONDITIONAL SALES ACT**

To the Conference of Commissioners on  
Uniformity of Legislation.

Your committee appointed to consider the amendments made by the Legislature of British Columbia to the uniform Conditional Sales Act as enacted by that Province begs to report as follows:

The amendments in question consist of two amendments to section 3 and one amendment to section 10 of the uniform Act, and are found in the Statutes of British Columbia of 1929, chapter 13, a copy of which is attached to this report.

The first amendment to section 3 inserts certain words in subsection (1) for the purpose of extending the Conditional Sales Act for the protection of the same classes of people as are protected under the Bills of Sale Act. The extension covers a creditor suing on behalf of himself and other creditors, and a trustee, receiver, or liquidator. The wording of the amendment is designed to conform so far as possible with the wording of the uniform Bills of Sale Act (see definition of "creditors" in section 2 of the uniform Bills of Sale Act, 1928 Proceedings, page 27). The word "receiver" was inserted to conform with the British Columbia Bills of Sale Act, and any other Province adopting a similar amendment must necessarily consider in like manner the wording the Bills of Sale in force in that Province.

The second amendment to section 3 is designed to meet a difficulty as to registration of conditional sales in the case of a corporation. The necessity of this amendment was considered by the Conference in 1927 (Proceedings 1927, page 17), and an amendment was then proposed by deleting subsection (6) and inserting a new subsection (2). The British Columbia amendment accomplishes the purpose desired by re-enacting subsection (6), which in the opinion of your committee is preferable to the method of amendment adopted by the Conference in 1927.

The amendment to section 10 of the uniform Act is to meet a difficulty which arose in the case of *Motorcar Loan Co. v Bonser*, 1928, 3 D.L.R. 875, which held that the wording of section 10 (3)

of the Act required in case of a resale of repossessed goods that notice of the definite sale in view must be given to the buyer before the sale could be made. This would render it practically impossible to make prompt sales of repossessed motor cars, for example. The amendment makes it plain that notice only of the *intention to sell* need be given, not notice of the *intended sale*.

Your committee recommends that these three amendments to the uniform Conditional Sales Act as enacted by the Legislature of British Columbia be approved by the Conference for consideration by the Legislature of any Province which has adopted or which proposes to adopt the uniform Act.

Respectfully submitted,

A. V. PINEO.  
F. F. MATHERS.  
E. R. RICHARD

September 2, 1929.

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## CHAPTER 13

### AN ACT TO AMEND THE "CONDITIONAL SALES ACT"

[Assented to 20th March, 1929.]

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. This Act may be cited as the "Conditional Sales Act Amendment Act, 1929."

2. (1) Section 3 of the "Conditional Sales Act," being chapter 44 of the "Revised Statutes of British Columbia, 1924," is amended by inserting after the word "seized," in the ninth line of subsection (1), the words "and, for the purpose of enforcing the rights of such creditors but not otherwise, shall be void as against a creditor suing on behalf of himself and other creditors, and as against an assignee for the general benefit of creditors, and as against a trustee under the 'Bankruptcy Act' of the Dominion, and as against a receiver of the estate and effects of the buyer, and as against a liquidator of a corporation under the 'Winding-up Act' of the Dominion or under any Statute of the Province in a compulsory winding-up proceeding, without regard to whether or not the creditor so suing had at the time of becoming a creditor notice

of the provision or whether or not the assignee, trustee, receiver, or liquidator at the time of his appointment had notice of the provision.”

(2) Said section 3 is further amended by striking out subsection (6), and substituting therefor the following:—

“(6.) In case the buyer is a corporation, the residence of that buyer shall for all purposes of this section be deemed to be in the City of Victoria.”

3. Section 10 of said chapter 44 is amended by striking out the words “intended sale” in the third line of subsection (3), and substituting therefor the words “intention to sell.”



**APPENDIX D.**

DRAFT SECTIONS RESPECTING PROOF OF STATUTES,  
ETC.

1. Judicial notice shall be taken of all Acts of the Imperial Parliament, of all ordinances made by the governor in council or the lieutenant-governor in council of any province or colony which, or some portion of which, forms part of Canada, and of all the Acts of the legislature of any such province or colony whether enacted before or after the passing of the British North America Act, 1867.

2. Imperial proclamations, orders in council, treaties, orders, warrants, licenses, certificates, rules, regulations, or other Imperial official records, Acts, or documents, may be proved:—

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

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

(c) By the production of a copy thereof purporting to be printed by the King's Printer for Canada, or for this province.

3 (1) The existence and contents of any state document, that is to say, any statute, Act, ordinance, regulation, proclamation, letters patent, treaty, rule of court, or any official appointment, official notice, order, journal, gazette, or any other public document or act of state, of any foreign state or of any dominion, commonwealth, state, province, colony, territory, or possession within the British Empire, or within any foreign state, may be proved in any of the modes following:—

(a) By the production of a printed copy of or a printed extract from the state document, purporting to be printed by, or for, or by the authority of the Parliament or legislative body, Government, King's Printer, Government Printer, or other official printer of the foreign state or the dominion, commonwealth, state, province, colony, territory, or possession;

(b) By the production of a copy of or an extract from the state document, whether printed or not, purporting to be certified as a true or correct copy or extract by the Minister or head,

or the Deputy Minister or deputy head, of any department of Government of the foreign state or the dominion, commonwealth, state, province, colony, territory, or possession, or purporting to be an exemplification of the state document under the Great Seal or other state seal of the foreign state or the dominion, commonwealth, state, province, colony, territory, or possession;

(c) By the production of a copy of or an extract from the state document, whether printed or not, purporting to be certified as a true or correct copy or extract by the custodian of the original document or the public records from which the copy or extract purports to be made.

(2) It shall not be necessary to prove the signature or official position of the person printing or certifying any copy or extract admissible in evidence pursuant to subsection (1), or to prove the great seal or other state seal affixed thereto, or to prove that the original document or the public records from which the copy or extract purports to be made was deposited or kept in the custody of the person so certifying.

**APPENDIX E.**

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TABLE OF MODEL UNIFORM STATUTES

(Suggested, proposed, reported on, drafted, or approved, as appearing  
in the printed Proceedings of the Conference, 1918-1929).

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Procedure as to. 1929, p. 13

ASSIGNMENT OF BOOK DEBTS

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Text of 1928, p. 47.

Report of Committee.

Presentation of. 1928, p. 14.

Text of. 1928, p. 44.

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BILLS OF SALE.

Committees appointed. 1923, p. 15; 1924, p. 13; 1925, p. 16;  
1926, p. 14; 1927, p. 12; 1928, p. 18.

Draft Act.

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Discussion of. 1926, pp. 14, 15; 1927, pp. 11, 12, 13; 1928,  
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p. 13; 1928, p. 13.

Reports of Committees.

Presentation of. 1924, p. 13; 1925, p. 16; 1927, p. 11; 1928,  
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Text of. 1925, p. 68; 1926, p. 51; 1928, p. 24.

BOOK DEBTS. See Assignment of Book Debts.

BULK SALES.

Amendments of Uniform Act.

Approved. 1925, pp. 13, 37.

Discussed. 1925, p. 13; 1926, p. 16.

Suggested. 1924, pp. 12, 57; 1925, pp. 12, 30; 1927, p. 11;  
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Committees appointed. 1918, p. 10; 1919, p. 10, 1923, p. 15;  
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Draft Act.

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Presentation of 1919, p. 10; 1920, p. 9; 1925, p. 12; 1926,  
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Text of. 1920, p. 29; 1921, p. 9; 1925, p. 30.

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COMPANIES.

Committees appointed. 1919, p. 16; 1920, p. 12; 1921, p. 18;  
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Discussed. 1926, p. 17.

Suggested. 1926, pp. 13, 49.

Committees appointed. 1919, p. 12, 1920, p. 11; 1921, p. 18;  
1926, pp. 13, 17.

## Draft Act.

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Prepared by Committee of Canadian Bar Association. 1919, pp. 11, 64.

Text of. 1919, p. 64, 1920, p. 51; 1921, p. 76; 1922, p. 40.

## Reports of Committees.

Presentation of. 1920, p. 10; 1921, p. 15; 1926, p. 17; 1927, p. 17.

Text of. 1921, p. 75; 1927, p. 17.

## CONTRIBUTORY NEGLIGENCE.

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Committee appointed. 1923, pp. 17, 18; 1929, p. 21

## Draft Act.

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Discussion of. 1924, p. 11.

Text of. 1924, p. 36.

Ontario Contributory Negligence Act, text of. 1928, p. 94.

Paper by Francis King, K.C. 1924, p. 37.

Recommendation of Canadian Bar Association respecting. 1923, p. 17.

## Reports of Committee.

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CONVENTION BETWEEN GREAT BRITAIN AND BELGIUM, ETC., Extension of, to Canada. 1925, pp. 16, 61.

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## DEFENCES TO ACTIONS ON FOREIGN JUDGMENTS.

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## Reports of Committees.

Consideration of. 1924, pp. 13, 14; 1925, pp. 13, 14.

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