1930

PROCEEDINGS

OF THE

THIRTEENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

TORONTO

AUGUST 11TH, 12TH, 13TH AND 14TH, 1930

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

President	John D. Falconbridge, K.C., Osgoode Hall, Toronto 2, Ontario.
Vice-President	Robert W. Shannon, .K.C., Regina, Saskatchewan.
Treasurer	R. Murray Fisher, K.C., Parliament Bldgs., Winnipeg, Manitoba.
Secretary	Sidney E. Smith, Dalhousie Law School, Halifax, N S.

Local Secretaries.

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

Alberta	R. Andrew Smith, Parliament Buildings, Edmonton.
British Columbia	Avard V. Pineo, Parliament Buildings, Victoria.
Manitoba	R Murray Fisher, K.C., Parliament Buildings, Winnipeg.
New Brunswick	E René Richard, Sackville.
Nova Scotia	Frederick Mathers, K.C., Parliament Buildings, Halifax.
Ontario	John D. Falconbridge, K.C, Osgoode Hall, Toronto 2.
Prince Edward Island	Sylvere Des Roches, Charlottetown.
Quebec	Hon Ed. Fabre Surveyer, Judges' Chambers, Superior Court, Montreal.
Saskatchewan	Robert W. Shannon, K.C., Parliament Buildings, Regina

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

Alberta.

R ANDREW SMITH, 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.

ERIC PEPLER, Departmental Solicitor, Attorney-General's Department, Victoria.

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

Manitoba·

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

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

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

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

New Brunswick·

E RENÉ RICHARD, Sackville.

RALPH P. HARTLEY, Woodstock.

JOHN A. CREAGHAN, Newcastle

(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.

HERBERT W. SANGSTER, K.C., Windsor

(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 Statutes of Ontario, 1918, c. 20).

Prince Edward Island:

GEORGE J. TWEEDY, Charlottetown
SYLVERE DES ROCHES, Charlottetown
DONALD O STEWART, Summerside
(Commissioners appointed under the authority of the Statutes of Prince Edward Island, 1918, c. 3)

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 L. Hall, K.C
Attorney-General of Ontario: Hon. W. H. Price, K.C.
Attorney-General of Prince Edward Island: Hon. T. A. Campbell, 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 interprovincial conference for the purpose of promoting uniformity of legislation

The first meeting of commissioners and representatives of the provinces took place at Montreal on the 2nd of September, 1918, and at this meeting the Conference of Commissioners on Uniformity of Legislation in Canada was organized.

Subsequent annual meetings have been held as follows:—

1919 August 26-29, Winnipeg.

1920. August 30-31, September 1-3, Ottawa.

1921. September 2-3, 5-8, Ottawa.

1922. August 11-12, 14-16, Vancouver.

1923. August 30-31, September 1, 3-5, Montreal.
1924. July 2-5, Quebec.
1925. August 21-22, 24-25, Winnipeg
1926. August 27-28, 30-31, St. John.
1927. August 19-20, 22-23, Toronto
1928. August 23-25, 27-28, Regina.
1929. August 30-31, September 2-4, Quebec.
1930. August 11-14, Toronto.

In 1919 the Conference considered and adopted a report on legislative drafting, containing a carefully prepared selection of extracts from books written by the leading authorities on the subject, and directing attention to many important rules to be observed by draftsmen of statutes.

In 1919 and 1920 the Conference secured the adoption of the Sale of Goods Act, 1893, and the Partnership Act, 1890, in those common law provinces which had not already adopted them; and these two codifying statutes are now in force in all the provinces of Canada except Quebec.

In 1920 the Conference revised and approved model uniform statutes respecting legitimation by subsequent marriage and bulk sales.

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

In 1922, in consequence of representations made by the superintendents of insurance and the insurers, the Conference reconsidered the model uniform statute respecting fire insurance policies, and approved it in a revised form. The Conference also revised and approved a model uniform statute respecting conditional sales, and devoted much time to the consideration of the revised draft of an act respecting life insurance.

In 1923 most of the time of the Conference was devoted to an act respecting life insurance, which was approved in its revised form. The subjects of intestate succession and reciprocal enforcement of judgments were also discussed.

In 1924 the Conference again discussed the act respecting fire insurance policies, as revised in 1922, and made some additions to statutory condition 17, and revised and approved model uniform statutes respecting contributory negligence and reciprocal enforce-

ment 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 limitation of actions and proof of statutes

In 1930 the Conference revised and approved a model uniform Limitation of Actions Act, certain amendments to the uniform Conditional Sales Act, and draft sections for insertion in provincial Evidence Acts respecting judicial notice of statutes and proof of state documents were discussed, revised and approved.

Statutes have been passed in some of the provinces providing both for contributions by the provinces towards the general expenses of the Conference and for payment by the respective provinces of the travelling and other expenses of their own commissioners. The commissioners themselves receive no remuneration for their services

The appointment of commissioners or participation in the meetings of the Conference does not of course bind any province to adopt any conclusions reached by the Conference, but it is hoped that the voluntary acceptance by the provincial legislatures of the recom-

mendations 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, 1929 and 1930): adopted in British Columbia (1922), New Brunswick (1927), and Nova Scotia (1930).

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), Nova Scotia (1930), Ontario (1924), and Saskatchewan (1925)

1924. Reciprocal Enforcement of Judgments Act (amended, 1925): adopted in Alberta (1925), British Columbia (1925), New Brunswick (1925), Ontario (1929), 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).

1927. Devolution of Real Property Act adopted in Alberta (1928), and Saskatchewan (1928).

1928. Bills of Sale Act, adopted in Alberta (1929), Manitoba (1929), Nova Scotia (1930), and Saskatchewan (1929).
1928. Assignment of Book Debts Act: adopted in Alberta (1929), Manitoba (1929), and Saskatchewan (1929).
1929 Wills Act.

S. E. S.

PROCEEDINGS.

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

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

Alberta:

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

British Columbia:

MESSRS. BAIRD and PEPLER.

Manitoba:

MESSRS. PITBLADO, CRAIG and FISHER.

New Brunswick:

MESSRS. RICHARD, HARTLEY and CREAGHAN.

Nova Scotia:

MESSRS. MATHERS and SMITH.

Ontario:

HON. W H. PRICE, K.C., Attorney-General of Ontario, and MESSRS. KING, FALCONBRIDGE and DYMOND.

Prince Edward Island:

MESSRS. TWEEDY, DES ROCHES and STEWART.

Saskatchewan:

HON M. A MACPHERSON, K C, Attorney-General of Saskatchewan, and MR THOM

FIRST DAY.

Monday, 11th August, 1930

The Conference assembled at 10.15 a m. at the Royal York Hotel, Toronto, Mr. Pitblado, the President, in the chair

It was resolved that *the minutes* of last year's meeting be taken as read and approved, subject to the following corrections in the Table of Model Statutes adopted by the Conference printed on page 9 of the Proceedings of the twelfth Annual Meeting:

1924. Reciprocal Enforcement of Judgments Act: adopted in Ontario (1929).

1925. Intestate Succession Act: strike out the words "Provisions similar in effect are in force in Alberta."

1928. Devolution of Real Property Act: substitute "Assignment of Book Debts Act," adopted in Alberta (1929), Manitoba (1929), and Saskatchewan (1929).

1928. Bills of Sale Act: adopted in Manitoba (1929).

Mr. Falconbridge, having informed the Conference of his desire to be relieved of his duties as *Secretary,* his resignation was regretfully accepted, and Mr. Smith was appointed Secretary, *pro tem.*

The Honourable N. W. Rowell, K.C., welcomed the members of the Conference to Ontario, and emphasized the importance of the work in which they are engaged.

The Attorney-General of Ontario also delivered an address of welcome in which he reminded the members that the adoption of uniform acts depended, in a large measure, upon their securing the co-operation of their respective Attorneys-General.

The President, Mr. Pitblado, read his *Presidential Address,* and the Conference directed that it should be printed in the proceedings. (*Appendix A.*)

The *Treasurer's Report* was received and referred to Messrs. Richard and Pepler for audit and report.

Oral reports of the work of various committees of the Conference were received. It was then decided to proceed first with the draft *Limitation of Actions Act* (Conference Proceedings, 1929, p. 20; Canadian Bar Association Year Book, 1929, p. 306) prepared by the Alberta Commissioners The draft and accompanying notes were read by Mr. Scott and the Act was discussed section by section. (*Appendix B.*)

At 1.00 p.m. the Conference adjourned.

At 2.30 p.m. the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

At 6 00 p m. the Conference adjourned.

SECOND DAY.

Tuesday, 12th August, 1930.

At 9.30 a.m. the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

(*Appendix B.*)

At 12.45 p.m. the Conference adjourned.

At 2.15 p.m the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

At 4 15 p.m the Conference adjourned.

At 8.45 p.m. the Conference reassembled. The President reported that in April, 1930, Mr. Pineo, acting on behalf of the Attorney-General of British Columbia, had requested that the Conference consider certain proposed amendments to the uniform *Conditional Sales Act.* As British Columbia has enacted the uniform Conditional Sales Act, the President, pursuant to the resolution of the Conference (Conference Proceedings, 1929, p. 13; Canadian Bar Association Year Book, 1929, p. 299) referred the request from British Columbia to the Manitoba Commissioners for report to the meeting of the Conference in 1930 Mr. Fisher then presented the report of the Manitoba Commissioners which was discussed paragraph by paragraph.

(*Appendix D.*)

It was resolved that the amendments to the uniform *Conditional Sales Act* as enacted by the Legislature of British Columbia in the Conditional Sales Act Amendment Act, 1930, be approved.

(*Appendix D.*)

It was resolved that the proposed amendment to the effect that the uniform *Conditional Sales Act* should not apply to the sale or bailment of manufactured goods which at the time of delivery have the manufacturer's or vendor's name painted, printed or stamped thereon be rejected.

After a long discussion with respect to proposed amendments to section 12 of the uniform *Conditional Sales Act* the following resolution was adopted:

The Conference recommends:

(i) That in view of existing legislation in a number of the

provinces which have not adopted the uniform Act it is inexpedient to repeal section 12.

(ii) That owing to difficulties that have arisen under section 12 it is advisable to amend the uniform Act to provide

(a) where goods have been affixed to realty the conditional sale agreement shall contain an exact description of the realty to which the goods are affixed;

(b) for the recording in such cases of conditional sale agreements under a real estate description to enable a purchaser, mortgagee, lessee or other encumbrancer to ascertain if a conditional sale affects realty in which he is interested;

(c) that upon default under a conditional sale agreement the vendor in such cases before taking possession under section 12 shall give to the registered owner, purchaser, mortgagee, lessee, or other encumbrancer notice of his intention to remove the goods and if within a specified number of days after receipt of such notice the registered owner, purchaser, mortgagee, lessee, or other encumbrancer does not redeem the goods by payment of the amount owing on them, the vendor shall have the right to repossess and remove the goods subject to provisions protecting the realty against damages.

(iii) That owing to the diversity in the provincial statutes providing for the registration of charges affecting real estate the amendment recommended in paragraph (b) of section (ii) hereof should be left to the discretion of the provincial legislatures.

(iv) That the amendments necessary to carry out the recommendations in paragraphs (a) and (c) of section (ii) hereof should be referred to the British Columbia Commissioners to draft and such draft be submitted to the Conference in 1931.

It was resolved that any provisions concerning the right of lien for repairs done upon a chattel while it is subject to a conditional sale which any province considers necessary should be enacted as a separate statute and not by way of amendment to the uniform *Conditional Sales Act*.

At 11 15 p m. the Conference adjourned.

THIRD DAY.

Wednesday, 13th August, 1930.

At 9.30 a.m the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

(*Appendix B.*)

At 12.45 p.m. the Conference adjourned

At 2 45 p.m. the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

At 5.00 p.m. the Conference adjourned.

At 8.30 p.m. the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

It was resolved that the matter of any further provisions in the uniform *Limitation of Actions Act* relating to claims against executors or administrators of debtors or claims by executors or administrators of creditors be left to the provinces for consideration and necessary action.

It was resolved that special provisions concerning the limitation of actions with respect to dower be inserted in the uniform *Limitation of Actions Act* by those provinces which require them.

It was resolved that the special provisions concerning estates tail and crown lands and highways contained in Appendix B to the draft of the Alberta Commissioners be inserted in the uniform *Limitation of Actions Act* by the provinces, if local conditions so require.

At 11,30 p.m. the Conference adjourned.

FOURTH DAY.

Thursday, 14th August, 1930.

At 9.30 a.m the Conference reassembled and resumed the discussion of the draft *Limitation of Actions Act.*

(*Appendix B.*)

The following resolution was adopted:

Resolved that the draft *Limitation of Actions Act* be referred to the Commissioners for Alberta and Ontario with instructions to revise the draft in the light of the discussion at the present meeting 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.

(The text of the revised draft is printed as Appendix C)

The *Auditor's Report* was received and adopted as follows.

REPORT OF THE TREASURER FOR THE YEAR ENDING JULY 31, 1930

1929			
	Balance on deposit	$1,019.03	
Aug. 22	Grant—British Columbia	200.00	
Oct. 31	Interest	17 14	
Nov. 22	Grant—Ontario	200.00	
1930			
Apr. 14	Miss Livingstone		$ 66.25
Apr. 14	Carswell Co., 500 copies Proceedings 12th Conference		190.76
Apr. 14	Carswell Co, 3,000 copies Report Conference in Can. Bar Assoc Year Book		237 77
Apr. 15	Grant—Saskatchewan	200.00	
Apr. 30	Interest	20.30	
July 19	Grant—Manitoba	200.00	
	Balance on deposit		1,361 69
		$1,856.47	$1,856.47

Respectfully submitted,
R MURRAY FISHER, Treasurer

Audited and found correct,
E. R RICHARD,
ERIC PEPLER,
Auditors.

August 11th, 1930

It was resolved that the Ontario Commissioners be appointed a Committee to co-operate with a Committee of the Association of Superintendents of Insurance in considering certain amendments

to the uniform *Life Insurance Act* which have been suggested by the Association, and that this Committee report to the Conference at the next meeting The Conference also recommend that the Attorneys-General of the provinces which have adopted the uniform Life Insurance Act be consulted with respect to any proposed amendments

It was resolved that the correspondence between Mr Falconbridge and Mr. H T. Ross, Secretary, Canadian Bankers Association, relating to certain suggested amendments to the uniform *Assignment of Book Debts Act* be referred to the Manitoba Commissioners, and that they be directed to report thereon to the Conference at the next meeting

It was resolved that the matter of registration of corporate securities, which was excepted from the uniform Bills of Sale Act and the uniform Assignment of Book Debts Act, be referred to the Saskatchewan Commissioners, with a view to their submitting to the Conference a draft *Registration of Corporate Securities Act.*

Mr Falconbridge reported to the Conference that the National Committee on Arbitration of the Canadian Chamber of Commerce had suggested that the Conference might consider a draft *Arbitration Act* which the Committee submitted

In view of the importance of the subject of commercial arbitration to the business community and commercial interests, it was then resolved that the Conference consider the draft *Arbitration Act* of the Canadian Chamber of Commerce.

(*Appendix F*)

After discussion, it was resolved that a uniform *Arbitration Act* should be prepared, and the British Columbia Commissioners were requested to prepare a draft act and to report to the Conference at the next meeting The British Columbia Commissioners were directed to consult, in respect of their draft, with the proper officials of the Canadian Chamber of Commerce; and it was further resolved that the commissioners for each province should consult with the officers of the local Board or Boards of Trade with respect to a uniform Arbitration Act.

With regard to the subject of *Contributory Negligence*, referred last year to the Ontario Commissioners (Conference Proceedings, 1929, p 21, Canadian Bar Association Year Book, 1929, p. 307) Mr. Falconbridge orally reported that no draft act had been prepared in view of the fact that the Ontario Legislature had in 1930

passed an act, without reference to the Ontario Commissioners. Mr. Dymond explained to the Conference the circumstances in which the Ontario Act of 1930 was passed.

(*Appendix F.*)

It was resolved that further consideration of the *Contributory Negligence Act* be deferred until the next meeting of the Conference.

The Conference then proceeded to discuss the draft sections respecting *Proof of Statutes* as prepared by the New Brunswick Commissioners (Conference Proceedings, 1929, p. 19; Canadian Bar Association Year Book, 1929, p. 305).

(*Appendix G.*)

In the absence of Mr. Pineo, Mr. Richard presented to the Conference a draft section respecting *Proof of Statutes and other State Documents* which Mr. Pineo had prepared.

At 12.45 p.m. the Conference adjourned

At 2.30 p m. the Conference reassembled and it was decided to discuss not only the draft sections respecting *Proof of Statutes* of the New Brunswick Commissioners but also the section prepared by Mr. Pineo.

At 4.15 p.m. the discussion of the section respecting Proof of Statutes was adjourned for the afternoon, and Mr. Thom on behalf of the members of the Conference expressed their regret that *Mr. Scott,* in view of his departure to Ireland, would cease to be a member of the Conference. Mr. Thom paid tribute to Mr. Scott's learning, his ability as a draftsman, and his patience in reporting a draft act to the Conference. After the presentation of a gift to Mr. Scott, Messrs. Falconbridge and Fisher also spoke of the loss which the Conference will suffer when Mr. Scott ceases to be a member. Mr. Scott expressed his gratitude to the members of the Conference for their kindness.

At 8.30 p.m. the Conference reassembled and resumed the discussion of the draft sections on *Proof of Statutes.*

It was resolved that one section should deal with *Proof of State Documents* and that another section should deal with *Judicial Notice of Statutes.*

The following resolution was then adopted:

Resolved, that the draft sections, for insertion in provincial Evidence Acts, respecting *Judicial Notice of Statutes and Proof of State Documents* be referred to the Commissioners for New Bruns-

wick with instructions to revise the draft in the light of the discussion at the present meeting, and

Further resolved, that the revised draft be printed and that copies be sent to all the 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 G.*)

Mr. Mathers reported that the Nova Scotia Commissioners had prepared a draft *Registration of Partnerships Act* (Conference Proceedings, 1929, p 19; Canadian Bar Association Year Book, 1929, p. 305). It was resolved that the draft should be printed in the proceedings and that consideration of it should be deferred until the next meeting.

(*Appendix H.*)

Mr Thom on behalf of the Saskatchewan Commissioners presented the report on *Defences to Actions on Foreign Judgments* (Conference Proceedings, 1929, p. 20; Canadian Bar Association Year Book, 1929, p. 306) and it was decided to print the report in the proceedings and that consideration of the draft *Foreign Judgments Act* prepared by the Saskatchewan Commissioners be deferred until the next meeting.

(*Appendix I.*)

It was resolved that the commissioners for each province consult with their respective Attorneys-General in respect of *Defences to Actions on Foreign Judgments.*

Mr. Falconbridge reported that he had received a letter from the Hon. Mr. Justice Surveyer of Montreal concerning the report of the Saskatchewan Commissioners in submitting a draft *Foreign Judgments Act.* It was resolved that Mr. Justice Surveyer's criticism of the report should stand over for the next meeting of the Conference.

It was resolved that the attention of the Secretary of the Canadian Bar Association be called to the heading on a draft act, which was attached to a copy of the *Report of the Committee on Comparative Provincial Legislation and Law Reform,* as follows: "As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada," and that it be pointed out that the head-

ing is erroneous as the draft act in question has never been before the Conference, much less revised or approved by the Conference.

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

The *Secretary* was also instructed (1) to arrange with the Canadian Bar Association to have the report of the proceedings of the Conference published as an addendum to the report of the proceedings of the Association, the expense of the publication of the addendum to be paid by the Conference; and (2) to prepare a report of the proceedings of the Conference and have the same published in pamphlet form and send copies to the other commissioners.

It was resolved that the *next meeting of the Conference* should be held 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 Hon. N W Rowell, K C, of the President of the Conference and of the members of the Ontario Bar.

Mr Craig reported orally on behalf of the Committee appointed last year to consider the question of *the appointment of a paid officer*, the Committee being of opinion that it was inadvisable at the present time to appoint a paid officer

Mr. Craig, on behalf of the *Nomination Committee*, appointed by the President on the first day of the meeting, submitted the following report, which was received and adopted·

Your Committee on Nomination of Officers submits the following recommendations:

President—John D. Falconbridge, K.C, Toronto.
Vice-President—R. W. Shannon, K C, Regina.
Secretary—Sidney E. Smith, Halifax.
Treasurer—R. Murray Fisher, K C., Winnipeg.

The following resolution was unanimously adopted

We, the members of the Conference, express to *Mr. Pitblado* our profound appreciation of his services to the Conference as its *President* during the past seven years His thorough knowledge of the law, his courteous bearing and by no means least his irrepressible energy have contributed to a very marked degree to the measure of success which has attended our efforts. We hope that he will long continue to assist us with his knowledge and advice.

It was also resolved that the members of the Conference express to *Mr. Falconbridge* their deep appreciation of his invaluable ser-

vices as Secretary to the Conference for a period of twelve years. His careful, painstaking and efficient efforts have contributed in a large measure to the success of the meetings of the Conference.

At 11.15 p.m. the Conference adjourned

APPENDICES.

A. Presidential Address.

B Draft Limitation of Actions Act with the Draftsman's Annotations.

C Text of revised uniform Limitation of Actions Act.

D. Report on proposed amendments to the uniform Conditional Sales Act and the Conditional Sales Act Amendment Act, 1930, British Columbia.

E Draft Arbitration Act submitted by the Canadian Chamber of Commerce.

F The Negligence Act, 1930, Ontario

G Draft sections for insertion in the Provincial Evidence Acts respecting Judicial Notice of Statutes and Proof of State Documents as revised and approved

H Draft Registration of Partnerships Act

I. Report on Defences to Actions on Foreign Judgments and draft Foreign Judgments Act

APPENDIX A.

PRESIDENTIAL ADDRESS.

It gives me great pleasure to welcome to this Conference so many Commissioners who have had to do with the work of the Conference in the past and, at the same time, I extend a hearty welcome to those Commissioners who are here for the first time.

It is not necessary for me to give any resumé of the work done by the Commission in the past year, or during the twelve years in which it has functioned. The excellent resumé of the work of the Conference printed in our proceedings year by year gives to all interested, in summary form, a memorandum of our objects and of the work which we have accomplished

To all Commissioners, both old and new, I would like to call attention to Appendix E of the 1929 Report, which contains a table of all the model uniform statutes which were suggested, proposed, reported on, drafted or approved by this Conference.

A perusal of this Appendix will show that whatever practical results may have followed, the Conference has done a great deal of work in the consideration of various statutes affecting the interests of the community.

The aims of the Conference are high, but it is necessary to aim high, and if we have not always achieved all the results we desired, we should not be discouraged

I desire to thank the Attorneys-General of the various Provinces of Canada for their continued interest in the work of the Conference, and I trust that our work will commend itself more and more to them as the years go by I also desire to thank the Legislatures of the various Provinces and, particularly, the various Law Amendment Committees for the careful, and, in most cases, favourable consideration which they have given to our uniform bills when they have come up for consideration

The members of this Conference have no axes to grind Their only desire is to see that the best possible provincial legislation is enacted upon matters which affect the commercial, business and property interests of the citizens of Canada, and that such legislation should as far as possible be of a uniform character in the various Provinces

Since our last meeting we have lost an eminent confrère, who took a great part in bringing about the organization of this Conference I refer to Mr Eugene Lafleur, K.C In the short address

which I made to the Conference last year, I quoted the remarks which he had made to the Canadian Bar Association some years ago as to the desirability of uniformity of legislation of our commercial laws throughout the Dominion. Mr. Lafleur was active in the organization of this Conference, and was present as an unofficial representative of the Province of Quebec at the first Annual Meeting held at Montreal in September, 1918, and he always took a keen interest in the work of the Conference. We regret his death; we remember him with deep affection; he was simple in his habits of life, humble and kindly in manner and disposition; he had great legal ability and he was a splendid advocate; and with all he had a sane and broad viewpoint on the affairs of Canada as a whole. Mr. Lafleur's death is not only a distinct loss to the legal profession in Canada, to the Province of which he was a citizen, but also to this Conference.

We also join all the members of the Canadian Bar Association in recording our deep sense of loss occasioned by the death of the Hon. Wallace Nesbitt, K C., past President of the Canadian Bar Association and at the time of his death Treasurer of the Law Society of Upper Canada He was a very distinguished member of the Bar and one of our ablest counsel. He also was deeply interested in the work of this Conference and appreciated to the full the importance of the work which we are trying to accomplish.

APPENDIX B.

DRAFT LIMITATION OF ACTIONS ACT WITH THE DRAFTSMAN'S ANNOTATIONS.

An Act Respecting the Limitation of Actions.

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

SHORT TITLE.

1. This Act may be cited as *"The Limitation of Actions Act, 19 ."*

INTERPRETATION.

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

(*a*) "Action" shall include any civil proceeding and any action or other proceeding by or against the Crown (i);

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

(*c*) "Disability" shall mean disability arising from infancy or unsoundness of mind;

(*d*) "Heirs" (iii) shall include the persons entitled beneficially to the real estate of a deceased intestate;

(*e*) "Land" shall include all corporeal hereditaments, and any share, estate or interest in any of them (iv);

(*f*) "Possession" shall include receipt of profits (v);

(*g*) "Proceeding" shall include action, entry and distress;

(i) In accordance with the instructions of the Conference, the meaning of "action" has been broadened to include all proceedings by or against the Crown

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

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

(iv) The definition of "land" has been considerably shortened.

(v) The clauses relating to recovery of land and rent charges have, in the body of the Act, been simplified by leaving out any allusion to receipt of profits It does not appear that there was ever any necessity for such allusion (See as to this, Time Limit on Actions: Lightwood, p 30; and *Allen* v *England*, 3 F. and F, p 49.)

The definition of "possession" as including receipt of profits is, perhaps, equally unnecessary, but at any rate, it can do no harm.

(*b*) "Rent" shall mean a rent service or rent reserved upon a demise;

(*i*) "Rent charge" shall include all annuities and periodical sums of money charged upon or payable out of land (vi).

PART I.

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

(*a*) Actions for penalties imposed by any statute brought by any informer suing for himself alone or for the Crown as well as himself, or by any person authorized to sue for the same (i), not being the person aggrieved, within one year after the cause of action arose.

(*b*) Actions for penalties, damages or sums of money in the nature of penalties (ii) given by any statute to the Crown or the person aggrieved, or partly to one and partly to the other, within two years after the cause of action arose.

(*c*) Actions of defamation, whether libel or slander, within one year of the publication of the libel or the speaking of the slanderous words, or where special damage is alleged, within one year after the occurrence of such damage (iii).

(vi) Inasmuch as much confusion has arisen owing to the word "rent" sometimes meaning "rent charge" and sometimes meaning ordinary "rent" the word "rent" is not used throughout the statute except where ordinary rent payable to a landlord is meant. It does not appear to be settled as to whether rent reserved on leases for lives is within or without the statute. The point does not appear to be of much importance and the adoption of the definition will definitely settle that rent payable upon a lease for lives is rent within the meaning of the statute and not a rent charge. (See generally on the subject, *Grant* v *Ellis*, 9 M and W 113)

(i) The words "by any person authorized to sue for same" have been introduced to meet the case of *Robinson* v *Currey*, 7 Q B.D. 465, which was an action on the provisions of The Gold and Silver Wares Act which provided that the Goldsmiths Company might sue for penalties, but it was held that the Company was not barred by this provision as it could not be said to be a common informer

(ii) The words "in the nature of penalties" have been added (See *Jervis* v *Surrey County Council*, [1925] 1 K B. 554)

(iii) As agreed by the Conference, slander and libel have been grouped together and the period of limitation shortened

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

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

(*f*) Actions for the recovery of money, whether as a debt, damages or otherwise, on a recognizance, bond, covenant or other specialty (except a specialty debt charged upon land) or on a simple contract, whether expressed or implied, or for any money demand or for an account or for not accounting, within six years after the cause of action arose(v).

(*g*) Actions grounded on fraudulent misrepresentation within six years from the discovery of the fraud (vi).

(*h*) Actions grounded on undue influence, within six years from the time when such influence ceased

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(iv) The words "or for seduction" have been added as agreed to by the Conference.

(v) As agreed to by the Conference, the distinction between specialties and special contracts is no longer preserved The recommendation of the Conference was that a covenant for the payment of mortgage moneys should be excluded from the operation of this paragraph The draftsman suggests that it would be better to exclude specialty debts charged upon land In *Barnes* v *Glenton*, [1899] 1 Q B. 885, it was held that a simple contract debt, even if charged upon land, was not affected by The Real Property Limitation Act, 1833

(vi) In the note to section 4 of the last draft (see page 72 of the Conference Report, 1928) the following words occur: "It has been suggested that the equitable rule (that is, that the statute only ran from the discovery of the fraud) did not apply to causes of action which were formerly cognizable solely at common law" In the recent case of *Lynn* v *Bamber*, 46 T L R. 367, Mr Justice McCardie held that even in a pure common law action, active and fraudulent concealment is now, since the Judicature Acts, a good reply to the Statute of Limitations He further held that in cases where there was fraudulent misrepresentation but there had been no fraudulent concealment of it, the statute also applied This case seems to settle the law in accordance with the words of this paragraph

(*i*) Actions grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action (vii).

(*j*) Actions on a judgment or order for the payment of money, within ten years after the cause of action arose (viii).

(*k*) Any other action [real, personal or mixed] not in this Act specifically provided for within six years after the cause of action arose (ix).

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

4. When the existence of a cause of action has been concealed by fraud of or in some way imputable to the person setting up this Part as defence, the cause of action shall be deemed to have arisen when the fraud was first known or discovered (i).

(vii) The words "or of the time when such cause might with reasonable diligence have been discovered" are here omitted in accordance with the decision of the Conference at its last sitting

(viii) An action on a judgment is now dealt with in this Part relating to personal actions In the English Acts and the Acts which follow these Acts, judgments are dealt with in the section which relates to charges upon lands In *Jay* v. *Johnstone*, [1893] 1 Q B 189, it was held that this section operated as a bar to all judgments alike whether charged on land or not It seems better, therefore, to deal with them in this section

(ix) There are some actions to which no statutes of limitation are applicable either directly or by analogy, thus no statute of limitation is applicable to a charge on personal property whether by way of vendor's lien or otherwise (*Stucley-Stucley* v *Kekewich*, [1906] 1 Ch 67, C A), or to a mandamus or to an action for the recovery of chattels in specie. (*Mitchell* v *Moseley*, [1914] 1 Ch 438)

(i) This section has been redrafted to meet the view of the Conference at its last sitting, where it adopted the principle enunciated by Rigby, L J, in *Betjemann* v *Betjemann*, 64 L J. Ch 645, where he says: "What duty is there to enquire? To whom is that duty owed? Certainly not to the person who had committed the concealed fraud, for a man in that position to be allowed to say 'But you ought to have enquired; if you had enquired you would have found me out' is utterly opposed to every principle of equity."

As to the difficulties inherent in questions of concealed fraud in personal actions, see note on page 70 of the Conference Report, 1928

5. No claim in respect of a matter which arose more than six years before the commencement of the action shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action (i).

DISABILITIES.

6.—(1) If a person entitled to bring any action mentioned in paragraphs ( ) to ( ) inclusive, is under disability at the time the cause of action arises, he may bring the action within the time hereinbefore limited with respect to such action or at any time within two years after he first ceased to be under disability (i).

(2) This section shall not operate to extend the time for bringing an action where one or more of several possible co-plaintiffs was not under disability at the said time (ii).

7. If a person is out of the Province at the time a cause of action against him arises, the person entitled to the action may bring the same within two years after the return of the first mentioned person to the Province

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

(2) A person having such cause of action shall not be barred from commencing an action against any joint debtor or joint contractor,

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(i) This section has been redrafted to meet the views expressed by some members of the Conference.

(i) This section has been redrafted so as to make the rules as to disability only applicable to certain paragraphs

(ii) In Halsbury, vol 19, p 57, it is said that if one co-plaintiff is under a disability when the cause of action accrues and the other co-plaintiff is not, the statutory provisions relating to disabilities have, it seems, no application, and time runs from the accrual of the cause of action. (*Perry* v *Jackson*, 4 T R 516) This decision relates to absence beyond the seas, which is no longer a disability in this case, but the reasoning is applicable to any kind of disability.

(i) This section extends its principle to joint contractor defendants as well as joint debtor defendants.

who was out of the Province at the time the cause of action accrued, after his return to the Province by reason only that judgment has been already recovered against such of the joint debtors or joint contractors as were at such time within the Province

ACKNOWLEDGMENTS AND PART PAYMENT.

9.—(1) Whenever—(i)

(*a*) any person who is, or would have been but for the effluxion

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(i) The note taken with regard to this section by the draftsman appears to contain two mutually destructive recommendations

(*a*) The first recommendation is to the effect that the wording of the Act should provide that the promise should not be treated as constituting a new cause of action, but that time should run from the time of the promise or inferred promise to pay. This suggestion seems to be based upon Lord Sumner's judgment in *Spencer* v *Hemmerde*, [1922] 2 A C 507, where he combats the old theory that the new promise creates a new cause of action. Several of the other Lords are in their judgments unrepentant as to the old theory, and none of them give express adhesion to the theory of Lord Sumner. Thus Lord Wrenbury says: "An action will lie upon a new promise if brought within six years of the date of the promise"; and Viscount Cave says: "The original promise to pay is renewed and confirmed without condition or qualification and if that be done there is a new promise to pay upon which an action may be founded." The question is, however, largely academic, inasmuch as under the existing practice, the original promise is the promise sued upon. It would appear, however, even from Lord Sumner's judgment, that if an acknowledgment does not constitute a fresh enforceable cause of action, then there would be no logical reason that an acknowledgment should precede the commencement of the action. The draftsman has not, therefore, taken the case of *Spencer* v *Hemmerde* as in any way altering principles of law or affecting the words of a statute intended to give effect to them.

(*b*) The second recommendation is to the effect that the draft Act should negative entirely the necessity of a promise or inferred promise. This would seem to be the course that would appeal to Lord Sumner, who says in his judgment: "What if the debtor himself says that he has not paid? Why, then, he ought to pay, since he admits himself that he ought to pay. How is such an admission, firstly, to be evidenced, and, secondly, to be reconciled with the Act? As to the first, there were two schools, one saying that non-payment was non-payment and non-payment was evidenced by saying that the debt was unpaid, no matter what else

of time, liable (ia) to an action for the recovery of money as a debt, or his duly authorized agent, promises his creditor or the duly authorized agent of the creditor in writing to pay such debt; or

(*b*) any such person or his duly authorized agent gives a written acknowledgment of a debt to his creditor or the agent of the said creditors; or

(*c*) a part payment is made on account of the principal debt or interest thereon, to a creditor or his agent by a debtor or his duly authorized agent—

then an action to recover any such debt may [thereafter] (ii) be brought within six years from the date of the promise, acknowledg-

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might be said at the same time I confess I think that there is a good deal in this."

It should be noticed that the section as drafted: first, still treats an acknowledgment of a liability in respect of a breach of contract other than a debt or of tort as ineffective in taking a liability out of the statute, and second, it expressly provides that acknowledgments must be given to the creditor or his agent. Under the existing law, in the case of specialty debts, an acknowledgment given to a third party is sufficient, *Moodie* v *Bannister*, 4 Drew 432, whereas in the case of a simple contract debt, since the acknowledgment operated as a promise, it had to be made to the creditor or his agent (See *Stamford Banking Company* v. *Smith*, [1892] 1 Q.B 765, C.A). The section brings within the scope of the law as to acknowledgments, simple contract debts within The Civil Procedure Act and not within the Act of James

(*ia*) Acknowledgment by party liable under section 5, Civil Procedure Act, 1833, means each or anyone of the several persons liable (per Kindersley, V C, *Coope* v *Cresswell*, 2 Eq. 116)

(ii) It has been thought well to insert the word "thereafter" here The doctrine that an acknowledgment of a simple contract debt must be made before action brought depended upon the idea that the promise furnished a new cause of action (*Bateman* v *Pinder*, 3 Q B. 574) In accordance with the instructions of the Conference, the necessity for an acknowledgment amounting to a promise or inferred promise has been removed and, therefore, the logical basis of the doctrine is gone. In the case of specialty debts an acknowledgment could not, of course, operate as a promise, for a promise by specialty could not be supported by a promise not by specialty and, therefore, it was not necessary that the acknowledgment should be made before action brought. It seems, therefore, necessary to indicate which of these theories is to be followed. The draftsman has preferred to preserve the existing rule as to simple contract debts and to assimilate the rule governing specialty debts to that rule

ment or part payment, as the case may be [notwithstanding that the action would otherwise be barred under the provisions of this Act].

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

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

12. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing,

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(i) This section deals with the effect of an acknowledgment or payment by one or two or more joint debtors The existing law seems to be that by virtue of section 14 of The Mercantile Law Amendment Act, 1846 (Ontario Act, section 55), a payment does not bind a co-debtor in the case of either simple contracts or specialties and that an acknowledgment does not bind a co-debtor in the case of a simple contract (Statute of Frauds, 1828, Ontario Act, section 55), but an acknowledgment in the case of specialties does not bind a co-debtor (Civil Procedure Act, section 5, Ontario Act, section 53) This latter rule was due to the joint effect of *Roddam* v *Morley*, 1 De G and J 1, and *Read* v *Price* [1909] 2 K B 724 In the first of these cases it was held that the words "the party liable or his agent" occurring in both the Civil Procedure section and the Ontario section were to be read as if they were "the party or parties liable by virtue of a bond, etc., or any of them or his or her or their agent," and in the second case, it was held that the law was the same for both part payments and acknowledgments The draft section places specialty debts and simple contract debts on the same basis in every particular (See generally on this section, the note on page 75 of the Proceedings of the Conference, 1928)

by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act.

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

PART II.

CHARGES ON LAND (i).

14.—(1) No proceeding shall be taken to recover any (rent charge or any) (ii) sum of money secured by any mortgage (iii) or lien, or otherwise charged upon or payable out of any land or rent charge [or to recover any legacy, whether it is or is not charged upon land or the personal estate or any share of the personal estate of any person dying intestate and possessed by his personal representative] (iv), but within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for or

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(i) It seems better to make a separate part relating to charges on land as occupying an intermediate position between strict personal actions and real actions for the recovery of land

(ii) There does not seem to be any reason why rent charges should not be taken out of the sections which relate to the recovery of land and placed in this section The presence of rent charges in the sections relating to land has occasioned many difficulties and the draftsman cannot at present see any good reason why the Gordian knot should not be cut by removing them entirely from those sections, all the more particularly as rent charges do not appear to be of as much importance in Canada as in England The words which it would be necessary to insert in this section, if this suggestion is adopted by the Conference, are enclosed in round brackets Similar changes would, of course, be necessary in section 15, where the words to be inserted are also enclosed in round brackets

(iii) The word "judgment" is here omitted; judgment having been taken to section 3 of the Act (See note (viii) to that section)

(iv) The draftsman recommends that the words contained in square brackets should be omitted A legacy has always been mentioned in this section and it has long been settled that the word referred to legacies whether payable out of real or personal estate (see *Bullock* v *Downes*, 9 H L C 14), but there appears to be something anomalous in mixing up legacies payable out of personal estate with legacies charged upon land. The period of limitation with respect to the personal estate of intestates is

release of the same, unless prior to the expiry of such ten years (v) some part of the (rent charge or) principal money [or the estate or share] or some interest thereon has been paid by a person bound or entitled to make a payment thereof (vi) or his agent to a person entitled to receive the same or his agent, or some acknowledgment in writing of the right to such sum of money signed by any person so bound or entitled or his agent has been given to a person entitled to receive the same or his agent, and in such case no action shall be brought but within ten years after such payment or acknowledg-

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twenty years, but this was probably due to oversight when The Real Property Limitation Act Amendment Act was passed in 1874 There does not seem to be any reason why these claims, if charged upon or payable out of land, should not be left to the operation of the general words of this section, and if not charged on land, to the general operation of the residuary words in section 3, paragraph (*k*), of the Act. With the single exception of a legacy, which seems to have been introduced into the Act by a blunder, no claim comes within chapter 27 but that which is a charge upon land (per Kindersley, V.C., *Coope* v *Cresswell*, 2 Eq. 116).

(v) The original words perpetuated in most of the Canadian Acts, were "Unless in the meantime some part of the principal money, etc., has been paid" These words clearly might refer to the period before the expiration of the twelve years, so that an acknowledgment, after that time, would be ineffectual, but it has been decided in *Re Clifden*, [1900] 1 Ch 774, that the words refer to the period between the accrual of the right to receive and the commencement of the action, so that an acknowledgment would be effectual after the statutory period had elapsed, and so be in conformity with the law as to simple contract and specialty debts It should be observed, however, that in Halsbury's Laws of England, vol 19, page 92, it is said: "To be effective, the payment must, it seems, at all events where money is charged upon land, be made within twelve years after the accrual of the person's right to receive." It would seem to be more in accord with the idea that in all cases of land and rent, the right is gone when the remedy is gone to make it clear that an acknowledgment will not operate if given after the expiry of the ten years.

(vi) Under the words of the existing statutes, the acknowledgment or payment must be made by the person "by whom the same is payable" These words have been explained in a series of English cases such as *Toft* v *Stephenson*, 1 D. M. and G 28, and *Bolding* v *Lane*, 1 D J and S 122 It is thought that the general effect of these decisions has been embodied in the words "by a person bound or entitled to make a payment thereof"

ment, or the last of such payments or acknowledgments, if more than one was made or given. (See also Appendix A.).

(2) This section shall not apply to a simple contract debt (vii).

(3) (*If it is intended to limit charges created by writs of execution, a special clause should be inserted here which would probably vary in different jurisdictions.*)

15.—(1) No proceeding shall be taken to recover any arrears (of rent, or rent charge or) of interest in respect of any sum of money to which the immediately preceding section applies (i) or any damages in respect of such arrears, but within six years, or where the payment thereof is secured by specialty (ii) within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for or release of the same (iii) unless between the accrual of the right to receive and the taking of proceedings (iv) some

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(vii) These words are inserted to provide that when the personal remedy is at an end on the simple contract debt, then the remedy against the land shall also be at an end. This under the existing law is true with regard to the personal remedy on a covenant contained in a mortgage deed, and the remedy against the land. Both remedies expire at the end of twelve or ten years. (*Sutton* v. *Sutton*, 22 C D. 511.) In the case of a simple contract debt the personal remedy is barred at the end of six years, but the remedy as against the land exists for twelve years (*Barnes* v *Glenton*, [1899] 1 Q B 885, C A)

(i) This and the immediately preceding subsection are respectively section 8 of The Real Property Limitation Act, 1874, and section 42 of The Real Property Limitation Act, 1833 The subject-matters of the two sections are verbally different, but the sections have been always construed as covering the same subject-matter

(ii) Under the existing law where interest on money secured by a specialty is also charged upon land, it is recoverable in an action on the specialty within twelve years (See *Sutton* v *Sutton*, 22 C D , 511). It is thought wise to preserve this increase of limitation

(iii) In this section, as it now stands, there is no provision as to disabilities This probably occurred through oversight and inasmuch as the two sections (8 and 42) deal with the same subject matter, the provisions have been made, in this draft, speaking generally, the same.

(iv) It would appear that under the law as it now stands, an acknowledgment may be given even after the commencement of proceedings to recover arrears It would be better to legislate so as to make the law as to acknowledgments as uniform as possible.

part of the arrears has been paid (v) by a person bound or entitled to make a payment thereof or his agent to a person entitled to receive the same or some acknowledgment in writing of the right to the arrears signed by a person so entitled or bound or his agent has been given to a person entitled to receive the same, and in such case no proceeding shall be taken but within six years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given.

(2) Subsection (1) shall not apply to an action for redemption or similar proceedings brought by a mortgagor or by any person claiming under him (vi).

General note to sections 14 and 15

It is thought well to point out some of the contradictions in the English Acts and those Acts which follow them; an endeavour to cure which has led to the redrafting of those sections

(1) Under the Act of 1874, a rent charge must be recovered within twelve years;

(2) Under the Act of 1874, section 8 (first draft Act, section 30), any sum of money secured by any mortgage, judgment or lien or otherwise charged upon or payable out of land or rent, could only be recovered within twelve (ten) years;

(3) Under the Act of 1833, section 42 (first draft Act, section 24), arrears of rent or of interest in respect of any such sum could only be recovered within six years;

(4) Under The Civil Procedure Act, 1833, section 3, actions of debt for rent upon an indenture of demise, of covenant or debt upon specialty were to be brought within twenty years.

Where the case falls within (3) and (4), that is, where there is an action for arrears of rent, and there is also a covenant, the period is twenty years, not twelve years (*Paget* v. *Foley*, 2 Bing. N.C. 679.)

Where the case falls within (1), (3) and (4), that is, where it is sought to recover arrears of a rent charge secured by a covenant, the period is twelve years, and not twenty (*Shaw* v. *Crompton*, [1910] 2 K B. 370.)

(v) There is no provision as to part payment in this section, and it has been held that none can be implied. It has seemed better to the draftsman to insert here a reference to payment on the ground taken by Romer, J, in *Purnell* v. *Roche*, [1927] 2 Ch. 142, where he says: "Between an acknowledgment in writing and a payment of interest which is also an acknowledgment, though not in writing, there would seem to be but little difference in principle"

(vi) This subsection was apparently inserted in the Ontario statute to conform with the ordinary practice referred to in *Lloyd* v. *Lloyd*, [1903] 1 Ch 385

Where the case falls within (2), (3) and (4), that is, where the action is to recover interest on mortgage moneys secured by a covenant, the period is twelve years and not twenty or six (*Sutton* v. *Sutton*, 22 CD 511.)

Where the case falls within (2) and (3), that is, where there is an action to recover interest under a judgment or in respect of a legacy, the period is six years and not twelve years (*Toft* v. *Stephenson*, 7 Hare 1.)

Where the case falls within (2) and (4), that is, where the action is to recover mortgage moneys secured by a covenant, the period is twelve years and not twenty (*Sutton* v *Sutton, supra*)

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

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

(2) The preceding subsection shall apply only as between the land charged and the persons entitled to the charge and shall not operate

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(i) This section is section 10 of The Real Property Limitation Act, 1874, and appears to have been added to that Act by way of afterthought. It has given rise to many difficulties of construction and was considered very carefully and in detail by the English Court of Appeal in *Re Jordison*, [1922] 1 Ch. 440, where it was held that the section did not apply to the ordinary case of a trustee holding land upon an express trust for payment of a sum of money and was aimed, roughly speaking, at cases where there were three or more persons involved: (1) an owner having an estate subject to a charge; (2) a trustee entitled to the charge; and (3) a beneficiary entitled to the benefit of the charge.

so as to affect any claim of a *cestui que trust* against his trustee for property held on an express trust (ii).

PART III.

LAND.

RIGHT TO TAKE PROCEEDINGS.

GENERAL PRINCIPLE.

18. No person shall take proceedings to recover any land [or rent charge] but within ten years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called "predecessor") or if such right did not accrue to a predecessor then within ten years next after the time at which such right first accrued to the person exercising the right (hereinafter called "claimant") (i).

(ii) It is thought that subsection (2), taken from the language of the case above quoted may serve to make its meaning clearer (See *Re Jordison* in cases appended)

(i) This section sets out the general principle, and the following sections (formerly parts of section 3 of The Real Property Limitation Act, 1833) are not intended to explain in every instance, this section, but are to be taken as setting out those cases only in which doubt or difficulty might occur. (*James* v *Salter*, 3 Bing N C. 544) Throughout the Limitation Acts as they now stand, there is no hint of one important principle which was laid down by Blackburne, C.J., in *MacDonnell* v *McKinty*, 10 Ir 514, where he says: "If an owner leaves his land vacant, time does not begin to run against him until someone else has entered and begun acts of ownership" This principle was approved of by Parke, B., in *Smith* v. *Lloyd*, 9 Ex 562, where he says "There must be both an absence of possession by the person who has the right and actual possession by another, whether adverse or not, to be protected, to bring the case within the statute" "A continuous adverse possession, for the statutory period, though by a succession of persons not claiming under one another, does, in my opinion, bar the true owner" (Per Kay, L.J, in *Willis* v *Earl Howe*, [1892] 2 Ch 545 at p 553) "Where there is no continuous possession 'either by the same person or several persons claiming one from the other' (*Dixon* v. *Gayfere*, 17 B. 421) the result seems to be that the relative position and priority of inchoate titles acquired by any number of persons within the period of limitation remain unaffected by the extinguishment of the true owner's right, and the person who happens to be in

possession derives no advantage from that extinguishment, as against any one whose right is not specifically barred" (Possession in the Common Law, Pollock & Wright, p 98) The general position is well set out by Cheshire in his Modern Real Property on page 774 as follows: "It follows from this principle that if A takes possession of X's land, but abandons possession before the twelve years have run, and if he is, *after an interval* followed into possession by B, the right of the true owner X is not barred until B has himself been in for the full statutory period While a disseisor is in process of acquiring a statutory title by remaining in possession he holds an interest which is both transmissible and inheritable, so that the time during which he has been in possession is available to his assignee or heir The trouble comes where there has been, not a series of possessors each of whom claims under his predecessor, but a succession of trespassers each claiming adversely to the other. X, for instance, is the true owner A disseises X, B disseises A, C disseises B and is in actual possession when the statutory period of twelve years has run from the time when X was disseised In whom is the title to the land vested at the end of the twelve years? The true answer would seem on principle to be that no one disseisor obtains a good title against his predecessor for twelve years The rule of law is that possession of land confers a right which is valid against everyone who cannot show that he has a better right X is entitled to recover the land from A at any time during the twelve years succeeding A's entry. A is entitled to recover it from B until twelve years from B's entry, and the same is true as between B and C. The Real Property Limitation Act, 1833, provides that when the statutory period comes to an end, the right of the owner to recover the land shall be extinguished. If, therefore, the land has been *continuously* occupied by disseisors, so that there has always been someone against whom X could have maintained an action, X's title is irrevocably gone after he has been out of possession twelve years, no matter whether A or B or C is at that time in possession If X has been out of possession for twelve years, and of that time A has possessed the land for eight and B for four years, the latter being still in possession, X cannot recover the land from B, but A can No prior possessor's title is extinguished until *he* has been out of possession for twelve years." The Conference should consider whether a subsection introducing this principle should not be added to the section in some such words as the following: "(2) This section shall not operate [in the case of land] except when there has been continuous possession adverse to the claimant, whether such possession has been the continuous possession of one person or the unbroken and successive possession of several persons"

The question of adverse possession or receipt does not arise with regard to rent charges "As regards rent (being a perpetual rent or rent of inheritance) the mere non-payment of that rent

SPECIAL CASES.

Dispossession, Etc.

19. Where the claimant or a predecessor has in respect of the estate or interest claimed been in possession of the land [or in receipt of the rent charge] and has while entitled thereto been dispossessed or has discontinued such possession [or receipt] the right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession [or at the last time at which any part of the rent charge was so received] (i).

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for the appointed time, extinguishes the rent altogether (*Owen* v. *De Beauvoir*, 16 M and W 547), *scil.* because the land liable to the rent, is *semble*, deemed (by the continued non-payment thereof) to have been (in effect) receiving the rent adversely to the true owner" (Banning on Limitation of Actions, 3rd ed, p. 84) It will not be necessary, of course, to consider the case of rent charges if the suggestion made in note (ii) to section 14 of this draft Act is adopted In that event, the words "in the case of land" in the proposed new subsection, need not be inserted

(i) With respect to the time at which the right to take proceedings to recover a rent charge accrues, there seems to be considerable confusion In the case of dispossession, the right accrues at the last time at which any part of the rent charge was received and accordingly the period of limitation is in this case in fact reduced from ten to nine years, in the case of a rent charge payable annually; whilst in the case of succession upon death, if all A's rent charge devolves upon B, the time runs from the death, but if B takes a new rent charge or part of A's rent charge, either by succession or alienation, the time dates from the failure to pay the rent charge; whilst in the case of alienation, where all A's rent charge devolves upon B, the time runs from the time at which the claimant became entitled to the receipt of the rent charge This confusion would disappear, if sections 20 and 21 were deleted as proposed *infra*, and the final words of section 19 were changed from "or at the last time at which any part of the rent charge was so received" to "or at the time at which the rent charge fell due and was not paid" If the suggestion contained in note (ii) to section 14 is adopted, there will, of course, be no difficulty as to the period from which time will run

It might further be noted that the rule that the right is to be deemed to accrue at the time of the last receipt of the rent charge has often worked in an unfair way For instance, it prevents a person who is not under disability at the time that the rent charge was last received but was under disability at the time that his right to sue for the rent in fact accrued,

Succession on Death.

20. [Where the claimant claims the estate or interest of a deceased predecessor who was in possession of the land [or receipt of the rent charge] in respect of the same estate or interest at the time of his death and was the last person entitled to such estate or interest who was in such possession [or receipt] the right shall be deemed to have first accrued at the time of the death of the predecessor] (i) (ii).

Alienation

21. [Where the claimant claims in respect of an estate or interest in possession, granted, appointed or otherwise assured to him or a predecessor by a person being in respect of the same estate or interest in the possession of the land [or the receipt of the rent charge] and no person entitled under such assurance has been in such possession [or receipt] such right shall be deemed to have first accrued at the time at which the claimant or his predecessor became entitled to such possession or receipt by virtue of the assurance] (i) (ii).

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though not under the terms of the statute (namely, at the time that the rent fell due, but was not paid) from relying on that disability for the purpose of extending the time

(i) If the principle of *Smith* v. *Lloyd* is applicable it is clear that sections 20 and 21 would apply to land only when possession, adverse to the person entitled, was taken immediately on the death. In that event, the sections become entirely unnecessary, inasmuch as they would be then only particular instances of the general principle stated above (See generally on this subject, Lightwood's Time Limit on Actions, p 50.) The draftsman recommends the elimination of the sections. He has less hesitation in recommending this course inasmuch as the sections are only applicable where the predecessor has been in possession *in respect of the same estate or interest,* as that which the successor claims; and therefore do not touch the case of derivative interests carved out of a greater interest; these latter interests being governed by the general principle

(ii) The exterior brackets mark the suggestion that the entire section should be removed and the interior brackets mark those parts of the section which should be struck out if the suggestion to remove the whole section is not adopted and the suggestion to remove rent charges to section 14 is adopted.

(i) See note to section 20.

(ii) The exterior brackets mark the suggestion that the entire section should be removed and the interior brackets mark those parts of the section which should be struck out if the suggestion to remove the whole section is not adopted and the suggestion to remove rent charges to section 14 is adopted

Forfeiture.

22. When the claimant or the predecessor becomes entitled by reason of forfeiture or breach of condition, then the right to take proceedings shall be deemed to have first accrued at the time when [or whenever] (i) the forfeiture was incurred or the condition was broken.

FUTURE ESTATES.

Owner of Particular Estate in Possession.

23. —(1) Where the estate or interest claimed has been an estate or interest in reversion or remainder or other future estate or interest, including therein an executory devise (i) and no person has obtained the possession of the land [or the receipt of the rent charge] in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which the estate or interest became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held [or the rent charge has been received] [notwithstanding the claimant or the predecessor has at any time previously to the creation of the

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(i) The words "or whenever" are inserted to meet the case of *Barratt* v. *Richardson* (1930), 46 T L R 279 In that case it was claimed that the correct view of the law with respect to re-entry for non-payment of rent was contained in Sugden's Real Property Statutes, second edition, p. 83, where Lord St Leonards says: "If a man have a power of re-entry under a lease upon non-payment of rent, and non-payment of rent be made for twenty years, during which time he has not re-entered, he cannot re-enter afterwards and maintain an ejectment during the lease, although as we have seen, his right to recover the possession at the end of the lease will not be affected by the mere non-payment of rent" In a footnote he adds: "One learned judge thought this a startling state of things if such were the law. In this case, according to Baron Alderson, the judges in fact controverted *Doe* v. *Oxenham*, 7 M and W. 131, though they are reported to have stated otherwise" Wright, J, decided that the plaintiffs were entitled to recover in ejectment, notwithstanding that the first breach of the covenant to pay rent was more than twelve years before the writ.

(i) These words have been inserted to meet the case of *James* v. *Salter*, 3 Bing N.C. 544.

estate or estates which has determined been in the possession of the land or the receipt of the rent] (ii).

(2) The previous subsection shall apply only in cases where another person than the reversioner is entitled to the particular estate (i).

Owner of Particular Estate Out of Possession.

(3) If the person last entitled to any particular estate on which any future estate or interest was expectant was not in possession of the land [or receipt of the rent charge] at the time when his interest determined, no proceedings shall be taken by any person becoming entitled in possession to a future estate or interest but within ten years next after the time when the right to take proceedings first accrued to the person whose interest has so determined, or within six years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of these two periods is the longer.

Settlement While Statute is Running.

(4) If the right to take proceedings has been barred, no person afterwards claiming to be entitled to the same land [or rent charge] in respect of any subsequent estate or interest under any will or assurance executed or taking effect after the time when a right to take proceedings first accrued to the owner of the particular estate whose interest has so determined, shall take proceedings.

Successive Estates in Same Person.

(5) When the right of any person to take proceedings to recover any land [or rent charge] to which he may have been entitled for

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(ii) It is difficult to say why this clause was inserted. It is suggested in Smith's Leading Cases, volume II, p 669, that the clause was inserted to prevent any doubt that might have arisen upon the question, whether a person being in possession of an estate and then going out of possession to make room for somebody entitled to a sub-interest, could be barred of the remainder of his interest by that person's possession The instance given by Smith is the case of A being in possession of an estate subject to a power of leasing, vested in B, and exercised by him by making a lease for twenty years. The opinion of Lightwood in Time Limit on Actions, page 54, is that the clause is unnecessary The draftsman is inclined to the view that it should be struck out.

(i) These words are inserted to meet the case of *Doe* v. *Moulsdale*, 16 M and W 687, followed in *Stuart* v *Taylor*, 33 O L R. 20.

an estate or interest in possession entitling him to take proceedings (i) has been barred by the determination of the period which is applicable in such case, and such person has at any time during the said period been entitled to any other estate, interest, right or possibility in reversion, remainder or otherwise in or to the same land [or rent charge] no proceedings shall be taken by him or any person claiming through him to recover the land [or rent charge] in respect of such other estate, interest, right or possibility, unless in the meantime the land [or rent charge] has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of the estate or interest in possession:

Forfeiture.

24. When the right to take proceedings first accrued to a claimant or a predecessor by reason of any forfeiture or breach of condition, in respect of an estate or interest in reversion or remainder and the land [or rent charge] has not been recovered by virtue of such right, the right to take proceedings shall be deemed to have first accrued at the time when the estate or interest became an estate or interest in possession.

LANDLORD AND TENANT.

Wrongful Receipt of Rent.

25. Where any person is in possession of any land [or in receipt of any rent charge] by virtue of a lease in writing, by which a rent amounting to the yearly sum or value of four dollars or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to the land [or rent charge] in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the claimant or his predecessor to take proceedings to recover the land [or rent charge] after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

(i) The words "entitling him to take proceedings" have been inserted owing to the case of *Ludbrook* v *Ludbrook*, [1901] 2 K.B. 96, C.A.

Tenancy from Year to Year.

26. Where any person is in possession of any land [or in receipt of any rent charge] as tenant from year to year, or other period, without any lease in writing, the right of the claimant or his predecessor to recover the land [or rent charge] shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time (prior to his right to take proceedings being barred under the provisions of this Act) (i) when any rent payable in respect of such tenancy was received (by the claimant or his predecessor or the agent of either) (ii) whichever last happens.

Tenancy at Will.

27.—(1) Where any person is in possession of any land [or in receipt of any rent charge] as tenant at will, the right of the claimant or his predecessor to take proceedings to recover such land or rent, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after its commencement, at which time and if the tenant was then in possession, the tenancy shall be deemed to have been determined.

(i) The section gives two alternative points for the commencement of the statute—the end of the first year of the tenancy, or the last receipt of rent; and hence, although such last receipt may be more than twelve years after the end of the first year, the lessor is entitled to rely upon it as giving the date from which the statute is to run: *Bunting* v *Sargent* (1879), 13 C.D. 330. *Prima facie*, it might be supposed that the title is extinguished at the end of the twelve years, and that a subsequent payment of rent would be as ineffectual to revive it as an acknowledgment: cf. *Sanders* v *Sanders* (1881), 19 C.D. 373, C.A But in *Bunting* v. *Sargent*, Jessel, M.R., observed that section 34 only extinguishes the title "at the determination of the period limited by this Act" and that under section 8 the statutory period was to be reckoned from the last receipt of rent, whenever this took place, provided only it was subsequent to the end of the first year of the tenancy. In *Nicholson* v. *England*, [1926] 2 K.B. 93, Sankey, J., refused to follow this case and held that if twelve years elapsed between the expiration of the first year of the tenancy and the payment of rent, such payment will have no effect, as the right of the lessor will have been extinguished. The draftsman proposes therefor to insert the words in round brackets.

(ii) Receipt by an agent is insufficient (See *Smith* v *Bennett*, 30 L.T. 100)

(2) No mortgagor or *cestui que trust* under an express trust (i) shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of this section.

CONCEALED FRAUD.

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

(2) Nothing in subsection (1) shall enable any owner of land or rent to bring an action for the recovery of such land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.

ACKNOWLEDGMENTS.

29. When any acknowledgment in writing of the title of a person entitled to any land [or rent charge] signed by the person in possession of the land [or in receipt of the rent charge] or his agent (i)

(i) See Lightwood, p. 79, and Halsbury, vol. 19, p 126

(i) These words have been inserted by reason of the decision in *McCallum* v. *McCallum*, [1901] 1 Ch. 143, C A

(ii) It has been thought well to retain this section dealing with concealed fraud It will be noticed that in cases of the recovery of land, the term "concealed fraud" is of a stricter nature than the fraud which is the subject of the rule of equity and has been more or less adopted in the Part relating to personal actions. Under this section, in order to gain the benefit of the section, a plaintiff must make out, first, that there has been concealed fraud; second, that he or his predecessor entitled, have been deprived of the land by such fraud; and third, that the fraud has not been discovered and could not with reasonable diligence, have been discovered within ten years of action brought Per Lindley, L J., in *Willis* v. *Earl Howe*, [1893] 2 Ch. 549, C.A.

(i) The existing law is that an acknowledgment given to an agent is not effective. (*Ley* v *Peter*, 3 H. and N 101)

has been given to him or his agent prior to his right to take proceedings having been barred under the provisions of this Act (ii), then the possession [or receipt] of [or by] the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession [or receipt] of [or by] the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of the last mentioned person, or of any person claiming through him to take proceedings shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given.

DISABILITIES.

30.—(1) If at the time at which the right to take proceedings first accrued to any person he was under disability, then such person or a person claiming through him may (notwithstanding anything in this Part) take proceedings at any time within six years next after the person to whom the right first accrued first ceased to be under disability (i) or died, whichever event first happened, provided that if he died without ceasing to be under disability, no further time to take proceedings shall be allowed, by reason of the disability of any other person.

(2) Notwithstanding anything in this Part, no proceedings shall be taken by a person under disability at the time the right to do so first accrued to him or by any person claiming through him, but within thirty years next after that time.

MORTGAGES.

Redemption

31.—(1) When a mortgagee has obtained the possession of any [land] (property) (i) [or the receipt of any rent charge] com-

(ii) *Nicholson* v *England*, [1926] 2 K B 93

(i) It is thought that the use of the words "first ceased to be under disability" (defined in section 2) makes it clear that provided some disability exists at the accrual of the right of action the statute continues to be excluded during any further disability which may exist in the same claimant (See *Burrows* v *Ellison*, L R. 6 Ex 128)

(i) As under the existing law there is no Statute of Limitation relating to mortgages on personalty (see *Weld* v *Petre*, [1929] 1 Ch. 33), but it is proposed to make the Statute apply to all actions, the question arises whether the redemption of mortgages on

prised in his mortgage, the mortgagor or any person claiming through him shall not bring an action to redeem the mortgage but within ten years next after the time at which the mortgagee obtained such possession [or receipt] unless prior to the expiry of such ten year (ii) an acknowledgment in writing of title of the mortgagor or of his right to redeem is given to the mortgagor or some person claiming his estate or to the agent of such mortgagor or person signed by the mortgagee or the person claiming through him or the agent (iii) of either of them, and in such case, no such action shall be brought but within ten years next after the time at which such acknowledgment or the last of such acknowledgments, if more than one was given (iv).

(2) Where there is more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, an acknowledgment, if given to any of such mortgagors or persons or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons.

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personalty should be dealt with here Difficult questions have arisen under the law as it now exists, with respect to mortgages of mixed funds or of realty and personalty It was held in *Charter* v *Watson*, [1899] 1 Ch 175 by Kekewich, J., that "in the case of mixed personalty and realty, when the right to redeem the realty was barred, the right to redeem the personalty was also barred", but it was held in *Weld* v. *Petre, supra*, that the considerations which apply to redemption were not the same as those which apply to foreclosure

This section can be made to include personalty by striking out the word "land" and inserting the word "property" in the appropriate places

(ii) These words are inserted to emphasize the fact that an acknowledgment made after the right of the mortgagor has been extinguished is ineffective (*Sanders* v *Sanders*, 19 C D 373)

(iii) The word "agent" is here inserted

(iv) There is no provision in this section for disabilities The draftsman has not inserted any such provision, in reliance upon the opinion of Jessel, M R, expressed in *Kinsman* v *Rouse*, 17 C D 104, where he states that the sixteenth section of the Act of 1833, that is, the section relating to disabilities, should not be extended to the case of a mortgagor, and that the section relating to redemption, in his opinion, did not include any such qualification of the rights of the mortgagee, because it was not intended to put the rights of the mortgagee upon the same footing as the rights of persons claiming under an ordinary disposition of land.

(3) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees, an acknowledgment signed by one or more of such mortgagees or persons or his or their agent, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or [land] (property) [or rent charge] by, through or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or [land] (property) [or rent charge].

(4) Where such of the mortgagees or persons aforesaid as have given such acknowledgment shall be entitled to a divided part of the [land] (property) [or rent charge] comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the [land] (property) [or rent charge] on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of the divided part of the [land] (property) [or rent charge] bears to the value of the whole of the [land] (property) [or rent charge] comprised in the mortgage.

Foreclosure.

32. When any person bound or entitled to make payment of the principal money or interest secured by a mortgage [of land] (of property) or his agent (i), at any time prior to the expiry of ten years from the accrual of his right to take proceedings, pays any part of such money or interest to a person entitled to receive the same, as mortgagee (ii) or his agent, the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or the last of the payments, if more than one, was made, or if any acknowledgment of the nature described in section 29 was given, after that time, then at the time at which the

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(i) Agents are not mentioned in the Act of 1837.

(ii) The words "as mortgagee" are inserted. (See *Barclay* v *Owen*, 60 L T 220)

acknowledgment or the last of the acknowledgments, if more than one, was given (iii).

(*a*) Section 14 of the Act of 1833, providing that the right to take proceedings should be deemed to have first accrued at the date of the acknowledgment applied, of course, to foreclosure actions as well as to actions of ejectment. In more or less assimilating the law as to part payments to that of acknowledgments, the Act of 1837 did not provide that the right should be deemed to have accrued at the date of the payment; but only provided that an action might be taken to recover the land within twelve years after the last payment Hence, a disability existing at the date of the last payment of mortgage moneys but not at the date when the right to commence foreclosure proceedings first accrued, namely, at the date fixed for the redemption of the mortgage, was ineffective to give the mortgagee any protection by reason of the existence of the disability (*Purnell* v *Roche* [1927] 2 Ch. 142)

(*b*) An acknowledgment made at any time before the expiration of twelve years from the accrual of the right to take proceedings or from the last part payment but not after, would cause time to run afresh, but it has been suggested that The Real Property Limitation Act, 1833, section 34, i e, the section extinguishing the right at the end of the period of limitation, has no application as against a mortgagee where interest has been paid This statement is based on the presence of the words at the end of the 1837 Act "Anything in the said Act [i e., the Act of 1833] notwithstanding" In Lightwood, p 86, it is said "upon the payment being made the statute immediately begins to run afresh, and since the mortgagee's title is extinguished at the end of twelve years, a payment after this period does not help him, even though made in pursuance of an order obtained in a foreclosure action, *Hemming* v *Blanton*, 42 L.J C.P. 158," but this case is explained in Halsbury as being a case where there was possession adverse to the mortgagor at the date of the mortgage, in which case, the Act would not apply at all, according to *Thornton* v *France*, [1897] 2 Q B. 143, C A., where Chitty, L J., delivering the judgment, says: "Further we think that that Act does not confer a new right of entry on the mortgagee, where at the time of making the mortgage, a man is in possession, holding adversely to the mortgagor and the Statute of Wm. 3 and 4 has already begun to run in his favour against the mortgagee. We can

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(iii) This section is more or less a reproduction of the Real Property Limitation Act, 1837, which was passed to clear up doubts as to the effect of the part payment of principal or interest in extending the period of limitation under the Act of 1833 Several difficulties occur under the Act of 1837:

see no reason for giving so extensive a construction to an Act which was passed to remove a doubt"

The section has been redrafted so as to provide that the effect of an acknowledgment under section 14 (section 29 of this Act) and of part payment, should be the same, ie, that the right to take proceedings shall be deemed to have first accrued at the date of the last acknowledgment or payment.

LIMITS OF POSSESSION.

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

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

(3) The receipt of the rent payable by any [tenant at will] (i) tenant from year to year or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act.

EFFECT OF EXPIRY OF STATUTORY PERIOD.

34. At the determination of the period limited by this Act, to any person for taking proceedings to recover any land, rent charge or money charged on land, the right and title of such person to the land, rent charge or money, shall be extinguished (i).

(i) The words in brackets were inserted to make it clear that a demise at will reserving rent is a lease within the meaning of this section, so that payment of rent to the reversioner would preserve his title from being barred by section 7 of The Real Property Limitation Act, 1833, ie, section 27 of this draft.

(i) It will be noted that this rule does not apply to claims for debt or damages as Part I only takes away the remedy by action or by set-off, and, therefore, money may be appropriated to a statute-barred debt or the creditor may enforce a lien or other security after the debt is barred, or could peaceably retake a personal chattel

If it is thought right to make the same provision with regard to actions covered by Part I this section will obviously need alteration.

The question as to whether the section applies to money charged on land is dealt with in note (v) to section 14 of this draft

TITLE OF ADMINISTRATOR.

35. For the purposes of Parts II and III, an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration (i).

PART IV.

TRUSTS AND TRUSTEES

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

37. Subject to the other provisions of this Part no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by this Act or any other Act imposing a limitation upon action (i).

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

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, all rights and privileges conferred by this Act or any other Act imposing a limitation upon action shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.

(i) This section at present only applies to interests in land, and time does not now run against an administrator as regards tort or contract until the grant Perhaps the law should be made uniform

(i) This section is section 25, subsection (2), of The Supreme Court of Judicature Act, 1873, reproduced in most, if not all, Canadian jurisdictions, and here inserted to complete the law relating to trustees.

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

39. Where any land or rent charge is vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring an action against the trustee or any person claiming through him to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him (i).

PART V

GENERAL.

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

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

41. Nothing in this Act shall interfere with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person notwithstanding that his right to bring an action is barred by virtue of this Act.

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

(i) This section is taken from The Trustee Act, 1888, but that portion of it which relates to actions for which there is no existing Statute of Limitations, is, of course, omitted.

(i) This section is section 25 of The R P L Act, 1833

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

44. 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.

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

APPENDIX A.

REVERSIONARY INTEREST IN LAND

In the case of a reversionary interest in land time begins to run at the time when the interest falls into possession, under section 2 of The Real Property Limitation Act, 1874 This was because foreclosure was possible (*Hugill* v. *Wilkinson*, 38 C.D. 480), but if there is no right to obtain foreclosure as in the case of a mere charge on a reversionary interest in land, the case falls within section 8 of The Real Property Limitation Act, 1874, the prototype of section 14 of this Act, and proceedings must be brought within ten years after a right to receive accrues and not after the time at which the interest falls into possession (*Re Owen*, [1894] 3 Ch 220) The same rule applies to the mortgage of a reversionary interest in land, held on trust for sale (*Re Witham*, [1922] 2 Ch 413) In the last mentioned case, Sargant, J, said that his judgment did not reflect his own view of what would do the greater justice between the parties, and later says: "This decision is quite contrary to my inclination, and I think it works something of a practical injustice" This could be obviated by adding to section 14 of this Act, as subsection (3): "In the case of a reversionary interest in land, no right to receive the sum of money charged thereon shall be deemed to accrue until the interest has fallen into possession"

APPENDIX B

ESTATES TAIL.

1. Where the right of a tenant in tail of any land or rent charge to take proceedings to recover the same, has been barred by reason of the same not having been made or brought within the period limited by this Act, no such proceeding shall be taken by any person claiming any estate interest or right which such tenant in tail might lawfully have barred.

2. Where a tenant in tail of any land or rent charge, entitled to recover the same dies before the expiration of the period applicable in such case for taking proceedings to recover the land or rent, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall take proceedings to recover such land or rent, but within the period during which, if the tenant in tail had so long continued to live, he might have taken proceedings

3. Where a tenant in tail of any land or rent charge has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, in possession of the land or in the receipt of the rent charge, and the same person or any other person, other than a person entitled to such possession or receipt in respect of an estate which has taken effect after or in defeasance of the estate tail, continues or is in such possession or receipt for the period of ten years next after the commencement of the time at which the assurance, if it had then been executed by the tenant in tail, or the person who would have been entitled to his estate tail if the assurance had not been executed would, without the consent of any other person, have operated to bar such estate or estates, then, at the expiration of such period of ten years, the assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of the estate tail

CROWN LANDS AND HIGHWAYS.

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

2. Nothing in the foregoing sections shall apply to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any allowance for roads heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance, or highway is vested in the Crown or any municipal corporation or other public body, or to any lands vested in any municipal corporation by virtue of tax enforcement or tax recovery proceedings, but nothing in this section contained shall be deemed to affect or prejudice any right, title or interest heretofore acquired by any person (Ontario, 16)

APPENDIX C.

BARNES v GLENTON, [1899] 1 Q.B 885.

Where an action is brought to recover a simple contract debt, and the money sought to be recovered is charged on land, the period of limitation

is that imposed by Statute of Limitations, 1623 (c. 16) and has not been enlarged to twelve years by The Real Property Limitation Act, 1874 (c 57).

Barratt v. Richardson, 46 T.L.R. 279.

Premises were demised to R for ninety-nine years from December, 1908, at a yearly rent of £6 6s No rent was paid between 1914 and 1928, when the executors of the reversioner began an action against R and C, to whom R. had assigned the lease in 1924, claiming possession. R's whereabouts were not known and he was not served C pleaded that the claim to possession was barred by the Statute of Limitations since the right to possession first accrued more than twelve years before the date of the writ Held: that a fresh cause of action arose on each failure to pay rent, and the plaintiffs were entitled to rely on any and every non-payment within twelve years A waiver of an earlier breach of covenant was not a waiver of a subsequent breach.

Bateman v. Pinder, 3 Q B. 574.

An acknowledgment of the debt bars Statute of Limitations, because it amounts to a new promise, and therefore, if made after action brought, it is no bar

Bolding v. Lane, 1 De J. & S. 122.

A mortgagee is not entitled under The Real Property Limitation Act, 1833 (c. 27), s 42, to recover as against a second mortgagee and subsequent incumbrancers, the arrears of interest due on his mortgage for more than six years, by reason of an acknowledgment in writing by the mortgagor of the sum due in respect of interest The words of The Real Property Limitation Act, 1833 (c. 27), s. 42 "by whom the same is payable" denote not merely those who are legally bound by contract to pay the interest, but all against whom payment may be enforced by any action or suit

Bunting v Sargent (1879), 13 Ch. D. 330

By a lease to six persons described as trustees, a building used as a dissenting chapel, though not so described and reserving to the lessors a right of access to their pews therein, was demised for ninety-nine years, with a covenant for renewal, at the yearly rent of 1s The lease was not enrolled New trustees of the chapel had been appointed under The Trustee Appointment Act, 1850 (c 28) Shortly before the expiration of the term the trustees served the reversioner with a notice for renewal At that time no rent had been paid for above twenty years, but some of the arrears were then paid to and accepted by the reversioner. The reversioner refused to renew the lease Five years afterwards he brought an action against the trustees to recover possession of the building Held plaintiff's right of action was not extinguished under The Real Property Limitation Act, 1833 (c 27), s 34.

Borrows v. Ellison, L.R. 6 Ex. 128

When the person to whom the right to bring an action for the recovery of land accrues is under a disability and before the removal of that dis-

ability, the same person falls under another disability, The Real Property Limitation Act, 1833 (c 27), s. 16, preserves his right to bring an action until ten years after the removal of the latter disability. In 1833 plaintiff became entitled to land, which defendant then entered into possession of, and continued to occupy until action brought. At the time when plaintiff's title accrued she was an infant; she married under age, and continued under coverture until the time of bringing this action in 1870. In an action by herself and her husband in her right to recover the land: Held: the action was maintainable, notwithstanding that more than twenty years had elapsed since the title accrued, and more than ten years since the removal of the disability of infancy.

Piggot, B, said: "The words at the end of s. 16 must be construed reasonably. The intention was to give an extended time to the person entitled, so long as he remained under disability. If no break occurs, but the causes of disability overlap, he does so continuously remain under disability, notwithstanding there may be more causes than one"

CHARTER V. WATSON, [1899] 1 Ch. 175.

Where real estate and a life policy have been included in one mortgage to secure one indivisible sum, the mortgaged properties being subject to one and the same proviso for redemption and the mortgagee has been in possession of the real estate for more than twelve years without any acknowledgment of the mortgagor's title, so that the mortgagor's right to redeem the real estate has become barred by The Real Property Limitation Act, 1874 (c 57), s 7, his right to redeem the policy is also barred, not by analogy to the statute, but because, it having become impossible for the mortgagor to require a reconveyance of the real estate, it has become equally impossible according to the rules regulating the administration of mortgages in a court of equity, for him to require a reassignment of the policy, the real estate and the policy together constituting one security for the debt.

RE CLIFDEN, [1900] 1 Ch. 774.

(1) In 1871 A mortgaged a contingent reversionary interest in certain property together with a policy of assurance on his own life for £2,500 for securing the sum of £2,500. The mortgage contained the usual covenants for payment of the principal and interest with power of sale and surrender of the policy. A. never made any payment in respect of the principal or interest of the mortgage debt, or paid any of the premiums on the policy, which was kept up by the mortgagee In 1893 the mortgagee surrendered the policy to the office for the sum of £1,468 14s A. had no notice of the surrender The mortgagee died in 1895 and A. died in 1899. Held: in an action by the representative of the mortgagee against the representatives of A, claiming that the security might be enforced, the receipt of the mortgagee of the surrender value of the policy was not a payment of principal or interest within The Real Property Limitation Act, 1874 (c. 57), s. 8, so as to entitle plaintiff to recover on the covenant contained in the mortgage.

(2) The words "in the meantime" in the section include a period between the time of the commencement of the action or suit and a time when the remedy for the debt would otherwise have been barred.

DIXON v. GAYFERE, 17 Beav. 421.

Though by The Real Property Limitation Act, 1833 (c 27), s 34, the right is extinguished at the end of twenty years, still adverse possession by a succession of independent trespassers, for a period exceeding twenty years, confers no right on any one of them who has not himself had twenty years' uninterrupted possession, except as furnishing a defence to a trespasser in possession against an action by the rightful owner.

DOE v MOULSDALE, 16 M & W. 689.

(1) The Real Property Limitation Act, 1833 (c. 27), s 3, which relates to estates in reversion, expectant on the determination of a particular estate, applies only to cases where another person than the reversioner is entitled to the particular estate

(2) In 1784, premises were leased to H. for three lives. H. by his will devised all his estate and interest in the premises to his wife A, her heirs and assigns A in 1793, conveyed the estate so devised to her, to her son R, and the heirs of his body, with a proviso, that if he should have no child living at his death, the limitation thereby made should cease, and the estate should revert to A, her heirs and assigns In 1811, R. purchased the reversion in fee in the premises, expectant on the lease for lives, which was duly conveyed to him and at the same time an old satisfied term of five thousand years affecting the premises was assigned to a trustee for him, to attend the inheritance. R died in 1812, without issue, leaving his nephew J. his heir-at-law, and the heir-at-law of A. The lease for lives determined in 1835 For upwards of twenty years, from the death of R the premises were held adversely to J Held: his right of entry was barred thereby, and he had not a new right of entry on the determination of the lease for lives in 1835.

DOE v. OXENHAM, 7 M & W. 131

Where A was in possession of premises under a lease for ninety-nine years, determinable on lives, subject to a rent of £1 10s. per annum to the reversioner, which rent had not been paid to him for more than twenty years before the commencement of the action, but of which there had not been an adverse receipt by any other person Held: the right of the reversioner to the premises accrued on the determination of the lease, and not on the non-payment of the rent

HEMMING v BLANTON, 42 L J.C.P. 158.

Where a demise for a term of one thousand years by way of mortgage is created in land and no payment of principal or interest or acknowledgment is made for more than twenty years and the mortgagor and those claiming under him remain in possession of the premises without interruption, the title of the mortgagee under the mortgage is thenceforth barred, therefore, a payment of arrears of interest and the principal to the mortgagee under a decree in a foreclosure suit, after that time has elapsed, does not revive the title in the mortgagee and an ejectment does not then lie to recover the possession

James v. Salter, 3 Bing N.C. 544.

(1) An annuitant under a will since the passing of The Real Property Limitation Act, 1833 (c. 27), must have recourse to distress or action within twenty years from the date when the first payment became due, or the annuity will be barred.

(2) The limitation affecting a right to recover a rent charge granted by will is twenty years from the death of testator under The Real Property Limitation Act, 1833 (c 27), s 2

(3) [The Real Property Limitation Act, 1833 (c. 27), s 3], which provides for cases of claims in respect of estates in reversion or remainder "or other future estates or interests" is large enough to comprehend and would comprehend all executory devises (Tindal, C J)

Jervis v. Surrey County Council, [1925] 1 K.B. 554.

In an action against the police authority under The Riot Damages Act for damages caused by a riot, the cause of action is the refusal or failure of the authority to fix compensation Such an action is not an action "for penalties, damages, or sums of money given to the party grieved, by any statute" within The Civil Procedure Act, 1833 (c 42), s 3, therefore the period for bringing an action limited by the section in respect of those actions is not applicable.

Re Jordison, [1922] 1 Ch. 440.

(1) Above Act, s 10, does not extend to an annuity charged upon real estate and secured by an express trust where the trustee still remains in possession of the property upon which it was charged.

(2) Testator, who died in 1898, devised and bequeathed his real and personal estate to trustees upon trust for sale and conversion and investment of the proceeds, and directed them out of the income to pay his wife an annuity of £500 a year for her life and subject thereto to stand possessed of the corpus of the fund upon certain trusts for his children Testator had one child, who became absolutely entitled to the trust fund subject to the annuity. The widow died on January 20, 1908 At her death there were large arrears of the annuity unpaid, the income of the estate never having been sufficient to pay it in full, and no payment having been made out of capital. No payment in respect of the arrears had ever been made or had any acknowelgment of a right thereto been given Early in 1921, part of the residuary real estate was sold and the surviving trustee thereupon presented an originating petition in the Lancaster Palatine Court asking for the determination of the questions: (*a*) whether on the true construction of the will the annuity was charged upon the corpus of the residuary estate; and (*b*) if so, whether the estate of the widow was entitled to any and what sum in respect of the arrears of the annuity. The Vice-Chancellor held (*a*) the annuity was a charge upon the corpus; and (*b*) the arrears of the annuity were statute-barred with the exception of a sum of £108 4s 4d, less income tax, representing the apportioned part of the quarterly payment due to the widow at her death. Defendant appealed and by her notice of appeal

claimed to be entitled to the arrears of the annuity for the six years immediately preceding the death of the widow Held: the claim to the arrears of the annuity was not barred by above Act, section 10, and the interest of the son was, therefore, subject not only to the apportioned part of the last payment of the annuity due to the widow at her death, but also to the full arrears of the annuity

Extract from Lewin on Trusts, p. 491; largely Based on Re Jordison.

6 By the Supreme Court of Judicature Act, 1873, section 25, subsection (2), it was expressly enacted that no claim by a *cestui que trust* against his trustee in respect of any breach of an express trust, should be barred by any Statute of Limitations The Real Property Limitation Act, 1874, s 10, enacts that from January 1st, 1879, no money or legacy charged on any land or rent shall, though secured by an express trust, be recoverable but within the time allowed for recovery had there been no express trust

But this section 10 does no more than further amend The Real Property Limitation Act, 1833, by introducing into its working a provision which would for the future exclude the possibility of certain decisions which unduly affected the operation of section 40 (for which is now substituted section 8 of the Act of 1874) and 42 of the Act of 1833 The words of section 10, "secured by express trust" are used in contradistinction to the words "held on express trust" in section 25 of the Act of 1833, and are used to indicate that the section is only applicable to cases where, to take the case of an annuity, there are three parties, first the owner, devisee or obligor and his charged estate, secondly the trustee, and thirdly, the annuitant, for whom he is trustee The section has no relation at all to a case where there is only a trustee holding the property on the one hand, and the annuitant and other *cestui que trust* of the trustee on the other—cases in which there is no question of the one beneficiary more than the others being "secured" by an express trust, the true position being that the entire property is held by the trustee upon the different trusts expressed with reference thereto The Act of 1833 is to be construed together with the Act of 1874, and in so construing the two statutes the true place of section 10 of the Act of 1874 is immediately after section 25 of the Act of 1833, it being in effect a proviso to that section, constituting a qualification of its effect as expounded by Turner, L.J, in a passage from his judgment in *Knight* v. *Bowyer*. The mutual rights and obligations of the annuitant *cestui que trust* and his express trustee remain untouched, except only to this extent, that the annuitant is, to take the case of arrears of an annuity, no longer entitled to shelter himself behind any legal claim of his trustee against the charged estate in respect of these arrears, in any case in which, these arrears, had they been charged in his favour directly, would have been barred under section 40 of the Act of 1833. In other words, the doctrine of express trusts in relation to the arrears of an annuity secured by a trust term was modified only to this extent, that neither the trustee nor the annuitant could claim, as the possession of the annuitant, a possession obtained by the trustee after the annuitant's claim to arrears had, apart from such possession, become barred by section 40

The provisions of The Trustee Act, 1888, s. 8, to which reference has already been made, will not affect cases of the kind now under consideration where the claim of the *cestui que trust* against the trustee is "founded upon fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use" and if a claim of that description can be substantiated, the trustee will, henceforth, as heretofore, be precluded from pleading the statute; but if not, then it would seem that in general, clause (*b*) of subsection (1) of that section will be applicable, and that the lapse of six years will be a protection to the trustee, as it would have been in an ordinary action of debt

KINSMAN v. ROUSE, 17 C.D. 104.

The rule that prevailed prior to The Real Property Limitation Act, 1833 (c 27), that no lapse of time barred the right of a mortgagor of lands to redeem the whole provided he held possession of part has been abolished by section 28 of the statute. Accordingly, where a mortgagee has been in undisturbed possession of part of the land comprised in the mortgage for upwards of twenty years, the right of the mortgagor to redeem was held to be barred by that section, although he held possession of the remainder of the land The Real Property Limitation Act, 1833 (c 27), s. 16, saving the rights of persons under disability, such as absence beyond seas, does not apply as between a mortgagor and mortgagee.

LLOYD v. LLOYD, [1903] 1 Ch. 385.

Where a mortgagor applies by summons as against the mortgagee, that a fund in court in an administration action, being the proceeds of sale of the mortgaged property, real and personal estate under a will, may be paid out to him, the mortgagor, after payment thereout to the mortgagee of six years' interest only, in addition to the principal, he is in the same position as if he had brought an action for redemption and, therefore, cannot recover the fund except upon the usual redemption terms of payment of principal together with the full arrears of interest, The Real Property Limitation Act, 1833 (c 27), s 42, having no application to the case

LUDBROOK v. LUDBROOK, [1901] 2 K.B. 96.

The Real Property Limitation Act, 1837 (c. 28), which provides that a person entitled to or claiming under a mortgage of land may make an entry or bring an action at law or suit in equity to recover such land at any time within twenty, now twelve, years next after the last payment of any part of the principal or interest secured by mortgage applies not only as against the mortgagor and persons claiming under him, but also as against a person who has acquired a good title by virtue of Statute of Limitations as against the mortgagor and those claiming under him.

LYNN v BAMBER (1930), 46 T.L.R 367.

In December, 1921, defendant sold plaintiff 240 plum trees as purple pershores. Some years later it was discovered that the trees were Coe's Late Red

The writ in the action was issued December 7th, 1928. The plaintiff alleged:

(1) Fraudulent misrepresentation; and

(2) That the defendant was aware that the plaintiff would not be able to discover the true nature of the trees until six years from the date of the action and the defendant fraudulently concealed the kind of trees sold.

McCardie, J Held:

(1) That even in a pure common law action, active and fraudulent concealment is, since the Judicature Acts, a good reply to the Statute of Limitations; and

(2) That it was relevant for the plaintiff to prove either:

(*a*) that the defendant acted fraudulently in making his representations and warranty; or

(b) that he fraudulently and actively concealed from the plaintiff his breach of warranty.

In the course of his judgment, McCardie, J, disapproved of the opinions of the Divisional Court in *Armstrong* v. *Milburn*, and noted that in *Bulli Coal Mining Company* v *Osborne*, [1899] A C. 351, there was no question of fiduciary relationship as the claim in substance was for trespass in that the defendant had furtively (that is fraudulently) taken the plaintiff's coal by wilful and secret underground appropriation

The judge regarded this decision as indicating that the decision of the Court of Appeal in *Gibbs* v. *Guild* might have rested on the ground of the original fraud independently of the fraudulent concealment.

The head note of the case is as follows: "Not merely in equity, but also since the Judicature Acts, at common law where a fraudulent representation has not been discovered till after the period fixed by the Statute of Limitations, the statute does not protect the fraud whether there has or has not been fraudulent concealment thereof"

McCallum v. McCallum, [1901] 1 Ch. 143.

The intentional concealment by a mother of a [voluntary] conveyance of property by her to her daughter is a "concealed fraud" against the daughter, whether the mother's motive for concealment may have been.

The "concealed fraud" which under The Real Property Limitation Act, 1833 (c 27), s 26, will prevent the running of The Real Property Limitation Acts against a plaintiff claiming real property must, according to the principles which have been always acted upon by courts of equity, be the fraud of, or in some way imputable to, the person setting up the statutes, or of some one through whom that person claims.

Mitchell v. Moseley, [1914] 1 Ch. 438.

Where a lease is granted and there is afterwards a severance of the reversion without the rent being apportioned and no notice of the severance is given to the lessee, payment of the whole rent to one of the reversioners

is not a payment to a person wrongfully claiming it within The Real Property Limitation Act, 1833 (c. 27), s 9, so as to bar the claim of the other reversioner.

Moodie v. Bannister, 4 Drew. 432

The whole effect of Lord Tenterden's Act (Statute of Frauds Amendment Act, 1828, c. 14, s. 1) was, that whereas, before the statute there might have been an acknowledgment of a debt by parol, which might amount to a promise to pay, and therefore be a new cause of action, that statute provides that no such mere verbal acknowledgment shall have that effect, but the acknowledgment must be in writing; that was the whole effect of that statute; and so the matter stood so far as respected simple contract debts (Kindersley, V.C.)

The acknowledgment provided for by the 5th section of the 3rd and 4th Will. IV c 42, in order to take a specialty debt out of the operation of that statute, need not be made by the person chargeable to the person entitled, or amount to a promise to pay. Held: therefore, that an admission of a bond debt, contained in the answer of the executors of the obligor in a suit to which the obligee was not a party, was sufficient to take the bond debt out of the operation of that statute.

Nicholson v. England, [1926] 2 K.B. 93.

(1) Where the title of a reversioner to land subject either to a tenancy at will within The Real Property Limitation Act, 1833 (c. 27), s 7, or to a tenancy from year to year within section 8, has been extinguished by reason of his having received no acknowledgment thereof by payment of rent or otherwise during the statutory period from the expiration of a year after the commencement of the tenancy, that title cannot be revived by a subsequent payment in respect of rent

(2) *Semble*: in The Real Property Limitation Act, 1833 (c 27), s 8, the words defining the second alternative time for the accrual of the reversioner's right of action, namely: "the last time when any rent payable in respect of such tenancy shall have been received," do not apply to a tenancy in respect of which, since the determination of the first year thereof, the statutory period has expired without any acknowledgment of the reversioner's title by payment of rent or otherwise

Owen v. De Beauvoir (1847), 16 M & W. 547

H. farm was holden of the manor of S. at an ancient freehold rent 9s per annum, payable at Michaelmas, yearly. All arrears to Michaelmas, 1824, were paid in January, 1825. No other payment took place, but, after repeated applications for the rent in several years before Michaelmas, 1844, the lord distrained in May, 1845, for six years' rent due at Michaelmas, 1844 Held: that by the operation of The Real Property Limitation Act, 1833 (c. 27), ss 2, 3 and 34, the rent was extinguished by the lapse of twenty years from the day on which the last payment was made

PAGET v. FOLEY, 2 Bing. N.C. 679.

In covenant by mortgagees in possession for arrears of rent due under an indenture of demise for a term of years: Held: a plea alleging that the sum sought to be recovered did not, or did any part thereof, become due at any time within six years before the commencement of the suit, was bad upon demurrer, inasmuch as The Real Property Limitation Act, 1833 (c 27), s. 42, limiting the recovery of arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or any damages in respect of such arrears of rent, to within six years next after the same, respectively, shall have become due, in *pro tanto* repealed by The Civil Procedure Act, 1833 (c. 42), s 3

PERRY v. JACKSON, 4 T.R. 516.

If one plaintiff be abroad, and the others in England, the action must be brought within six years after the cause of action arises

This statute (Limitations, 1623, c 16) having been always considered as a beneficial law for the public, we ought not to extend the exceptions in it to a case which does not require it (Ashhurst, J)

PURNELL v. ROCHE, [1927] 2 Ch. 142.

In 1902 certain freehold hereditaments were assured to a mortgagee In February, 1907, the mortgagee became and thenceforward continued to be, of unsound mind The last payment in respect of interest before the date on which the mortgagee became of unsound mind was made on January 30, 1907 In March, 1907, the husband of the mortgagee accepted, on behalf of the mortgagee, a further payment on account of interest Since that payment no further payment of interest was made In 1926 a summons for foreclosure was issued by the mortgagee, and it was claimed on her behalf that her rights under the mortgage were preserved by s 3 of The Real Property Limitation Act, 1874. Held: that the right to commence proceedings first accrued, at the latest, at the date fixed for the redemption of the mortgage, which was a date earlier than that on which the mortgagee became of unsound mind; and that the foreclosure proceedings must be dismissed, inasmuch as, in view of the express words of The Real Property Limitation Act, 1837, a disability beginning after the date when the right to bring the action first accrued, or must be deemed to have first accrued, would not entitle the mortgagee to the protection given by s 3 of the Act of 1874

READ v PRICE, [1909] 2 K B. 724

An acknowledgment in writing by one of several obligors is an acknowledgment by a party liable by virtue of the specialty within The Civil Procedure Act, 1833 (c. 42), s 5, as interpreted by *Roddam* v *Morley*, No 772, *post*, so as to take out of the operation of section 3 of that Act an action founded on the liability of the surviving obligors and stands on the same footing as payment

Parol evidence is admissible to prove the contents of a written acknowledgment which has been lost

RODDAM v. MORLEY, 1 De G. & J. 1.

A tenant for life under the will of a person who, in 1826, gave a bond, in which his heirs were bound, to secure payment of £300, paid interest upon the bond debt up to 1847. Upon a bill filed by the bond creditor, after the death of the tenant for life, to enforce payment of the bond debt against the estate of the obligor Held: (1) acknowledgment by the "party liable" within The Civil Procedure Act, 1833 (c 42), s. 5, extends to the case of acknowledgment by one of the parties liable; (4) an acknowledgment within The Civil Procedure Act, 1833 (c. 42), does not operate on the footing of a fresh promise, and as constituting upon that ground a new cause of action, as under Statute of Limitations, 1623 (c. 16), and The Statute of Frauds Amendment Act, 1828 (c 14); and an action in which such acknowledgment is to be operative must be maintained upon the original obligation; (5) an acknowledgment by one of several obligors is an acknowledgment by the party liable within the statute; and any party who could plead the limitation given by The Civil Procedure Act, 1833 (c. 42), s 3, to an action on the bond, is capable under section 5 of making an acknowledgment so as to prevent the operation of s. 3 in his favour; (6) a bond debt is not "charged upon" or "payable out of land" within The Real Property Limitation Act, 1833 (c. 27), s 40

SANDERS v. SANDERS (1881), 19 C.D. 373.

T and J became entitled in possession to a freehold as tenants in common in 1833. In 1879, persons claiming under J brought an action for sale or partition. Defendants who claimed under T alleged that T. was in receipt of the rents of the entirety from 1833 to 1864, without accounting and claimed the benefit of the Statute of Limitations The parties entered into admission, which stated that T. received the rents of the entirety from 1833 till his death in 1877, and that T paid to the solicitors of J.'s mortgagees a moiety of the rents due in November, 1864, and continued to pay to them a moiety of the rents till his death The admissions did not state, or was there any evidence, whether T did or did not account for a moiety of the rents before 1864. Held: that where a tenant in common has gained by the statute an adverse title to another share of the property, no payment of rent or acknowledgment by him can restore the title which has been extinguished by the statute.

SHAW v. CROMPTON, [1910] 2 K.B. 370.

The effect of The Real Property Limitation Act, 1874 (c 57), s 1, upon The Civil Procedure Act, 1833 (c. 42), s. 3, is to cut down the period within which a covenant to pay a rent charge can be enforced, so that after the expiry of twelve years from the last payment without acknowledgment the remedy on the personal covenant is gone as well as the remedy against the land on which the money was charged.

SMITH v. BENNETT, 30 L.T. 100.

So long as an agent is in receipt of the rent of land, Statute of Limitations will not run against his employer, and if a person commence to receive

rents as the agent of another, and afterwards continue to receive such rents, without paying them over, he must be presumed to receive as agent till the contrary is shown

SMITH v. LLOYD, 9 EX 562.

The Real Property Limitation Act, 1833 (c. 27), s 3, does not apply to the mere want of actual possession by the owner, but to cases where the owner has been out of possession and some other person has been in possession Therefore, where in 1725 the owner in fee of a close, with a stratum of coal and other minerals under it, conveyed the surface to A , under whom plaintiff claimed, reserving the minerals and a right of entry to get them to B , under whom defendant claimed, and the right of entry had not been exercised for more than forty years, but no other person had worked or been in possession of the mines Held the title of the grantees of the mines was not barred by The Real Property Limitation Act, 1833 (c 27)

STAMFORD BANKING COMPANY v. SMITH, [1892] 1 Q.B. 765.

The maker of a promissory note repaid the same by instalments to the original holder, after the latter had endorsed it over to plaintiffs, to whom one payment was communicated. Held: such payments were not acknowledgments of the debt so as to prevent the statute running, as there was no authority to receive payment on behalf of plaintiffs

In my opinion there is no question that a payment or acknowledgment must be made to the creditor or his agent (Lord Herschell, C)

SUTTON v. SUTTON, 22 C.D. 511.

The limitation of twelve years imposed by above section to actions and suits for the recovery of money charged on land applies to the personal remedy on the covenant in a mortgage deed as well as to the remedy against the land.

THORNTON v. FRANCE, [1897] 2 Q.B. 143, C.A.

In 1886 the owner of one undivided moiety of premises, which had been during the previous eleven years in sole possession of the owners of the other moiety, mortgaged his moiety; and in 1890, the premises having in the meantime continued and still continuing to be in the sole possession of the owners of the other moiety, he executed a conveyance of his moiety, subject to the mortgage to plaintiff who subsequently paid off the mortgage. In an action for partition of the property Held: (1) plaintiff did not, on paying off the mortgage become a "person claiming under a mortgage" within The Real Property Limitation Act, 1837 (c. 28) which, as modified by The Real Property Limitation Act, 1874 (c. 57), s 9, give such a person a period of twelve years from the last payment of any part of the principal money or interest secured by the mortgage for bringing an action to recover the land, (2) The Real Property Limitation Act, 1837 (c. 28), did not confer a new right of entry on the mortgagee where at the date of the mortgage a person

is in possession adversely to the mortgagor and the Statute of Limitations had already begun to run in his favour against the mortgagor.

WELD v. PETRE, [1929] 1 Ch, 33.

In order to secure a loan of £1,000, repayable with interest in three months, shares in a limited company were deposited with a mortgagee The loan was not repaid Twenty-six years later a claim to redeem the shares was made on behalf of the mortgagor At that date the mortgagee and his executors, who still held the shares, had received in dividends more than sufficient to repay the £1,000, with interest from the date of the loan. Held: by the Court of Appeal (affirming the decision of Russell, J) that the twelve years rule by analogy to the Statute of Limitations was not applicable to proceedings for the redemption of a mortgage of personalty

Mellersh v *Brown* (1890), 45 Ch D 225; *In re Powers* (1885), 30 Ch. D. 291; *London and Midland Bank* v *Mitchell*, [1899] 2 Ch. 161; *In re Stucley*, [1876] 1 Ch 67 applied. Held also, that the considerations which applied to applications by a mortgagor to redeem were not the same as those which applied to applications by a mortgagee to foreclose, and that, unless a mortgagor's right to redeem had been destroyed by statute, foreclosure, sale, or release, equity ought not to deprive him of the right provided that when it was asserted three circumstances co-existed—namely, the debt had been or could be paid, the security was available, and no one's position had been altered in the meantime Held further, that the delay that had taken place in the present case was not in itself sufficient to disentitle the mortgagor's representatives to relief

WILLIS v. EARL HOWE, [1893] 2 Ch. 545.

Plaintiff brought an action of ejectment in 1892 and alleged by his statement of claim that he was the heir-at-law of W., who died intestate in 1789, and that on his death his real estate was wrongfully taken possession of by the mother of G, an infant, in his name under the false pretence that G was the heir-at-law of W; that G died an infant, and that his mother continued to hold possession of the estate in the name of R, an infant whom she falsely asserted to be the brother of G, but who was really a supposititious child, that R. held possession of the estates after he came of age, and that he and his successors in title, including the defendant, fraudulently concealed these facts from the true heir of W, that plaintiff and his predecessors in title had been deprived of the estates by such concealed fraud, and that the same could not with reasonable diligence be discovered before 1879 when they became partially known; that plaintiff was an infant at that time, and did not attain his majority until 1887. Defendant moved to have the statement of claim struck out as frivolous and vexatious and filed an affidavit showing that the story of R being a supposititious child was publicly spoken of in newspapers and otherwise as early as 1853, and had been made the ground of previous unsuccessful actions of other claimants against defendant and his predecessors Held: the allegations in the statement of claim as to the entry in 1798 on behalf of G did not show a case of concealed fraud, within The Real Property Limitation Act, 1833 (c 27), s. 26, but only a

wrongful entry under a false claim, the statute began to run against plaintiff's predecessors in title in 1798, and as the possession had been adverse to plaintiff and his predecessors ever since, the operation of the statute had not been suspended by the alleged fraud in 1805; and plaintiff or his predecessors might with reasonable diligence have discovered the concealed fraud, if any, more than twelve years after the commencement of the action.

APPENDIX C.

LIMITATION OF ACTIONS ACT.

(Subject to further revision).

An Act Respecting the Limitation of Actions.

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

SHORT TITLE

1. This Act may be cited as *The Limitation of Actions Act, 19* .

INTERPRETATION.

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

(*a*) "Action" includes any civil proceeding and any action or other proceeding by or against the Crown,

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

(*c*) "Disability" means disability arising from infancy or unsoundness of mind;

(*d*) "Heirs" includes the persons entitled beneficially to the real estate of a deceased intestate;

(*e*) "Land" includes all corporeal hereditaments, and any share, estate or interest in any of them;

(*f*) "Proceeding" includes action, entry, distress and sale proceedings under an order of a court or under a power of sale contained in a mortgage or charge or conferred by statute;

(*g*) "Rent" means a rent service or rent reserved upon a demise;

(*h*) "Rent charge" includes all annuities and periodical sums of money charged upon or payable out of land

PART I

LIMITATION PERIODS.

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

(*a*) Actions for penalties imposed by any statute brought by any informer suing for himself alone or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.

(*b*) Actions for penalties, damages or sums of money in the nature of penalties given by any statute to the Crown or the person aggrieved, or partly to one and partly to the other, within two years after the cause of action arose.

(*c*) Actions of defamation, whether libel or slander, within two years of the publication of the libel or the speaking of the slanderous words, or where special damage is the gist of the action, within two years after the occurrence of such damage

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

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

(*f*) Actions for the recovery of money, whether as a debt, damages or otherwise, on a recognizance, bond, covenant or other specialty (except a debt charged upon land) or on a simple contract, whether expressed or implied, or for any money demand (except a debt charged upon land) or for an account or for not accounting, within six years after the cause of action arose.

(*g*) Actions grounded on fraudulent misrepresentation, within six years from the discovery of the fraud.

(*h*) Actions grounded on accident, mistake or other equitable ground of relief not hereinbefore specifically dealt with, within six years from the discovery of the cause of action

(*i*) Actions on a judgment or order for the payment of money, within ten years after the cause of action thereon arose.

(*j*) Actions for foreclosure under any mortgage of or charge upon personal property, within ten years after the cause of action arose.

(*k*) Any other action not in this Act specifically provided for, within six years after the cause of action arose

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

4. When the existence of a cause of action has been concealed by the fraud of the person setting up this Part or Part II as a defence, the cause of action shall be deemed to have arisen when the fraud was first known or discovered

5. No claim in respect of an item in an account which arose more than six years before the commencement of the action shall be enforceable by action by reason only of some other claim in respect of another item in the same account having arisen within six years next before the commencement of the action

DISABILITIES.

6. If a person entitled to bring any action mentioned in paragraphs (*c*) to (*j*) inclusive of subsection (1) of section 3 is under disability at the time the cause of action arises, he may bring the action within the time hereinbefore limited with respect to such action or at any time within two years after he first ceased to be under disability.

ACKNOWLEDGMENTS AND PART PAYMENT.

7.—(1) Whenever any person who is, or would have been but for the effluxion of time, liable to an action for the recovery of money as a debt, or his duly authorized agent,

(*a*) promises his creditor or the agent of the creditor in writing signed by the debtor or his duly authorized agent to pay the debt; or

(*b*) gives a written acknowledgment of the debt signed by the debtor or his duly authorized agent to his creditor or the agent of the creditor; or

(*c*) makes a part payment on account of the principal debt or interest thereon, to his creditor or the agent of the creditor—

then an action to recover any such debt may be brought within six years from the date of the promise, acknowledgment or part payment, as the case may be, notwithstanding that the action would otherwise be barred under the provisions of this Act.

(2) A written acknowledgment of a debt shall have full effect whether or not a promise to pay can be implied therefrom and whether or not it is accompanied by a refusal to pay.

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

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

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

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

PART II

CHARGES ON LAND, LEGACIES, ETC

12.—(1) No proceedings shall be taken to recover any rent charge or any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of any land or rent charge or to recover any legacy, whether it is or is not charged upon land, or to recover the personal estate or any share of the personal estate of any person dying intestate and possessed by his personal representa-

tive, but within ten years next after a present right to recover the same accrued to some person capable of giving a discharge for or release of the same, unless prior to the expiry of such ten years some part of the rent charge, sum of money, legacy or estate or share or some interest thereon has been paid by a person bound or entitled to make a payment thereof or his duly authorized agent to a person entitled to receive the same or his agent, or some acknowledgment in writing of the right to such rent charge, sum of money, legacy estate or share signed by any person so bound or entitled or his duly authorized agent has been given to a person entitled to receive the same or his agent, and in such case no action shall be brought but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given.

(2) In the case of a reversionary interest in land, the right to recover the sum of money charged thereon shall not be deemed to accrue until the interest has fallen into possession.

(3) (*If it is intended to limit charges created by writs of execution, a special clause should be inserted here which would probably vary in different jurisdictions*)

13.—(1) No arrears of rent, or of interest in respect of any sum of money to which the immediately preceding section applies or any damages in respect of such arrears shall be recovered by any proceeding, but within six years, next after a present right to recover the same accrued to some person capable of giving a discharge for or release of the same unless, prior to the expiry of such six years, some part of the arrears has been paid by a person bound or entitled to make a payment thereof or his duly authorized agent to a person entitled to receive the same or his agent or some acknowledgment in writing of the right to the arrears signed by a person so bound or entitled or his duly authorized agent has been given to a person entitled to receive the arrears or his agent, and in such case no proceeding shall be taken but within six years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given

(2) Subsection (1) shall not apply to an action for redemption or similar proceedings brought by a mortgagor or by any person claiming under him.

14. Where any prior mortgagee or other encumbrancer has been in possession of any land within one year next before an action is

brought by any person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover in such action the arrears of interest which have become due during the whole time that the prior mortgagee or encumbrancer was in such possession or receipt, although that time may have exceeded such term of six years.

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

(2) The preceding subsection shall apply only as between the person entitled to the charge and the owner of the land or of some other charge thereon and shall not operate so as to affect any claim of a *cestui que trust* against his trustee for property held on an express trust.

PART III.

LAND

RIGHT TO TAKE PROCEEDINGS.

GENERAL PRINCIPLE.

16. No person shall take proceedings to recover any land (including proceedings for foreclosure under any mortgage or charge) but within ten years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called "predecessor") or if such right did not accrue to a predecessor then within ten years next after the time at which such right first accrued to the person taking the proceedings (hereinafter called "claimant").

SPECIAL CASES

Dispossession, Etc

17. Where the claimant or a predecessor has in respect of the estate or interest claimed been in possession of the land or in receipt of the profits thereof and has while entitled thereto been dispossessed or has discontinued such possession or receipt the right to take proceedings to recover the land shall be deemed to have first

accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits were so received.

Succession on Death.

18. Where the claimant claims the estate or interest of a deceased predecessor who was in possession of the land or in receipt of the profits thereof in respect of the same estate or interest at the time of his death and was the last person entitled to such estate or interest who was in such possession or receipt the right to take proceedings to recover the land shall be deemed to have first accrued at the time of the death of the predecessor.

Alienation.

19. Where the claimant claims in respect of an estate or interest in possession, granted, appointed or otherwise assured to him or a predecessor by a person being in respect of the same estate or interest in the possession of the land or in receipt of the profits thereof and no person entitled under the assurance has been in such possession or receipt the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the claimant or his predecessor became entitled to such possession or receipt by virtue of the assurance

Forfeiture.

20. Where the claimant or the predecessor becomes entitled by reason of forfeiture or breach of condition, then the right to take proceedings to recover the land shall be deemed to have first accrued whenever the forfeiture was incurred or the condition was broken.

FUTURE ESTATES

Owner of Particular Estate in Possession.

21. Where the estate or interest claimed has been an estate or interest in reversion or remainder or other future estate or interest, including therein an executory devise and no person has obtained the possession of the land or in receipt of the profits thereof in respect of such estate or interest, the right to take proceedings to recover the land shall be deemed to have first accrued at the time at which the estate or interest became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof have been received notwithstanding the claimant or the predecessor has at any time previously to the creation of the estate or estates which has determined been in the possession of the land or the receipt of the profits thereof.

Owner of Particular Estate Out of Possession.

22. If the person last entitled to any particular estate on which any future estate or interest was expectant was not in possession of the land or in receipt of the profits thereof at the time when his interest determined, no proceedings to recover the land shall be taken by any person becoming entitled in possession to a future estate or interest but within ten years next after the time when the right to take proceedings first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of these two periods is the longer

Settlement While Statute is Running.

23. If the right to take proceedings to recover the land has been barred, no person afterwards claiming to be entitled to the same land in respect of any subsequent estate or interest under any will or assurance executed or taking effect after the time when a right to take proceedings first accrued to the owner of the particular estate whose interest has so determined, shall take proceedings

Successive Estates in Same Person.

24. When the right of any person to take proceedings to recover any land to which he may have been entitled for an estate or interest in possession entitling him to take proceedings has been barred by the determination of the period which is applicable in such case, and such person has at any time during the said period been entitled to any other estate, interest, right or possibility in reversion, remainder or otherwise in or to the same land no proceedings shall be taken by him or any person claiming through him to recover the land in respect of such other estate, interest, right or possibility, unless in the meantime the land has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of the estate or interest in possession.

Forfeiture.

25. When the right to take proceedings to recover any land first accrued to a claimant or a predecessor by reason of any forfeiture or breach of condition, in respect of an estate or interest in reversion or remainder and the land has not been recovered by virtue of such right, the right to take proceedings shall be deemed to have first accrued at the time when the estate or interest became an estate or interest in possession.

Wrongful Receipt of Rent

26. Where any person is in possession or in receipt of the profits of any land by virtue of a lease in writing, by which a rent amounting to the yearly sum or value of four dollars or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the claimant or his predecessor to take proceedings to recover the land after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

Tenancy from Year to Year.

27. Where any person is in possession or in receipt of the profits of any land as tenant from year to year, or other period, without any lease in writing, the right of the claimant or his predecessor to take proceedings to recover the land shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time (prior to his right to take proceedings being barred under any other provisions of this Act) when any rent payable in respect of such tenancy was received by the claimant or his predecessor or the agent of either whichever last happens

Tenancy at Will.

28.—(1) Where any person is in possession or in receipt of the profits of any land as tenant at will, the right of the claimant or his predecessor to take proceedings to recover the land, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after its commencement, at which time, if the tenant was then in possession, the tenancy shall be deemed to have been determined.

(2) No mortgagor or *cestui que trust* under an express trust shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of this section.

CONCEALED FRAUD.

29.—(1) In every case of concealed fraud of the person setting up this Part as a defence, or of some other person through whom

such first mentioned person claims, the right of any person to bring an action for the recovery of any land of which he or any person through whom he claims may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud was or with reasonable diligence might have been first known or discovered

(2) Nothing in subsection (1) shall enable any owner of land to bring an action for the recovery of such land, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.

ACKNOWLEDGMENTS OF TITLE.

30. When any acknowledgment in writing of the title of a person entitled to any land signed by the person in possession or in receipt of the profits of the land or his duly authorized agent has been given to him or his agent prior to his right to take proceedings to recover the land having been barred under the provisions of this Act, then the possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of the last mentioned person, or of any person claiming through him, to take proceedings shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given.

DISABILITIES.

31.—(1) If at the time at which the right to take proceedings to recover any land or to bring an action to redeem any mortgage first accrued to any person he was under disability, then such person or a person claiming through him may (notwithstanding anything in this Part or Part IV) take proceedings at any time within six years next after the person to whom the right first accrued first ceased to be under disability or died, whichever event first happened, provided that if he died without ceasing to be under disability, no further time to take proceedings shall be allowed, by reason of the disability of any other person.

(2) Notwithstanding anything in this section, no proceedings shall be taken by a person under disability at the time the right to do so first accrued to him or by any person claiming through him, but within thirty years next after that time.

PART IV.

MORTGAGES OF REAL AND PERSONAL PROPERTY

Redemption.

32.—(1) When a mortgagee has obtained the possession of any property real or personal comprised in his mortgage or is in receipt of the profits of any land therein comprised the mortgagor or any person claiming through him shall not bring any action to redeem the mortgage but within ten years next after the time at which the mortgagee obtained such possession or first received any such profits unless prior to the expiry of such ten years an acknowledgment in writing of title of the mortgagor or of his right to redeem is given to the mortgagor or some person claiming his estate or interest or to the agent of such mortgagor or person signed by the mortgagee or the person claiming through him or the duly authorized agent of either of them; and in such case, no such action shall be brought but within ten years next after the time at which the acknowledgment or the last of the acknowledgments, if more than one was given

(2) Where there is more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of the mortgagors or persons or his or their agent, shall be as effectual as if the same had been given to all the mortgagors or persons.

(3) Where there is more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees, an acknowledgment signed by one or more of such mortgagees or persons or his or their duly authorized agent, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or property by, through or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any undivided or divided part of the money or property.

(4) Where such of the mortgagees or persons aforesaid as have given such acknowledgment are entitled to a divided part of the property comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the property on payment with interest of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of the divided part of the property bears to the value of the whole of the property comprised in the mortgage.

Foreclosure: Acknowledgments and Part Payment.

33. When any person bound or entitled to make payment of the principal money or interest secured by a mortgage of property real or personal or his duly authorized agent, at any time prior to the expiry of ten years from the accrual of the mortgagee's right to take foreclosure proceedings or to take proceedings to recover the property, pays any part of such money or interest to a person entitled to receive the same, or his agent, the right to take proceedings shall be deemed to have first accrued at (and not before) the time at which the payment or the last of the payments, if more than one, was made, or if any acknowledgment of the nature described in section 30 was given, after that time, then at the time at which the acknowledgment or the last of the acknowledgments, if more than one, was given.

PART V.

TRUSTS AND TRUSTEES

34. Subject to the other provisions of this Part no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations

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

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to

recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use,

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

(*b*) If the action is brought to recover money or other property, and is one to which no statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action in the like manner and to the same extent as if the claim had been against him in an action for money had and received;

But so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

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

36. Where any property is vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring an action against the trustee or any person claiming through him to recover the property, shall be deemed to have first accrued at and not before the time at which it was conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him

PART VI.

GENERAL.

Possession.

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

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

(3) The receipt of the rent payable by any tenant at will, tenant from year to year or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act.

Effect of Expiry of Statutory Period.

38. At the determination of the period limited by this Act, to any person for taking proceedings to recover any land, rent charge or money charged on land, the right and title of such person to the land, or rent charge or the recovery of the money out of the land shall be extinguished.

Title of Administrator.

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

Defendant out of the Province.

40. If a person is out of the province at the time a cause of action against him arises within the province, the person entitled to the action may bring the same within two years after the return of the first mentioned person to the province or within the time otherwise limited by this Act for bringing the action.

41.—(1) Where a person has any cause of action against joint debtors or joint contractors, he shall not be entitled to any time within which to commence such action against such of them as were within the province at the time the cause of action accrued by reason only that one or more of them was at such time out of the province.

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

Application of Act.

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

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

Acquiescence.

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

Repeal.

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

Interpretation of Act.

45. 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

Coming into Force.

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

APPENDIX D.

REPORT ON PROPOSED AMENDMENTS TO THE UNIFORM CONDITIONAL SALES ACT.

To the Conference of Commissioners on Uniformity of Legislation in Canada

GENTLEMEN,—On behalf of the Honourable Attorney-General for British Columbia, Mr. Pineo submitted to the President certain correspondence regarding proposed amendments to The Conditional Sales Act Mr. Pitblado thought it advisable to have a Committee consider the proposals and report thereon to the meeting in August, and he therefore appointed the Manitoba Commissioners as a committee to deal with the matter.

There were three separate proposals referred to in the correspondence. *First* amendment of subsection (2) of section 3; *Second* amendment or repeal of section 12, *Third*: amendment respecting a right of lien for repair work done on motor cars

Subsection (2) of section 3 is as follows:—

> Such provision shall be evidenced by a writing signed prior to or at the time of delivery of the goods, by the buyer or his agent, giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount unpaid of the purchase price or the terms and conditions of the hiring, and a true copy of such writing shall be filed within twenty days after it has been signed, with the proper officer of the registration district in which the buyer resided at the time of the making of the conditional sale, or, in case his residence is outside the Province, of the district where the goods are deivered

Re: 1. The Legislative Assembly of British Columbia by Bill No. 29 of the Session of 1930 amended subsection (2) of section 3 by inserting after the word "of" where it first occurs in the second line the words "or within ten days after" and by striking out the word "twenty" in the sixth line and substituting therefor the word "thirty" The Manitoba Commissioners approve of this amendment We would point out that the substitution of the word "thirty" for the word "twenty" is in line with the ideas of the Commissioners when the uniform Act was drafted, see 1921 Proceedings, page 83:

> It has been thought that twenty days after the writing is signed might fairly meet the requirements of all parts of the country, but

> where the conditions of settlement differ so widely it is probable that different provinces will continue to differ in the length of the period prescribed

One of the correspondents also suggested that the words "signed prior to or at the time of delivery of the goods" should be eliminated owing to the difficulty of complying with this provision in the remote parts of the Province. These words were considered necessary at the time the legislation was prepared, see 1921 Proceedings, page 83:

> The words "signed prior to or at the time of delivery" are not in the provincial Acts but are deemed necessary to complete the protection of innocent purchasers.

It was also felt that their deletion might open up methods of evading the provisions of the Act but that if certain implement dealers were in an impossible position under the section as originally drafted the clause might be altered so as to read "signed prior to or at the time of or within ten days after delivery of the goods." This suggestion has been included in the British Columbia amendment The Committee recommends that the amendments made by the Legislature of British Columbia in Bill No. 29 of the Session of 1930 be approved by the Conference.

One of the correspondents suggested that the sections of the Alberta, Saskatchewan and Ontario acts to the effect that the Act should not apply to the sale or bailment of manufactured goods which at the time of delivery have the manufacturer's or vendor's name painted, printed or stamped thereon be inserted in the uniform Act. It is felt that the whole object of the uniform Act would be destroyed if manufactured goods were not within its provisions and recommends that the proposed amendment be rejected by the Conference.

Re: 2. Section 12 of the Uniform Act is as follows:

> If the goods have been affixed to realty they shall remain subject to the rights of the seller as fully as they were before being so affixed but the owner of such realty or any purchaser, lessee, mortgagee or tenant or other encumbrancer thereof shall have the right as against the seller to redeem the goods upon payment of the amount owing on them.

It was evidently felt upon the authority of *Hayward and Dood* v. *Lim Bang*, 19 B.C.R. 381, and *Goldie & McCullough* v. *Town of Uxbridge*, 13 O.W.R. 696, that this section permitted the vendo of goods sold under conditional sale which had been affixed to th realty to repossess them from subsequent mortgagees or purchaser

of the realty who had taken without notice. The most recent case seems to be *Welsh* v. *General Refrigeration Limited,* [1929] 3 W W R. 360. A refrigeration plant which might well have been considered a fixture was removed by the vendor and the court ordered it to be replaced because the defendant had failed to register the conditional sale agreement within the time limited by the Act. The implication being that if it had been properly registered the vendor would have the right to remove it even though the subsequent purchaser had purchased the realty without notice of the conditional sale There are two methods of dealing with this problem namely, either repeal the section or amend it. It was suggested that by way of amendment provision might be made for registration of liens which affected realty in the registry or land titles offices The Committee, however, felt that this would be unwise Another suggestion was to the effect that if the section was repealed there was possibly sufficient protection for the manufacturer by registering under "The Mechanics Lien Act" within the time limited by that Act after installation of the material It is felt by your Committee that it is essential to protect the innocent purchaser or mortgagee of realty against a vendor under a conditional sale removing chattels which have become affixed to the realty and damaging the building by their removal If the section were repealed then we take it the law would be that laid down in C E D., Western Edition, vol. 1, page 730, paragraph (53):

> Chattels subject to conditional sale and subsequently affixed to the freehold would pass to a mortgagee, or purchaser of real estate taking without express notice of the lien agreement and this irrespective of whether it was registered or not

On the other hand a good case can be made out for the retention of the principle embodied in the present section.

Your Committee feels that the rights of the conditional sale vendor to goods that have been affixed to realty should be retained but that they should be subject to three conditions:

I That where goods, the subject of a conditional sale are affixed to realty the conditional sale agreement shall contain an exact description of the realty to which the goods are to be affixed;

II That the officer in whose office conditional sale agreements are registered should keep a separate and distinct register in which such agreements should also be recorded under the real estate description so that an intending purchaser or mortgagee could ascertain whether any lien under a

conditional sale existed against the realty he proposes to purchase or to advance money on the security thereof;

III. Upon default under a conditional sale agreement where the goods are affixed to realty the vendor before taking possession shall give the purchaser of the goods and the registered owner of the realty and any mortgagee thereof written notice of his intention to remove the goods and if within a specified number of days after receipt of the notice the purchaser, registered owner, or mortgagee does not redeem the goods by payment of the amount owing on them the vendor shall have the right to repossess and remove the goods.

Your Committee feels that this is the only practical way of dealing with the problem and if the Conference approves of the suggestions, recommends that the British Columbia Commissioners be appointed to draft the amendments and submit them to the various provincial Commissioners for criticisms or suggestions and if no amendments are proposed, or if proposed are agreed to by the British Columbia Commissioners, that the amendments be considered approved by the Conference. The work, if possible, should be completed before the end of the year so that any Province could enact the proposed amendments at the coming session if it so desired.

Re: 3 Following the decision of *Alliance Finance Corporation* v *Simmons*, [1928] 3 W.W.R. 621, in which it was held that where the agreement for a conditional sale of a motor car contained the following clause:

> We (that is the buyer) shall not at any time suffer or permit any charge or lien whether possessory or otherwise to exist against said automobile

negatived the idea that the buyer could authorize the doing of repairs in such a way as to give the repairer a lien The Legislative Committee of the Victoria Bar Association felt that some provision should be made by statute to provide that the common law right of lien for repair work done upon chattels should obtain even where the chattel was subject to a conditional sale agreement It was thought that repair work done to a car was something almost in the nature of salvage but that the right of lien should not include anything except necessary repairs.

Your Committee felt that this problem could be dealt with without amendment to The Conditional Sales Act by enacting necessary legislation in another statute. Manitoba has an Act called The

Garage Keepers Act in which every garage keeper has a lien upon a motor vehicle for services rendered upon it. Services include bona fide repairs to a motor vehicle or the supplying of parts or accessories thereto, or the painting, stabling or caring for a motor vehicle. The lien is realized by sale of the motor vehicle under the provisions of the statute This year the Act was further amended to provide for the marking of rented storage batteries and providing that rented storage batteries shall not be kept by a person for a period longer than fourteen days Procedure was also laid down for a summary method of enforcing their return. It would seem that there would be a number of matters in connection with motor cars and garage keepers that it might be well to make provision for in a separate statute and not by way of amendment to The Conditional Sales Act Your Committee therefore recommends that whatever provisions any Province considers necessary be provided in a separate statute and not by way of amendment to The Conditional Sales Act.

All of which is respectfully submitted to the Conference.

ISAAC PITBLADO.
RICHARD W. CRAIG
R. MURRAY FISHER.

AN ACT TO AMEND THE "CONDITIONAL SALES ACT."

HIS 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, 1930."

2. 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 "of," where it first occurs in the second line of subsection (2), the words "or within ten days after"; and by striking out the word "twenty" in the sixth line of subsection (2), and substituting therefor the word "thirty."

APPENDIX E.

DRAFT ARBITRATION ACT.

Submitted by Canadian Chamber of Commerce.

Section 1.—TITLE. The short title of this act shall be known as the Province of ———— Arbitration Act.

Section 2.—VALIDITY OF ARBITRATION AGREEMENTS. A provision in any written contract to settle by arbitration a controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, shall be valid, irrevocable and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract; provided, however, that this Act shall not apply to collective contracts between employers and employees, or between employers and associations of employees in respect of terms or conditions of employment (labor disputes).

Section 3.—STAY OF PROCEEDINGS BROUGHT IN VIOLATION OF ARBITRATION AGREEMENT: If any suit or proceeding be brought upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

Section 4.—REMEDY IN CASE OF DEFAULT — JURISDICTION — PETITION AND NOTICE—HEARING AND PROCEEDINGS: The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed in the manner provided for in such agreement Five days' notice in writing of such application shall be served upon the party in default Service thereof shall be made in the manner provided by law for the service

of a summons The court shall hear the parties and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof If no jury trial be demanded the court shall hear and determine such issue Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury called and impanelled in the manner provided for the trial of equity actions. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof

Section 5.—APPOINTMENT OF ARBITRATORS: If, in the agreement, provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or an umpire, or in filling a vacancy, then upon the application of either party to the controversy the court aforesaid or the court in and for the (district or county) in which the arbitration is to be held shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and, unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator.

Section 6.—APPLICATION HEARD AS MOTIONS: Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

Section 7.—WITNESSES — SUMMONING — COMPELLING ATTENDANCE· When more than one arbitrator is agreed to, all the arbi-

trators shall sit at the hearing of the case unless, by consent in writing, all parties shall agree to proceed with the hearing with a less number. The arbitrators selected either as prescribed in this Act or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses in courts of general jurisdiction. The summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrator or arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner, as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the court in and for the (district or county) in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner now provided for securing the attendance of witnesses or their punishsuits or proceedings pending in the courts of record in this province

Section 8.—DEPOSITIONS: Upon petition, approved by the arbitrators or by a majority of them, any court of record in and for the (district or county) in which such arbitrators, or a majority of them, are sitting may direct the taking of depositions to be used as evidence before the arbitrators, in the same manner and for the same reasons as provided by law for the taking of depositions in suits or proceedings pending in the courts of record in this Province.

Section 9.—AWARD: The award must be in writing and must be signed by the arbitrators or by a majority of them.

Section 10.—MOTION TO CONFIRM AWARD — JURISDICTION — NOTICE: At any time within one year after the award is made any party to the arbitration may apply to the court in and for the (district or county) within which such award was made, for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in the next two sections. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof.

Section 11.—MOTION TO VACATE AWARD—GROUNDS—REHEARING: In either of the following cases the court in and for the (district or county) wherein the award was made must make an order vacating the award upon the application of any party to the arbitration.

(a) Where the award was procured by corruption, fraud or undue means

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehaviour by which the rights of any party have been prejudiced

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject-matter submitted was not made

Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators

Section 12.—MOTION TO MODIFY OR CORRECT AWARD—GROUNDS In either of the following cases the court in and for the (district or county) wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy

The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

Section 13.—JUDGMENT UPON AWARD: Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court wherein the order was granted.

Section 14.—NOTICE OF MOTIONS—WHEN MADE—SERVICE—STAY OF PROCEEDINGS: Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered, as prescribed by law for service of notice of a motion in an action For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award

Section 15.—RECORD—FILING—JUDGMENT—EFFECT AND ENFORCEMENT: Any party to a proceeding for an order confirming, modifying or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement, the selection or appointment, if any, of an additional arbitrator or umpire, and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Section 16.—APPEALS: An appeal may be taken from an order confirmining, modifying, correcting or vacating an award, or from a judgment entered upon an award, as from an order or judgment in an action.

Section 17.—CONSTITUTIONALITY: If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provisions to other persons and circumstances shall not be affected thereby

Section 18.—INCONSISTENT ACTS REPEALED—TIME OF TAKING EFFECT—APPLICATION: All Acts and parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon

its enactment, but shall not apply to contracts made prior to the taking effect of this Act.

[This draft Act is based upon the Draft State Arbitration Act which is being submitted to the various state legislatures in the United States and which has been endorsed by the Committee of Commercial Interests in the United States.]

APPENDIX F.

STATUTES OF ONTARIO, 1930, CHAPTER 27.

An Act respecting Contributory Negligence.

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

1. This Act may be cited as *The Negligence Act, 1930.*

2. In this Act "action" shall include counter-claim, "plaintiff" shall include a defendant who counter-claims, and "defendant" shall include a plaintiff against whom a counter-claim is brought.

3. In any action founded upon the fault or negligence of two or more persons the court shall determine the degree in which each of such persons is at fault or negligent, and where two or more persons are found liable they shall be jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each shall be liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.

4. In any action for damages which is founded upon the fault or negligence of the defendant if fault or negligence is found on the part of the plaintiff which contributed to the damages, the court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively.

5. If it is not practicable to determine the respective degree of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent.

6. Whenever it appears that any person not already a party to an action is or may be wholly or partly responsible for the damages claimed, such person may be added as a party defendant upon such terms as may be deemed just.

7. In any action tried with a jury, the degree of fault or negligence of the respective parties shall be a question of fact for the jury

8. Where the damages are occasioned by the fault or negligence of more than one party, the court shall have power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just.

9. *The Contributory Negligence Act,* being chapter 103 of the Revised Statutes of 1927, is repealed

APPENDIX G.

DRAFT SECTIONS FOR INSERTION IN THE PROVINCIAL EVIDENCE ACTS RESPECTING JUDICIAL NOTICE OF STATUTES AND PROOF OF STATE DOCUMENTS.

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 1930)

JUDICIAL NOTICE.

1.—(1) Judicial notice shall be taken of all Acts of the Imperial Parliament, of all Acts of the Parliament of Canada, of all ordinances made by the Governor in Council of the Dominion of Canada, or the Lieutenant Governor in Council of any province, colony, or territory which, or some portion of which, forms part of the Dominion of Canada, of all Acts of the Legislature of any such province, colony or territory, whether enacted before or after the passing of "The British North America Act, 1867," and of all statutes and Acts of the legislature or governing body of any dominion, commonwealth, state, province, colony, territory, possession or protectorate within the British Empire.

(2) In this section "Imperial Parliament" means the Parliament of the United Kingdom of Great Britain and Northern Ireland, as at present constituted, or any former kingdom which included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise.

STATE DOCUMENTS

2.—(1) In this section, unless the context otherwise requires·—

(*a*) "British possession" means any dominion of His Majesty exclusive of the United Kingdom of Great Britain and Northern Ireland and of the Dominion of Canada;

(*b*) "Dominion" includes commonwealth, state, province, territory, colony, possession, and protectorate; and, where parts of a dominion are under both a central and a local legislature, includes both all parts under the central legislature and each part under a local legislature;

(*c*) "Federal" as applied to state documents means of or pertaining to the Dominion of Canada;

(*d*) "Foreign state" includes every dominion other than the United Kingdom of Great Britain and Northern Ireland, the Dominion of Canada, or a British possession,

(*e*) "Imperial" as applied to state documents, means of or pertaining to the United Kingdom of Great Britain and Northern Ireland, as at present constituted, or any former kingdom which included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise;

(*f*) "King's Printer" includes government printer or other official printer;

(*g*) "Legislature" includes any legislative body or authority competent to make laws for a dominion,

(*h*) "Provincial" as applied to state documents, means of or pertaining to a province or territory within the Dominion of Canada,

(*i*) "State document" includes any Act, ordinance, or statute enacted or purporting to have been enacted (whether before or after the enactment of this section) by a legislature and any order, regulation, notice, appointment, warrant, license, certificate, letters patent, official record, rule of court, or other instrument issued or made or purporting to have been issued or made (whether before or after the enactment of this section) under the authority of any Act, ordinance or statute so enacted or purporting to have been enacted; and any official gazette, journal, proclamation, treaty, or other public document or act of state issued or made or purporting to have been issued or made (whether before or after the enactment of this section).

(2) The definitions in subsection (1) shall be deemed to apply in respect of dominions, kingdoms, commonwealths, states, provinces, territories, colonies, possessions, and protectorates at any time heretofore existing or hereafter constituted as well as to those now existing, and the provisions of this section shall apply accordingly.

(3) The existence and contents of any Imperial state document may be proved in any of the following modes:—

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

(*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 or an extract from the same or a notice thereof;

(*c*) By the production of a copy thereof or an extract therefrom purporting to be printed by, or for, or by authority of, the King's Printer for Canada or for any province;

(*d*) By the production of a copy thereof purporting to be certified as a true copy by the minister or head, or by the deputy minister or deputy head, of any department of the Imperial Government or purporting to be an exemplification thereof under the Imperial Great Seal;

(*e*) By the production of a copy thereof or an extract therefrom purporting to be certified as a true copy by the custodian of the original document or the public records from which the copy or extract purports to be made.

(4) The existence and contents of any federal or provincial state document may be proved in any of the following modes:—

(*a*) By the production of a copy of the Canada Gazette or of the official gazette for any province or of a volume of the Acts of the Parliament of Canada or of the legislature of any province purporting to contain a copy of the state document or an extract therefrom or a notice thereof;

(*b*) By the production of a copy thereof or an extract therefrom purporting to be printed by, or for, or by authority of, the King's Printer for Canada or for the province,

(*c*) By the production of a copy thereof or an extract therefrom, whether printed or not, purporting to be certified as a true copy or extract by the minister or head or the deputy minister or deputy head of any department of government of the Dominion of Canada or of the province, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the Great Seal of the Dominion of Canada or of the province.

(5) The existence and contents of any state document of a British possession or foreign state may be proved in any of the following modes:—

(*a*) By the production of a copy thereof or an extract therefrom, purporting to be printed by, or for, or by the authority of, the legislature, government, King's printer, government printer, or other official printer of the British possession or of the foreign state;

(*b*) By the production of a copy thereof or an extract therefrom, whether printed or not, purporting to be certified as a true copy or extract by the minister or head, or the deputy minister or deputy head, of any department of government of the British possession or of the foreign state, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the Great Seal or other state seal of the British possession or of the foreign state

(6) 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 under this section 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 in fact existed, or were deposited or kept in the custody of the person so certifying

APPENDIX H.

REGISTRATION OF PARTNERSHIPS ACT.

(*An Act to make Uniform the Law respecting the Registration of Partnerships.*)

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

1. This Act may be cited as *The Registration of Partnerships Act.*

INTERPRETATION.

2. In this Act unless the context otherwise requires:

(*a*) "Partnership" means a partnership whatsoever its purposes or objects may be except a partnership the purpose or object of which is farming or fishing, and the word "partnership" includes a person who is engaged in business or otherwise for the purpose of gain and is not associated in partnership with any other person, but uses as his style in connection therewith some name or designation other than his own name or who, in such style, uses his own name with the addition of "and Company" or some words or phrase indicating a plurality of persons,

(*b*) "Proper Officer" means the Registrar of Joint Stock Companies, and includes the Deputy Registrar of Joint Stock Companies

CERTIFICATE OF REGISTRATION.

3.—(1) No person shall as a member of a partnership carry out in whole or in part in the Province any purpose or object of the partnership or do any act, matter or thing in the Province as a member of the partnership, unless and until the partnership holds a certificate (called a Certificate of Registration) issued by the Proper Officer as hereinafter provided and unless the Certificate of Registration is in force

(2) No person shall as an agent, clerk or servant of a partnership, knowing that the partnership does not hold a Certificate of Registration that is in force, carry out in whole or in part in the Province any purpose or object of the partnership or do any act,

matter or thing in the Province as an agent, clerk or servant of the partnership

ISSUE OF CERTIFICATE.

4.—(1) The Proper Officer shall, unless it is otherwise in this Act provided, issue a Certificate of Registration to a partnership when the declaration hereinafter mentioned is filed.

(2) No partnership shall be registered under a name identical with that of any other subsisting partnership or company incorporated or unincorporated or so nearly resembling the same as to be calculated to deceive except in a case where such subsisting partnership or company is in the course of being dissolved and testifies its consent in such manner as the Proper Officer requires, provided that this subsection shall not apply to a partnership which carries on business under the name or names of one or more of the members of the partnership.

DECLARATION TO BE FILED.

5. Before a Certificate of Registration is issued under this Act there shall be filed with the Proper Officer a declaration in writing, in accordance with the form in Schedule "A" to this Act, signed by the several member of the partnership and verified under oath.

SIGNING OF DECLARATION WHEN PARTNER ABSENT FROM PROVINCE

6. If at the time of making the declaration any member of the partnership is absent from the Province, the declaration shall be signed by the members present, in their own names, and also in the name of the absent member, under a special authority to that effect, and the special authority shall be annexed to the declaration and filed therewith, provided that the Proper Officer may before the authority is filed issue a conditional Certificate of Registration to the partnership, which conditional certificate shall remain in force for a period not exceeding six months from the date of issue of the conditional certificate, further provided, that if the authority is filed with the Proper Officer at any time before the expiration of the said six months period then the conditional certificate shall be thereupon cancelled and a new Certificate of Registration issued

DECLARATION MAY BE SIGNED BY ATTORNEY WHEN PARTNERS NON-RESIDENT.

7. If the members of a partnership reside out of the Province, and the partnership is represented in the Province by an attorney, agent or other representative, the declaration may be signed by the

attorney, agent or other representative, under special authority of the members of the partnership. The execution of the special authority shall be verified on oath before a notary public who shall sign a certificate indorsed upon or attached to the special authority of the execution having been made and the oath having been administered, and the special authority shall be annexed to the declaration and filed therewith and in that case the form of the declaration shall be modified accordingly.

Provided, that the Proper Officer may before the authority is filed issue a conditional Certificate of Registration to the partnership, which conditional certificate shall remain in force for a period not exceeding six months from the date of issue of the conditional certificate; further provided, that if the authority is filed with the Proper Officer at any time before the expiration of the said six months period, then the conditional certificate shall be thereupon cancelled and a new Certificate of Registration issued.

WHEN MEMBERSHIP CHANGES, NEW DECLARATION TO BE FILED.

8. Whenever any change or alteration takes place in the membership of a partnership, or in its name or style, or in the place of residence of any member of the partnership, the Certificate of Registration shall be *ipso facto* void and a new declaration shall be filed, stating the change or alteration, and signed by the several members of the partnership as it is constituted after the change or alteration, and another Certificate of Registration shall be issued accordingly.

DECLARATION OF DISSOLUTION.

9. Upon the dissolution of any partnership all or any of the members of the partnership may sign a declaration stating the dissolution and file the declaration with the Proper Officer. The declaration may be in the form or to the effect in Schedule "B" of this Act.

ALLEGATIONS INCONTROVERTIBLE.

10.—(1) No allegation contained in any declaration made under this Act shall be controverted by any person who, either himself, or by his specially authorized attorney, agent or representative signed the declaration.

(2) Except as against the other members of the partnership mentioned in any declaration, no allegation contained in the declaration shall be controverted by any person who was a member

of the partnership at the time the declaration was made, but who has not signed the declaration.

PERSON MAKING DECLARATION DEEMED A PARTNER.

11. Every person who has made and filed a declaration under sections 5 or 8 of this Act shall be deemed to continue a member of the partnership as in the declaration stated, until the filing of a new declaration or a declaration of dissolution as in this Act provided

ACTIONS, HOW TAKEN.

12. Nothing in this Act shall exempt from liability any person who, being a member of a partnership, fails to make and file a declaration as hereinbefore provided, (and such person may, notwithstanding such failure, be sued jointly with the members of the partnership mentioned in the declaration, or such members of the partnership may be sued alone, and if judgment is recovered against them, any other member or members of the partnership, may be sued jointly or severally, in an action on the original cause of action in respect of which the judgment was obtained); nor shall anything in this Act be construed to affect the rights of any members of the partnership with regard to each other, except that no declaration shall be controverted by any signer thereof.

ACTIONS, WHERE NO DECLARATION FILED

13.—(1) If no declaration is filed under this Act with regard to a partnership any action which might be brought against all the members of the partnership may also be brought against any one or more of the members of the partnership as such, without naming the others in the writ of summons, under the name and style of the partnership; and if judgment is recovered against him or them, any other member or members of the partnership may be sued jointly or severally on the original cause of action in respect of which the judgment was obtained.

JUDGMENT, HOW ENFORCED.

(2) Any such judgment recovered against any member of a partnership for a partnership debt or liability may be enforced by process against all and every the partnership stock, property and effects in the same manner and to the same extent as if such judgment had been obtained against the partnership.

WHERE ACTION FOUNDED ON WRITTEN INSTRUMENT.

(3) If any action is founded on any obligation or instrument in writing in which all or any of the members of the partnership bound by it are named, then all the members of the partnership named therein shall be made parties to the action

PARTNERSHIP NAMES ON BILLS AND LETTER-HEADS.

14. In all cases of partnership the name of the member or names of the members of the partnership shall be distinctly written or printed on all the bill-heads and letter-heads used by the partnership.

REVOCATION OF CERTIFICATE

15. If the members of a partnership holding a Certificate of Registration fail to comply with any of the requirements of this Act or if they execute and file with the Proper Officer a declaration of dissolution, or if they request that the Certificate of Registration be revoked under section 9, the Proper Officer may revoke the Certificate of Registration and shall then cause notice of the revocation to be published in the Royal Gazette. Where a Certificate of Registration is so revoked the Proper Officer may withhold the issue of another Certificate of Registration in respect of the partnership until the members of the partnership comply with all or any of the requirements of this Act in respect of which they are in default and until they pay to the Proper Officer for such Certificate of Registration, a fee the amount of which shall be determined in the same way as that hereinafter provided in respect of annual registration fees.

ANNUAL REGISTRATION FEE

16. Every partnership holding a Certificate of Registration shall, in the month of January in every year, pay to the Proper Officer a fee (called an annual registration fee) as set forth in Schedule "C" to this Act If any such partnership makes default in paying any annual registration fee that is due and payable by it, each member of the partnership shall be liable to a penalty not exceeding one hundred dollars.

RESIDENT AGENT.

17.—(1) Every partnership holding a Certificate of Registration shall appoint and have a recognized agent residing within the Province service upon whom of any writ, summons, process, notice

or other document shall be deemed to be sufficient service upon the partnership, and upon each member of the partnership. If any partnership fails to appoint and have such agent each member of the partnership shall be liable to a penalty not exceeding one hundred dollars.

(2) A statement showing the name and address of such agent, and from time to time a statement showing any change of such agent, or of his address, shall be filed with the Proper Officer. Until the statement is so filed a partnership shall be held not to have complied with the provisions of this section with respect to appointing and having such agent.

(3) If a partnership has no such agent, or he cannot be found, or he is absent, any writ, summons, process, notice or other document may be served on any member of the partnership or on any employee of the partnership or in case there is no such employee or a member of the partnership cannot be found, or is absent, may be posted in a conspicuous place on any land or building owned or occupied by the partnership and such service or posting shall be deemed to be sufficient service upon the partnership and upon each member of the partnership

(4) This section shall not apply to a person not associated in partnership with any other person and who uses as his style in connection with his business a name or designation other than his own name or who in such style uses his own name with the addition of "and Company" or some word or phrase indicating a plurality of persons.

PENALTY FOR CARRYING ON PARTNERSHIP WITHOUT CERTIFICATE.

18.—(1) If any person shall, as a member of a partnership, carry out in whole or in part in the Province, any purpose or object of the partnership or do any act, matter or thing in the Province as a member of the partnership, whilst the partnership does not hold a Certificate of Registration that is in force, such person shall be liable to a penalty of ten dollars for every day on which he so carries out in the Province any purpose or object of the partnership or does any act, matter or thing in the Province as a member of the partnership.

PENALTY ON AGENT, ETC.

(2) If any person shall as an agent, clerk or servant of a partnership carry out in whole or in part in the Province any purpose

or object of the partnership or do any act, matter or thing in the Province as an agent, clerk or servant of the partnership, such person shall be liable to a penalty of ten dollars for every day on which he so carries out in the Province any purpose or object of the partnership or does any act, matter or thing in the Province as an agent, clerk or servant of the partnership unless he proves that he had no knowledge that the partnership did not hold a Certificate of Registration that was in force.

WHEN SECTION APPLIES.

(3) Provided that this section shall not apply to any member of a partnership existing at the date of the coming into force of this Act which does not at that date hold a Certificate of Registration under The Registration of Partnerships' Act, Chapter 205 of the Revised Statutes 1923, or to any agent, clerk or servant of the partnership until the expiration of three months from that date unless and until the partnership has had issued to it a Certificate of Registration before the expiration of the three months.

UNREGISTERED PARTNERSHIP CANNOT MAINTAIN SUIT.

19. Unless and until a partnership holds a Certificate of Registration that is in force, the partnership or the members of the partnership, shall not be capable of bringing or maintaining any action, suit or other proceeding in any Court in the Province in respect of any contract made in whole or in part in the Province in connection with any purpose or object of the partnership carried out in the Province whilst it did not hold a Certificate of Registration that was in force.

Provided that in the event of a Certificate of Registration having been revoked upon the filing of a certificate of dissolution of the partnership, the members of such partnership shall be capable of bringing and maintaining an action, suit or other proceeding in any Court in the Province in respect of any contract at any time made by the partnership in the same manner and as effectual to all intents and purposes as if this Act had not been passed.

WHERE PARTNERSHIP HAS NOT RESIDENT TRAVELLER, AGENT OR REPRESENTATIVE IN PROVINCE.

20.—(1) It shall not be deemed a carrying out in whole or in part of any purpose or object of a partnership within the meaning of this Act, if a partnership merely takes orders for or buys or sells goods, wares or merchandise by travellers or by corres-

pondence, but has no traveller, agent or representative residing in the Province or no office or warehouse in the Province for the carrying out in whole or in part of any purpose or object of the partnership.

ONUS OF PROOF.

(2) The onus of proving that a partnership has no such traveller, agent or representative residing in the Province, and no such office or warehouse in the Province, and has not carried out in whole or in part in the Province any purpose or object of the partnership within the meaning of this Act, and holds a Certificate of Registration that is in force, shall in all cases be upon the partnership and the members of the partnership.

PENALTIES, HOW RECOVERABLE.

21. The penalties imposed by this Act shall be recoverable only by action at the suit of, or brought with the written consent of the Attorney-General of the Province or upon summary conviction with the like consent. Any pecuniary penalty prescribed for the violation of any of the provisions of the Act shall when recovered belong to the Province and shall be paid into the general revenue of the Province

FEES, PART OF GENERAL REVENUE.

22. All fees paid to the Proper Officer in pursuance of this Act shall form part of the general revenue of the Province

OATHS AND DECLARATIONS

23. All oaths to be taken and all declarations to be declared to under this Act may be sworn and declared to before any Notary Public, Commissioner or Barrister of the Supreme Court, Justice of the Peace or other officer authorized by law to take affidavits and declarations.

APPLICATION OF ACT.

24. This Act shall apply to any partnership existing before or after the date when this Act comes into force, provided that any partnership holding on that date a Certificate of Registration under The Registration of Partnerships' Act, Chapter 205 of the Revised Statutes of 1923, shall be deemed to hold a Certificate of Registration under this Act.

CONSTRUCTION OF THIS ACT.

25. 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.

DATE, ACT TO COME INTO FORCE

26. This Act shall come into force on the day of

SCHEDULE A.

(Section 5).

FORM 1.

DECLARATION TO BE USED WHERE THERE ARE TWO OR MORE PARTNERS.

Province of
County of

We of in (Occupation) and of in (Occupation) hereby, each for himself, make oath and declare:

1 That we are in partnership under the name and firm of for the following purposes and objects, namely

....

....

2. That the said partnership has subsisted since the day of one thousand nine hundred and

3 And that we (or I), (or we), and the said C.D. and E.F. are and have been since the said day the only members of the said partnership.

Sworn to at
in the County of
this day of
A D , 19
Before me

FORM 2.

DECLARATION TO BE USED IN OTHER CASES.

Province of
County of

I, , in the County of Province of (occupation), make oath and declare.

1. That I am engaged in business (or, as the case may be) for the purpose of gain, and am not associated in partnership with any other person, but use as my style in connection therewith the following name or designation

2 That I have been engaged in such business under such name or designation since the day of

Sworn to at
in the County of
this day of
A.D., 19
Before me

SCHEDULE B.

(Section 9).

DECLARATION OF DISSOLUTION OF PARTNERSHIP.

Province of
County of

I, , formerly a member of the firm carrying on business as at in the County of , do hereby make oath and declare that the said partnership was, on the day of , dissolved

Sworn to at
in the County of
this day of
A D., 19
Before me

SCHEDULE C.

(Section 16).

FEES TO BE PAID TO THE PROPER OFFICER.

1. Annual registration fee, per partner	$5.00
2. For filing declaration. Forms 1 and 2, Schedule A, per partner:	
(1) When filed before the 1st of July in each year, per partner	5.00
(2) When filed after the 1st of July in each year, per partner	2.50
3. For filing appointment of agent or change of same	1.00
4 For filing any other declaration under this Act	1 00
5. For every search of record	.30
6 For each certificate other than the original certificate of registration, under this Act, when required	1.00

APPENDIX I.

REPORT ON THE FOREIGN JUDGMENTS ACT.

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

GENTLEMEN,—The subject of foreign judgments has been before you for some years. In 1925 the Ontario Commissioners gave a comprehensive report upon the law of the several provinces (Proceedings, Conference, 1925, p. 44, Year Book, Canadian Bar Association, p. 382) in which reference was made to the model Reciprocal Enforcement of Judgments Act approved in 1924 That Act permits registration of a foreign judgment to be prevented by showing to the court that "the judgment debtor would have a good defence if an action were brought upon the original judgment" It, therefore, seemed desirable, in the opinion of the Committee, that a model Act respecting Defences to Actions upon Foreign Judgments should be prepared. It was suggested that the model Act should not only specify the defences available in such actions but should also state the cases in which foreign courts have jurisdiction

The Saskatchewan Commissioners, to whom the matter was referred in 1929 for further consideration and report, have accepted these suggestions, but they have gone further and included such incidental rules of international law as seemed necessary to make the measure, as far as it goes, a code. The Act, as drawn by those Commissioners, is submitted herewith

R. W. SHANNON,
D. J. THOM

Regina, June, 1930

An Act to make Uniform the Law respecting Actions upon Foreign Judgments.

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

SHORT TITLE.

1. This Act may be cited as *The Foreign Judgments Act.*

INTERPRETATION.

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

1. "Court of competent jurisdiction" means a court which has jurisdiction over the subject-matter of an action or proceeding,

2 "Foreign country" means any country other than , whether a sovereign power or self-governing portion thereof, a dominion, state, province, colony or possession;

3. "Foreign judgment" means a judgment, decree or order in the nature of a judgment, obtained in a court of a foreign country.

JURISDICTION IN ACTION IN PERSONAM

3. In an action *in personam* in respect of any cause of action, the courts of a foreign country have jurisdiction in the following cases, namely:

(*a*) where the defendant, at the time of the commencement of the action, was resident in such country;

(*b*) where the defendant is, at the time of the judgment in the action, a subject of the sovereign of such country and domiciled therein;

(*c*) where the party objecting to such jurisdiction has submitted thereto:

(*i*) by appearing as plaintiff in the action; or

(*ii*) by voluntarily appearing as defendant in the action without protest; or

(*iii*) by having expressly or impliedly contracted to submit to such jurisdiction

JURISDICTION IN ACTIONS IN REM.

4. In an action or proceeding *in rem* the courts of a foreign country have jurisdiction to determine the title to any immoveable or moveable within such country

JURISDICTION OF FOREIGN COURTS

5.—(1) In an action *in personam* the courts of a foreign country shall not be held to have acquired jurisdiction:

(*a*) from the mere possession by the defendant at the commencement of the action of property locally situate in that country; or

(*b*) from the presence of the defendant in such country at the time when the obligation in respect of which the action is brought was incurred in that country.

(2) Such courts shall be held to be without jurisdiction:

(*a*) to adjudicate upon the title, or the right to the possession, of real property situate in this province; or

(*b*) to give redress for any injury in respect of such real property

NO DIRECT OPERATION

6. A foreign judgment has no direct operation in this province.

PRIMA FACIE VALID.

7. A foreign judgment is presumed to be valid until the contrary is shown.

EFFECT OF VALID FOREIGN JUDGMENTS.

8. Subject to the other provisions of this Act, a valid foreign judgment is conclusive as to any matter adjudicated upon and cannot be impeached for any error of fact or of law.

PERMISSIBLE DEFENCES.

9. When action is brought in this province upon a foreign judgment, it shall be a sufficient defence

(*a*) that the original court acted without jurisdiction;

(*b*) that the defendant being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court;

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

(*d*) that the judgment was obtained by fraud;

(*e*) that the judgment is not a final judgment;

(*f*) that the judgment is not for a debt or definite sum of money;

(g) that the judgment was in respect of a cause of action which, for reasons of public policy or for some similar reason, would not have been entertained by the courts of this province.

APPEAL.

10. In any action on a foreign judgment, the defendant, upon proof to the satisfaction of the court or a judge that he has taken an appeal or other proceeding in the nature of an appeal in respect thereof, shall be entitled, pending the determination of such appeal or proceeding, and upon such terms, if any, as may be deemed proper, to a stay of proceedings, and application for such stay may be made at any stage of the action.

CAUSE OF ACTION NOT EXTINGUISHED.

11. Nothing in this Act shall prevent a judgment creditor from proceeding upon the original cause of action in respect of which the judgment was obtained.

CONSTRUCTION OF ACT

12. 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.

COMING INTO FORCE

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

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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