

1931

PROCEEDINGS

OF THE

FOURTEENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION
IN CANADA

HELD AT

MURRAY BAY

AUGUST 27TH, 28TH, 29TH, 31ST,

AND SEPTEMBER 1ST, 1931

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

<i>President</i>	John D. Falconbridge, K.C., Osgoode Hall, Toronto 2, Ontario.
<i>Vice-President</i>	Douglas J. Thom, K.C., Regina, Saskatchewan.
<i>Treasurer</i>	E. René Richard, Sackville, New Brunswick.
<i>Secretary</i>	Sidney E. Smith, Dalhousie Law School, Halifax, Nova Scotia.

Local Secretaries.

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

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

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

Alberta:

R. ANDREW SMITH, Legislative Counsel, Parliament Buildings,
Edmonton.

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

British Columbia:

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

HENRY G. LAWSON, 918 Government Street, Victoria.

HON. R. L. MAITLAND, 626 West Pender Street, Vancouver.

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

Manitoba:

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

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

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

T. W. LAIDLAW, Parliament Buildings, Winnipeg.

(Commissioners appointed under the authority of the Stat-
utes 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 Stat-
utes 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 Stat-
utes 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., London.

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. C. D. Richards, K.C.

Attorney-General of Nova Scotia: Hon. John Doull, K.C.

Attorney-General of Ontario: Hon. W. H. Price, K.C.

Attorney-General of Prince Edward Island: Hon. J. D. Stewart,
K.C.

Attorney-General of Quebec: Hon. L. A. Taschereau, K.C.

Attorney-General of Saskatchewan: Hon. M. A. MacPherson, K.C.

PREFACE.

The independent action of the several provincial legislatures naturally results in a certain diversity of legislation. In some cases diversity is inevitable, as, for instance, when the province of Quebec legislates upon subjects within the purview of the Civil Code of Lower Canada and according to principles derived from the law of France, and the other provinces legislate upon similar subjects according to principles derived from the common law of England. In such cases the problem of securing uniformity is confined to the common law provinces. There are, however, many other cases in which no principle of either civil law or common law is at stake, with regard to which the problem of securing uniformity is the same in all the provinces. Both these classes of cases include subjects of legislation as to which it is desirable, especially from the point of view of merchants doing business in different parts of Canada, that legislation should be made uniform throughout the provinces to the fullest extent possible.

In the United States work of great value has been done by the National Conference of Commissioners on Uniform State Laws. Since the year 1892 these commissioners have met annually. They have drafted uniform statutes on various subjects, and the subsequent adoption of these statutes by many of the state legislatures has secured a substantial measure of uniformity. The example set by the state commissioners in the United States was followed in Canada when, on the recommendation of the Council of The Canadian Bar Association, several of the provinces passed statutes providing for the appointment of commissioners to attend an inter-provincial conference for the purpose of promoting uniformity of legislation.

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

Subsequent annual meetings have been held as follows:—

- 1919. August 26-29, Winnipeg.
- 1920. August 30-31, September 1-3, Ottawa.
- 1921. September 2-3, 5-8, Ottawa.
- 1922. August 11-12, 14-16, Vancouver.
- 1923. August 30-31, September 1, 3-5, Montreal.

- 1924. July 2-5, Quebec.
- 1925. August 21-22, 24-25, Winnipeg.
- 1926. August 27-28, 30-31, St. John.
- 1927. August 19-20, 22-23, Toronto.
- 1928. August 23-25, 27-28, Regina.
- 1929. August 30-31, September 2-4, Quebec.
- 1930. August 11-14, Toronto.
- 1931. August 27-29, 31, September 1, Murray Bay.

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.

In 1931, in consequence of certain questions raised by commissioners, the Conference reconsidered the model uniform Limitation of Actions Act, and approved it in revised form. The Conference also revised the draft sections for insertion in provincial Evidence Acts respecting judicial notice of statutes and proof of state documents. A model uniform Corporation Securities Registration Act was discussed and finally revised and approved. Progress was made in drafting a Registration of Partnerships Act and a Foreign Judgments Act

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

The appointment of commissioners or participation in the meetings of the Conference does not of course bind any province to adopt any conclusions reached by the Conference, but it is hoped that the voluntary acceptance by the provincial legislatures of the recommendations of the Conference will secure an increasing measure of uniformity of legislation

The following table shows to what extent, if any, each model statute drawn by the Conference has been adopted by the provinces:

- 1920. Bulk Sales Act (amended, 1925): adopted in Alberta (1922), British Columbia (1921), Manitoba (1921), and New Brunswick (1927).
- 1920. Legitimation Act: adopted in 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 (amended, 1931): adopted in Alberta (1929), Manitoba (1929), Nova Scotia (1930), and Saskatchewan (1929).
1928. Assignment of Book Debts Act (amended, 1931): adopted in Alberta (1929), Manitoba (1929), New Brunswick (1931), Nova Scotia (1931), Ontario (1931), and Saskatchewan (1929).
1929. Wills Act: adopted in Saskatchewan (1931).
1930. Judicial Notice of Statutes and Proof of State Documents (amended, 1931): adopted in New Brunswick (1931).
1931. Limitation of Actions Act.
1931. Corporation Securities Registration Act.

S. E. S.

PROCEEDINGS.

PROCEEDINGS OF THE FOURTEENTH 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:

British Columbia:

MESSRS. PINEO and LAWSON.

Manitoba:

MESSRS. PITBLADO and LAIDLAW.

New Brunswick:

MESSRS. RICHARD, HARTLEY and CREAGHAN.

Nova Scotia:

MESSRS. SMITH and SANGSTER

Ontario:

MESSRS. KING, FALCONBRIDGE and DYMOND.

Saskatchewan:

MR. THOM.

FIRST DAY.

Thursday, 27th August, 1931.

The Conference assembled at 10.30 a.m. at the Manoir Richelieu, Murray Bay, Mr. Falconbridge, the President, in the chair.

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

Mr. Louis S. St. Laurent, K.C., President of the Canadian Bar Association, welcomed the members of the Conference to Quebec, and expressed the hope that all the provinces might join in promoting uniformity of legislation upon certain subjects.

The President, Mr. Falconbridge, 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. Thom and Lawson for audit and report.

Messrs. King, Pitblado, Thom and Lawson were appointed a *Nomination Committee* to submit recommendations as to the election of officers of the Conference for the ensuing year.

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

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

Oral reports of the work of the various committees of the Conference were received. It was then decided to consider the report of the Committee on the draft *Arbitration Act* (Conference Proceedings, 1930, p. 17; Canadian Bar Association Year Book, 1930, p. 287) which was presented by Mr. Pineo on behalf of the British Columbia Commissioners.

(Appendix B.)

It was resolved that the report of the British Columbia Commissioners be adopted, and that no action be taken by the Conference in the drafting of a uniform Act based on the draft Provincial *Arbitration Act* advocated by the report of the committee of the Canadian Chamber of Commerce.

The President presented the report of the committee on the uniform *Life Insurance Act* (Conference Proceedings, 1930, pp. 16, 17; Canadian Bar Association Year Book, 1930, pp. 286, 287).

(Appendix C.)

It was resolved that the report of the committee be adopted, and that the Conference appoint the Ontario Commissioners a committee to co-operate with a committee to be appointed by the Association of Superintendents of Insurance in considering any proposed amendments to the uniform *Life Insurance Act*, and that the committee of the Conference be instructed to endeavour to ascertain the views of the insurance companies as to any proposed amendments, and to report to the Conference thereon at the next meeting.

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

The President submitted a report on the draft *Limitation of Actions Act* (Conference Proceedings, 1930, pp. 15, 16, 68; Canadian Bar Association Year Book, 1930, pp. 285, 286, 338).

(*Appendix D.*)

It was then decided to reconsider and revise in the light of this memorandum the draft *Limitation of Actions Act*.

At 1.10 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 5.00 p.m. the Conference adjourned.

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

At 11.00 p.m. the Conference adjourned.

SECOND DAY.

Friday, 28th August, 1931.

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

Mr. Lawson, on behalf of the British Columbia Commissioners, presented a report with respect to proposed amendments to the uniform *Conditional Sales Act* (Conference Proceedings, 1930, pp. 13, 14; Canadian Bar Association Year Book, 1930, pp. 283, 284).

(*Appendix E.*)

After discussion, it was resolved that consideration of the report of the British Columbia Commissioners and of section 12 of the uniform *Conditional Sales Act* be deferred until the next meeting of the Conference, and that the matter be referred again to the British Columbia Commissioners to report at the next meeting of the Conference with such suggestions as they may consider advisable.

At 12.10 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled.

Mr. Pitblado, on behalf of the Manitoba Commissioners, presented a report relating to certain suggested amendments to the uniform *Assignment of Book Debts Act* (Conference Proceedings, 1930, p. 17; Canadian Bar Association Year Book, 1930, p. 287).

(Appendix F.)

After discussion of this report, it was resolved that the Conference do not at the present time recommend any amendment to the uniform *Assignment of Book Debts Act* for the reasons given in the report of the Manitoba Commissioners.

Mr. Thom, on behalf of the Saskatchewan Commissioners, presented a report on and draft of a *Corporation Securities Registration Act* (Conference Proceedings, 1930, p. 17; Canadian Bar Association Year Book, 1930, p. 287). The Conference proceeded to discuss the draft Act section by section.

At 4.45 p.m. the Conference adjourned.

At 8.15 p.m. the Conference reassembled and resumed the discussion of the draft *Corporation Securities Registration Act*.

At 10.15 p.m. the Conference adjourned.

THIRD DAY.

Saturday, 29th August, 1931.

At 9.30 a.m. the Conference reassembled.

The *Auditors' Report* was received and adopted as follows:

REPORT OF THE TREASURER FOR THE YEAR ENDING JULY 31ST, 1931.

Aug. 1/30	Balance on hand	\$1,361.69
" 29/30	Grant—Nova Scotia	200.00
Oct. 31/30	Bank Interest	19.53
" 31/30	Grant—Ontario	200.00
Apr. 30/31	Bank Interest	25.59
May 9/31	Grant — Saskatchewan	200.00
Sept. 16/30	Cheque to Secretary for postage and other secretarial expenses, 1928-1930	\$20.00
" 16/30	Cheque to Miss Livingstone, steno. services	45.00
" 30/30	Advance to Secretary for secretarial expenses	10.00

June 1/30	Carswell Co., 500 copies Pro- ceedings of 13th Annual Meeting	\$361.82
" 1/30	Carswell Co., 3,200 copies Re- port of Conference of Com- missioners in C.B.A. Year Book	460.56
July 31/31	Balance on hand	1,109.43
		\$2,006.81
		\$2,006.81

Respectfully submitted,

R. MURRAY FISHER, Treasurer.

Audited and found correct,

D. J. THOM,

H. G. LAWSON,

Auditors.

August 28th, 1931.

The Conference resumed the discussion of the draft *Corporation Securities Registration Act*.

The Conference adjourned at 12.30 p.m.

The Conference reassembled at 2.30 p.m. and resumed discus-
sion of the draft *Corporation Securities Registration Act*.

The following resolution was adopted:

Resolved that the draft *Corporation Securities Registration Act* be referred to the Commissioners for Saskatchewan with instructions to revise the draft in the light of the discussion at the present meet-
ing and

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

(Appendix G.)

It was resolved that, in order to make the uniform *Bills of Sale Act* (Conference Proceedings, 1928, p. 27; Canadian Bar Association Year Book, 1928, p. 267) conform to the *Corporation Securities Registration Act*, sub-clause (i) of clause (g) of section 2 of the former Act be struck out, and that the following be substituted therefor:

- (i) A mortgage or charge, whether specific or floating, of chattels created by a corporation, and contained
 - (i) In a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation; or
 - (ii) In any bonds, debentures, or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures, or debenture stock of any other corporation; or
 - (iii) In any bonds, debentures, or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument.

It was resolved that, in order to make the uniform *Assignment of Book Debts Act* (Conference Proceedings, 1928, p. 47; Canadian Bar Association Year Book, 1928, p. 287) conform to the *Corporation Securities Registration Act*, clause (a) of section 3 of the former Act be struck out, and that the following be substituted therefor:

- (a) Any assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the province and contained:
 - (i) in a trust deed or other instrument to secure bonds, debentures, or debenture stock of the corporation or of any other corporation; or
 - (ii) in any bonds, debentures, or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures, or debenture stock of any other corporation; or
 - (iii) in any bonds, debentures, or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument.

At 5.30 p.m. the Conference adjourned.

FOURTH DAY.

Monday, 31st August, 1931.

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

The following resolution was adopted:

Resolved that the draft *Limitation of Actions Act*, as revised at the present (1931) meeting of the Conference, be approved by the Conference and be recommended to the Legislatures of the several provinces of Canada for enactment and

Further resolved, that the President be authorized to prepare for the printer in accordance with the discussion at the present meeting the draft *Limitation of Actions Act* and to furnish printed copies thereof to all the members of the Conference.

(Appendix D.)

At 1 00 p.m. the Conference adjourned.

At 2.15 p.m. the Conference reassembled.

Mr. Pineo submitted draft sections, for insertion in provincial Evidence Acts, respecting *Judicial Notice of Statutes and Proof of State Documents* (Conference Proceedings, 1930, pp. 18, 19, 96; Canadian Bar Association Year Book, 1930, pp. 288, 289, 366).

After discussion it was decided to revise the uniform sections, for insertion in provincial Evidence Acts, respecting *Judicial Notice of Statutes and Proof of State Documents* which were approved by the Conference at the 1930 meeting. The draft submitted by Mr. Pineo was then discussed.

The following resolution was adopted:

Resolved that the draft sections, for insertion in provincial Evidence Acts, respecting *Judicial Notice of Statutes and Proof of State Documents* as revised at the present (1931) meeting of the Conference be substituted for the draft sections approved by the Conference at the 1930 meeting, and that they be approved by the Conference and be recommended to the Legislatures of the several provinces of Canada for enactment and

Further resolved, that the British Columbia Commissioners be authorized to prepare for the printer in accordance with the discussion at the present meeting the draft sections, for insertion in provincial Evidence Acts, respecting *Judicial Notice of Statutes and Proof of State Documents*, and that printed copies thereof be furnished to all the members of the Conference.

(Appendix H.)

Mr. Smith, on behalf of the Nova Scotia Commissioners, presented the draft *Registration of Partnerships Act* (Conference Proceedings, 1930, pp. 19, 100; Canadian Bar Association Year Book, 1930, pp. 289, 370). After discussion, the Conference, by way of

instructions to the draftsman and to assist him in preparing a revised draft *Registration of Partnerships Act* for submission to the Conference at the next meeting, decided that (a) the Act should apply only to persons associated in partnership for trading, manufacturing or mining purposes; (b) that a disability with respect to bringing or maintaining any action, suit or other proceeding in respect of any contract be imposed upon a partnership which is not registered in compliance with the Act; (c) that the principle of section 19 of the draft Act presented by the Nova Scotia Commissioners be adopted; and (d) that the Act should provide for a penalty for not registering but not a penalty for carrying on business without registration.

At 6.00 p.m. the Conference adjourned.

At 8.30 p.m. the Conference reassembled and resumed discussion of the draft *Registration of Partnerships Act*.

It was resolved that the draft *Registration of Partnerships Act* be referred to the New Brunswick Commissioners, to revise the draft Act submitted by the Nova Scotia Commissioners at the present (1931) meeting in accordance with the instructions of the Conference and in the light of the discussion at the present meeting and to report to the Conference at the next meeting.

At 10.15 p.m. the Conference adjourned.

FIFTH DAY.

Tuesday, 1st September, 1931.

At 9.30 a.m. the Conference reassembled.

Mr. King, on behalf of the *Nomination Committee*, submitted the following report which was received and adopted:

Your Committee on Nomination of Officers submits the following nominations:

President—John D. Falconbridge, K.C., Toronto.

Vice-President—Douglas J. Thom, K.C., Regina.

Secretary—Sidney E. Smith, Halifax.

Treasurer—E. René Richard, Sackville.

It was resolved that the *next meeting of the Conference* be held five days (exclusive of Sunday) before the next meeting of the Canadian Bar Association, and at the same place; unless the President, after communicating with the officers of the Conference, decides that

some other time and place would be more convenient, in which event the President shall fix the time and place of the next meeting of the Conference.

The President submitted a report with respect to the *Contributory Negligence Act* (Conference Proceedings, 1930, pp. 17, 18; Canadian Bar Association Year Book, 1930, pp. 287, 288).

The Conference, being desirous of working in co-operation with the *Committee on Comparative Legislation of the Canadian Bar Association*, and of taking advantage of the services of that Committee so far as they may be available, ventures to suggest that the subject of *Contributory Negligence* would be a suitable subject for the Committee to consider, with a view to the preparation of a memorandum of the present law and recommendations as to desirable changes in the law. Since a model *Contributory Negligence Act* was adopted by the Conference in 1924 (Conference Proceedings, 1924, pp. 34-46; Canadian Bar Association Year Book, 1925, pp. 303-313), various questions have been raised as to the desirability of amending the model Act and extending its scope so as to cover explicitly cases which involve (as in the case of motor vehicles) the rights and liabilities of masters and/or servants, employers and/or employees, owners and/or drivers and/or passengers, and to provide also for apportionment of liability between wrongdoing defendants liable to an innocent plaintiff. (See the Conference Proceedings, 1928, pp. 18, 90; 1929, p. 21; 1930, pp. 17, 18; Canadian Bar Association Year Book, 1928, pp. 258, 330; 1929, p. 307; 1930, pp. 287-288). If the Committee on Comparative Legislation would undertake an investigation of this group of interrelated questions, the necessary foundation would be laid for considering to what extent the law relating to those questions might be embodied in a model uniform Act which might be recommended to the provincial legislatures for enactment.

A communication from Messrs. Hough, Campbell and Ferguson of Winnipeg concerning the uniform *Bills of Sale Act* was referred to the Manitoba Commissioners for report to the Conference at the next meeting.

Mr. Thom, on behalf of the Saskatchewan Commissioners, presented the report on *Defences to Actions on Foreign Judgments* and submitted the draft *Foreign Judgments Act* which was printed in the proceedings of last year (Conference Proceedings, 1930, pp. 19,

III; Canadian Bar Association Year Book, 1930, pp. 289, 381) and also a redraft of section 3 of the draft Act.

(Appendix I.)

Mr. Pineo submitted a redraft of the draft *Foreign Judgments Act* which was prepared by the Saskatchewan Commissioners.

(Appendix I.)

The Conference proceeded to compare and discuss the draft *Foreign Judgments Act* submitted by the Saskatchewan Commissioners and the British Columbia Commissioners' redraft.

At 1.00 p.m. the Conference adjourned.

At 3.00 p.m. the Conference reassembled and resumed discussion of the *Foreign Judgments Act*.

It was resolved that the *Foreign Judgments Act* be referred again to the Saskatchewan Commissioners with instructions to revise the draft Act in the light of the discussion at the present (1931) meeting of the Conference and to report to the Conference at the next meeting.

At 4.30 p.m. the Conference adjourned.

APPENDICES.

- A. Presidential Address.
- B. Report on draft Arbitration Act.
- C. Report on the uniform Life Insurance Act.
- D. Report on the draft Limitation of Actions Act and Text of the revised uniform Limitation of Actions Act
- E. Report with respect to proposed amendments to the uniform Conditional Sales Act.
- F. Report relating to certain suggested amendments to the uniform Assignment of Book Debts Act.
- G. Text of the revised uniform Corporation Securities Registration Act.
- H. Draft sections for insertion in provincial Evidence Acts respecting Judicial Notice of Statutes and Proof of State Documents as revised and approved.
- I. Redraft of section 3 of the draft Foreign Judgments Act and suggested redraft of the draft Foreign Judgments Act.

APPENDIX A.**PRESIDENTIAL ADDRESS.**

Custom decrees that the Proceedings of the Conference of Commissioners should begin with an address by the President. This annual meeting will be the first, and perhaps the last, at which I shall have the privilege of occupying the chair. By reason of absence from Canada I shall be unable to attend next year's meeting and therefore I trust that you will avail yourselves of the opportunity of electing a new president at the end of this year's meeting, in order that the business of the Conference may be carried on without interruption.

I am grateful to the members of the Conference for having done me the great honour of electing me president, but I approach with especial diffidence the duty of actually presiding at a meeting because I am the immediate successor in the presidential office of Mr. Pitblado, whose extraordinarily keen mind and energetic disposition made him an exemplary president—one who usually kept the iron hand concealed under the velvet glove, and who combined great amiability and tact with a truly amazing driving force. The printed reports of the proceedings of the Conference from 1924 to 1930 give only a faint idea of the range of the discussions which took place, and the work that was accomplished, during the seven meetings at which he presided.

I am so lacking in the talents and qualities which distinguish Mr. Pitblado that in all sincerity I ask for your indulgent co-operation in the orderly and efficient conduct of the meeting.

The agenda for this year's meeting contains some important items of unfinished business, notably the further and presumably final consideration of the important Limitation of Actions Act to which we devoted most of the time of the 1930 meeting, and the consideration of proposed amendments of the Conditional Sales Act and the Assignment of Book Debts Act.

Closely connected with the Assignment of Book Debts Act and the Bills of Sale Act, already prepared by the Association, we shall have to consider a draft Corporation Securities Registration Act to cover certain cases advisedly omitted from the two earlier Acts.

Again, closely connected with the Reciprocal Enforcement of Judgments Act, already prepared by the Conference, we shall have to consider a draft Foreign Judgments Act.

Further, we shall have before us for consideration a draft Registration of Partnerships Act.

Lastly, we shall have reports on the Life Insurance Act and on a proposed Arbitration Act, neither of which will probably require extended discussion.

We have therefore a full programme for the present meeting, but it is not clear that there will be much left over by way of unfinished business for next year, and it might be well for the members to consider what new subjects should be referred to committees for report, in addition to the somewhat old subject of Contributory Negligence, further consideration of which was deferred until this year, and upon which we have no report this year.

One inviting subject for uniform provincial legislation occurs to me, namely, Wagering Contracts, as to which the present law in some of the provinces is in a peculiarly complicated and unsatisfactory condition, owing to the indiscriminate adoption in whole or in part of statutes passed in England at various dates, statutes which themselves stand badly in need of revision and consolidation. (See an article by Mr. George H. Ross, K C., in the Canadian Bar Review for December, 1930, and an article by me in the Canadian Bar Review for May, 1931). Other subjects may occur to other members, and towards the end of this year's proceedings we shall be glad to have the suggestions of members in this respect.

As we are once more meeting in the province of Quebec, it seems desirable to repeat the emphatic assurance which Mr. Pitblado gave to our Quebec friends in his presidential address on the occasion of our meeting at the City of Quebec in 1929, namely, that there is nothing sinister in the work of the Conference and that the commissioners do not contemplate any attack upon or interference with the system of law prevailing in Quebec.

In a paper which I read before the Canadian Bar Association in 1927 (Year Book, 1927, p. 195) I ventured to point out that in two notable instances, namely, as to legitimation by subsequent marriage and as to contributory negligence, the Conference had been instrumental in obtaining the adoption in the common law provinces of Canada of rules of law which are in substantial accord with the rules long prevailing in the province of Quebec. If the commissioners have discussed subjects such as wills, intestate succession and devolution of real property, with regard to which lawyers from the province of Quebec are not so likely to agree with the rest of us, is there any harm in the other provinces attempting to secure uniformity of legislation among themselves. On the other hand

when we discuss subjects such as bulk sales, life insurance, fire insurance, conditional sales, bills of sale, assignment of book debts, registration of corporate securities, reciprocal enforcement of judgments and defences to actions on foreign judgments, there seems to be no reason why Quebec lawyers should not join with us in our deliberations, and I am sure that we should be glad to have the benefit of their co-operation.

In view of the fact that in 1925 the Conference of Commissioners adopted a model Act respecting the Reciprocal Enforcement of Judgments, and the fact that the Conference has before it for consideration this year a draft Act respecting Defences to Actions upon Foreign Judgments, it has seemed to me worth while to say something about the peculiar situation existing between Ontario and Quebec by reason of the fact that from 1841 to 1867 Upper Canada and Lower Canada were united in one Province of Canada with a common legislature.

In the year 1858 the legislature of the Province of Canada passed an Act further to amend the Judicature Acts of Lower Canada—22 Vict. c. 5—by s. 58 in which it was, in part, provided as follows:

“58. In any suit or action brought or to be brought against any person who shall have left his domicile in Lower Canada, or against any person who shall have had no domicile in Lower Canada, but when such person shall have personal or real property therein, or the cause of such suit or action shall have arisen within Lower Canada, then if such person be a resident of or is known to be then in Upper Canada, it shall be lawful for any Judge of the Superior Court, or for the Prothonotary of the Superior Court or Clerk of the Circuit Court at the place where the action is brought, on being satisfied of the facts by affidavit or otherwise, to sign an order to be indorsed on the writ of summons in such suit or action, in the following words, *this Writ may be served in Upper Canada*, and such Writ may then be served in Upper Canada—and the person so served shall be bound to appear according to the exigency of the Writ, and if he fails to appear, the plaintiff may proceed as in case of default, and as if the service had been made within the limits of the ordinary jurisdiction of the Court . . .”

This provision was included in the Consolidated Statutes of Lower Canada, 1859, c. 83, as s. 63; and in the year 1881, in the case of *Court v. Scott*, 32 U.C.C.P. 148, it was held in Ontario by Wilson, C.J., and Galt, J., on demurrer, that a judgment might be recovered in the province of Quebec, on a personal service in On-

tario, in an action in which the cause arose in Quebec, so as to render the judgment conclusive on the merits in Ontario.

In 1907, however, it was held, in the case of *Vezina v. Newsome*, 14 O.L.R. 658, by a divisional court of the High Court of Justice for Ontario, that the statute in question was no longer in force, and therefore when a judgment was obtained in Quebec against an Ontario company which had no office or agent in Quebec, and was not domiciled or resident in Quebec, when it was served in Ontario with the writ of summons, the judgment was not entitled to be recognized as binding in Ontario, even though the original cause of action arose in Quebec.

It appears from the review of Quebec legislation contained in the judgment of *Vezina v. Newsome* that the statute of 1858, after having been incorporated in the Code of Civil Procedure of Lower Canada in 1867, amended in 1875, re-enacted in 1888 with some unimportant verbal changes, and amended in 1890, was impliedly repealed by a statute which in 1897 gave effect to a revised Code of Civil Procedure, or at least was impliedly repealed so far as it imposed upon persons domiciled or resident in Ontario the obligation to submit to the jurisdiction conferred upon the courts of Quebec and to obey judgments obtained against them in the manner authorized by the statute. On the other hand no notice of the statute of 1858 was at any time taken in the legislation of Ontario.

In the meantime, that is, after the legislation of 1858 and before the decisions in *Court v. Scott* and *Vezina v. Newsome*, and in fact as early as the year 1860 the legislature of the Province of Canada had, without referring to the statute of 1858, passed an Act respecting Foreign Judgments and Decrees, being 23 Vict. c. 24, as follows:

“Whereas it is expedient to amend the laws of Upper Canada and Lower Canada respecting Foreign Judgments and Decrees and to assimilate the same: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

“1. In any suit in either section of the Province upon a Foreign Judgment or Decree (that is to say, upon any Judgment or Decree not obtained in either of the said sections, except as hereinafter mentioned) any defence set up or that might have been set up to the original suit may be pleaded to the suit on the Judgment or Decree.

“2. In any suit brought in either section on a Judgment or Decree obtained in the other section in a suit in which the service of process on the defendant or party sued has been personal, no defence

that might have been set up to the original suit can be pleaded to that brought on the Judgment or Decree.

"3. In case of a suit against a Corporation, service of process on the officer or officers thereof named in the Act incorporating such Corporation, or in case there be no officer named in the said Act, then service of process according to the law of the section of the Province where the process is served, shall be held to be personal service under this Act.

"4 In any suit brought in either section on a judgment or decree obtained in the other section in a suit in which personal service was not obtained and in which no defence was made, any defence that might have been set up to the original suit may be made to the suit on such judgment or decree."

It is not necessary to refer in detail to the subsequent legislative history of these provisions.

In the province of Quebec all four sections of the statute of 1860 appear, in modified form, in the Code of Civil Procedure (1897), as set out in the 1925 report of a committee, consisting of the Ontario commissioners, on Defences to Actions on Foreign Judgments (Conference Proceedings, 1925, p. 47; Canadian Bar Association Year Book, 1925, p. 385). Section 1 of the statute (applicable to a judgment not obtained in either section of the Province of Canada) has become article 210 of the Code (applicable to a judgment rendered out of Canada). Sections 2 and 4 of the statute (applicable to a suit in one section of the Province of Canada upon a judgment obtained in the other section) have become articles 211 and 212 of the Code (applicable to an action in Quebec upon a judgment rendered in any other province of Canada), with certain important modifications. Under articles 211 and 212 of the Code a person sued in Quebec upon a judgment rendered in any other province is prevented from setting up any defence which might have been set up to the original action only if he was personally served "in such province," or if he appeared in the original action, and only if the case does not involve the decision of a right affecting immovables in Quebec or the jurisdiction of a foreign court concerning such right. Section 3 of the statute (relating to service on a corporation) is in effect reproduced in article 213 of the Code.

In Ontario s. 1 of the statute of 1860 was repealed in 1876 (39 Vict. c. 7, s. 1, schedule A), and s. 3, after finding its way into the consolidated rules of 1888 as rule 270, was abrogated by the rules of 1897. On the other hand, ss. 2 and 4 of the statute of 1860 have been reproduced without substantial change in the Judicature Act,

R.S.O. 1914, c. 56, ss. 50 and 51 (set out in the report above mentioned: Conference Proceedings, 1925, p. 46; Canadian Bar Association Year Book, 1925, p. 384), now R.S.O. 1927, c. 88, ss. 51 and 52.

In the case of *Lung v. Lee*, 1928, 63 O.L.R. 194, [1929] 1 D.L.R. 130, an action was brought in Ontario upon a judgment of the Superior Court of the province of Quebec, the writ in the Quebec action having been personally served upon the defendant in Ontario, where the defendant was domiciled and resident. It was held that "personally served" in the Judicature Act meant "personally served in Quebec." Although, as I have elsewhere ventured to submit (see 7 Canadian Bar Review 131—February, 1929), the decision is difficult to defend as a matter of statutory construction, the result is that both in the case of a Quebec judgment sued on in Ontario, and in the case of an Ontario judgment sued on in Quebec, the personal service on the defendant which will deprive the defendant of the right to set up any defence which he might have set up in the original action must be a service in the province in which the original action is brought.

The judgment in *Lung v. Lee* has therefore deprived Quebec judgments of the preferential position which a literal construction of the Ontario statute would have given them in Ontario, while the modern Quebec legislation has in the converse case deprived Ontario judgments of the similar preferential position which they might have had under the earlier legislation. The Quebec legislation does, however, still give a favourable treatment in some respects to a judgment rendered in Ontario or in any other province of Canada, as compared with a judgment rendered outside of Canada.

I have stated the present situation with special reference to the province of Quebec, in some detail, because it seems to me that the Attorney-General of Quebec might well consider the advisability of introducing the Reciprocal Enforcement of Judgments Act, as adopted by the Conference of Commissioners in 1924, and as since enacted in Saskatchewan (1924), Alberta (1925), British Columbia (1925), New Brunswick (1925), and Ontario (1929).

I draw attention especially to the fact that when this statute is passed by the legislature of any province, it does not *ipso facto* become operative as regards judgments obtained in any other province, but its passing in any province does empower the government of that province to make arrangements with the government of another province for the reciprocal enforcement of judgments. The Act specifically provides that the Lieutenant-Governor may, by order in council, direct that the Act shall apply to any other province, if

the Lieutenant-Governor is satisfied that reciprocal provision has been made or will be made by that province for the enforcement of judgments. When the Act is thus made applicable as between two provinces, the effect is that, subject to safe-guarding provisions, a judgment obtained in one province may be registered and enforced in the other province without any action being brought upon the judgment.

Furthermore the passing of the Reciprocal Enforcement of Judgments Act in any province does not affect the existing legislation or other law of that province with regard to actions brought there upon judgments obtained elsewhere. That is a separate, though closely related, subject which the Conference will have before it at the present meeting. In view of the Quebec legislation existing on this subject it would have been especially desirable that representatives of the government of Quebec should have given us the benefit of their advice.

APPENDIX B.REPORT ON THE DRAFT PROVINCIAL ARBITRATION ACT
SUBMITTED BY THE CANADIAN CHAMBER OF
COMMERCE.

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

GENTLEMEN,—Your Committee, consisting of the British Columbia Commissioners, was instructed by the Conference at its last meeting to consider and report on the Draft Provincial Arbitration Act submitted to the Conference by the Canadian Chamber of Commerce, as found in the Report presented to that body in 1929 by its National Committee on Arbitration.

Before your Committee had proceeded very far in considering this Report and in checking up the existing legislation to which it refers, it became apparent that while a good case might be made out for the adoption of better legislation on the subject of arbitration in some jurisdictions there was not the same justification for a like agitation in Canada. Further study of the subject has confirmed this, and having reached a decided opinion on the matter your Committee has thought best to make its report to the members of the Conference at this early date instead of waiting until the annual meeting which will not take place until the autumn of next year. In the meantime the Officers of the Conference may think it desirable to obtain further representations from those interested in the subject, and thus be in a better position at the time of the next annual meeting to decide on the course to be adopted by the Conference.

The report of the Committee of the Canadian Chamber of Commerce in referring to arbitration legislation in Canada states (pp. 10, 11) that Alberta has no general Arbitration Act, and that, with the exception of Alberta and Quebec, the provision for arbitration procedure is practically the same in the various provincial statutes. Why an exception was made in this statement in the case of Alberta is not apparent, as that Province in 1909 passed an Arbitration Act, adopting the provisions of the Imperial Arbitration Act, which is still in force as chapter 98 of the Revised Statutes of Alberta, 1922.

Examination of the arbitration legislation in force throughout Canada (excepting Quebec) discloses that Prince Edward Island still retains the arbitration provisions found in the Imperial Statutes prior to 1889, and that all the other Provinces have Arbitration

Acts based on the present Imperial Act. These Acts are already substantially uniform in the following substantive provisions:

1. Application of Act to agreements to submit future as well as present differences (Alta., R.S. 1922, c. 98, s. 2; B.C., R.S. 1924, c. 13, s. 2; Man., R.S. 1913, c. 9, s. 2; N.B., R.S. 1927, c. 126, s. 2; N.S., R.S. 1923, c. 227, s. 2; Ont., R.S. 1927, c. 97, s. 2; Sask., R.S. 1920, c. 55, s. 2).
2. Submissions made irrevocable, except by leave of Court, and given same effect as an order of the Court (Alta., s. 3; B.C., s. 3; Man., s. 3; N.B., s. 6; N.S., s. 3; Ont., s. 4; Sask., s. 5).
3. Provision for the staying of legal proceedings (Alta., s. 5; B.C., s. 6; Man., s. 6; N.B., s. 9; N.S., s. 6; Ont., s. 7; Sask., s. 7).
4. Provision for appointment of arbitrators in case of default or other contingency (Alta., ss. 6, 7; B.C., ss. 7, 8; Man., ss. 7, 8; N.B., ss. 10, 11; N.S., ss. 7, 8; Ont., s. 8; Sask., s. 8).
5. Provision for compelling attendance of witnesses and production of documents (Alta., s. 9; B.C., s. 11; Man., s. 16; N.B., s. 13; N.S., s. 10; Ont., s. 14; Sask., s. 14).
6. Provision for enforcement of award as a judgment of the Court (Alta., s. 13; B.C., s. 15; Man., s. 14; N.B., s. 17; N.S., s. 15; Ont., s. 13; Sask., s. 13).

The legislation in force in Prince Edward Island provides that the parties to an arbitration agreement may agree that the award shall be made a rule of Court, and that submissions so made shall not be revocable by any party without the leave of the Court. This legislation is found in the Statutes of Prince Edward Island, 21 Geo. III, c. IV, "An Act for determining differences by Arbitrators or Umpirage" (being a copy of the English Act, 9 and 10 Wm. IV, c. 15, s. 1); 34 Vict., c. XXIV, "An Act to confer certain Powers on Trustees and Executors" (being in part a copy of the English Act, 23 and 24 Vict., c. 145, s. 30); 36 Vict., c. XXII, ss. 211-225 (being a copy of ss. 3-17 of the English Common Law Procedure Act, 17 and 18 Vict., c. 125); 42 Vict., c. XII, "An Act to amend the Law of Arbitration."

Examination of arbitration legislation in other parts of the Empire discloses that the Imperial Arbitration Act has been adopted, practically verbatim, in Newfoundland, Northern Ireland, New Zealand, and throughout Australia.

The Imperial Arbitration Act of 1889 (52 and 53 Vict., c. 49) from which the substantive provisions of our Provincial Acts were taken without any material change in wording is still in force.

Under that Act the very effective system of arbitration referred to in the Report of the Committee of the Canadian Chamber of Commerce (p. 6) as existing in Great Britain has been developed, not only as to arbitration generally but also along the line of commercial arbitration as practised by the various trade associations. So far as disclosed by that Report there does not appear to be any reason why commercial arbitration may not continue to develop under the Acts now in force in Canada to the same extent as it has under the Imperial Act.

Notwithstanding these facts, and the statements found on pages 6 and 11 of the Report, above referred to, the Report proceeds (p. 13) to advocate the adoption by the various Provincial Legislatures of "an uniform provincial arbitration act, which will embody the fundamental principles of successful commercial arbitration," basing this proposal on the allegation that "there is no uniform arbitration procedure throughout the Dominion whereby a party to a commercial dispute in one province may settle with another party to the dispute in another province under the same arbitration procedure." Examination of the draft Provincial Arbitration Act advocated in the Report (pp. 13-19) fails to disclose any new or additional provision essential to the practice of commercial arbitration, nor has it any bearing on Canada's prospective adherence to the League of Nations protocol on arbitration referred to in Part III of the Report (pp. 8-10). This draft appears to be based on a Draft State Arbitration Act said to have been endorsed by commercial interests in the United States of America for submission to the various State Legislatures. Without mentioning the sections of the draft in detail, your Committee begs to state that in its opinion some of the provisions of the draft are unsuited to conditions in Canada, and many of its substantive sections are not so complete or effective in their provisions as the corresponding sections in the Acts we already have. Further, while the provisions of our Acts have during the course of years acquired a settled construction by the Courts, these new provisions have not that advantage.

The arguments which are stressed in the Report of the Committee of the Canadian Chamber of Commerce in its advocacy of arbitration legislation might be quite in point if addressed to the conditions which until recently existed generally in the United States of America, where legislation on the subject has been lacking in some most essential features. Advocacy of legislation based on these arguments loses its force, however, when addressed to Canadian Legislatures which have for years had in force Arbitration Acts

of the more advanced type, uniform with those under which arbitration has made such marked advances in Great Britain and in other parts of the Empire.

In consideration of the foregoing, and having in mind the fact that probably in no other subject of legislation is there a more marked degree of uniformity existing in Canada, Great Britain, and throughout the Empire than that already obtaining in the subject of arbitration, your Committee strongly recommends that no action be taken by the Conference of Commissioners on Uniformity of Legislation in Canada in the drafting of a uniform Act based on the Draft Provincial Arbitration Act advocated by the Report of the Committee of the Canadian Chamber of Commerce.

Our existing Provincial Arbitration Acts are sound in principle and have on the whole worked satisfactorily, and it would be difficult to get the Provinces generally to adopt an entirely new Act unless there was strong reason for it. Any attempt along this line, instead of resulting in a greater degree of uniformity, might easily endanger the uniformity now existing. If the Conference on the representations of the Canadian Chamber of Commerce or other commercial interests finds that further legislation is necessary to remedy some defect in our present Acts or to aid in the development of commercial arbitration in Canada, your Committee would recommend that the matter be considered along the lines of amending or supplementing the existing legislation rather than by substituting an untried Act based on conditions in the United States of America for our existing Acts with their well-developed quota of English and Canadian case law.

Respectfully submitted,

A. V. PINEO,

For British Columbia Commissioners.

APPENDIX C.

REPORT ON THE LIFE INSURANCE ACT.

1. At the 1930 meeting of the Conference 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 recommends that the Attorneys-General of the provinces which have adopted the uniform Life Insurance Act be consulted with respect to any proposed amendments.”

2. It subsequently appeared that the only amendment proposed by the Association for enactment at the present time was one to increase the amounts insurable on the lives of children of less than ten years of age, that is to say, to change the sums mentioned in s. 22, sub-s. 1, of the uniform Life Insurance Act (Conference proceedings, 1923, p. 33; Canadian Bar Association Year Book, 1923, p. 443) so as to range from \$100 in the case of a child dying under the age of one year to \$1,000 in the case of a child dying under the age of ten years, instead of ranging from \$20 to \$400.

3. The object of this amendment was to bring the legislation of the provinces of Canada to some extent in accord with the legislation in force in some parts of the United States, it being felt that the increase in the insurable amounts was a proper recognition of the changes in economic conditions, in the standards of living and in the value of money which have taken place since the insurable amounts were fixed by the various provincial statutes upon which the uniform statute was based.

4. It seemed to me that the proposed amendment involved a matter of policy within the jurisdiction of the Superintendents of Insurance and of the provincial Attorneys-General, and involved no question of uniform drafting or principle which concerned the Conference of Commissioners; and I informed the President of the Association of Superintendents that in my opinion it was not necessary to bring the matter before the Conference for approval. Accordingly I am informed that every province of Canada (including Quebec, in which the uniform statute is not in force) has adopted

the recommendation of the Superintendents to increase the amounts insurable upon the lives of children under ten years of age.

5. It is probable, however, that the Association of Superintendents, which is to meet at Winnipeg on the 9th, 10th and 11th of September, 1931, may recommend other changes in the uniform Life Insurance Act, and it seems desirable that the Conference of Commissioners should appoint a committee to co-operate with a committee to be appointed by the Association in considering any proposed amendments. I suggest that the committee of the Conference should be instructed to endeavour to ascertain the views of the insurance companies as to the proposed amendments, and to report to the Conference in 1932.

All of which is respectfully submitted.

JOHN D. FALCONBRIDGE.

APPENDIX D.**REPORT ON THE UNIFORM LIMITATION OF
ACTIONS ACT.**

1. At the 1930 meeting of the Conference 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.”

2. In order to carry the resolution of the Conference into effect, Mr. Scott, the draftsman of the Act and the then sole commissioner for Alberta, undertook to revise the draft Act in the light of the long discussion which had taken place at the 1930 meeting, and to send the revised draft to me in order that it might be printed and circulated for further criticism. The work of revision was, of course, somewhat onerous, and Mr. Scott did not get it completed until he was on his way to England and I received it from him late in October. In the circumstances some further revision was necessary before the material could be given to the printer, and in order to save time I further revised the draft, gave it to the printer, and subsequently sent copies of the revised draft in galley proof to the commissioners from the other provinces, asking them to send their comments to me.

3. The comments which I subsequently received were numerous and somewhat divergent in character and, so far as they related merely to questions of form, I did my best to incorporate the suggestions made, and the resulting revised text appears in the 1930 proceedings at pages 68 ff.

4. Some of the questions raised in the memoranda submitted by the commissioners from other provinces seemed to me sufficiently substantial and difficult to require further consideration by the Conference, and I did not feel that I ought to dispose of them on

my sole responsibility. Most, if not all, of these questions were however subsequently considered by the Manitoba commissioners, and such changes as seemed to them desirable were made in the revised draft of the Conference and incorporated in a bill which was introduced in the Manitoba legislature, and which was enacted as chapter 30 of the Manitoba Statutes of 1931, under the title of The Limitation of Actions Act, 1931. This Act was assented to on April 9, 1931, and came into force on June 1, 1931. I am informed by the Manitoba commissioners that copies will be available for the consideration of the Conference at its present meeting, so that the Conference will have the opportunity of comparing it with the Conference draft.

5. In a letter from me to Mr. Fisher of February 13, 1931 (of which I sent a copy to those commissioners from whom I had already received comments on the draft circulated in galley proof), I mentioned various matters, and for convenience I refer to them now under the same numbers, omitting those which do not seem to require further consideration.

(1) In s. 3, clause (f) the words "except a debt charged upon land" have been repeated after the words "money demand" in the Conference draft and in the Manitoba statute. In the alternative it has been suggested that the words "or for any money demand" should be struck out.

(2) As to s. 7, sub-s 2, which was drawn by Mr. Scott after the 1930 meeting of the Conference, it has been suggested that the sub-section should be worded so as to cover the case of a part payment as well as an acknowledgment. It has also been suggested in the alternative that the sub-section should be struck out, and that it is not advisable to extend the time in disregard of a condition, or of a refusal to pay anything or to pay anything more, which may be attached to or accompany a part payment or an acknowledgment or promise, as the case may be.

(3) It has been suggested that s. 23 would be improved if "no proceedings shall be taken by any person" were substituted for "no person . . . shall take proceedings"

(4) The form of words used in ss 26, 27 and 28 of the Manitoba statute, namely, "where any person is in possession of any land or in receipt of the profits thereof" would seem to be preferable to the form used in the same sections of the Conference draft. Whichever form of words is adopted should of course be used, as much as possible, throughout the Act.

(5) In s. 33, line 5, of the Conference draft the words "foreclosure proceedings or to take" have been inserted, in view of the doubt whether the definition in s. 16 would apply to s. 33. In the Manitoba statute these words have been inserted in a subsequent part of the section.

(6) In the concluding part of s. 33 of the Manitoba statute the words "given at any time prior to the expiry of ten years from the accrual of the mortgagee's right to take proceedings" are clearer than the words "after that time" in the Conference draft, but, grammatically, the insertion of the word "was" after "section 30" or of the words "was given" elsewhere seems to be required in the Manitoba statute.

(7) In s. 35, sub-s. 2, clause (a), the words "by this Act or" have been inserted in the Manitoba statute before the words "any statute of limitations" in the Conference draft (which preserves the wording of the original English statute). A similar change has been made in s. 34 of the Manitoba statute.

(8) In s. 3, sub-s. 1, clause (j) of the Conference draft (clause (k) of the Manitoba statute), the provision as to "actions for foreclosure under any mortgage of or charge upon personal property" gives rise to some difficulties.

(a) As it stands, it applies to mortgages of leaseholds, although presumably mortgages of leasehold are also covered by Part II of the Act, and therefore clause (j) should be limited to pure personalty or movable property.

(b) Assuming that s. 32 sufficiently covers redemption of mortgages of pure personalty, and that s. 33 would apply to foreclosure of pure personalty, then it has been suggested that there should be added at the end of s. 33 a "notwithstanding" clause similar to that which occurs at the end of s. 7, sub-s. 1, or alternatively, that s. 3, sub-s. 1, clause (j) (Conference) i.e. clause (k) (Manitoba), should be amended so as to read "within ten years after the right to take foreclosure proceedings first accrued."

6. Other matters which the Conference might consider are the following:

(1) Section 3, sub-s. 1, clause (h), of the Manitoba statute has been omitted from the Conference draft in accordance with what I understood to be the decision of the Conference.

(2) In the Manitoba statute, s. 40 begins with the words "In respect of a cause of action the time for taking proceedings, as to which is limited by this Act (except those mentioned in para-

graphs (a) and (b) of sub-s. (1) of s. 3). The reason for the addition of these words is to prevent s. 40 from applying to actions, for example, under the Manitoba Motor Vehicles Act, which contains a specific time limit for taking proceedings thereunder.

(3) Section 3, sub-s. 1, clause (1), of the Manitoba statute reads "any other action not in this or any other Act," whereas the corresponding clause (k) of the Conference draft reads "any other action not in this Act."

(4) It has been suggested that sub-s. 2 of s. 3 should be a separate section, beginning with the words "Nothing in this Act shall extend," and should be transferred to the end of the Act.

(5) Section 6 of the Manitoba statute as well as s. 6 of the Conference draft apply in terms to paragraphs (c) to (j) of s. 3, sub-s. 1, but, as already noted, paragraph (h) of the Manitoba statute has been omitted from the Conference draft, with the result that s. 6 of the Conference draft applies to actions for foreclosure, but s. 6 of the Manitoba statute does not.

(6) In s. 9 of the Manitoba statute the words "as defendants" have been inserted in the third line, with some consequential verbal changes later in the section.

(7) The text of s. 12 of the Manitoba statute differs from that of s. 12 of the Conference draft in omitting "to recover" in line 5, substituting "discharge therefor or release thereof" for "discharge for or release of the same" in lines 8 and 9, substituting "principal money" for "sum of money" in line 10, substituting "no right . . . shall be" for "the right . . . shall not be" in sub-s. 2, and in omitting sub-s. 3 as to executions.

(8) In s. 13 of the Manitoba statute the words "prior to the expiry of such six years" are inserted after the word "capable," and the words "so entitled or bound" occur instead of the words "so bound or entitled."

(9) In s. 15, sub-s. 2, the Manitoba statute omits the words "shall apply only as between the person entitled to the charge and the owner of the land or of some other charge thereon and."

(10) The Manitoba statute differs slightly from the Conference draft in s. 16 ("the" omitted in the last line before "proceedings"), s. 18 ("receipt" instead of "in receipt"), s. 19 ("the receipt" instead of "in receipt"), s. 21 ("receipt" instead of "in receipt"—the latter being ungrammatical in this section of the Conference draft), s. 22 ("receipt" instead of "in receipt").

(11) In s. 31 the Manitoba statute reads "this Part or Part IV" instead of "this Act."

(12) In s. 32 the Manitoba statute reads "agent or either of them" instead of "agent of either of them" in sub-s. 1, and substitutes "such" for "the" twice at the end of sub-s. 1, and three times in sub-s. 2.

(13) The heading of s. 33 of the Manitoba statute has "of" instead of "and" or "or."

(14) The specific headings of ss. 40, 42 and 43 in the Conference draft have been superseded by the heading "General" in the Manitoba statute.

(15) The words "or joint obligors or joint covenantors" have been inserted in both sub-sections of s. 41, with a consequential change at the end of sub-s. 2.

(16) Section 45 of the Conference draft has been omitted from the Manitoba statute.

All which is respectfully submitted.

JOHN D. FALCONBRIDGE.

LIMITATION OF ACTIONS ACT.

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 1931).

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" means any civil proceeding, including any civil 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 or any freehold or leasehold estate or any interest in any of them;
- (f) "Mortgage" includes charge, "mortgagor" includes chargor, and "mortgagee" includes chargee;
- (g) "Proceedings" includes action, entry, taking of possession, distress and sale proceedings under an order of a court or under a power of sale contained in a mortgage or conferred by statute;
- (b) "Rent" means a rent service or rent reserved upon a demise;
- (i) "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 for 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 (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant or other specialty or on a simple contract, express or implied, and actions 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.
- (b) 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.

[*Note: In the Statutes of Manitoba, 1931, c. 30, the following words have been added to the clause corresponding with clause (i): "but no such action shall be brought upon a judgment or order recovered upon any previous judgment or order."*]

- (j) Any other action not in this Act or any other 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 (i) 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 agent in that behalf,

- (a) conditionally or unconditionally promises his creditor or the agent of the creditor in writing signed by the debtor or his agent to pay the debt; or
- (b) gives a written acknowledgment of the debt signed by the debtor or his 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 or a part payment on account of the principal debt or interest thereon 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 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 representative, but within ten years next after a present right to recover the same accrued to some person capable of giving a discharge therefor, or a release thereof, 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 agent in that behalf 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 agent in that behalf 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, no right to recover the sum of money charged thereon shall 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 therefor or a release thereof 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 agent in that behalf 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 agent in that behalf 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 has been in possession of any land within one year next before an action is brought by any person entitled to a subsequent mortgage on the same land, the person entitled to the subsequent mortgage may recover in such action the arrears of interest which have become due during the whole time the prior mortgagee 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 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 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 is 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 in 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 proceedings shall be taken by any 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.

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.

LANDLORD AND TENANT.

Wrongful Receipt of Rent.

26. Where any person is in possession of any land, or in receipt of the profits thereof 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 of any land or in receipt of the profits thereof 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 of any land or in receipt of the profits thereof 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 of the land or in receipt of the profits thereof or his agent in that behalf 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.

[In any province in which there are now in force limitation provisions relating to dower and estates tail (see, e.g., R.S.O. 1927, c. 106, ss. 25-30), the appropriate provisions may be added here, in Part III].

PART IV.

MORTGAGES OF REAL AND PERSONAL PROPERTY.

Redemption.

31.—(1) When a mortgagee or a person claiming through a mortgagee has obtained the possession of any property real or personal comprised in a 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 or a person claiming through 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 the 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 agent in that behalf of either of them; and in that case, the action shall not 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 agent in that behalf 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 OR SALE.

32. No mortgagee or person claiming through a mortgagee shall take any proceedings for foreclosure or sale under any mortgage of real or personal property or to recover the property mortgaged but within ten years next after the right to take the proceedings first accrued to the mortgagee, or if the right did not accrue to the mortgagee, then within ten years after the right first accrued to a person claiming through the mortgagee.

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 agent in that behalf, at any time prior to the expiry of ten years from the accrual of the right to take proceedings for foreclosure or sale 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 at any time prior to the expiry of ten years from the accrual of the right to take proceedings, 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 this Act.

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 this Act 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 limitation provision of this Act 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;

Provided that the limitation provisions of this Act 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.

DISABILITIES.

40.—(1) If at the time at which the right to take any proceedings referred to in Parts II, III or IV first accrued to any person he was under disability, then such person or a person claiming

through him may (notwithstanding anything in this Act) 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.

Defendant out of the Province.

41. In respect of a cause of action as to which the time for taking proceedings is limited by this Act other than those mentioned in paragraphs (a) and (b) of subsection 1 of section 3, 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.

42.—(1) Where a person has any cause of action against joint debtors, joint contractors, joint obligors or joint covenantors, 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, joint contractor, joint obligor or joint covenantor 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, joint contractors, joint obligors or joint covenantors as were at such time within the province.

Application of Act.

43. 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.

44. 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.

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

Interpretation of Act.

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

Coming into Force.

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

[NOTE.—This Act is not intended to deal with the subject of prescription in case of easements. Therefore, if this Act is adopted in any province in which the existing statute of limitations contains provisions as to prescription in case of easements (see, e.g., R.S.O. 1927, c. 106, ss. 33-38, 42-44), these provisions should be excepted from the repealing clause, and, when the provincial statutes are again revised, should be put in a separate Act.]

APPENDIX E.**REPORT RESPECTING DRAFT AMENDMENTS TO THE
UNIFORM CONDITIONAL SALES ACT.**

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

GENTLEMEN,—By resolution of the Conference at its annual meeting in 1930 certain proposed amendments to the Uniform Conditional Sales Act were referred to the British Columbia Commissioners to draft for submission to the Conference in 1931. Acting on the instructions contained in the resolution (Proceedings 1930, pp. 13, 14), your Committee has prepared the following draft amendments to s. 12 of the principal Act (Proceedings 1922, pp. 40-46).

Amend s 12 by numbering the present section as sub-s. (1) and by adding the following sub-section:

“(2) The provisions of sub-s. (1) shall not apply in respect of goods which have been affixed to realty unless the writing evidencing the conditional sale agreement of which a copy is filed under the provisions of s. 3 contains such a description of the realty to which the goods are affixed as would be sufficient for the purpose of instruments to be registered in respect of that realty under the laws of the Province respecting the registration of titles to land; nor shall the seller be entitled by virtue of the provisions of sub-s. (1) to retake possession of or to remove from the realty the goods affixed thereto unless he has given to every person registered as the owner, purchaser, lessee, or tenant, or as a mortgagee or other encumbrancer of the realty under the laws of the Province respecting the registration of titles to land notice in writing of his intention to retake possession of and to remove the goods and every person so notified has for a period of twenty days after the giving of the notice to him failed to redeem the goods by payment of the amount owing on them. The notice to any person pursuant to this sub-section may be given by personal delivery to him or by mailing it by prepaid registered mail addressed to him at his last known address, and where the notice is so mailed it shall be deemed to be given to the person to whom it is addressed at the time when it would be delivered in the ordinary course of the mail. The right of the seller pursuant to

the provisions of sub-s. (1) to remove from realty the goods affixed thereto shall be subject in every case to the provision that in removing the same he shall do no more damage to the realty or to the other personal property situate thereon than is necessary."

Respectfully submitted,

A. V. PINEO,

For British Columbia Commissioners.

APPENDIX F.

REPORT WITH RESPECT TO SUGGESTED AMENDMENTS
TO THE UNIFORM ASSIGNMENT OF BOOK DEBTS ACT.

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

GENTLEMEN,—With respect to the suggestion of the Secretary of the Canadian Bankers Association as to an amendment to the uniform Assignment of Book Debts Act so as to add to s 5, sub-s. (1) the following:

- (f) Where the assignor is not a corporation and at the time of the execution of the assignment does not carry on business in the Province in the Registration District of (Regina).

The object of The Assignment of Book Debts Act was to provide for registration of assignments of books debts made by persons carrying on business in the Province, and the place of registration was under ordinary circumstances to be the place where the person carried on business so that creditors of such a person would be able to be advised either by a search or through the ordinary Trade Journals that such an assignment had been given. In our opinion, the Act in so far as each Province is concerned, was not intended to cover assignments made by persons not carrying on business in the Province even although such a person might have a debt owing to him from a person resident in the Province.

Should, therefore, a person be carrying on business in the Province of Manitoba, and in the course of such business become a creditor of a person living in Alberta, we do not think that the Alberta Act would require registration in Alberta in order that the assignment should be valid as to such a debt. In other words, the residence of the "debtor" whose debt is being assigned is not a vital factor in the matter, but the important factor is the place where the trade or business of the assignor is being carried on.

Section 4 of the Act reads as follows—"save as hereinafter provided, every assignment of book debts made by any person engaged in a trade or business shall be absolutely void, etc." unless registered as set out in the Act.

We think that this section should be interpreted to mean "save as hereinafter provided, every assignment of book debts made by any person engaged in a trade or business *in this Province.*" In

other words, the Legislature was enacting laws for persons carrying on business in the Province, and the other Legislatures of Canada were enacting similar legislation for persons carrying on business in their Province.

Of course, if the assignor carried on business in more than one Province and gave an assignment of book debts, that assignment should be registered in each of the Provinces in which the uniform Act is in force, and in which he carries on business.

If the amendment suggested by the Secretary of the Canadian Bankers Association is accepted, the Province would clearly be attempting to legislate in regard to persons who did not carry on business within the Province, and we do not think that any Province should attempt to legislate in this manner for obvious reasons, but, in any event, it seems, that the position of the Banks would be very much weakened by this amendment

It must be remembered, that the assignment must be registered within thirty days.

To give some illustrations

(1) Suppose that a concern which has given a general assignment of its book debts to a Bank, sells goods from its place of business in Ontario to a resident of Ontario; the assignment is properly registered in Ontario; the debtor subsequently moves to Manitoba, and at the time when the Bank attempts to collect the money this debtor is resident in Manitoba. Surely, the assignment would be held good by the Courts of Manitoba.

(2) Suppose in the second place, that such an assignor carrying on business in Ontario receives an order by mail from a person resident in Manitoba, and ships the goods to such person. The general assignment of book debts has been made long before to the Bank, and it would be impossible for the Bank to comply with the requirement of the law as to registering within thirty days in Manitoba. Surely, also in such a case the assignment is perfectly valid although not registered in Manitoba.

It seems, therefore, that it is only in cases where the assignor is carrying on business in more than one Province at the time of the assignment that registration is necessary in more than one Province.

All of which is respectfully submitted to the Conference.

ISAAC PITBLADO,

For Manitoba Commissioners.

APPENDIX G.

CORPORATION SECURITIES REGISTRATION ACT.

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 1931.)

An Act to Make Uniform the Law Respecting Registration of Corporation Securities.

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

SHORT TITLE.

1. This Act may be cited as *The Corporation Securities Registration Act*.

INTERPRETATION.

- 2.** In this Act, ~~unless the context otherwise requires,~~
- (a) "Assignment of book debts" includes every legal or equitable assignment by way of security of, and every mortgage or other charge upon, book debts;
 - (b) "Assignor" means any corporation making an assignment of book debts;
 - (c) "Book debts" means all such accounts and debts, whether existing or future, as in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;
 - (d) "Chattels" means goods and chattels capable of complete transfer by delivery, and includes when separately assigned or charged, fixtures and growing crops; but does not include chattel interests in real property or fixtures when assigned together with a freehold or leasehold interest in any land or building to which they are affixed; or growing crops, when assigned together with any interest in the land on which they grow; or a ship or vessel registered under the provisions of the Canada Shipping Act or the Merchant Shipping Act, 1894, and amending Acts or any share in such ship or vessel; or shares or interests in the stock, funds, or securities of a Government, or in the capital of a corporation; or book debts or other choses in action;
 - (e) "Corporation" includes a company, corporation or body corporate, wherever or however incorporated.

- (f) "Creditors" means creditors of the mortgagor or assignor, whether execution creditors or not, who become creditors before the registration of the mortgage, charge or assignment, and, for the purpose of enforcing the rights of such creditors, but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the Bankruptcy Act and a liquidator of a company under the Winding-up Act of Canada or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor or when the assignee, trustee or liquidator is appointed;
- (g) "Mortgagor" includes a corporation ^{that} which executes a charge; and "mortgagee" includes a person in whose favour a charge is created;
- (h) "Subsequent purchasers or mortgagees" includes any person who obtains, whether by way of purchase, mortgage, charge or assignment, an interest in chattels or book debts ^{that} which have already been mortgaged, charged or assigned.

INSTRUMENTS TO BE REGISTERED.

3.—(1) Every mortgage and every charge, whether specific or floating, of chattels in the province created by a corporation and every assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business in the province, and contained:

- (a) ~~In~~ a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation; or
- (b) ~~In~~ any bonds, debentures or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing the bonds, debentures or debenture stock of any other corporation; or
- (c) ~~In~~ any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument,

~~shall~~ ^{is} be absolutely void as against creditors of the mortgagor or assignor, and as against subsequent purchasers or mortgagees from or under the mortgagor or assignor, in good faith, for valuable consideration and without notice, unless it is duly registered, and unless, if contained in a trust deed or other instrument to secure bonds,

debentures or debenture stock, it complies with the provisions of subsection (2).

(2) If the mortgage, charge or assignment is contained in a trust deed or other instrument to secure bonds, debentures, or debenture stock, the instrument containing it shall be accompanied by an affidavit of the mortgagee, trustee, or grantee or one of the mortgagees, trustees or grantees, his or their agent, or, if the mortgagee, trustee or grantee is a corporation, of any officer, or agent of the corporation, stating that the instrument containing the mortgage, charge or assignment was executed in good faith and for the purpose of securing payment of the bonds, debentures or debenture stock referred to therein and not for the mere purpose of protecting the chattels or book debts therein mentioned against the creditors of the mortgagor or assignor or preventing such creditors from obtaining payment of any claim against the mortgagor or assignor.

(3) A mortgage, charge or assignment required to be registered under this Act shall, as against creditors and the subsequent purchasers or mortgagees referred to in subsection (1), take effect only from the time of its registration.

4.—(1) Registration of every mortgage, charge or assignment, shall, save as provided by subsection (2), be effected by filing with the Provincial Secretary a duplicate original of the instrument containing the mortgage, charge or assignment, together with the affidavit required by subsection (2) of section 3, and an affidavit made by any officer or agent of the mortgagor or assignor stating the date of the execution of the instrument by the mortgagor or assignor, within thirty days from the date of the execution of the instrument.

(2) Registration of every mortgage, charge or assignment, contained in bonds, debentures or any series thereof or in debenture stock, not secured by a separate instrument, shall be effected by filing with the ~~Provincial Secretary~~, within thirty days after the execution of the bonds, debentures or debenture stock, an affidavit made by any officer or agent of the mortgagor or assignor, setting forth the following particulars:

- (a) The total amount secured by the bonds, debentures or series thereof, or debenture stock;
- (b) ~~A~~ true copy of the bond or debenture or of one bond or debenture of the series or of the debenture stock certificate;
- (c) The date of execution.

Registration of Finance Stock Companies

AFFIDAVIT OF CORPORATION OFFICER.

5. Any affidavit made for the purposes of this Act by an officer or agent of a corporation shall state that the deponent is aware of the circumstances connected with the transaction and has a personal knowledge of the facts deposed to.

TIME EXPIRING ON HOLIDAY.

6. When the time for filing an instrument containing a mortgage, charge or assignment, or an affidavit, expires on a Sunday or other day on which the office of the ~~Provincial Secretary~~ is closed, the filing ~~shall~~, so far as regards the time of filing, ~~be~~ valid if made on the next following day on which the office is open.

MINUTES OF REGISTRATION.

7. The ~~Provincial Secretary~~ shall cause every instrument containing a mortgage, charge or assignment, and every affidavit, filed in his office under this Act to be numbered, to be endorsed with a memorandum of the day, hour and minute of its filing and to be indexed by entering in alphabetical order in a register kept by him the names of the parties to the mortgage, charge or assignment, the date of execution of the instrument containing the same or of the bonds, debentures or debenture stock not secured by separate instrument, as shown by the affidavit filed, and the date of filing and the amount secured as shown by the instrument or by the affidavit.

RECTIFICATION OF OMISSIONS AND MIS-STATEMENTS.

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

DEFECTS AND IRREGULARITIES.

9. No defect or irregularity in the execution of an instrument containing a mortgage, charge or assignment, no defect, irregularity

or omission in any affidavit, and no error of a clerical nature or in an immaterial or non-essential part shall invalidate or destroy the effect of the mortgage, charge or assignment or the registration thereof, unless in the opinion of the court or judge before whom a question relating thereto is tried, such defect, irregularity, omission or error has actually misled some person whose interests are affected by the mortgage, charge or assignment.

ASSIGNMENTS AND DISCHARGES.

10.—(1) An assignment of a mortgage or charge of chattels or of an assignment of book debts within this Act need not, but may, be filed with the ~~Provincial Secretary~~.

see p. 7
see p. 10
(2) A mortgage or charge or assignment of book debts registered under this Act may be discharged in whole or in part by filing with the ~~Provincial Secretary~~ a certificate of discharge signed by the mortgagee, trustee, or assignee, his or its executors, administrators, successors or assigns, and, except in the case of a certificate of discharge executed by a corporation under its corporate seal, the certificate shall be accompanied by the affidavit of an attesting witness of the execution thereof; but in case a mortgage, charge or assignment of book debts has been assigned, no certificate of discharge by an assignee shall be filed until the assignment has been filed.

(3) In the case of a mortgage, charge or assignment contained in bonds, debentures or any series thereof or in debenture stock, not secured by a separate instrument, the ~~Provincial Secretary~~ may, on evidence being given to his satisfaction that the debt for which the mortgage, charge or assignment was given as security has been paid or satisfied, enter a memorandum of discharge in the register, and shall, if required, furnish the corporation with a copy thereof.

(4) The ~~Provincial Secretary~~ shall note the fact of such assignment or discharge against each entry in the books of his office respecting the filing of the instrument or affidavit, and shall make a like notation upon that instrument or upon the affidavit filed under subsection (2) of section 4.

CERTIFICATE OF FILING.

11.—(1) Upon payment of the prescribed fees the ~~Provincial Secretary~~ shall give a certificate under his hand of the filing of any instrument or affidavit in pursuance of this Act, and of the day and hour of such filing, and a certificate as to prior registrations, if any, of mortgages, charges or assignments created or made by the mortgagor or assignor.

(2) Every certificate furnished by the ~~Provincial Secretary~~ touching any matter dealt with by this Act, shall be received for all purposes as *prima facie* evidence of the facts set out in the certificate; and every copy of a document filed under this Act, certified by the ~~Provincial Secretary~~, shall be received as *prima facie* evidence for all purposes as if the original document were produced, and also as *prima facie* evidence of the execution of the original document according to the purport of such copy.

(3) No proof shall be required of the signature of the ~~Provincial Secretary~~ in respect of any certificate produced as evidence pursuant to this section.

SEARCHES.

⁽¹⁾ 12. Upon payment of the prescribed fees every person shall have access to and be entitled to inspect the books of the ~~Provincial Secretary~~ containing records or entries of mortgages, charges or assignments or documents registered or filed under the provisions of this Act, and no person shall be required as a condition of his right thereto to disclose the name of the person in respect of whom such access or inspection is sought; ~~and the Provincial Secretary shall, upon request, accompanied by payment of the prescribed fees, produce for inspection any mortgage, charge, assignment or document so registered or filed.~~

FEEES.

13. For services under this Act the ~~Provincial Secretary shall be~~ entitled to receive such fees as may be from time to time prescribed by the Lieutenant Governor in Council.

GENERAL.

14. This Act ~~shall apply~~ only to mortgages or charges of chattels or assignments of book debts executed after it comes into force.

15. A mortgage or charge of chattels or an assignment of book debts heretofore made ~~which if the same had been executed after the coming into force of this Act would be within the provisions of this Act and which has heretofore or hereafter been properly registered or filed under any Act respecting the same, shall, notwithstanding anything contained in that Act or any other Act of this Legislature, not require~~ to be renewed.

16. "The Bills of Sale Act" and "The Assignment of Book Debts Act" ~~shall~~ not apply to any mortgage, charge or assignment the registration of which is provided for in this Act.

CONSTRUCTION OF ACT.

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

REPEAL.

18. [*Note: Provision should be made for the repeal of the Act or part of the Act for which this Act is to be substituted, care being taken to preserve the former for the purposes of registration of mortgages, charges or assignments executed before the latter comes into force.*]

COMING INTO FORCE.

19. This Act shall come into force on the _____ day of _____, A.D. 193 .

NOTES.

I. Where desired, the Registrar of Companies or other provincial officer may be substituted for the Provincial Secretary.

II. Where local statutes do not already sufficiently cover the point, a section may be inserted authorizing the Deputy of the Provincial Secretary or other provincial official to perform all services under the Act.

III. It was resolved by the Conference of Commissioners that, in order to make the uniform *Bills of Sale Act* (Conference Proceedings, 1928, p. 27; Canadian Bar Association Year Book, 1928, p. 267) conform to the *Corporation Securities Registration Act*, sub-clause (i) of clause (g) of section 2 of the former Act be struck out, and that the following be substituted therefor:

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

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

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

(iii) In any bonds, debentures, or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument.

It was resolved that, in order to make the uniform *Assignment of Book Debts Act* (Conference Proceedings, 1928, p. 47; Canadian Bar Association Year Book, 1928, p. 287) conform to the *Corporation Securities Registration Act*, clause (a) of section 3 of the former Act be struck out, and that the following be substituted therefor:

(a) Any assignment of book debts, whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the province and contained:

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

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

(iii) In any bonds, debentures, or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument.

APPENDIX H.

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

(As further revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in September, 1931, in substitution for the draft sections appearing in the Conference Proceedings, 1930, p. 96; Canadian Bar Association Year Book, 1930, p. 366.)

JUDICIAL NOTICE.

Interpretation.

1. (1.) 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.

Judicial Notice of Statutes.

- (2.) Judicial notice shall be taken of,—
- (a) All Acts of the Imperial Parliament;
 - (b) All Acts of the Parliament of Canada;
 - (c) All ordinances made by the Governor in Council of the Dominion of Canada;
 - (d) All ordinances made by the Governor in Council, Lieutenant-Governor in Council, or Commissioner in Council of any Province, colony, or territory which, or some portion of which, forms part of the Dominion of Canada, and all Acts and ordinances of the Legislature of, or other legislative body or authority competent to make laws for, any such Province, colony, or territory;
 - (e) All Acts and ordinances of the Legislature of, or other legislative body or authority competent to make laws for, any dominion, empire, commonwealth, state, province, colony, territory, possession, or protectorate of His Majesty.

Application of Section.

(3.) The provisions of this section shall apply in respect of dominions, empires, commonwealths, states, provinces, colonies,

territories, possessions, and protectorates at any time heretofore existing or hereafter constituted, as well as to those now existing, and shall also apply in respect of ordinances and Acts made or enacted before as well as to those made or enacted after the enactment of this section.

PROOF OF STATE DOCUMENTS.

Interpretation.

- 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 kingdom, empire, republic, 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 any Province, colony, or territory which, or some portion of which, forms part of the Dominion of Canada; and “Province,” when used in respect of federal or provincial state documents, shall have a corresponding meaning;
 - (i) “State document” includes any Act or ordinance enacted or made or purporting to have been enacted or made (whether before or after the enactment of this section) by a legislature, and any order, regulation, notice, appointment, warrant, licence,
- c.c.—5a.

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 or ordinance so enacted or made or purporting to have been enacted or made, 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).

Application of Section.

(2.) The definitions in subsection (1) shall apply in respect of dominions, kingdoms, empires, republics, 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.

Proof of Imperial State Documents.

(3.) The existence and the whole or any part of the 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 of the Dominion of Canada;
- (d) By the production of a copy thereof or an extract therefrom purporting to be certified as a true copy or extract 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 or extract by the custodian of the original document or the public records from which the copy or extract purports to be made.

Proof of Federal and Provincial State Documents.

(4.) The existence and the whole or any part of the 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 any 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 any 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 any Province.

Proof of State Documents of a British Possession or Foreign State.

(5.) The existence and the whole or any part of the 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.

Proof of Signature and Official Position Unnecessary.

(6) It shall not be necessary to prove the signature or official position of the person by whom any copy or extract which is tendered in evidence under this section purports to be certified, or to prove that the original document or the public records from which the copy or extract purports to be made were deposited or kept in the custody of the person so certifying; and where a copy or extract which is tendered in evidence under this section purports to be printed by, or for, or under the authority of a legislature or government, or of a King's Printer, government printer, or other official printer, it shall not be necessary to prove the authority, status, or official position of the legislature or government, or of the King's Printer, government printer, or other official printer.

APPENDIX I.

UNIFORM FOREIGN JUDGMENTS ACT.
REDRAFT OF SECTION 3 OF THE DRAFT ACT APPEARING
IN CONFERENCE PROCEEDINGS, 1930, p. 112.

JURISDICTION IN ACTIONS 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 was, at the time of the judgment in the action, a subject or citizen of such country or of a sovereign power of which it forms a part, and, where such country is part of a larger political unit, was domiciled in such country;
- (c) where the defendant, at the time of the judgment in the action, was carrying on business in such country, and such country was a province or territory of Canada;
- (d) 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.

 SUGGESTED REDRAFT OF DRAFT ACT APPEARING IN
CONFERENCE PROCEEDINGS, 1930, P. 111.

(Prepared by Mr. Pineo)

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 British Columbia, enacts as follows:

SHORT TITLE.

1. This Act may be cited as the "Foreign Judgments (Actions) Act."

INTERPRETATION.

- 2.—(1) In this Act, unless the context otherwise requires:

"Action" includes any suit or other civil proceeding; (New.)

"Court of competent jurisdiction" *in relation to a foreign judgment* means a court which had jurisdiction over the subject matter of the action *in which the foreign judgment was obtained, under the provisions of subsections (2) and (3);* (Redrawn.)

"Foreign country" means any country, *other than this province, whether known as a kingdom, republic, commonwealth, state, dominion, province, territory, colony, possession, or protectorate,* (Redrawn.)

"Foreign judgment" means a judgment or order obtained in an action in a court of a foreign country, *whether before or after the passing of this Act, whereby a sum of money is made payable;* (Altered.)

"Original court" in relation to a foreign judgment means the court in which the foreign judgment was obtained. (New.)

RULES AS TO JURISDICTION IN ACTIONS IN PERSONAM.

(2) *For the purposes of this Act, the courts of a foreign country, in an action in personam, shall be deemed to have had jurisdiction in the following cases:*

- (a) where the defendant, at the time of the commencement of the action, was *ordinarily* resident in the foreign country;
- (b) where the defendant, at the time of *the obtaining of the judgment in the action, was a subject of the foreign country and domiciled therein;*
- (c) where the party objecting to the jurisdiction *of the courts of the foreign country* has submitted thereto by becoming a plaintiff in the action or by voluntarily appearing as a defendant in the action without protest, or *where he has expressly or impliedly contracted to submit to the jurisdiction of those courts in respect of the cause of action;*

but those courts shall not be deemed to have acquired jurisdiction from the mere possession by the defendant at the time of the commencement of the action of property locally situate in the foreign

country, or from the presence of the defendant in *the foreign* country at the time when the obligation *or liability* in respect of which the action is brought was incurred in *the foreign* country; and those courts shall be *deemed* to be without jurisdiction to adjudicate upon the title or the right to the possession of real property situate in this Province, or to give redress for any injury in respect of *that* property. (Draft ss. 3, 5, redrawn.)

RULE AS TO JURISDICTION IN ACTIONS IN REM.

(3) *For the purposes of this Act*, the courts of a foreign country, in an action in rem, *shall be deemed* to have jurisdiction to determine the title to any *real or personal property locally situate in the foreign* country. (Draft s. 4, redrawn)

OPERATION OF FOREIGN JUDGMENTS.

3. *Except as provided in the "Reciprocal Enforcement of Judgments Act,"* no foreign judgment *shall have any* direct operation in this Province. (Draft s 6, redrawn)

EFFECT OF FOREIGN JUDGMENTS.

4.—(1) Subject to the other provisions of this Act, a *subsisting* foreign judgment *obtained in a court of competent jurisdiction shall, for the purposes of any action brought thereon in this Province,* be conclusive as to any matter adjudicated upon, and shall not be impeached for any error of fact or law.

(2) A foreign judgment *shall be presumed to be subsisting and to have been obtained in a court of competent jurisdiction* until the contrary is shown. (Draft ss. 7, 8, redrawn)

DEFENCES TO ACTION ON FOREIGN JUDGMENT.

5. Where an action is brought in this Province upon a foreign judgment, it shall be a sufficient defence:

- (a) that the original court was not a court of competent jurisdiction;
- (b) that the defendant being a person who was neither carrying on business nor ordinarily resident within the *territorial* jurisdiction of the original court, did not voluntarily appear *without protest* or otherwise submit during the *action in which the foreign judgment was obtained* to the jurisdiction of *the original* court;

- (c) that the defendant, being a defendant in that *action in which the foreign judgment was obtained*, was not duly served with the process of the original court and did not appear in that action, notwithstanding that he was carrying on business or was ordinarily resident within the *territorial jurisdiction of the original court* or *had expressly or impliedly contracted* to submit to the jurisdiction of the original court;
- (d) that the *foreign judgment* was obtained by fraud;
- (e) that the *foreign judgment* is not a final judgment, *that is to say, a judgment or order which determines in whole or in part a substantive right of a party to an action in which the original court exercised a jurisdiction which was not merely regulative, administrative, or executive*;
- (f) that the *foreign judgment* is not for a definite sum of money;
- (g) that the foreign judgment *is* in respect of a cause of action which for reasons of public policy or for some other similar reason would not have been entertained by the courts of this Province. (Draft s. 9, redrawn.)

STAY OF PROCEEDINGS.

6. In any action brought in this Province upon 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 of *the foreign judgment*, shall be entitled, pending the determination of *the* appeal or proceeding, and upon such terms, if any, as may be deemed proper, to a stay of proceedings; and application for *the* stay may be made at any stage of the action. (Draft s. 10.)

PROCEEDINGS ON ORIGINAL CAUSE OF ACTION.

7. Nothing in this Act shall prevent a judgment creditor or any other person from bringing any action upon the original cause of action in respect of which a *foreign judgment* was obtained. (Draft s. 11, altered)

CONSTRUCTION OF ACT.

8. 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. (Draft s. 12.)

**CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGIS-
LATION IN CANADA.**

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