1933

PROCEEDINGS

OF THE

SIXTEENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

OTTAWA

AUGUST 24TH, 25TH, 26TH, 28TH AND 29TH, 1933

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

Honorary President	Hon. W. J. Major, K.C, Winnipeg, Manitoba.
President	John D. Falconbridge, K.C., Osgoode Hall, Toronto 2, Ontario.
Vice-President	Douglas J. Thom, K.C., Regina, Saskatchewan.
Treasurer	E. René Richard, Sackville, New Brunswick.
Secretary	Sidney E. Smith, Dalhousie Law School, Halifax, Nova Scotia.

Local Secretaries.

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

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

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

Alberta:

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

HENRY G. NOLAN, Lancaster Building, Calgary.

STANLEY H. MCCUAIG, McLeod Building, Edmonton.

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

British Columbia:

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

HENRY G. LAWSON, K.C., 918 Government Street, Victoria.

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

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

Manitoba:

R. MURRAY FISHER, K.C., Deputy Municipal Commissioner, Legislative Buildings, Winnipeg.

A. C. CAMPBELL, K C., 614 Somerset Block, Winnipeg.

J. C. COLLINSON, K.C, Legislative Counsel, Legislative Buildings, Winnipeg.

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

New Brunswick:

E. RENÉ RICHARD, Sackville.

RALPH P. HARTLEY, K.C., Deputy Attorney-General, Fredericton.

JOHN A. CREAGHAN, Newcastle.

(Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5).

Nova Scotia:

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

SIDNEY E. SMITH, Dean, Dalhousie Law School, Halifax.

(Commissioners appointed under the authority of the Statutes of Nova Scotia, 1919, c. 25).

Ontario:

JOHN D. FALCONBRIDGE, K.C., Dean, Osgoode Hall Law School, Toronto 2.

CHARLES P. MCTAGUE, K.C., Security Building, Windsor.

I. A. HUMPHRIES, K.C., Parliament Buildings, Toronto.

R LEIGHTON FOSTER, K.C., Parliament Buildings, Toronto.

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

Prince Edward Island:

W. E. BENTLEY, K.C., Charlottetown.

Quebec:

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

Saskatchewan:

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. G. McG. Sloan, K.C.
Attorney-General of Manitoba: Hon. W. J. Major, K.C.
Attorney-General of New Brunswick: Hon. W. H. Harrison, K.C.
Attorney-General of Nova Scotia: Hon. J. H. MacQuarrie
Attorney-General of Ontario: Hon. W. H. Price, K.C.
Attorney-General of Prince Edward Island: Hon. H. F. MacPhee, K.C.
Attorney-General of Quebec: Hon. L. A. Taschereau, K.C.
Attorney-General of Saskatchewan: Hon. M. A. MacPherson, K.C.

PREFACE.

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

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

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

Subsequent annual meetings have been held as follows:—

1919. August 26-29, Winnipeg.
1920. August 30-31, September 1-3, Ottawa.
1921. September 2-3, 5-8, Ottawa.
1922. August 11-12, 14-16, Vancouver.
1923. August 30-31, September 1, 3-5, Montreal.
1924. July 2-5, Quebec.

1925. August 21-22, 24-25, Winnipeg.
1926. August 27-28, 30-31, St. John.
1927. August 19-20, 22-23, Toronto.
1928. August 23-25, 27-28, Regina.
1929. August 30-31, September 2-4, Quebec.
1930. August 11-14, Toronto.
1931. August 27-29, 31, September 1, Murray Bay.
1932. August 25-27, 29, Calgary.
1933. August 24-26, 28-29, Ottawa.

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.

In 1932 the Conference revised and approved, provisionally, a model uniform Foreign Judgments Act, and subsequently the President referred it again to a committee for further consideration and report to the next meeting. A draft Partnerships Registration Act was considered and referred to a committee for report to the next meeting. Certain amendments to the uniform Conditional Sales Act and the uniform Limitation of Actions Act were discussed, revised and approved.

In 1933 the Conference revised and finally approved a model uniform Foreign Judgments Act. A revised draft Partnerships Registration Act was considered and referred to a committee for further revision and report. The Conference also considered certain amendments to the uniform Assignment of Book Debts Act and the uniform Conditional Sales Act and appointed committees to consider further these matters and to report to the next meeting of the Conference.

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), New Brunswick (1927), and Prince Edward Island (1933).

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, 1930 and 1933): 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), Prince Edward Island (1933), 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 and 1932): 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), Prince Edward Island (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 British Columbia (1932), Manitoba (1933), and New Brunswick (1931).

1931. Limitation of Actions Act (amended, 1932): adopted in Manitoba (1932), and Saskatchewan (1932).

1931. Corporation Securities Registration Act: adopted in Nova Scotia (1933), Ontario (1932), and Saskatchewan (1932).

1933. Foreign Judgments Act.

S. E. S.

PROCEEDINGS.

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

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

Alberta:

MESSRS SMITH and MCCUAIG.

British Columbia:

MR. LAWSON.

Manitoba:

HON. W. J. MAJOR, K.C., Attorney-General of Manitoba, and MR. FISHER.

New Brunswick:

HON. W. H. HARRISON, K.C., Attorney-General of New Brunswick, and MR. HARTLEY.

Nova Scotia:

MR. SMITH.

Ontario:

MESSRS. MCTAGUE, HUMPHRIES and FOSTER.

Saskatchewan:

MR. THOM.

FIRST DAY.

Thursday, 24th August, 1933.

The Conference assembled at 10.00 a.m. at the Chateau Laurier, Ottawa, Mr. Thom, the Vice-President, in the chair.

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

The Vice-President, Mr. Thom, read an *Address*, and the Conference directed that it should be printed in the proceedings.

(*Appendix A.*)

Mr. Hartley, on behalf of the Treasurer, presented the *Treasurer's Report,* and it was referred to Messrs. McTague and McCuaig for audit and report.

Messrs. Fisher, Hartley, R. Andrew Smith and McTague were appointed a *Nomination Committee* to submit recommendations as to the election of officers of the Conference for the ensuing year.

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

Oral reports of the work of the various committees of the Conference were received.

A letter from the Vice-President to the Secretary relating to the uniform *Life Insurance Act* (Conference Proceedings, 1932, p. 13; Canadian Bar Association Year Book, 1932, p. 181) and the uniform *Fire Insurance Policy Act* was read.

(*Appendix B.*)

Mr. Lawson presented a memorandum prepared by Mr. Pineo respecting the uniform *Life Insurance Act* and the uniform *Fire Insurance Policy Act.*

(*Appendix B.*)

Mr. Thom informed the Conference that no request from any Attorney-General of the provinces for uniform legislation with respect to *automobile insurance* (Conference Proceedings, 1932, pp. 19, 20; Canadian Bar Association Year Book, 1932, pp 187-8) had been received.

After a full discussion of the work and place of the Conference in drafting uniform legislation respecting *insurance,* the following resolution was adopted:

Whereas the Conference has not undertaken the consideration of legislation respecting insurance since 1924 when uniform legislation respecting fire insurance contracts was recommended by the Conference,

And Whereas, during the period since 1924, the Association of Superintendents of Insurance of the Provinces of Canada has met in annual conferences, and, as a result of its work, much has been accomplished to promote and maintain uniformity in insurance legislation and regulation throughout the provinces of Canada,

And Whereas, proposed amendments to the uniform *Life Insurance Act* and the uniform *Fire Insurance Policy Act* have

been under consideration for three years by the Association of Superintendents of Insurance of the Provinces of Canada with general satisfaction,

And Whereas, it is undesirable to duplicate the splendid work already undertaken by a special agency such as the Association of Superintendents of Insurance of the Provinces of Canada;

Now be it resolved that the Conference should not hereafter consider legislation respecting *insurance* unless specially requested to do so by at least three of the Attorneys-General of the provinces of Canada, or by the Canadian Bar Association, or by the Association of Superintendents of Insurance of the Provinces of Canada. The Conference also desires to express the confident hope that the Association of Superintendents of Insurance of the Provinces of Canada will meet with continual success in carrying on the work of promoting uniformity in insurance legislation in the several provinces of Canada.

In view of the fact that no communication from the Committee of the Canadian Bar Association on Comparative Provincial Legislation and Law Reform relating to *contributory negligence* had been received by the Conference since the last meeting, it was resolved that the President be authorized to take such steps before the next meeting of the Conference as he deems necessary to further consideration by the Conference of this topic.

[At the 1933 meeting of the Canadian Bar Association, held in Ottawa after the 1933 meeting of the Conference, the report of the Committee on Comparative Provincial Legislation and Law Reform relating to *contributory negligence* was adopted and the draft *Contributory Negligence Act* prepared by the Committee was forwarded to the Conference for consideration. The report of the Committee is printed in these proceedings as Appendix C.]

(*Appendix C.*)

Mr. Thom presented a report respecting *company law* (Conference Proceedings, 1932, pp. 19, 20; Canadian Bar Association Year Book, 1932, pp. 187-8).

(*Appendix D.*)

It was resolved that the Conference express its willingness to undertake the consideration of a uniform Act dealing with *company law* upon receiving a request to do so from the Canadian Bar Association, or from at least three Attorneys-General of the provinces, and the Conference would respectfully suggest that, in the event of the receipt by the Conference of such a request, it should be made pos-

sible for the Conference to consult the departmental officers of each of the provinces who are responsible for the administration of company law.

Mr. Sidney Smith presented a report relating to the uniform *Legitimation Act* (Conference Proceedings, 1932, pp. 19, 20; Canadian Bar Association Year Book, 1932, pp. 187-8).

(*Appendix E.*)

At 12.30 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled and resumed discussion of the report respecting the uniform *Legitimation Act.*

It was resolved that the report be adopted and that the uniform *Legitimation Act* be not revised in view of the English legislation of 1926.

Mr. R. Andrew Smith presented a report relating to a draft *Landlord and Tenant Act* (Conference Proceedings, 1932, p. 20; Canadian Bar Association Year Book, 1932, p. 188) and it was resolved that the report be received.

(*Appendix F.*)

Mr. Sidney Smith presented a report relating to the *Factors Acts* (Conference Proceedings, 1932, pp. 20-1; Canadian Bar Association Year Book, 1932, pp. 188-9).

(*Appendix G.*)

It was resolved that the report be adopted and that the Conference do not consider the drafting of a new uniform *Factors Act.*

Mr. McTague, on behalf of the Ontario and Manitoba Commissioners, presented a report relating to the uniform *Assignment of Book Debts Act* and the uniform *Corporation Securities Registration Act* (Conference Proceedings, 1932, p. 14; Canadian Bar Association Year Book, 1932, p. 182).

(*Appendix H.*)

A memorandum relating to the uniform *Assignment of Book Debts Act* and the uniform *Corporation Securities Registration Act* prepared by Mr. A. W. Rogers, K.C., Assistant-Secretary of the Canadian Bankers' Association, was also read.

(*Appendix H.*)

It was decided to invite Mr. Rogers to attend the present meeting of the Conference and to discuss his memorandum. Consideration of the uniform *Assignment of Book Debts Act* and the uniform

Corporation Securities Registration Act was deferred until the arrival of Mr. Rogers.

At 5.00 p.m. the Conference adjourned.

At 8.30 p.m. the Conference reassembled.

Mr. Thom presented a report relating to the draft *Foreign Judgments Act* (Conference Proceedings, 1932, p. 16; Canadian Bar Association Year Book, 1932, p. 184), and the Conference proceeded to consider it paragraph by paragraph.

(*Appendix I.*)

At 10.30 p.m. the Conference adjourned.

SECOND DAY.

Friday, 25th August, 1933.

At 9.30 a m. the Conference reassembled and resumed discussion of the report relating to the draft *Foreign Judgments Act.*

The following resolution was adopted:

Resolved that the draft *Foreign Judgments Act,* as revised at the present (1933) meeting of the Conference, be approved by the Conference and be recommended to the Legislatures of the several provinces of Canada for enactment.

(*Appendix I.*)

After full discussion of the problem of informing and interesting the Attorneys-General of the several provinces with respect to *new model uniform acts,* the following resolution was adopted:

Resolved that the commissioners, who are responsible for the final drafting of any Act or amendments thereto which has or have been approved by the Conference, shall prepare and send to the Attorneys-General of the several provinces and the other commissioners the final draft and also a memorandum setting forth the general purposes of the draft Act or amendments and also notes explaining the various sections of the draft Act or amendments and

Further resolved that the memorandum and explanatory notes be not printed in the proceedings of the Conference.

Mr. Lawson, on behalf of the British Columbia Commissioners, presented a report relating to certain proposed amendments to the uniform *Conditional Sales Act* (Conference Proceedings, 1932, pp

18-9; Canadian Bar Association Year Book, 1932, pp. 186-7) and he read a letter respecting section 12 of the uniform *Conditional Sales Act* written by Mr. Pineo to Messrs. McLellan and White of Vancouver.

(*Appendix J.*)

At 12.30 p m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled and resumed discussion of the amendments to the uniform *Conditional Sales Act.*

At 4.00 p.m. the Conference adjourned.

At 8.30 p.m. the Conference reassembled and resumed discussion of the amendments to the uniform *Conditional Sales Act.*

At 10.30 p.m. the Conference adjourned.

THIRD DAY.

Saturday, 26th August, 1933.

At 9.30 a.m. the Conference reassembled and considered with Mr. Rogers, Assistant-Secretary of the Canadian Bankers' Association, amendments to the uniform *Assignment of Book Debts Act.*

After full discussion of the registration of assignments of book debts and paragraph 1 of the report of the Ontario and Manitoba Commissioners relating to the uniform Assignment of Book Debts Act and the uniform Corporation Securities Registration Act (*Appendix H.*) the following resolution was adopted:

Resolved that upon section 63(2) of the Bankruptcy Act being amended by striking out the same and by substituting therefor a provision substantially to the following effect:

> This section shall not apply in the case of any such assignment which is registered pursuant to any statute of any province providing for the registration thereof

the Conference recommends the amendment of the uniform *Assignment of Book Debts Act* to provide for single registration of assignments of book debts in each province and

Further resolved that the matter be referred to the Ontario Commissioners to submit to the next meeting of the Conference a draft section 5(1) of the uniform *Assignment of Book Debts Act* in the

light of any amendment to section 63(2) of the Bankruptcy Act which may be made at the next session of the Parliament of Canada.

After a discussion of paragraph 2 of the report of the Ontario and Manitoba Commissioners on the uniform Assignment of Book Debts Act and the uniform Corporation Securities Registration Act (*Appendix H.*) and a consideration of the method of effecting a discharge of a registered assignment, it was resolved that section 6(1) of the uniform *Assignment of Book Debts Act* be not amended.

After consideration of paragraph 3 of the report of the Ontario and Manitoba Commissioners relating to the uniform Assignment of Book Debts Act and the uniform Corporation Securities Registration Act (*Appendix H.*) it was resolved that section 3(3) of the uniform *Corporation Securities Registration Act* be not amended.

At 12.30 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled and resumed discussion of the amendments to the uniform *Conditional Sales Act.*

The following resolution was adopted:

Resolved that the draft section 12 of the uniform *Conditional Sales Act,* submitted by the British Columbia Commissioners to the present (1933) meeting of the Conference, be referred to the British Columbia Commissioners to revise it in the light of the discussion at the present meeting of the Conference, and further to report to the next meeting of the Conference, and that the revised draft of the section be printed for distribution to the commissioners and other interested persons and for inclusion in the proceedings of the present meeting of the Conference.

(*Appendix J.*)

It was resolved that the following amendments to the uniform *Conditional Sales Act* (Conference Proceedings, 1922, p. 40; Canadian Bar Association Year Book, 1922, p. 346) be approved:

Section 3, subsection (2), line 6—Strike out the words "a true copy of such writing," and substitute the words "the writing or a true copy thereof."

Section 3, subsection (3), line 2—Strike out the words "such copy," and substitute the words "an original of the writing or a true copy thereof."

Section 3, subsection (4), line 2—Strike out the words "a true copy of such writing," and substitute the words "an original of the writing or a true copy thereof."

Section 3, subsection (5), line 3—Strike out the words "such copy," and substitute the words "the writing or a true copy thereof."

Section 11, subsection (3)—Strike out the words "the copy of" in line 2, and insert after the word "agreement" in line 3 the words "or copy thereof." Strike out the words "such copy" in line 4, and substitute the words "the writing or copy so filed."

Mr. Hartley, on behalf of the New Brunswick Commissioners, presented a revised draft *Partnerships Registration Act* (Conference Proceedings, 1932, pp. 18, 43; Canadian Bar Association Year Book, 1932, pp. 186, 211). The Conference proceeded to discuss the draft Act section by section

At 4.00 p.m. the Conference adjourned.

FOURTH DAY.

Monday, 28th August, 1933.

At 9.30 a.m. the Conference reassembled and resumed discussion of the *Partnerships Registration Act.*

At 12.30 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled and resumed discussion of the *Partnerships Registration Act.*

At 4.00 p.m. the Conference adjourned.

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

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

REPORT OF THE TREASURER FOR THE YEAR ENDING JULY 31ST, 1933.

1932	
Aug. 1—Balance on hand	$1,079.69
Aug. 6—Grant—Province of British Columbia	200.00
Aug. 16—Grant—Province of Manitoba	100.00
Aug. 26—Grant—Province of Alberta	200.00
Oct. 20—Grant—Province of Ontario	200.00
Dec. 31—Bank Interest	21.02
1933	
June 30—Bank Interest	23.18
	$1,823.89

1932		
Aug. 16—Cheque to S. E. Smith, Secretary, for secretarial expenses	$15.00	
1933		
March 31—Cheque to Carswell Company Binding Proceedings	17.49	
March 31—Cheque to Carswell Company	185.39	
May 30—Cheque to Carswell Company: 2,700 copies Report of Conference for C B.A. Year Book	239.24	
July 27—Cheque to S. E. Smith, Secretary, for secretarial expenses	17.79	
		474.91
		$1,348 98

Respectfully submitted,

E. RENÉ RICHARD, Treasurer.

August 16, 1933.

Audited and found correct.

S. H. MCCUAIG,
C. P. MCTAGUE,
Auditors

August 28, 1933.

Mr. Fisher, 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:

Honorary President—Hon. W. J. Major, K.C., Winnipeg.
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* should be held five days (exclusive of Sunday) before the next meeting of the Canadian Bar Association, and at the same place.

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.

The Conference expressed its grateful appreciation of the hospitality of the Ontario Commissioners, of members of the Ottawa Bar and of Mr. Harry D. Wright of Ottawa.

It was resolved that the members of the Conference express to Mr. R. W. Shannon, K.C., their deep appreciation of the services which he has rendered to the cause of promoting uniformity of legislation since 1919 and their hope that for Mrs. Shannon and for him many years of usefulness and enjoyment are yet to be.

It was resolved that the draft *Landlord and Tenant Act,* submitted to the present (1933) meeting of the Conference by Mr. R. Andrew Smith, be referred to the Alberta Commissioners for the preparation of explanatory notes and for report to the next meeting of the Conference.

(*Appendix F.*)

It was resolved that the Ontario Commissioners be requested to report to the next meeting of the Conference in respect of *collection agencies* and the desirability of a consideration by the Conference of this subject.

It was resolved that the Manitoba Commissioners be requested to consider the *Interpretation Acts* of the several provinces and to report to the next meeting of the Conference with respect to the extent of the uniformity of these Acts and the feasibility of drafting a uniform Interpretation Act.

It was resolved that the Local Secretary for each province be requested to report to the Secretary of the Conference with respect to the number and titles of the *uniform Acts adopted* by the Legislature of his province and also the number, nature and source of amendments to these uniform Acts.

At 11.50 p.m. the Conference adjourned.

FIFTH DAY.

Tuesday, 29th August, 1933.

At 10.00 a.m. the Conference reassembled and resumed discussion of the *Partnerships Registration Act.*

The following resolution was adopted:

It was resolved that the draft *Partnerships Registration Act* be again referred to the New Brunswick Commissioners to revise the draft Act submitted by them at the present (1933) meeting in accordance with the instructions of the Conference and in the light of the discussion at the present meeting, and to send the revised draft to the Secretary for inclusion in the proceedings of the present meeting. (*Appendix K.*)

It was resolved that the draft *Partnerships Registration Act,* as revised by the New Brunswick Commissioners, be referred to the Ontario Commissioners for further consideration and that they be requested to submit to the next meeting of the Conference a report relating to the revised draft which report shall include a particular reference to the applicability of the revised draft to *limited partnerships.*

At 11.00 a.m. the Conference adjourned.

APPENDICES

A. Vice-President's Address.
B. Letter and memorandum relating to insurance legislation.
C. Report from Canadian Bar Association relating to contributory negligence and draft Contributory Negligence Act.
D. Report respecting company law.
E. Report respecting uniform Legitimation Act.
F. Report with respect to landlord and tenant law and draft Landlord and Tenant Act.
G. Report respecting Factors Acts.
H. Report and memorandum respecting uniform Assignment of Book Debts Act and uniform Corporation Securities Registration Act.
I. Report with respect to draft Foreign Judgments Act and Text of the revised uniform Foreign Judgments Act.
J. Report and letter respecting amendments to the uniform Conditional Sales Act and Text of revised draft of section 12.
K. Revised draft Partnerships Registration Act

APPENDIX A.

VICE-PRESIDENT'S ADDRESS.

True to precedent, I find on the agenda for the Conference an order of business, "Vice-Presidential Address."

In the absence of our President, Mr. John D. Falconbridge, K.C, Dean of the Law School, Osgoode Hall, we might very well have dispensed with this order of business. We are very fortunate in having a man of the recognized standing and ability of Mr. Falconbridge to assume the leadership of this Conference. Those of us who have worked with him for some years have come to value very highly his sound legal judgment and learning, while as a fellow-worker, it has been a pleasure for us all to be associated with him. We hope that he and his good wife have had a pleasant summer in Europe but we trust that he will not soon again leave us without his guiding hand

Speaking of Mr. Falconbridge, with him absent and with Mr. Pineo of British Columbia also absent, it means that for the first time we meet without a single member of the valiant band who made up the first meeting of Commissioners in 1918. It behooves each one of us to give attention all the more diligently to the work of the Conference and endeavour to keep it up to the high standard set by the earlier members of this body.

I welcome among us those who are attending for the first time. If any of you have not already done so, I would strongly urge that you read carefully the presidential address of Mr. Falconbridge at page 22 of the proceedings of 1932 and the preface at page 6, a perusal of which will bring you up to date with the work of the Conference.

The present is a time of questioning and uncertainty, and you will see traces of that in Mr. Falconbridge's remarks last year, particularly with reference to the work which we might take up in the future. As a matter of fact, when it came to the end of our session, we opened up, I think, avenues which will keep us busy for some time, but as we meet once a year only, it is not too often, in addition to the detailed work which we do, to take a general view of the situation You will notice last year that at the close of the meeting in the case of two matters, company law and automobile legislation, it was resolved that we should take these up if we receive requests from any Attorneys-General of the Provinces. In these two particular cases, for reasons which can easily be explained and understood, this

was certainly the wise course to take, but the Conference has not considered its function to be merely that of a drafting body to draft proposed uniform laws when requested. As set out in our Constitution, the purpose of the Conference is "to promote" uniformity. A successful promoter does not sit around merely passively, waiting to be called on, and we have acted on that principle.

As an outline of the class of Acts which have engaged the attention of the Conference, I cannot do better than quote from the very highest authority, namely the presidential address of the late eminent founder of the Canadian Bar Association and of this body, Sir James Aikins, K.C., taken from the proceedings of 1921, where he said:

> "It is not the purpose of the Canadian Bar Association and the Conference of Commissioners to provide a uniform Act on any such subject unless to embody existing laws in all or some of the provinces which have been tested by experience, nor is it the intention of the Conference to trespass upon the territory of local legislatures by untried Acts on new subjects or entirely new Acts on old subjects, nor should they permit themselves to become a mere drafting bureau. Nor do the Association and the Conference propose to take up every worthy subject for a draft uniform Act, but to take up only those commercial, business and industrial subjects in which uniformity of law is an essential and desirable thing, and upon the legal principles of which there is an approximation in the provinces, and subjects which provincial governments may submit for consideration."

But in addition to the drafting of the Acts, there is another piece of work which would certainly be included in the promotion of uniformity of legislation, that is to say, getting them adopted. Again referring to the presidential address of last year, and also even more fully to the summary in the preface of last year's report, it would appear that we have had good success in that respect, but if instead of setting out a tabulation of the provinces in which the different Acts have been adopted, we were to set out the Acts and the number of provinces in which they have not been adopted, it would be observed that there is still plenty of work to be done in this respect

Again I feel that, true to my legal training, I should quote authority for my advocacy of the line of action I am suggesting, and again I find it in the words of the late Sir James Aikins. From his address in the proceedings of 1923 I quote the following:

> "In forming the model uniform Acts we should have ever in our thought what will be best for the people at large. Efforts to make modifications of the model uniform Acts or opposition to

them may be expected. . . . But that or the apathy of some governments should not deter the commissioners or the Conference from proceeding with the work they believe will be of service to the people, and pressing their activities to practical results, that is, to the enactment of such uniform provisions."

from his address in the proceedings of 1925 the following:

"Some of the local governments seem to be too engrossed in the insistent demands of constituencies and in political strategies to give the work of the commissioners the consideration it merits and which must be given if it is to continue in strength, for it is a work which has an immediate benefit and an ever increasing usefulness."

and again from his address contained in the proceedings of 1927 the following, which I urge particularly upon your attention:

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

"Unfortunately, this Conference has not alone the power to do this, and it may well call upon the Canadian Bar Association to provide for the appointment of special committees, representing the Association in each province, for the purpose of co-operating with the members of this Conference in urging upon the several Governments the adoption of the model Acts"

What I have particularly in mind in giving you these quotations is to suggest that we should complete the work which we do here in our sessions by actively promoting the enactment of our output by the provincial legislatures. And I think the suggestion to call in the Canadian Bar Association in this effort is a wise one. It must not be forgotten that in the early stages the promotion of uniformity of legislation was one of the primary and outstanding objects of the Canadian Bar Association itself. They of course have never forgotten this object, but with the establishment of our Conference, possibly and naturally, they may wait for stimulation from us toward concrete action along the line I am suggesting

In 1927 Sir James made a further suggestion which I think very valuable, namely, that it was desirable that the Department of the Attorney-General in each province should have a representative official of that Department active in the Conference. I think representations should be made to the provinces to the effect that the legislative draftsman, by whatever name he may be called, should be one of the representatives from each province There should be

the legislative draftsmen and I think in addition at least one lawyer in the active hurly-burly of everyday practice from each province.

I find, however, that I am going entirely beyond the bounds of what a Vice-President should say in his opening remarks, and with the hope that this year's Conference may prove one of real value, I commend the programme of work which we have in hand to your careful consideration

APPENDIX B.

INSURANCE LEGISLATION.

Regina, Sask,
August 1, 1933.

Sidney E. Smith, Esq.,
Secretary, Conference of Commissioners
on Uniformity of Legislation in Canada,
Ottawa, Ont.

Dear Dean Smith:

I observe from the proceedings of 1932, page 13, that the matter of certain proposed amendments to the uniform Life Insurance Act which were mentioned in 1931 and again in 1932 may come up on the agenda this year.

In a letter to me dated the 15th of May our President, Mr Falconbridge, mentioned the matter, saying that since our 1932 meeting he had heard nothing whatever about it and he assumed that no one was asking us to consider amendments this year.

I think, however, the time is opportune to take one further step, and while I would prefer to suggest it while Mr. Falconbridge is present, I think that in view of our meetings being annual only, it should come up this year.

What I am going to suggest is that our Conference now place formally on the record what is really the actual situation and hand over to the Association of Superintendents of Insurance of the Provinces of Canada the uniform Life Insurance Act and uniform Fire Insurance Policy Act.

These two Acts stand out as perhaps the two most important accomplishments of the Conference. Such credit as is due us for their production cannot be taken away. There is no reason, however, for us to retain any hold on them when a new body has arisen which is probably better adapted for the purpose. I refer to the Association of Superintendents of Insurance of the Provinces of Canada.

When these Acts were put through, this Association represented only a limited number of Provinces. It now represents every Province of Canada. It has regular annual meetings and a perusal of their printed annual reports will show the comprehensive nature of their work and the care and attention given to it. One of the declared objects of that Association, as I observe by the Foreword of

its present President in its 1932 Report, is to promote, among other things, uniformity of legislation.

The primary object of our Conference is to promote uniformity of legislation. The larger part of our work has been by way of drafting the Acts themselves, but where we have started a good work and where in any specific line, such as insurance, there has arisen a competent body dealing with that particular matter, I think we should give it our blessing and tell it that we are looking to it to carry on the good work in its particular line.

Yours truly,

D. J. THOM.

MEMORANDUM RELATING TO THE UNIFORM LIFE INSURANCE ACT AND THE UNIFORM FIRE INSURANCE POLICY ACT.

I have read the correspondence you submitted relative to the proper body to deal with proposed amendments to the Uniform Life Insurance Act. Personally, I contributed so little to the drafting of this uniform Act that I do not feel justified in saying very much from the standpoint of the Conference of Commissioners. However, I probably did as much as some others who were members at that time. Mr. Falconbridge, Mr. Pitblado and one or two others, on the other hand, did much valuable work and gave freely of their ability, and if they hold any definite views in this matter I would not feel like going counter to them.

At the same time, I do feel that this Act is in quite a different position from the majority of the uniform Acts prepared by the Conference of Commissioners. Without minimizing the work done by our Conference, I have always thought that the final success was due in no small degree to the spade-work done by Mr. Gray and Mr. Sims, who prepared the first draft with its valuable analytical references to the existing legislation, and to the subsequent interest taken in the matter by these gentlemen as well as yourself and other Superintendents of Insurance. Further, the subject of insurance, being so well understood from an administrative standpoint by the Provincial Superintendents, it would seem to me not only quite safe as well as eminently fitting that the matter of amendments from time to time be left entirely to the Superintendent's Conference.

In expressing my personal views in this way, I would not wish to ɔe understood as advocating the adoption of a policy of exclusiveness ɔn the part of the Superintendents' Conference. Continuing success n securing the uniform adoption of their legislation will I think be ound to depend to some extent on their attitude not only towards he Conference specially charged with the matter of securing uniformty, but also towards the Provincial departments responsible locally or the preparation of legislation. It would probably be the part ɔf wisdom to submit for consideration and comment any vitally mportant amendment of a uniform Act dealing with insurance, and nuch more so in the case of a new uniform Act involving new prinɪples. I have in mind in this connection the present attempt (apparntly to be successful) to press upon the several Provinces the adopion of a new Automobile Insurance Act, not only without previous ubmission, but with an evident unwillingness (on the ground of ıniformity) to adopt any suggestion as to alteration even of defecive wording. In short, there is something to be said in favour of he rule adopted by the Conference of Commissioners not to recomnend to the Legislatures for adoption any draft uniform Act which ıad not been before at least two annual sessions of the Conference.

A. V. PINEO

0th January, 1933

APPENDIX C.

THE CONTRIBUTORY NEGLIGENCE ACT.

REPORT OF COMMITTEE ON COMPARATIVE PROVINCIAL LEGISLATION AND LAW REFORM.

The report of this Committee made last year is found on page 152 and the following pages of the proceedings of The Canadian Bar Association, volume 17, 1932.

There was an interesting discussion at a round-table meeting held prior to the report being rendered, but no decisions were made there, or at the meeting, the whole question being stood over for further consideration.

In the 1932 report, the Committee expressed the opinion that there should be protection against a finding of sole liability based on ultimate negligence and your Committee has not altered this view, although that opinion is by no means unanimous. The problem before the Committee was, therefore, to frame a statute that would in addition to providing for contribution between joint tort feasors, do away with the doctrine of ultimate negligence. A great many who studied this question maintain that a finding of ultimate negligence excludes a finding of contributory negligence on the part of any other person or party. In other words, they hold that if one party is guilty of ultimate negligence, no other negligence could have contributed to the damage suffered. If this opinion is correct, it would appear that no relief can be given by statute to a person guilty of ultimate negligence The Committee, however, is working on the premise that there can be both ultimate negligence and contributory negligence and having accepted this theory, they commenced operations from the revision of the Ontario Statute suggested in the 1932 report. The scope of that Act was not limited. After some consideration the Committee felt that for the present a uniform Act should be limited to actions for damages arising out of the use or operation of vehicles. This made necessary a section limiting the scope and also a definition of "vehicle."

After some revision from the 1932 suggestions an Act was drafted and a copy sent to nearly one hundred members of the profession in all parts of Canada, other than the Province of Quebec. While it was disappointing not to receive more comments the Committee was fortunate in getting very useful criticisms from most of the Provinces. A copy of this draft appears as Appendix "A" to this report.

In this draft as well as in the Ontario Act and most of the previous drafts the words "fault or neglect" or "fault and negligence" were used. The use of the word "fault" has been criticized and it is now the opinion of your Committee that this does not clarify and might cause some confusion. The definition of "vehicle" has been criticized as being too broad, but this does not appear to be a serious defect.

All Acts in force and drafts under consideration have provided that the Court should apportion the damage in proportion to the degree of negligence. It is submitted that the duty of the Court is to apportion the damage in proportion to the extent to which the negligence of the respective parties contributed toward the damage. After adopting this view the Committee made the necessary changes throughout the Act and at the same time changed the phrasing of sections 4 and 5 to make them uniform. These changes eliminated the necessity for section 8.

After consideration it seemed advisable to change the wording of the section dealing with ultimate negligence and this was redrafted to read as follows:

> "A finding that one or more of the parties in an action might, by the exercise of care, have avoided the consequences of the negligence of another party or of other parties shall, after the passing of this Act be material only in fixing the respective contributions of the persons found negligent."

The draft Act submitted as Appendix "B" to this report is offered by the Committee as being an Act suitable for the purpose intended and your Committee recommends that it be forwarded to the Commissioners on Uniformity of Legislation.

A.—THE CONTRIBUTORY NEGLIGENCE ACT.

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

2. In this Act "action" shall include counter-claim.

"Plaintiff" shall include a Defendant who counter-claims and "Defendant" shall include a Plaintiff against whom a counter-claim is brought.

"Fault" shall mean and include any act or omission capable of being negligence irrespective of whether or not in any particular case, the act or omission be the ultimate cause of the injuries or damages.

"Vehicle" shall mean and include every device in, upon or by which any person or property may be conveyed upon a highway or a railway.

3. This Act shall apply to all actions for damages arising out of the use or operation of vehicles (and for the purposes of this Act a vehicle parked on a highway or railway shall be considered in use or operation).

4. Where damages have been contributed to or caused by the fault or negligence of two or more persons, the Court shall determine the degree in which each of said persons is at fault or negligent, and where two or more persons are found liable, they shall be jointly and severally liable to the persons suffering the loss or damage for such fault and negligence, but as between themselves in the absence of any contract express or implied, each shall be liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent.

5. Where by the fault of two or more persons damage is caused to one or more of them, the liability to bear, contribute to or pay the damage shall be in proportion to the degree in which each person was at fault.

6. If having regard to all the circumstances of the case it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

7. Where a party is found negligent, he shall be liable to bear, contribute to or pay a share of the damages, notwithstanding that a finding of ultimate negligence is made against some other party.

8. Nothing in this Act shall operate so as to render any person liable for any loss or damage to which his fault has not contributed.

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

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

NOTE:—There should be a note referring to the King's Bench Rules in regard to costs and the Costs Rule should be amended providing that in actions coming under The Contributory Negligence Act, whether a money judgment is given in favour of the plaintiff or the defendant, or neither, the Court may award costs to the plaintiff or to the defendant, or may apportion the costs as it deems equitable.

B.—THE CONTRIBUTORY NEGLIGENCE ACT.

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

2. In this Act "action" shall include counter-claim.

"Plaintiff" shall include a Defendant who counter-claims and "Defendant" shall include a Plaintiff against whom a counter-claim is brought.

"Vehicle" shall mean and include every device in, upon or by which any person or property may be conveyed upon a highway or a railway.

3. This Act shall apply to all actions for damages arising out of the use or operation of vehicles (and for the purposes of this Act a vehicle parked on a highway or railway shall be considered in use or operation).

4. Where by the negligence of two or more persons damage is caused to some other person or persons, the Court shall determine the extent to which the negligence of each of said persons contributed to, or caused such damage and they shall be jointly and severally liable to the person or persons suffering such damage, but as between themselves in the absence of any contract express or implied, each shall be liable to make contribution to and indemnify the other or others to the extent to which it is determined that the negligence of each of them contributed to or caused the damage.

5. Where by the negligence of two or more persons damage is caused to one or more of them, the Court shall determine the extent to which the negligence of each of said persons contributed to, or caused such damage and the liability to bear, contribute to or make good the damage shall be in proportion to the extent to which the negligence of each person contributed to or caused such damage.

6. If having regard to all the circumstances of the case, it is not possible to establish the extent to which the negligence of the respective parties contributed to the damage, the liability shall be apportioned equally.

7. The finding that one or more of the parties in an action might, by the exercise of care, have avoided the consequences of the negligence of another party, or of other parties, shall, after the passing of this Act be material only in fixing the respective contributions of the persons found negligent.

8. Whensoever it appears that the negligence of any person not a party to an action may have caused or contributed to the damage, such person may be added as a party defendant upon such terms as the Court may deem just.

9. In any action tried with a jury the extent to which the negligence of the respective parties contributed to or caused the damage shall be a question of fact for the jury.

NOTE:—There should be a note referring to the King's Bench Rules in regard to costs and the Costs Rule should be amended providing that in actions coming under The Contributory Negligence Act, whether a money judgment is given in favour of the plaintiff or the defendant, or neither, the Court may award costs to the plaintiff or to the defendant, or may apportion the costs as it deems equitable.

APPENDIX D.

MEMORANDUM RESPECTING COMPANY LAW

At the closing session of the 1932 Conference in Calgary it was resolved (Proceedings 1932, pages 19 and 20), that Company Law should be considered by the Conference if a request for uniform legislation with respect thereto was received from at least three Attorneys-General of the Provinces.

If such request was received, it was recommended that the President be authorized to take such steps before the next meeting of the Conference as he deems necessary to further consideration by the Conference of the subject-matter of the request.

There were present in Calgary at the time the Attorneys-General of the Provinces of Alberta, Saskatchewan, Manitoba and Nova Scotia. Before the conclusion of the session of the Canadian Bar Association, Mr Lymburn, Attorney-General of Alberta, intimated to me, and I passed on the word to Mr. Falconbridge, that he had mentioned the matter to the other Attorneys-General present and that we might "make a start," to use Mr. Lymburn's phraseology.

Not so very long afterwards, that is to say in December, an Inter-Provincial Conference of Premiers and Attorneys-General was held in Ottawa and it appeared from the newspaper reports that steps had been taken toward uniform company legislation not only between the Provinces but between the Provinces and the Dominion.

As a result, Mr. Falconbridge was of opinion that we should for the present merely mark time

I have discussed the matter recently with my own Attorney-General and I would gather that, in actual fact, the progress toward uniformity as a result of the December Conference has not as yet been very substantial. It is possible that a more or less official commission may be formed to probe further the matter of uniformity in company law This would be highly desirable. But in any event, till specifically called on, I feel that our Conference of Commissioners should not do anything further, and so recommend.

D. J. THOM.

1st August, 1933

APPENDIX E.

REPORT ON THE UNIFORM LEGITIMATION ACT.

1. At the 1932 meeting of the Conference, the Committee on Future Business reported to the Conference that,

> It was decided to recommend that the Conference appoint a Committee to consider and report to the next meeting of the Conference upon amendments to the uniform *Legitimation Act* in view of the English legislation of 1926.

and the Conference resolved that,

> the report relating to the uniform *Legitimation Act* be adopted, and that the matter be referred to the Nova Scotia Commissioners to report to the next meeting of the Conference.

2. The uniform *Legitimation Act* was adopted by the Conference in 1919 (1919, p 16) and it was finally approved in 1920 (1920, pp. 7, 18).

The uniform Act reads as follows, (1919, p. 53):

"An Act respecting Legitimation by Subsequent Marriage

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

"1 This Act may be cited as *The Legitimation Act.*

"2. If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

"3. Nothing in this Act shall affect any right, title or interest in or to property if such right, title or interest has vested in any person,

(*a*) prior to the passing of this Act in case of any such intermarriage which has heretofore taken place, or

(*b*) prior to such intermarriage in the case of any such intermarriage which hereafter takes place"

3. The table of statutes adopted (1932, p. 9) shows that the uniform Act was adopted in "Alberta in 1928, British Columbia in 1922, Manitoba in 1920, Ontario in 1921, Prince Edward Island in 1920, and in Saskatchewan in 1920. Provisions similar in effect are in force in Nova Scotia and Quebec."

An examination of the provincial statutes relating to legitimation manifests that there is a considerable diversity in expression, if not in principle

The Alberta Act (1928, c. 30), the Manitoba Act (C.A. 1924, c. 113), and the Prince Edward Island Act (1920, c. 12) are identical with the uniform Act. The Saskatchewan Act, R.S.S. 1930, c. 193 differs from the uniform Act in that section 3 provides:

> "Nothing in section 2 shall affect any right, title or interest in or to property if the right, title or interest has vested in any person:
>
> (*a*) prior to the fourth day of February, 1920, or
>
> (*b*) in the case of marriage after the fourth day of February, 1920, prior to such marriage."

The British Columbia (R.S.B.C. 1924, c. 139) and New Brunswick Acts (R.S.N.B. 1927, c. 78) are in a different form. The substantive sections of these statutes read:

> "2(1) Where the parents of any child born out of lawful wedlock have intermarried after the birth of the child and prior to (the passing of this Act), the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.
>
> "(2) Nothing in this section shall affect any right, title, or interest in or to property where the right, title or interest has vested in any person prior to (the passing of this Act).
>
> "3(1) Where the parents of any child born out of lawful wedlock intermarry after the birth of the child and subsequent to (the passing of this Act) the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.
>
> "(2) Nothing in this section shall affect any right, title, or interest in or to property, where the right, title, or interest has vested in any person prior to the intermarriage."

The uniform Act was preferred by the Conference to the statute enacted by British Columbia and New Brunswick. (1920, pp. 7, 19).

Ontario first enacted a Legitimation Act in 1921 (1921, c. 53). This statute was superseded by the Act now in force passed in 1927 (1927, c. 52, now R.S.O. 1927, c. 187) which reads as follows:

> "1. If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes be deemed to be and to have been legitimate from the time of birth.
>
> "2. Notwithstanding the provisions of the preceding section, a child born while its father was married to another woman or while its mother was married to another man shall not inherit in competition with the lawful children of either parent.

"3. The parents and brothers and sisters of any child legitimatized by this Act shall inherit upon his death as though he had been legitimate.

"4. Nothing in this Act shall affect any right, title or interest in or right to property if such title or interest has been vested in any person,

(*a*) prior to the 1st day of July, 1921; or

(*b*) in the case of marriage after the 1st day of July, 1921, prior to such marriage.

"5. When a second marriage has taken place in the *bona fide* belief of the death of a former spouse and under such circumstances that the crime of bigamy has not been committed, the issue of such marriage conceived before knowledge of the facts that the former spouse is living shall in the case of intestacy of the father or mother inherit the estate of the father or mother equally, with lawful children"

The provisions of the Nova Scotia statute (1924, c. 20, s. 6) relating to legitimation differs from the other provincial enactments described or set out above. They read:

"32. Where the mother and putative father of any child heretofore or hereafter born out of lawful wedlock have heretofore married or hereafter intermarry, such child shall be deemed to have had from the date of his birth and to have for all purposes within Nova Scotia all the civil rights and privileges of a child born in lawful wedlock including (but not so as to restrict the generality of the foregoing) the right to inherit property upon an intestacy in the same manner and to the same extent as a child born in lawful wedlock.

"33. Where the mother and putative father of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes have and be deemed to have had the status and capacity of a child born in lawful wedlock of said mother and putative father from the date of birth and for all purposes to be a lawful lineal descendant and a child of said mother and putative father.

"34. Nothing in the two preceding sections shall affect any right, title or interest in or to property if such right, title or interest has been vested in any person,

(*a*) prior to the commencement of this Act in case of any such intermariage which has heretofore taken place; or

(*b*) prior to such intermarriage in the case of any such intermarriage which hereafter takes place."

4. Credit must be given to the Conference for initiating legislation with respect to legitimation *per subsequens matrimonium*, and it may be fairly stated that uniformity in principle, but not of expression and form, has been accomplished.

Only one case arising out of the various provincial statutes has been found. In *Re W.* (1925), 56 O.L.R. 611, decided by Riddell, J., the facts were: W. was born in 1878 out of lawful wedlock in England. His parents subsequently married in England and he came to Ontario in 1902, being then of the age of 24 years, and acquired a domicile in Ontario. In 1922 he died intestate and unmarried, leaving brothers and sisters who had been born to his father and mother in lawful wedlock. It was held that the *Legitimation Act* of 1921 applied but, as there was in it no express mention of the Crown, the right of the Crown to an escheat was not affected. This decision was given in the face of a declaration in the earlier Ontario statute, and which is in the present Ontario Act and the other provincial statutes, that, "If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall *for all purposes* be deemed to be and to have been legitimate from the time of birth." It would appear that the result of the case is correct in view of the following section in the *Interpretation Act* (then R.S.O. 1914, c. 1, s. 11, now R.S.O. 1927, c. 1, s. 10): "No Act shall affect the rights of His Majesty, His Heirs, or Successors, unless it is expressly stated therein that His Majesty shall be bound thereby." It is doubtful, to say the least, if section 3 of the present Ontario Statute (quoted above), which presumably was enacted to circumvent the decision in *Re W.*, has that effect. There is in that section no express mention that the Crown is to be bound by its provisions. In Nova Scotia there is no statutory provision with respect to the Crown being bound by legislation; the common law rule that the Crown may be bound by necessary implication and, *a fortiori*, by express mention is in force. See *Stewart* v. *Thames Conservators*, [1908] 1 K.B. 893; *R.* v. *MacLeod*, [1930] 4 D.L.R. 226. See also *In re Stone*, [1924] S.C.R. 682, on appeal from Saskatchewan. The phrase "for all purposes" is not sufficient, it would appear, to defeat the claim of the Crown to take by way of escheat or *bona vacantia* in provinces which have a legislative provision similar to that contained in the Ontario *Interpretation Act*.

5. At common law the subsequent marriage of parents would not operate to legitimatize a child born to them out of lawful wedlock. In 1926 the British Parliament enacted a *Legitimation Act* (16 & 17 Geo. V, c. 5). Section 1 of the English Act reads, in part:

"Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is *at the date of the marriage domiciled in England or Wales*, render that person legitimate from the commencement of this Act, or from the date of the marriage whichever last happens."

The words italicised restrict the operation of the Act. The provincial statutes, however, are much wider in their operation for they apply to "the parents of any child." In *Re W.*, Riddell, J., held that these words applied to W. born of parents domiciled in England and who had never come to Ontario. Riddell, J., said: *"Quoad* any property in the province there can be no doubt that the Legislature of the Province has the power of declaring that any person is legitimate and of determining the succession or devolution of any property." He might well have added that the Legislature of Ontario has the power to determine the status in Ontario of any person.

No doubt the restriction of the Act to a child of a father who is domiciled in England or Wales at the time of the subsequent marriage is based upon rules of private international law. English Courts before the *Legitimation Act* of 1926 would recognize a legitimation *per subsequens matrimonium* for the purpose of succession to movable property if the law of the father's domicile at the time of the child's birth taken together with the law of the father's domicile at the time of the subsequent marriage of the parents operated to legitimatize the child It may be suggested that the draftsman of the English Act had hoped that foreign courts administering common law would, according to rules of private international law, recognize a legitimation *per subsequens matrimonium* under the *Legitimation Act* of England. That Act, however, requires only domicile of the father in England or Wales at the date of the marriage The parents could have been domiciled at the time of the child's birth in a country which did not permit of legitimation *per subsequens matrimonium*. It is submitted that, as Canada is a country receiving immigrants, the wider policy of the uniform Act and the provincial statutes is preferable to that of the English Act. There are cogent reasons for legitimatizing W. in the case of *Re W.* despite the fact that his parents never became domiciled in Ontario. The problem of recognition of legitimation under, as, for example, the Ontario statute by the courts of other provinces is negligible. As the statutes of the other provinces are identical in principle with

that of Ontario, the courts of one of those provinces would treat a child, born out of lawful wedlock and whose parents subsequently married, as legitimate not by virtue of a recognition of the Ontario legitimation but rather by the operation of their own *Legitimation Act*. As recognition of a foreign legitimation was based upon domicile, it might be well to state clearly in the uniform Act that it applied "if the parents *wherever domiciled* of any child, etc." But the Court in *Re W.* had no difficulty in deciding that the words of the Ontario Act of 1921, and which are to be found now in all the statutes of the common law provinces, contemplated foreign as well as domestic marriages.

It should be pointed out that the English *Legitimation Act* has changed the rules of private international law and provides in effect that an English court will recognize a legitimation by the law of a foreign country in which the father of the child was domiciled at the time of the subsequent marriage notwithstanding that the father was not at the time of the birth of the child domiciled in a country in which legitimation by subsequent marriage was permitted by law.

6. Some of the subsidiary sections of the English *Legitimation Act* will now be examined. Section 3 provides, *inter alia,* that a legitimated person and his spouse, children or more remote issue shall be entitled to take any interest in the estate of an intestate dying after the date of legitimation or under any disposition coming into operation after the date in like manner as if the legitimated person had been born legitimate. Section 4 deals with succession on intestacy of legitimated persons and their issue. Section 6 provides, in part, that a legitimated person shall have the same rights and shall be under the same obligations in respect of the maintenance and support of himself or of any other person as if he had been born legitimate. It is submitted that the object of these sections in the English Act is accomplished in the uniform Act by the simple statement that the "child shall *for all purposes* be deemed to be and have been legitimate from the time of birth."

Section 1, subsection 2 of the English Act provides that, "Nothing in this Act shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born." Section 2 of the *Legitimation Act* of Ontario goes part way in the same direction as it provides that a child born in such circumstances shall not inherit in competition with the lawful children of either parent. The uniform Act and the other statutes in force in the common law provinces except Ontario would operate to legitimatize for all purposes such a child. When it is kept in mind

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced, and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(3) Where that person becomes entitled by conveyance or otherwise, such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

(4) This section applies to leases made before or after the commencement of this Act, but does not affect the operation of,—

(*a*) any severance of the reversionary estate; or

(*b*) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision,—

effected before the commencement of this Act.

5.—(1) The obligation under a condition or of a covenant entered into by a landlord relating to his leased premises shall, if and as far as the landlord has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is for the time being vested by conveyance, devolution in law, or otherwise; and, if and as far as the landlord has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies to leases made before or after the commencement of this Act, whether the severance of the reversionary estate was affected before or after such commencement.

(3) This section takes effect without prejudice to any liability affecting a covenantor or his estate

6. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon

each severed part is reversionary, or the term in any land which has not been surrendered or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisiting, as the case may be, had alone originally been comprised in the lease.

7. Where a reversion expectant on a lease of land is surrendered or merged the estate or interest which as against the tenant for the time being confers the next vested right to the land shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion if there had been no surrender or merger thereof.

8.—(1) In every lease in writing and whenever made, unless it is otherwise agreed and in every lease by parol there shall be implied an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand thereof shall have been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate.

(2) In every such lease as aforesaid there shall be implied an agreement that if the tenant or any other person shall be convicted of keeping a disorderly house, within the meaning of The Criminal Code, on the leased premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, into the leased premises, or any part thereof, to re-enter and the same to have again, repossess and enjoy as of his former estate.

9.—(1) Where a license is granted to a tenant to do any act, the license, unless otherwise expressed, extends only,—

(*a*) to the permission actually given; or

(*b*) to the specific breach of any provision or covenant referred to; or

(*c*) to any other matter thereby specifically authorized to be done;

and the license does not prevent any proceeding for any subsequent breach unless otherwise specified in the license.

(2) Notwithstanding any such license,—

(*a*) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter

not specifically authorized or waived, in the same manner as if no license had been granted; and

(*b*) the condition or right of entry remains in force in all respects as if the license had not been granted, save in respect of the particular matter authorized to be done.

(3) Where in any lease there is a power or condition of re-entry on the tenant assigning, subletting or doing any other specified act without a license, and a license is granted,—

(*a*) to any one of two or more tenants to do any act, or to deal with his equitable share or interest; or

(*b*) to any tenant, or to any one of two or more tenants to assign or underlet part only of the property, or to do any act in respect of part only of the property;

the license does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the tenant or tenants of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the license.

This subsection does not authorize the grant after the commencement of this Act of a license to create an undivided share in a legal estate.

10.—(1) In every lease containing a covenant, condition, or agreement against assigning, sub-letting, or parting with the possession, or disposing of the land or property leased without license or consent, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject,—

(*a*) to a proviso to the effect that such license or consent shall not be unreasonably withheld; and

(*b*) to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such license or consent; but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such license or consent

(2) Where the landlord refuses or neglects to give a license or consent to assign or sub-lease, a judge of the Supreme Court, upon the application of the tenant, or assignee or sub-tenant, made by way of originating notice according to the practice of the Court, may make an order determining whether or not such license or consent

is unreasonably withheld, and where it is so withheld permitting the assignment or sub-lease to be made, and such order shall be the equivalent of the license or consent of the landlord within the meaning of any covenant or condition requiring the same, and such assignment or sub-lease shall not be a breach thereof.

11. Every tenant to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his landlord or his bailiff or receiver, and, if he fails so to do, he shall be liable to forfeit to his landlord treble the amount of the then full annual value of the premises, to be recovered by action.

12.—(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action or otherwise, unless and until,—

(*a*) the landlord serves on the tenant a notice,—

(i) specifying the particular breach complained of;

(ii) if the breach is capable of remedy, requiring the tenant to remedy the breach; and

(iii) in any case requiring the tenant to make compensation in money for the breach; and

(*b*) the tenant fails, within a reasonable time, thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the landlord for the breach.

(2) Where a landlord is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the tenant may in the landlord's action, if any, or if there is no such action pending, then in an action brought by himself, apply to the Court for relief; and the Court may grant such relief as having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the Court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court may deem just.

(3) This section shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease or is implied therein.

(4) For the purposes of this section a lease limited to continue as long as the tenant abstains from committing a breach of covenant

shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(5) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the tenant, at any time before judgment, pays into court all the rent in arrear and the costs of the action, the proceedings in the action shall be stayed.

(6) Where relief is granted under the provisions of this section the tenant shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

(7) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the Court may impose, upon the term that the insurance is affected.

(8) This section shall apply to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary.

(9) This section shall not exten —

(*a*) to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or

(*b*) in the case of a mining lease, to a covenant or condition for allowing the landlord to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(10) This section does not apply to a condition for forfeiture on the bankruptcy of the tenant or on the taking in execution of the lessee's interest if contained in a lease of,—

(*a*) agricultural or pastoral land;

(*b*) a mining lease;

(*c*) a lease of a house let as a dwelling-house with the use of any furniture, books, works of art or other chattels not being in the nature of fixtures;

(*d*) a lease of land with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the landlord, or to any person holding under him.

13. Where a landlord is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso

or stipulation in a lease or for non-payment of rent, the Court, on application by any person claiming as sub-tenant any estate or interest in the property comprised in the lease or any part thereof, either in the landlord's action, if any, or in any action brought by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as sub-tenant to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the Court in the circumstances of each case shall think fit, but in no case shall the sub-tenant be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

14. Where a landlord is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the landlord that he claims such right or interest or if the instrument under which he claims is registered in the proper Land Titles Office, shall be made a party to the action

15. Unless it is otherwise expressly provided in the lease a covenant by a tenant for payment of taxes shall not be deemed to be an obligation to pay taxes assessed for local improvements, or drainage or irrigation rates

16. Unless it is otherwise expressly provided in a lease in writing a week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy.

17. In every case where a person being in the occupation of any land which he holds, either as purchaser under an agreement of sale for the purchase thereof or subject to any mortgage or subject to any charge thereon, to secure the payment of any money, agrees to deliver to the vendor, mortgagee or chargee, as the case may be, a share of any crop to be grown upon that land, on account of any indebtedness for purchase money, or money secured by a mortgage or charge, the relationship of landlord and tenant shall be deemed to exist between the person liable to deliver the share of crop and the person entitled to receive the same from the time of making the agreement for delivery until full delivery is made of all shares of crop deliverable pursuant to the agreement.

18. Where by virtue of any lease, or of the provisions of this Act, the relationship of landlord and tenant exists and the tenant is bound to deliver to the landlord a share of any crop grown upon the land in respect of which that relationship exists, the landlord shall be deemed to be and to have been the owner of an undivided interest in that crop to the extent of the share thereof deliverable to him, whichever shall be the least from the moment of the sowing of the crop until full delivery is made to him of the deliverable share, and the interest of the landlord shall to the extent aforesaid have priority over all claims of the tenant or any person claiming through or under him whatsoever.

19. In case the landlord is the vendor, mortgagee or chargee of any land and the tenant is the purchaser under an agreement of sale, mortgagor or the person liable for the payment of any money charged upon the land, the share of crop in any way deliverable by the tenant to the landlord in any year shall not exceed an amount which when sold will produce an amount equal to the aggregate of the amounts following, namely,—

(*a*) Interest for that year upon the debt payable by the tenant in respect of the land;

(*b*) Taxes for that year upon the land;

(*c*) Hail insurance in respect of the crop when the tenant is obligated to insure the same and pay the premiums thereon; and

(*d*) Fire insurance in respect of the premises for that year in case the tenant is obligated to effect that insurance and pay the premiums thereon,—

or an amount equal to one-fourth of the crop, whichever amount is the least.

20. Where any rent of any kind is payable by virtue of any deed, transfer or other assurance, or by will, and there exists no express right of distress for enforcing the payment thereof, the person entitled to receive the rent shall have the same right of distress for enforcing the payment thereof as if the same were rent reserved upon lease.

21. Upon the determination of any lease, whether for a life or for lives, or for years, or at will, the person entitled as landlord to receive any rent made payable thereby may, after the determination of the lease, distrain for any rent due and in arrear in the same manner as he might have done if the lease had not been determined:

Provided always that the distress is made,—

(*a*) within six months next after the determination of the lease; and

(*b*) during the continuance of the landlord's interest; and

(*c*) during the possession of the tenant from whom the arrears became due.

22. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life.

23. No person shall take under distress more goods than are reasonably sufficient to satisfy the rent in arrear and the costs of the distress.

24. Except only where it is by this Act expressly provided to the contrary, any goods or chattels which are not at the time of making the distress upon the premises in respect of which the rent distrained for is payable shall not be distrained for rent.

25. No distress for rent shall be made at any time in the interval between sunset and sunrise.

26. The goods and chattels next hereinafter mentioned and no others shall be liable to be taken under a distress for rent, namely:

(*a*) The goods and chattels of the tenant which are found upon the premises in respect of which the rent is payable;

(*b*) Grain crops and root crops upon the premises whether growing, or severed or partially harvested or completely harvested;

(*c*) Horses, cattle, sheep, swine, poultry and other domestic animals of the tenant which are grazing, pasturing or feeding upon any highway or road allowance or upon any way belonging or appertaining to the premises in respect of which the rent distrained for is payable; and

(*d*) All or any of the goods and chattels before mentioned which are claimed by a person other than the tenant by virtue of,—

(i) any execution against the tenant;

(ii) purchase, gift, transfer or assignment from the tenant, whether absolute or in trust or by way of mortgage or otherwise; and

(iii) the interest of the tenant under a contract for purchase or which the tenant may become the owner thereof upon the performance of any condition;

(*e*) Goods and chattels of the tenant which have been exchanged for goods and chattels of another person upon any borrowing by the one from the other for the purpose of defeating the claim of or the right of distress by the landlord; and

(*f*) All or any of the above mentioned goods and chattels which are claimed by any of the following persons, namely,—the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or any other relative of the tenant who lives upon the premises in respect of which the rent distrained for is payable as a member of the family of the tenant.

27.—(1) No tenant shall fraudulently or clandestinely remove from the premises in respect of which rent is payable any goods or chattels for the purpose of preventing the landlord from distraining the same for arrears of the rent.

(2) In case any goods and chattels are removed in the manner and for the purpose aforesaid the landlord may within thirty days next after the removal, take and seize any goods or chattels so removed which have not before seizure been purchased in good faith and for valuable consideration by a person without notice of the manner and purpose of the removal, wherever the same are found, and sell or otherwise dispose of the same as if the said goods and chattels had been distrained by the landlord upon the premises in respect of which the rent is payable.

28.—(1) Every tenant and every other person who fraudulently removes any goods and chattels for the purpose of preventing the landlord from distraining the same for arrears of rent, and every person who wilfully and knowingly aids or assists him in so doing or in concealing any goods or chattels so removed, shall be liable to the landlord for double the value of the said goods which amount shall be recoverable by action in any court of competent civil jurisdiction.

(2) Every sheriff or sheriff's bailiff charged with the duty of executing a warrant of distress for rent who has reason to believe that any goods or chattels have been fraudulently or clandestinely removed for the purpose of preventing the landlord from distraining the same, and that the said goods are in any building, yard, enclosure or place in such circumstances so as to prevent them from being taken or seized as a distress for arrears of rent, shall be entitled at any time between eight o'clock in the morning and five o'clock in the afternoon to enter into and upon the building, yard, enclosure or place and every part thereof for the purpose of searching for any

goods and chattels so removed and to seize any such goods and chattels there found for arrears of rent as he might have done if they were in an open field or place upon the premises from which they were removed as aforesaid, and for that purpose is empowered to obtain entry upon and access to the premises by breaking or removing any doors or any locks or other fastenings whereby such entry and access is hindered.

(3) In case any resistance is encountered by a sheriff or sheriff's bailiff in doing any of the acts and things which he is authorized by this section to do, he may call upon any peace officers to assist him in overcoming that resistance, and the sheriff, sheriff's bailiff and peace officers are and each of them is hereby empowered to use such force as is reasonably necessary for the purpose.

29.—(1) A tenant may set-off against rent due a debt due to him by the landlord, in which case he shall give notice in writing of the claim of set-off in Form A in the schedule to this Act, which notice may be given before or after seizure.

(2) Upon the giving of any such notice as aforesaid the landlord shall be entitled to distrain or to proceed with the distress, as the case may be, for the balance of the rent due after deducting the amount of the debt mentioned in the notice which is justly due and owing by the landlord to the tenant.

(3) The notice may be served either personally upon the landlord or any other person authorized to receive the rent on his behalf or by leaving it with a grown-up person in and apparently residing on the premises occupied by the landlord or other person authorized to receive the rent.

(4) No proceeding under this section shall be rendered invalid for any want of form.

30.—(1) Subject always to the express terms of any lease, or of any valid and subsisting covenant, agreement or stipulation affecting the tenancy,—

(*a*) every tenant for years and every tenant for life shall be liable to his landlord and every other person for the time being having a reversionary interest in the leased premises for voluntary waste and for permissive waste in respect of the premises to the extent by which the interest of the landlord and other persons (if any) having a reversionary interest in the premises is detrimentally affected thereby; and

(*b*) every tenant at will shall be liable to his landlord and every other person having a reversionary interest in the

leased premises for voluntary waste in respect of the premises to the extent by which the interest of the landlord and other persons (if any) having a reversionary interest in the premises is detrimentally affected thereby.

(2) Every landlord and every person having a reversionary interest in any leased premises shall be entitled in respect of any waste by a tenant in respect of the premises in an action brought in any court of competent civil jurisdiction to obtain damages or an injunction, or both.

31.—(1) Any goods or chattels taken in distress for rent may be impounded or otherwise secured either upon the premises chargeable with the rent or some part thereof, or in such other suitable and convenient place situate within the same municipality as the premises chargeable with the rent, and the same may be appraised, sold and disposed of upon the premises in which they are so impounded or secured.

(2) It shall be lawful for any person to come and go, to and from any place at which any distress for rent is so impounded and secured, to view, appraise, and buy and to carry off or remove the same on account of the purchaser thereof.

32. Every person who without the consent of the distrainor removes or takes away any goods or chattels which have been taken in distress for rent, and are impounded, and every person being the owner of goods so taken who is afterwards found to have the same in his possession shall forfeit to the person aggrieved twenty dollars in addition to the damages sustained by him.

33.—(1) Where any goods or chattels are distrained for rent and the tenant does not replevy the same within five days next after notice in writing of the distress, setting out the cause of the taking, has been left at the dwelling house or other conspicuous place on the premises in respect of which the rent is payable, then, after the expiration of the said five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers.

(2) Before making any appraisement the appraisers shall each be sworn to appraise the goods taken in distress truly, according to the best of their understanding, and a memorandum of the said oath shall be endorsed on the inventory.

(3) After the appraisement has been made the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of

the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for use of the person lawfully entitled thereto and pay the same over to him on demand.

34.—(1) For the purposes of this section the expression,—

(*a*) "Bankrupt" means a person whose estate has become vested in a trustee by virtue of,

(i) any valid assignment for the general benefit of his creditors; or

(ii) any order founded on a petition in bankruptcy; or

(iii) any winding-up order;

(*b*) "Date of bankruptcy" means the date upon which the estate of a bankrupt becomes vested in a trustee by virtue of any valid assignment for the benefit of creditors, any order founded on a petition in bankruptcy, or any winding-up order, as the case may be;

(*c*) "Trustee" means any person in whom for the time being the estate of any bankrupt is vested.

(2) In case a tenant becomes bankrupt the landlord shall have a preferred claim for rent in respect of the period of three months last preceding the date of bankruptcy and for three months subsequent thereto, and thenceforth for so long a period as the trustee of the bankrupt retains possession of the premises.

(3) Any payment made to the landlord for accelerated rent shall be credited by him against the amount payable by the trustee of the bankrupt in respect of the period during which that person occupies the premises.

(4) Notwithstanding anything contained in any lease or the legal effect thereof, upon a tenant becoming bankrupt his trustee may at any time within three months thereafter in his capacity of a trustee and before he has given notice of intention to surrender the lease or to disclaim by notice in writing, elect to retain the leased premises for the whole or any portion of the unexpired term, and the right to any renewal thereof upon the termination of the lease and subject to the payment of the rent as provided by the lease, and he may upon payment to the landlord of all arrears of rent assign the lease together with any subsisting right of renewal to any person,—

(*a*) who covenants to observe and perform the terms thereof and agrees to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or

hazardous nature than that which was conducted thereon by the bankrupt tenant; and

(*b*) who on the application of the trustee is approved by a Judge of the Supreme Court of as a person fit and proper to be put in possession of the leased premises.

(5) The trustee of a bankrupt tenant, so long as he has not elected to retain the leased premises of the tenant, may at any time by notice in writing to the landlord surrender or disclaim any lease, and any entry into possession of the leased premises and the occupation thereof by the trustee in his capacity as a trustee shall not be deemed to be evidence of an intention on his part to elect to retain the leased premises.

(6) Where a tenant has before the date of his bankruptcy validly sub-let any premises of which he is tenant, and subsequently becomes bankrupt and his trustee either disclaims the lease or elects to assign the same, the sub-tenant shall, if he so elects in writing within three months of the date of bankruptcy of the tenant, stand in the same position with the landlord as though he was a direct lessee from the landlord but subject as to rental payable to the same liabilities and obligations as the bankrupt tenant was subject to under the lease immediately before the last mentioned date, and upon making such election as aforesaid the sub-tenant shall be required,—

(*a*) to covenant to pay to the landlord a rent not less than that payable by the under-lessee to the bankrupt tenant; or

(*b*) if the rent last mentioned be greater than the rent payable by the bankrupt tenant to the landlord the sub-tenant shall be required to covenant to pay to the landlord the greater amount.

35.—(1) Upon seizure being made by virtue of any writ of execution or writ of attachment of any goods and chattels which are at the time of seizure liable to be taken in distress for rent then in arrear, and if notice is given in writing by or on behalf of the landlord to the sheriff or other officer lawfully making the seizure of the arrears of rent at any time after the seizure and before the sale of the said goods and chattels by virtue of the execution, the sheriff or other officer as aforesaid shall not sell any of the said goods and chattels unless and until the person at whose instance the writ of execution or writ of attachment is issued pays to the landlord either,—

(*a*) all money due for rent at the time of the making of the said seizure; or

(*b*) three months' arrears of rent where the rent is payable quarterly or more frequently; or

(*c*) one year's arrears where the same is payable less frequently than quarterly,—

whichever amount is the least.

(2) The sheriff or other officer shall levy and pay to the execution creditor any money paid by him for rent in addition to the amounts levied under the writ of execution.

36. Where all or any part of the standing crops or the growing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution such crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crop by any such sheriff or other officer.

37. Where any distress is made for any kind of rent justly due, and any irregularity shall afterwards be done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it deemed a trespasser *ab initio,* but the person aggrieved by such irregularity may recover by action full satisfaction for the special damage sustained thereby.

38.—(1) A distrainor who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale.

39. Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his

landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief

40. Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice, and does not accordingly deliver up the possession thereof at the time mentioned in such notice the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession.

41.—(1) When a mortgagor of land or a purchaser of land, with or without chattels, agrees in writing either in the mortgage or agreement of sale or by a collateral or subsequent writing to attorn or to be or become the tenant of the mortgagee or vendor of the land, as the case may be, the relationship of landlord and tenant shall be held to be validly constituted between the parties for all purposes and against all persons whomsoever.

(2) Such an agreement in writing shall not nor shall the receipt of rent falling due thereunder render the mortgagee or vendor accountable for any rent not actually received by him

42.—(1) Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be absolutely null and void, and the possession of his landlord shall not be deemed to be changed, altered or affected by such attornment; but nothing herein shall vacate or affect an attornment made,—

(*a*) pursuant to and in consequence of a judgment or order of a court; or

(*b*) with the privity and consent of the landlord.

(2) Nothing herein contained shall alter, prejudice or affect any rights which a vendor, mortgagee or incumbrancee may now possess under any law or statute.

43.—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any

attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee.

44.—(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the sub-leases, be as good and valid as if all the sub-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the sub-leases shall hold and enjoy the land in the respective sub-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any sub-leases for the rents and duties reserved by the new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such sub-lease was derived, as he would have had if the former lease had been still continued or as he would have had if the respective sub-leases had been renewed under the new principal lease.

45.—(1) Where any person who, in pursuance of any covenant or agreement in writing, if within the Province and amenable to the process of the Superior Court of Civil jurisdiction of the Province, might be compelled to execute any lease by way of renewal, is not within the Province, or is not amenable to the process of the Court, the Court, under the motion of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as the Court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

(3) In every such case it shall be in the discretion of the court to direct an action to be brought to establish the right of the person

seeking renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant, or agreement, unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

(5) All sums of money which are had, received or paid for, on account of, the renewal of any lease by any person out of the Province or not amenable to the process of the Superior Court of Civil Jurisdiction of the Province, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into court to such account and be applied and disposed of as the court shall direct.

(6) The court may order the costs and expenses of and relating to the application, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the court shall deem proper.

PART II.

46. In this Part, the expression "Judge" shall mean a judge of the in which a distress to which this Part applies is made.

47.—(1) Where goods or chattels are distrained by a landlord for arrears of rent, and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, or the tenant claims to set-off against the rent a debt which the landlord disputes, the landlord or the tenant may apply to the judge to determine the matters so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just.

(2) Where the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may before any distress has been made apply to the judge to determine the matter so in dispute, and the judge may hear and

determine the same in a summary way, and may make such order in the premises as he may deem just.

48. Where notice of such an application has been given to the landlord or tenant, as the case may be, the judge, pending the disposition of it by him, may make such order as he may deem just,—

(*a*) for the restoration to the tenant of the whole or any part of the goods or chattels distrained, or preventing a distress being made, upon the tenant giving security by payment into court or otherwise as the judge may direct; or

(*b*) for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay.

49. The judge shall have jurisdiction and authority to determine any question arising upon the application which the court of which he is judge has jurisdiction to determine in an action brought in that court

50. Where the amount of the rent claimed by the landlord exceeds eight hundred dollars or where any question is raised which a court would not have jurisdiction to try in an action brought in such court, the judge shall not, without the consent in writing of the landlord and the tenant, deal with the application summarily, but shall direct an action to be brought or an issue to be tried in the Superior Court of Civil Jurisdiction of the Province for the determination of the matters in dispute.

51.—(1) Where the judge, under the next preceding section, directs an action to be brought or an issue to be tried he shall have the like power as to the restoration to the tenant of the goods or chattels or of any part of them and to the prevention of a distress being made as is conferred by section , and where it is exercised the security shall be as provided in that section except that, as to costs, it shall be not only for the costs of the proceedings before the judge but also for the costs of the action or issue including any appeal therein or such of them as the tenant may be ordered to pay.

(2) The Superior Court of Civil Jurisdiction of the Province shall determine by whom and in what manner the costs of the action or issue and of the application to the judge shall be borne and paid.

(3) Judgment may be entered in accordance with the direction of the court, made at or after the trial, and may be enforced in like manner as a judgment of the court.

52. Where the amount claimed by the landlord does not exceed one hundred dollars the decision of the judge shall be final.

53. Where the amount claimed by the landlord exceeds one hundred dollars an appeal shall lie from any order of the judge made on an application to him under the provisions of section , by which the matters in dispute are determined in like manner as if the same were a judgment of the court of which he is judge pronounced in an action.

54. Where an issue is tried there shall be the same right of appeal from the judgment as if the judgment had been pronounced in an action.

55. Where the amount claimed by the landlord does not exceed eight hundred dollars the costs of the proceedings before the judge shall be on the court scale, and where the amount claimed exceeds eight hundred dollars they shall be on the scale of an action or issue in the Superior Court of Civil Jurisdiction of the Province directed under section .

56. Nothing in this Part shall take away or affect any remedy which a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where instead of proceeding under this Part he proceeds by action the court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action.

PART III.

57.—(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects upon demand made in writing to go out of possession of the land demised to him or which he has been permitted to occupy, his landlord may apply, upon affidavit, to a judge, whether in term or in vacation and wherever such judge may be, to make the inquiry hereinafter provided for.

(2) The landlord shall,—

(*a*) set forth on affidavit the terms of the demise or right of occupation, if verbal; and

(*b*) annex a copy of the instrument creating or containing such demise or right of occupation, if in writing, or, if for any cause a copy cannot be so annexed, then he shall make a statement setting forth the terms of the demise or occupation and the reason why such copy cannot be annexed; and

(*c*) annex a copy of the demand; and

(*d*) state the refusal of the tenant to go out of possession, and the reasons given for such refusal, if any were given; and

(*e*) add such explanation in regard to the ground of such refusal as the truth of the case may require.

(3) The judge shall, in writing, appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

(4) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition to every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application.

58. Where the demised premises are within or partly within the (judicial division of), the application in the preceding section mentioned shall be made to a judge of the Superior Court of Civil Jurisdiction of the Province, and in all other cases it shall be made to a County Court judge of the judicial division in which the demised premises are wholly or partly situate.

59. A County Court judge may, upon any such application being made to him, or at any time thereafter pending the proceedings, having regard to the convenience of the parties the costs of the proceedings and other considerations, and subject to such conditions as may to him seem just, direct that the case be referred to a judge of the Superior Court of Civil Jurisdiction of the Province to be heard and disposed of.

60. Except as otherwise varied by this Part, the provisions of (The King's Bench Act) shall apply to applications made and proceedings had under this Part.

61. The proceedings under this Part shall be intituled in the court in which taken and shall be styled:

"In the matter of (giving the name of the party complaining), landlord, against (giving the name of the party complained against), tenant."

62.—(1) If, at the time and place appointed the tenant fails to appear the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession in Form B in the Schedule to this Act, directed to the sheriff of the judicial district or bailiff of the County Court of the judicial division, as the case may be, in which the land lies, commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ, and the proceedings in such case shall be transmitted to and form part of the records of the Superior Court of Civil Jurisdiction of the Province or the proper County Court, as the case may be.

63. The judge shall have the same power to amend or excuse irregularities in the proceedings as he would have in an action.

64.—(1) An appeal shall lie to the Court of Appeal from the order of the judge granting or refusing a writ of possession, and the provisions of (The King's Bench Act) and (The County Court Act) as to appeals shall apply, respectively, to such an appeal.

(2) If the Court of Appeal is of opinion that the right to possession should not be determined in a proceeding under this Part the court may discharge the order of the judge and the landlord may in that case proceed by action for the recovery of possession.

(3) When the order is discharged, if possession has been given to the landlord under a writ of possession, the court may direct that possession be restored to the tenant.

65.—(1) If a tenant fails to pay his rent within three days of the time agreed on, and wrongfully refuses or neglects, upon demand made in writing, to pay the rent or to deliver up the premises demised, which demand shall be served upon the tenant or upon some grown-up person upon the premises, or if the premises be vacant,

be affixed to the dwelling or other building upon the premises or upon some portion of the fence thereon, the landlord or his agent may file with the clerk of the County Court of the judicial division in which said premises are situate or partially situate, an affidavit setting forth the terms of the demise or occupancy, the amount of rent in arrear and the time for which it is so in arrear, producing the demand made for the payment of rent or delivery of the possession, and stating the refusal of the tenant to pay the rent or to deliver up possession, and the answer of said tenant, if any answer were made, and that the tenant has no right of set-off or reason for withholding possession.

(2) Upon such filing the clerk shall cause to be issued from the court a summons in Form C of the Schedule to this Act, calling upon such tenant, three days after service, to show cause why an order should not be made for delivering up possession of the premises to the landlord, which summons shall be served in the same manner as the demand.

(3) Upon the return of said summons the judge of said court shall hear the evidence adduced upon oath and make such order, either to confirm the tenant in possession or to deliver up possession to the landlord, as the facts of the case may warrant, and such order may be in Form of the Schedule to this Act.

(4) In case the order be made for the tenant to deliver up possession and he refuse, then the sheriff of the (County Court) or any of his officers shall, with such assistance as he may require, forthwith proceed under said order to eject and remove the said tenant together with all goods and chattels that he may have on or about the premises, and make the rent in arrear and place the landlord in possession of the premises.

(5) If any tenant before the execution of the order pays the rent in arrears and all costs, the proceedings shall be stayed and the tenant may continue in possession as of his former tenancy.

(6) In case the premises in question be vacant, or the tenant be not found in possession, or if in possession and he refuse on demand made in the presence of a witness to admit the bailiff, the latter, after a reasonable time has been allowed to the tenant or person in possession to comply with the demand for admittance, may force open any outer door in order to gain an entrance, and may also force any inner door for the purpose of ejecting the tenant or occupant and giving proper possession of the premises to the landlord or his agent.

66. The judge may award such costs as he sees fit and as the circumstances of the case warrant to the landlord or the tenant, as the case may be, which costs, if payable by the tenant, may be added to the costs of the levy for rent, if any such is or is to be made, or in any case may be recovered by action against the landlord or tenant in the court having jurisdiction.

SCHEDULE OF FORMS.

"The Landlord and Tenant Act"

FORM A.

(Section).

Take notice that under The Landlord and Tenant Act I wish to set-off against rent due by me to you the debt which you owe to me on your promissory note for
dated (or as the case may be)
Dated this day of , 19 .

C.D. (tenant).

FORM B.

(Section 62).

Writ of Possession.

Canada, To Wit: George the Fifth, by the grace of God, of the United Kingdom of Great Britain and North Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

(L.S.)

To the sheriff (or bailiff) of Greeting.

Whereas, judge of (name of court), by his order, dated the day of , 19 , made in pursuance of The Landlord and Tenant Act, on the complaint of against adjudged that , was entitled to the possession of , with the appurtenances, in your bailiwick, and ordered that a writ should issue out of our said court accordingly, and also ordered and directed that the said should pay the costs of the proceedings under the said Act, which by our said court have been taxed at the sum of dollars;

Therefore, we command you that without delay you cause the said to have possession of the said lands and prem-

ises, with the appurtenances; and we also command you that of the goods and chattels of the said in your bailiwick, you cause to be made the sum of dollars, being the said costs so taxed by our said court as aforesaid, and have that money in our said court immediately after the execution hereof, to be rendered to the said ;

And in what manner you shall have executed this writ, make appear to our said court immediately after the execution hereof; and have there then this writ.

Witness, etc.

(Signed)
Prothonotary (or Clerk of the Court of).

FORM C.

(Section 65).

Summons for Eviction.

In the Court of .
In the matter of landlord,
and
tenant,
and The Landlord and Tenant Act.

To the above named

You are hereby summoned to appear before the Judge of this Honourable Court, at his chambers in the , on the third day after service of a copy hereof upon you, or as provided by the statutes in that behalf, at the hour of o'clock in the noon, to show cause why an order should not be made for the delivery up to the said , as landlord, of the possession of the premises mentioned in his demand, that is to say (here describe the premises as in the notice); and, further, to show cause why an order should not at the same time be made for payment by you of the rent alleged to be in arrear for said premises to said landlord, to be made or levied by distress or otherwise, and also as to the costs of these proceedings.

In default of you so appearing, the said landlord may proceed to obtain such order against you as to the judge or magistrate it may seem proper to grant.

Dated at , this , day of A.D. 19 .

By the Court.

Clerk.

APPENDIX G.

REPORT ON THE FACTORS ACTS.

1. At the 1932 meeting of the Conference, the Committee on Future Business reported to the Conference that,

> It was decided to recommend that the Conference appoint a committee to report at the next meeting of the Conference upon the various *Factors Acts* in force in the provinces and that the committee should raise in their report any questions of principle involved in the drafting of a uniform Factors Act.

And the Conference resolved that,

> The report relating to the *Factors Acts* be adopted, and that the matter be referred to the Nova Scotia Commissioners to report to the next meeting of the Conference.

2. A common fraud committed by agents entrusted with goods has been the raising of money upon them for their own benefit. At common law it was held in *Paterson* v. *Tash* (1743), 2 Stra. 1178, that "though a factor has power to sell and thereby bind his principal yet he cannot bind or affect the property of the goods by pledging them as a security for his own debt." To protect the man who purchases goods from an agent and, still more one who lends money upon the security of them, a series of Acts was passed in England from 1823 to 1877 known as the Factors Acts. These statutes were consolidated and amended by the Factors Act, 1889, 52 & 53 Vict c 45. The provisions of the earlier English Acts are relatively unimportant in view of the ruling sections of the enactment of 1889 which read as follows.

> Section 1(1). For the purposes of this Act (1) the expression "mercantile agent" shall mean a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods
>
> Section 2(1). Where a mercantile agent is with the consent of the owner, in possession of goods or of documents of title to goods, any sale, pledge, or other disposition, of the goods made by him, when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same, provided that the person taking under the disposition, acts in good faith and has not, at the time of the

disposition, notice that the person making the disposition has not authority to make the same.

3. The courts have been called upon to construe these sections. The difference in the wording of section 1(1) and section 2(1) of the Factors Act is significant. The former, defining a mercantile agent, is dealing with the status of the agent, the circumstances in which the agent gets his authority from the principal, and under it possession of the goods or of the documents of title to them. He must be an agent having authority, in the customary course of his business as *such* agent, "(a) to sell goods, or (b) to consign goods for the purpose of sale, or (c) to buy goods, or (d) to raise money on the security of goods." If the agent qualifies in any one of these four ways, the Act clothes him with ostensible authority in dealings with third persons who have no notice of a negation, restriction, or modification of this ostensible authority. He may by any sale, pledge or other disposition of the goods confer as good a title as if he had been expressly authorized by the owner of the goods to make the same. In the leading case of *Oppenheimer* v. *Attenborough*, [1908] 1 K.B. 227, decided by the Court of Appeal, the plaintiff entrusted one Schwabacher, a diamond broker, with diamonds on a representation that two specified firms of diamond merchants would probably buy them Schwabacher did not show the diamonds to either of these firms, but pledged them with the defendants, *bona fide* pledgees. In an action of detinue, evidence was given of a custom in the diamond trade that a diamond broker employed to sell has no authority to pledge them for his principal, and that the employment of a broker to pledge diamonds was unheard of. An owner could himself raise money upon them. Judgment was, however, given for the defendants. Alverstone, C.J., having decided that Schwabacher was a mercantile agent within the terms of the Act because he was an agent to sell and the customary course of his business as such agent was to sell, said: "Having got the class of mercantile agent we come to section 2(1), which deals with the circumstances under which the transaction might be carried out. . . . I think that the words 'acting in the ordinary course of business of a mercantile agent' (in section 2(1)) mean that the person must act as if he were carrying out a transaction which he was authorized by his master to carry out." Buckley, L.J., was of the opinion that the words "acting in the ordinary course of business of a mercantile agent" mean "acting in such a way as a mercantile agent would act, that is to say, within business hours, at a proper place of business, and in other respects in the ordinary way in which a

mercantile agent would act so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the disposition is one which the mercantile agent had no authority to make."

This decision, which has been recently followed in Ontario by O'Connell, Co.Ct.J., in *Peoples Credit Jewellers, Ltd.* v. *Melvin,* [1933] 1 D.L.R. 598, amounts to a holding that in section 2(1) the words "business of a mercantile agent" are not to be read as if they were "business of *such* mercantile agent."

It has been suggested that the effect of limiting agents to "mercantile" agents in section 1(1) and the effect of the "course of business" clause in section 2(1) confines the class to professional agents, that is, those who carry on recognized and well-known businesses of selling, etc. See *Hastings Limited* v. *Pearson,* [1893] 1 Q.B. 162. In view of the *Attenborough* case; *Weiner* v. *Harris,* [1910] 1 K.B 285, and *Peoples Credit Jewellers, Ltd.* v *Melvin,* the Act is sufficiently wide to apply to a person who customarily has as agent authority to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods, and, in the case in question, has been appointed in at least one of these capacities. In *Lowther* v. *Harris,* [1927] 1 K.B. 393, it was held that a mercantile agent under the Act of 1889 may exist, although the agent is acting for one principal only. The Act, it is submitted, would apply to the case of a man commencing business as a mercantile agent, whose first transaction is an irregular disposition of the goods. The words "his business" in section 1(1) being read as meaning "business of a similar character to that which he is carrying on."

The words "with the consent of the owner" have given rise to litigation. Consent is none the less valid though it has been obtained by fraud, provided the fraud does not amount to obtaining possession by a trick. See *Cole* v. *N.W. Bank* (1875), L R. 10 C P. 354; *Cahn* v. *Pockett,* [1899] 1 Q.B. 654; *Folkes* v. *King,* [1923] 1 K.B. 282; *Commercial Securities (B.C.) Ltd.* v. *Johnson,* [1930] 2 W.W.R. 444. Clandestine possession is not contemplated: *Albutt* v. *Continental Guaranty, etc.,* [1929] 3 W.W.R. 292.

The sections have given rise to a comparatively small amount of litigation and the ambiguities are fairly well ironed out.

4. Some text-writers have criticized the effect of the Factors Act. John D. Falconbridge, Esq., K.C, has pointed out (Handbook: Sale of Goods, p. 57) that the provisions of the Factors Act have often been taken by the courts as being more or less exhaustive

declarations of the principle of estoppel to the exclusion of cases not falling within the letter of the statute. The courts, this author believes, have directed their efforts rather to the construction of the Act than to the application of the general principle (See also Ewart: Estoppel, p. 296 *et seq.*).

Section 13 of the 1889 Act is explicit in saving the common law powers of an agent. It reads: "The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act." A *bona fide* purchaser or pledgee of goods which are in the possession of a person other than their owner may invoke in addition to the Act the protection afforded by the common law doctrines of estoppel and agency, and in some of the cases, the Act and agency are treated as separate grounds for the decisions.

Purchase in his Documents of Title to Goods (1931) says. "The Act although comparatively easy to interpret does not bring that quality of elasticity which business men require." Your Committee have neither heard nor read of any complaints from business men in Canada about the operation of the Act or the state of the law relating to mercantile agents.

There are some who would argue that there should be given in Canada the full negotiability of a bill of exchange to bills of lading as has been done by the Uniform Bills of Lading Act of the United States. The transferee from a finder or thief of a bill of lading possessing that characteristic would receive a good title as against the owner of the goods. Your Committee is of the opinion that the reasons for the full negotiability of bills of exchange do not exist in the case of documents of title.

E. J. Harvey, an author of a recent book, *Victims of Fraud*, (1932), is of the opinion that section 2(1) of the Act, does not give the third party the full protection which he is entitled to have and which he would have obtained if the principle of "apparent agency" had been applied. He says (p. 89): "No less than five conditions have to be fulfilled before the Act will operate, and of these at least two are out of cognizance of the purchaser, however alert he may be. Thus he cannot tell whether the vendor really is an agent for sale, and whether he obtained possession of the goods with the consent of the owner. Even the condition that the vendor must be acting in the 'ordinary course of his business' is not qualified so as to read 'apparently acting,' which is all the purchaser can make sure of." He then argues that the position of the third person should be made to depend, not at all on the actual facts relating to

the vendor's agency, but solely on the *appearance* of agency. As pointed out above, the Act gives to a third party protection where the doctrines of agency law would be of no avail. The third party is always free to call in his aid, in addition to the Act, those doctrines.

The Act does not apply to a transaction where the owner is not treating a second person as his mercantile agent but as a purchaser. (See *Weiner* v. *Gill*, [1906] 2 K.B. 574). If the owner delivers the goods to the purchaser who has agreed to buy them, a third person who *bona fide* takes a pledge of the goods or buys them may be protected by section 9 of the 1889 Act (now section 25(2) of the English Sale of Goods Act adopted in the eight common law provinces) subject to provisions of the Conditional Sales Act.

5. The English Factors Act of 1889 has been adopted in Alberta (R.S.A. 1922, c. 147); British Columbia (R.S.B.C. 1924, c. 225, ss. 60-69, part of the Sale of Goods Act); Manitoba (C.A. 1924, c. 68); New Brunswick (R.S N.B. 1927, c. 154); Nova Scotia (R.S.N.S. 1923, c. 203); Ontario (R.S O. 1927, c. 168); Prince Edward Island (1920, c. 13); Saskatchewan (R S.S. 1930, c. 234). In Quebec, Articles 1735-1754 of the Civil Code of Lower Canada are based upon the earlier English legislation superseded by the Act of 1889.

It would be difficult to imagine greater uniformity than in the Factors Acts in force in the common law provinces.

6. As the Conference of Commissioners on Uniformity of Legislation in Canada was constituted for the purpose of promoting uniformity of legislation throughout Canada, your Committee is strongly of the opinion that the Commissioners have no mandate to exceed that object. The task of the Nova Scotia Commissioners (1919, c. 25) is "to examine and consider all subjects within provincial jurisdiction in which uniformity seems desirable . . . to draft uniform laws to be submitted to approval and adoption by the legislatures of the several provinces, and generally to take such action as will best promote the enactment of uniform provincial laws in Canada." Your Committee, believing that it is not a function of the Conference lightly to disturb established uniformity, and further being of the opinion that new legislation in relation to mercantile agents for the reasons set out in paragraphs 3 and 4 of this Report is not needed, recommends that the Conference do not consider the drafting of a new uniform Factors Act.

F. F. MATHERS.
SIDNEY SMITH.

20th June, 1933.

APPENDIX H.

REPORT WITH RESPECT TO SUGGESTED AMENDMENTS TO THE UNIFORM ASSIGNMENT OF BOOK DEBTS ACT AND THE UNIFORM CORPORATION SECURITIES REGISTRATION ACT.

This Report deals with a former Report dated August 25th, 1932, on the Uniform Assignment of Book Debts and the Uniform Corporation Securities Registration Acts made to the Commissioners by Mr. John D. Falconbridge, K.C., as reported at page 35 of Proceedings, 1932.

1. Dealing first with section 63, subsection 2 of the Bankruptcy Act as being the foundation for the suggestion that multiple registrations in the provinces should be done away with, so as to conform to the said subsection in the Bankruptcy Act, subsection 2 of section 63 of the Bankruptcy Act is not clear and definite in that in law and in fact there is grave doubt as to just what is meant by principal *place of business*. A corporation might have its Head Office and carry on business in Ontario, and yet have its principal place of business in New Brunswick. Principal place of business does not necessarily mean head office or registered office. The head office or registered office is permanent as compared with the principal place of business. It is submitted, therefore, that to take this amendment as being the foundation upon which to make amendments in the Provincial Acts would be building on a rather shaky structure.

The argument has been advanced that the Assignment of Book Debts Act operates, as a matter of practice, only in the case of bankruptcy, and that, therefore, requirements as to registration in the provinces should be made to conform. It is suggested, in all due deference, that such a statement is far from covering the whole case, because the primary duty of the Provincial Legislature is to see,—as stated by Mr. Isaac Pitblado, K.C., in his Report at page 56, 1931 Proceedings,—"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"

The above view and also the suggestion of the Secretary of the Canadian Bankers' Association seem to be the result of a desire to reduce the law to a logical scheme or system into which the various branches harmoniously fit and interlock. It is submitted that logic is desirable but it must be secondary to the necessity of devis-

ing practical and just rules which will govern and control the economic dealings between men in the greatest number and variety of circumstances. It is further submitted that if it is desirable to regulate the dealing in book debts, strictly speaking it is a Provincial matter, and should be viewed with a desire to protect the interests of all persons within a given province, even if it is necessary in so doing to sacrifice to some extent the harmonious interlocking of Dominion and Provincial legislation. It seems to us that the registration required by the Assignment of Book Debts Act is primarily for the protection of the trading community. We are, therefore, of the opinion that the sections dealing with registration should not be amended in the manner suggested.

2. With respect to paragraph 8 of the Report of Mr. Falconbridge, this again reduces itself to a matter of convenience, and the change proposed would substitute affidavit evidence of discharge for the discharge itself. We are unable to see the wisdom of making the change suggested.

3. The suggestion contained in paragraph 9 of the Report as to striking out the word "creditors" in subsection 3 of section 3 of the Corporation Securities Registration Act is approved. However, there seems to be no reason for making any changes in the Assignment of Book Debts Act.

C. P. McTAGUE.

19th June, 1933.

MEMORANDUM RELATING TO THE UNIFORM ASSIGNMENT OF BOOK DEBTS AND THE UNIFORM CORPORATE SECURITIES REGISTRATION ACTS.

THE BANKRUPTCY ACT.

Section 63(2) of the Bankruptcy Act as amended by the statutes of Canada, 1932, chapter 39, section 27, is set forth below, the new words being italicised:

> 63(2) This section shall not apply if *in the Province where the assignor has his principal place of business* there is a statute providing for the registration of such assignment *and* if the assignment is registered in compliance therewith.

In our letter to Mr. Falconbridge in this connection, to which he refers on page 3 of his 1932 report to the Conference of Commissioners, we suggested that the foregoing amendment had paved the way for doing away with multiple registrations in more than one

province or more than one district of a single province, and that it should be possible to work out amendments to the uniform Act which would require registration in only one place, in the province and registration district therein in which the chief place of business is situated. We suggested that adoption of the exact phraseology of the Bankruptcy Act amendments would avoid the necessity for registration in every province where there was *a* principal place of business

Further Amendment of Bankruptcy Act.

An apparent solution might be to provide, in the Bankruptcy Act, that an assignment registered in the province where the assignor has his principal place of business would be binding upon the trustee in bankruptcy, but such a provision might not be "necessarily incidental" to the subject of "bankruptcy," and it would, in any case, be dangerous to make mere registration binding upon the trustee where the assignment might be invalid for other reasons under the general law of the province.

Effect of Amendment of Bankruptcy Act.

Since the amendment of the Bankruptcy Act, the banks have been considering its effect and have been advised by counsel that if there is registration in compliance with section 63(2), its only result is to render nugatory the provisions of subsection 1, which would otherwise have avoided the assignment as against a trustee in bankruptcy. That is, if there is registration, the assignment is merely not void by reason of subsection 1, for that subsection does not provide that, in the event of proper registration, the assignment shall be binding upon the trustee. The question, therefore, as to whether or not the assignment is valid as against the trustee must be determined in the light of the general law, and particularly in that of the provincial statutes requiring registration.

Provincial Acts Require Multiple Registration.

The banks have been advised, in view of the wording of sections of the uniform Act, which require registration, that it is unsafe for the banks (or anyone else) to rely merely upon registration in the province where the assignor has his principal place of business. This opinion appears to be based upon the following reasons:

Section 4(1) of the Ontario Act reads in part as follows:

> 4(1). Save as herein provided, every assignment of book debts made by any person engaged in a trade or business *within*

the province shall be absolutely void as against the creditors of the assignor and as against the subsequent purchasers unless such assignment is—

(*a*) in writing;

(*b*) accompanied by an affidavit . . . ;

(*c*) registered as hereinafter provided . . .

(See 1931 (Ontario) chapter 35, the italicised portion was added this year, 1933, chapter 39, section 56.)

So far as we are aware, Ontario is the only province in which the italicised words "within the province" have been added to the statutes, although we understand from the report of Mr. Falconbridge that it was the view of the Conference that each Act should be construed as if those words were included in it. Even on the assumption, however, that such a phrase is part of the statute, either explicitly or by construction, the words "engaged in a trade or business within the province" are still broad enough to include a person having a principal place of business in the province of Manitoba, who is engaged in a trade or business within Ontario, by means of travellers or by correspondence, although he has no place of business there and has money owing to him by a resident of Ontario, which book debt he has assigned in Manitoba. So far as we are aware, there is no legal decision which would exclude doing business by travellers or correspondence from the compass of the phrase "engaged in a trade or business within the province." The presumption is probably in favour of such business being included within the phrase, because in subsection 2 of section 6 of The Extra-Provincial Corporations Act, R.S O. 1927, chapter 219, the Legislature thought it necessary to provide expressly that selling goods by travellers or by correspondence, where there is no resident agent or place of business in Ontario, "shall not be deemed a carrying on of business within the meaning of this Act."

The foregoing view is strengthened by the provisions of section 5(1) (*c*) of The Assignment of Book Debts Act (Ontario), whereby provision is made for registration "where the assignor is an extra-provincial *corporation not having a head office or registered office within Ontario.*" In addition, as pointed out by Mr. Falconbridge in the memorandum referred to, the statutes of Nova Scotia, Prince Edward Island and New Brunswick also provide for registration in the province, where the assignor is an individual who does not carry on business in the province.

At the present time in the case referred to, if it is sought to prove against a trustee in bankruptcy in Ontario that an assignment of

book debts which was registered in the province of Manitoba, where the assignor (an individual) had his principal place of business, the fact of such registration in accordance with the provisions of The Bankruptcy Act would be proved. The assignment would not yet, however, be proved to be good against the trustee. The Ontario Assignment of Book Debts Act is broad enough to require registration in Ontario wherever the assignor carried on business at the time of the assignment, notwithstanding the Manitoba registration. The assignment, not being registered in Ontario, would therefore be void against the creditors of the assignor, and not binding on the trustee.

Single Registration should be Sufficient.

A single registration should, we feel, suffice. The Assignment of Book Debts Act ought to be amended,

(*a*) to require registration of assignments made by assignors engaged in trade or business within the province who have their principal place of business *in Canada* in the province;

(*b*) so that registration in the provincial registration district in which the principal place of business in Canada is situated will be sufficient.

(Note.—Assignments made in the province by assignors whose principal place of business in Canada is *not* in the province, but is, say in Quebec, where there is no provision for registration of assignments of book debts, will not be registered anywhere. Provision might be made for registration in the province in which they are made, as a matter of convenience, although the Bankruptcy Act does not require it. This would not occasion many duplicate registrations for most cases would be covered by (*a*) and (*b*), above.)

If the statutes of each province so provided, in the case referred to above, the Ontario court, in considering whether the Manitoba assignment was binding upon the Ontario trustee in bankruptcy, would find that no registration was required in Ontario, the assignor's principal place of business in Canada being in Manitoba, and the contract not being made in the province. The court would then seek to determine the validity of the assignment in accordan e with the rules of private international law, by applying the proper law of the contract.

Application of Rules of Conflict of Laws.

According to Dicey, capacity to assign is governed by the law of the assignor's domicile (*lex domicilii*), or the law of the country

in which the transaction takes place (*lex loci actus*). (Rule 151(2), Conflict of Laws, 4th edition.) The law of Manitoba would therefore govern the determination of capacity to assign.

An assignment of a debt which gives a good title according to the law of the country in which the debt is situate (*lex situs*) is valid. (Rule 153.) If the situs of the debt can be said to be Ontario, as it probably is (*R.* v. *Lovitt*, [1912] A.C. 212, P.C.), the Ontario Assignment of Book Debts Act would not invalidate it because of non-registration, and there would be nothing to fear from a construction of the assignment under the general law of Ontario.

The liabilities of the debtor, according to Dicey (Rule 153(1)) are to be determined by the *lex loci contractus*, in this case the law of Manitoba, to which there could be no objection, and questions of procedure would naturally be governed by the *lex fori*, the law of Ontario.

Dicey also says (Rule 154) that an assignment of a movable wherever situate, if in accordance with the law of the owner's domicile (*lex domicilii*) or the place where the assignment is made (*lex loci actus*) may be presumed to be valid. Manitoba law would apply in both of these cases, so the court would find no difficulty there.

Dicey's exception to Rule 154 reads as follows:

"When the law of the country where a movable is situate (*lex situs*) prescribes a special form of, or imposes conditions of validity of transfer, an assignment according to the law of the owner's domicile (*lex domicilii*), or of the place where the assignment is made (*lex loci actus*), is, if the special form be not followed, or the conditions be not fulfilled, invalid as an assignment, but it may be valid as a contract to assign."

In other words, the Manitoba assignment may be invalid as such if the Ontario Act requires registration. Where, however, the necessity for registration is clearly excluded, no difficulty would arise. It is the broad provisions of the present Act, which appear to require multiple registration, that create the present uncertainty, and if the Bankruptcy Act requirements are now satisfied by a single registration in Canada, there seems to be no good reason why the provincial statutes should require more than the single registration in the registration district and province in which the assignor's principal place of business in Canada is situate.

THE CORPORATION SECURITIES REGISTRATION ACT.

Similar observations apply in respect of the provisions of the above Act which relate to assignments of book debts. Under this statute a registration in one place only in the province suffices, so that no change is needed in that respect. But there is the necessity for registration in more than one province. This can be avoided by requiring registration only when the principal place of business in Canada is in the province.

Merely by way of suggestion, draft amendments of the Ontario Acts, along the lines of this discussion, are appended, the new portions being italicised.

A. W. ROGERS,

Assistant Secretary,
Canadian Bankers' Association.

5th June, 1933.

THE ASSIGNMENT OF BOOK DEBTS ACT. 1931 (ONTARIO), CH. 35 AS AMENDED 1932-3.

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

(Note.—The balance of this section is unchanged.)

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

(*New*) (*a*) Where the principal place of business in Canada of the assignor is in the province, which place of business, in the case of a corporation, shall be its head office or registered office, in the registration district in which the principal place of business is situate.

(Note.—Clauses (*a*) to (*e*) of subsection 1 are to be repealed, subsections 2 and 3 are unchanged.)

THE CORPORATION SECURITIES REGISTRATION ACT. 1932 (ONTARIO), CH. 50.

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 *whose principal place of business in Canada is in the province* and contained:

(Note.—New parts italicised. Balance of section unchanged)

APPENDIX I.

REPORT RESPECTING THE FOREIGN JUDGMENTS ACT.

As appears on page 16 of the 1932 Proceedings, it was resolved that a revised draft of this Act be printed and distributed, and that if within two months thereafter the revised draft was not disapproved by one-fourth of the members who had attended the meeting, it should be deemed to be approved by the Conference

The Proceedings go on to state that the draft was subsequently disapproved by one-fourth of the members attending the meeting and was thereupon referred to the Saskatchewan Commissioners to reconsider and report.

Criticisms and suggestions were made by Mr. Horace E. Read of Dalhousie Law School, Halifax, and Mr. C. P. McTague, K.C., and it was thought better to hold the Act over a year under the authority given in the foregoing resolution rather than to enforce its distribution without the fullest consideration.

The Saskatchewan Commissioners wish to express, particularly to Mr. Read, a non-member of the Conference, their appreciation of his interest shown in forwarding criticisms and suggestions.

With that introduction, we will set out, point by point, the comments of Messrs. Read and McTague, with our recommendations thereon.

1.—*Section* 2(*d*):

It is suggested that the words "whether for costs or otherwise" be added at the end of this clause, in order to clear up the point as to whether a foreign judgment for costs will be enforced. We see no objection to the addition of those words.

2.—*Section* 3:

Objection has again been taken to the insertion of the word "only" at the end of the second line. This point was thoroughly discussed at the Conference. Mr. Read says:

> It is always a mistake to introduce premature rigidity into the law, however philanthropic the immediate motive may be.

We think, however, "premature rigidity" is rather begging the question. The whole idea of our considering the Act was to introduce uniformity. If the Commission merely collects some principles of the law, leaving it to the industrious practitioner and the courts to bring up further principles, it would seem to us that we are shirking the

very thing that we are supposed to do, namely, wherever we see a point, to try to adopt the best practice and suggest it as the uniform practice. We therefore recommend the retention of the word "only."

3.—*Section 3(a)*:

Mr. Read suggests as additional cases of jurisdiction, probably as an addition to 3(*a*), the cases

> Where the defendant is at the time of the commencement of the action physically present within the country,

and also

> Where the defendant is present within the country when he is served with a writ or other initiatory process in the action.

These were considered at the Conference and discarded, and we do not think that the Conference should change its decision. We concur with the comment made by Dean Falconbridge in a letter, that this jurisdiction, though theoretically sound, "from a practical point of view would render it quite impossible to get the Statute adopted in most of the provinces, especially in those we might call 'importing' or 'debtor' provinces. Practically, it is essential that we should restrict severely the bases of jurisdiction, and the possibility of occasional hardship from the plaintiff's point of view would not be sufficient to justify the adoption of general rules which would be regarded as depriving the defendant of his right to defend on the merits at his own place of residence."

4.—*Section 3(a)*:

Dean Falconbridge passes on a suggestion of Mr. Robinette of Toronto that there should be a definition of "ordinarily resident." We feel that these words as they stand draw about as fine a line as possible.

5.—*Section 3(a)*:

Dean Falconbridge passes on a suggestion of Mr. Robinette of Toronto that the words "at the time of the commencement of the action" should be replaced by "at the time of the service of the writ," or other similar words. It would not seem to matter very much which point of time is taken as the test of residence. The commencement of the action, however, which we presume means the issue of the writ, is the focal point in the Statute of Limitations and other similar statutes, and we think the present wording might well be allowed to stand.

6.—*Sections 3 and 4*:

Mr. Read suggests in effect the addition to section 3, as clause (*d*), the following:—

In an action for damages for an injury in respect of immovable property situate in this province, if that injury arises out of trespass to such property,

and as correlative thereto, to add at the end of section 4, clause (*b*), the following words:—

except where such injury arises out of trespass to that property.

In order that this suggestion may receive full consideration, we will repeat that portion of Mr. Read's letter dealing with this point:—

"(*b*) *Concerning Section* 4.

It is suggested that Section 4, clause (*b*) be amended by adding "except where such injury arises out of trespass to that property." It is suggested that the following provision be added to section 3 or inserted as a section by itself: "For the purposes of this Act, in an action *in personam* a court of a foreign country has jurisdiction in an action for damages for an injury in respect of immovable property situate in this province, if that injury arises out of trespass to such property." Section 4, as it now stands, is merely a codification of *British South African Co.* v. *Mocambique*. It should be remembered that that case is based primarily upon the distinction in England between a so-called "local" and a so-called "transitory" action. The extension of this purely arbitrary decision to exclude actions for damages for trespass when the question of title to foreign land is merely incidental to an ordinary personal action amounts to an unwarranted denial of justice in many cases. The ridiculous result that follows from a blind adherence to such a rule is exemplified in *Brereton* v. *C.P.R.*, 29 O.R. 57. In an action *in personam* for damages arising out of trespass to foreign land there need be no pretence to declaring the question of title to be *res adjudicata*. The question of title is in such a case essentially merely one of fact to be found as such for the purposes of the personal action. A situation such as the following may arise under section 4(*b*) of the draft Act:

A who resides in Ontario drives his motor car into Nova Scotia and crashes into B's building there. Under section 3 in order to have the judgment recognized in other provinces B would probably have to sue in Ontario. Suppose A has assets in Manitoba but none available in Ontario or Nova Scotia. Any such judgment by an Ontario court cannot under section 4(*b*) be recognized in Manitoba. The consequence is that there is a complete denial of justice for B. It is submitted that B will find no

assistance in the Reciprocal Enforcement of Judgments Act, supposing that all the provinces concerned have adopted it, because under section 4(*a*) of that Act the original court must have had jurisdiction, and "jurisdiction" not being otherwise defined in that Act presumably means jurisdiction in the international sense or that possessed under the Uniform Foreign Judgments Act.

When the situation is further analysed, however, it will be found that by no process of each province passing an Act relating to the effect of foreign judgments in that province can the situation be materially improved, unless at the same time each province legislates, internally as it were, to provide that its own courts can entertain an action for trespass to foreign land, thereby reversing the present legal situation as laid down in the *British South African Co.* v. *Mocambique* case. Even then, assuming the present law in the States of the American Union is substantially the same as our law, there would not be a reciprocal clearing up of the matter between the States of the Union and the Canadian Provinces.

Any such amendment as we have referred to would properly go in the Judicature Acts of the respective provinces, as it really is not a matter affecting foreign judgments.

In view of the certificate of character given to the present state of the law in the *British South African Co.* v. *Mocambique* case, in view of the fact that we would have to go outside of foreign judgments and recommend changes in the local law of each province, in view of the fact that even then we could not clear up the situation with respect to the United States, and in view of the fact that cases of hardship under the present law have not seriously arisen, we are of opinion that it would be better to make no change in the Act as drafted on this point.

7.—*Section* 6:

Mr. Read suggests that we add a provision similar in effect to that found in Nova Scotia, reading that:

> In any action brought in this province against any person domiciled therein on a judgment obtained in an action in any other province or country to which no defence was made, any defence which might have been made to the original action may be made to the action on the judgment.

Manitoba has a similar provision. This point was discussed very fully and it was decided—we think wisely—not to introduce this defence. It would seem largely to neutralise the value of a foreign judgment. Mr. Read no doubt suggests it in view of the wider bases of jurisdiction suggested by him, dealt with in clause 3 of this

memorandum. If, as we are recommending, these wider bases are not adopted, there is the less reason for the further defence in this paragraph under consideration.

8. Mr. McTague suggests the following:—

> Section 7 uses the expression "or other proceeding in the nature of an appeal in respect thereof." It might be that a judge interpreting this expression would not consider that a motion to set aside the foreign judgment is a proceeding in the nature of an appeal, and I think that if the words "in the nature of an appeal" were struck out we would arrive at the same result without running the danger of having a narrow interpretation placed upon the phrase "in the nature of an appeal."

We incline to the view that the present wording will in the long run produce the most satisfactory results.

9. It is suggested that there should be a repeal clause. It is of course assumed that the existing statutory law will be repealed. For greater certainty, it might be desirable to incorporate in the Act the following as section 10, re-numbering present 10 as 11:

10. The following enactments are hereby repealed:

(Set out, if any).

Dated at Regina this 20th day of June, A.D. 1933.

R. W. SHANNON,
D. J. THOM,
Saskatchewan Commissioners.

UNIFORM FOREIGN JUDGMENTS ACT.

(As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in August, 1933.)

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

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

SHORT TITLE.

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

INTERPRETATION.

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

(*a*) "Action" includes any civil proceeding;

(*b*) "Defendant" means a person who is ordered to pay a sum of money with or without costs or costs only by a foreign judgment;

(*c*) "Foreign country" means any country other than this province, whether a kingdom, empire, republic, commonwealth, state, dominion, province, territory, colony, possession or protectorate, or a part thereof;

(*d*) "Foreign judgment" means a judgment or order of a court of a foreign country, whether obtained before or after the passing of this Act, whereby a sum of money is with or without costs made payable or whereby costs only are made payable;

(*e*) "Original court" means the court in which the foreign judgment was obtained.

JURISDICTION IN ACTIONS IN PERSONAM.

3. For the purposes of this Act, in an action *in personam* a court of a foreign country has jurisdiction in the following cases only:

(*a*) where the defendant is, at the time of the commencement of the action, ordinarily resident in that country;

(*b*) where the defendant, when the judgment is obtained, is carrying on business in that country and that country is a province or territory of Canada;

(*c*) where the defendant has submitted to the jurisdiction of that court

(i) by becoming a plaintiff in the action; or

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

(iii) by having expressly or impliedly agreed to submit thereto.

WHERE JURISDICTION NOT POSSESSED.

4. For the purposes of this Act, no court of a foreign country has jurisdiction:

(*a*) in an action involving adjudication upon the title to, or the right to the possession of, immovable property situate in this province; or

(*b*) in an action for damages for an injury in respect of immovable property situate in this province.

WHEN FOREIGN JUDGMENT CONCLUSIVE.

5. Subject to the other provisions of this Act, and for the purposes of this Act, a foreign judgment is conclusive as to any matter

adjudicated upon and shall not be impeached for any error of fact or law.

DEFENCES TO ACTION ON FOREIGN JUDGMENT.

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

(*a*) that the original court had not jurisdiction for the purposes of this Act;

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

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

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

(*e*) that the judgment is not for a sum certain in money;

(*f*) that the judgment is for payment of a penalty or a sum of money due under the revenue laws of the foreign country;

(*g*) that the judgment has been satisfied or for any other reason is not a subsisting judgment;

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

(*i*) that the proceedings in which the judgment was obtained were contrary to natural justice.

STAY OF PROCEEDINGS.

7. In an action on a foreign judgment, the court, upon being satisfied that the defendant has taken or is about to take an appeal or other proceeding in respect thereof, may from time to time, pending the determination of the appeal or proceeding, and upon such terms as may be deemed proper, grant a stay of proceedings.

PROCEEDING ON ORIGINAL CAUSE OF ACTION.

8. Nothing in this Act shall prevent the bringing of an action upon the original cause of action in respect of which a foreign judgment was obtained.

CONSTRUCTION OF ACT.

9. 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.

10. The following enactments are hereby repealed:
(Set out, if any).

COMING INTO FORCE.

11. This Act shall come into force on the day of 193 .

APPENDIX J.

REPORT OF COMMITTEE SUBMITTING DRAFT AMENDMENTS TO THE UNIFORM CONDITIONAL SALES ACT.

Your Committee, in making its report on the proposed amendments to the Uniform Conditional Sales Act (Proceedings, 1922, p. 40), will deal first with the amendments to section 12.

It will be recalled that this matter came before the Conference in 1930, at the request of the Attorney-General of British Columbia, the object being to afford some protection to purchasers and mortgagees of the realty by requiring that the conditional sale agreement contain a description of the realty to which the goods were proposed to be affixed and be registered in the land titles office. Prior to the meeting of the Conference, the matter had been considered by the Manitoba Commissioners, acting as a Committee appointed by the President. Their report contained several valuable suggestions (Proceedings, 1930, pp. 84-86) which were considered by the Conference. The recording of conditional sales agreements under a real estate description was thought advisable, but owing to the diversity of the Provincial statutes respecting the registration of land titles it was decided to leave this part of the proposal to the discretion of the respective Provincial Legislatures (Proceedings, 1930, p. 14). The drafting of amendments to provide for the insertion in the conditional sale agreement of a description of the realty, and for the giving of notice to all registered owners and encumbrancers of the realty prior to any removal of the goods on default of payment, was referred to a Committee consisting of the British Columbia Commissioners. Amendments prepared in accordance with these instructions were submitted to the Conference in 1931 (Proceedings, 1931, pp. 13, 54).

Your Committee in presenting its Report in 1931 called attention to the Ontario case of *Hoppe* v. *Manners,* decided in January of that year (66 O.L.R. 587), by which a section similar to section 12 of the Uniform Act was held ineffectual to exclude the operation of the provisions of the Registry and Land Titles Act designed for the protection of *bona fide* purchasers against unregistered transactions. It was thought that the principles laid down by the Ontario Court would be followed in other Provinces, and would result in rendering inoperative the provisions of section 12 in those Provinces that have adopted the Uniform Act. In view of this, the Conference deferred

the consideration of the Report, and instructed your Committee to consider the matter further. Your Committee urged the Conference at that time to instruct it as to the general principles to be followed in an attempted solution of the difficulties. This the Conference declined to do, and your Committee was asked to endeavour to work out a solution of the matter and to report the results to the Conference.

Under these circumstances, your Committee thought best to confine its endeavours to the devising of such amendments suitable for adoption in British Columbia as might meet with the approval of the Attorney-General of that Province from whom the request for amendment of section 12 was first received.

In the course of discussions during the following year with Provincial departmental officers familiar with the practice under the "Land Registry Act" of British Columbia, it was suggested that instead of retaining the principle of the present section which maintains the seller's rights, thereby permitting the tearing out of fixtures, regardless of the rights of those interested in the realty and of the resulting damage to buildings, it would be more logical to adopt the legal principle that the title to goods which become fixtures passes to the owner of the realty, and to provide for the creation and registration of a lien on the realty in favour of the seller. A draft Bill along these lines, prepared by one of these departmental officers, was discussed with the Attorney-General of British Columbia, and under his direction was submitted to various manufacturers and trades associations for their views. The consensus of opinion was found to be so strongly opposed to this radical departure from the principle of the present section 12 that it was decided not to proceed further with the draft Bill.

Early in the present year certain constructive suggestions were received from Counsel representing the B. C. Division of the Canadian Manufacturers' Association, accompanied by tentative draft amendments which were designed to make the present section more effective through registration of the conditional sale as against the land and provisions for notice prior to the removal of fixtures. Based on these suggestions, your Committee has prepared a tentative draft section to replace present section 12. In this draft we have elaborated the suggestions referred to above, and have added several provisions intended for the protection of all parties interested, including the provisions of the draft amendment contained in the Report of your Committee submitted in 1931. A copy of the tentative draft section is attached to this Report.

The objects which your Committee had in mind in preparing the tentative draft may be summarized, as follows:—

1. The preservation (subject to certain limitations) of the principle in force in British Columbia since 1904 (B.C. Stats. 1903-4, c. 46, s. 2) that chattels subject to a conditional sale which become affixed to land shall nevertheless retain their character as chattels so far as the rights of the seller are concerned (see subsection (3) of the draft section).

2. The protection of purchasers and mortgagees of the land from loss through unavoidable ignorance of the existence of a conditional sale under which valuable fixtures may be removed from the land. Filing of notice of the seller's claim, describing the goods and the land, is required to be made in the Land Registry Office where search is ordinarily made as to the title of land (see subsection (4) of the draft section).

3. The protection of all persons having a registered interest in the land by requiring the giving to them of notice of the intention to remove the fixtures, and allowing twenty days for redemption of the fixtures after service of the notice (see subsection (6) of the draft section).

4. The protection of all parties interested in the land by prohibiting unnecessary damage or inconvenience in effecting the removal of the fixtures (see subsection (7) of the draft section).

5. The exclusion of building materials from the seller's right of removal (see definition of "Building materials" in subsection (1) and the provisions of subsection (2) of the draft section). This exclusion was made in Ontario in 1927, and the cases that have since arisen in the Courts there indicate that some definition of building materials is desirable. It would appear undesirable to permit any tearing out and removal of goods involving the destruction of other parts of the building resulting in substantial damage, and the draft definition is an attempt to state this principle.

Your Committee has also considered the question submitted to it by the Conference in 1932 (Proceedings, 1932, p. 19), as to whether the provisions of the Uniform Conditional Sales Act which now require the filing of "a true copy" of the writing evidencing the conditional sale agreement should not be amended to permit as an alternative the filing of the original writing. Your Committee is not aware of the matter having been before the Courts, and would have thought it unlikely that any Court would hold the registration of a conditional sale agreement invalid merely because the original

or a duplicate of the writing was filed instead of a true copy. The question having been raised, your Committee sees no objection to the making of the amendments necessary to remove any doubt.

In this connection, it may be of interest to note the wording used in similar cases in other uniform Acts drawn by the Conference. The Uniform Bills of Sale Act (Proceedings, 1928, p. 27) provides for the registration of a bill of sale by "filing the bill of sale" (s. 6(1)); and, where part of the chattels are situate in another registration district, by "filing a duplicate original of the bill of sale and affidavits, or a copy thereof" in the other district (s. 6(2)). The Uniform Assignment of Book Debts Act (Proceedings, 1928, p. 47) provides for registration of an assignment of "filing the assignment" (s. 5(1)); and, where business is carried on in different registration districts, by "filing a duplicate original of the assignment and affidavits, or a copy thereof" (s. 5(1) (e)). The Uniform Corporation Securities Registration Act (Proceedings, 1931, p. 58) provides for registration of an instrument by "filing with the Provincial Secretary a duplicate original of the instrument" (s. 4(1)).

Your Committee has prepared and recommends for the consideration of the Conference the following draft amendments to the Uniform Conditional Sales Act covering this point, all section references being to the Act as printed at page 40 of the 1922 Proceedings of the Conference:—

Section 3, *subsection* (2), *line* 6—Strike out the words "a true copy of such writing," and substitute the words "the writing or a true copy thereof."

Section 3, *subsection* (3), *line* 2—Strike out the words "such copy," and substitute the words "an original of the writing or a true copy thereof."

Section 3, *subsection* (4), *line* 2—Strike out the words "a true copy of such writing," and substitute the words "an original of the writing or a true copy thereof."

Section 3, *subsection* (5), *line* 3—Strike out the words "such copy," and substitute the words "the writing or a true copy thereof."

Section 11, *subsection* (3)—Strike out the words "the copy of" in line 2, and insert after the word "agreement" in line 3 the words "or copy thereof." Strike out the words "such copy" in line 4, and substitute the words "the writing or copy so filed."

A. V. PINEO

for British Columbia Commissioners.

15th July, 1933.

"CONDITIONAL SALES ACT."

TENTATIVE DRAFT SECTION TO REPLACE SECTION 12.

12.—(1) In this section,—

"Affixed," as applied to goods, means erected upon or fixed or annexed to land in such a manner and under such circumstances as to constitute fixtures;

"Building" includes any structure, erection, mine, or work built, erected, or constructed on or in any land;

"Building materials" includes any goods used in the building, erection, or construction of a building which become so incorporated or built into the building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building (apart from the value of the goods removed), but shall not include goods so used which are removable merely by unscrewing, unbolting, unclamping, uncoupling, or some similar method of disconnection;

"Goods" means all chattels personal capable of being affixed to land.

(2) This section shall not apply in respect of building materials; and, upon any goods otherwise within the scope of this section becoming affixed to land in such a manner as to constitute building materials within the meaning of subsection (1), this section shall cease to apply in respect of those goods.

(3) Subject to the provisions of this section, and notwithstanding the provisions of the "Land Registry Act," where possession of goods has been delivered to the buyer, and where the goods have been affixed to land, they shall remain subject to the rights of the seller as fully as they were before being affixed.

(4) In addition to compliance with the provisions of section 3, and not later than ten days after the commencement of the affixing of the goods to the land, there shall be filed in the Land Registry Office of the land registration district within which the land is situate a notice in Form 1 setting out,—

(*a*) The name and address of the seller;

(*b*) The name and address of the buyer;

(*c*) A description of the goods by which they may be readily and easily known and distinguished;

(*d*) The amount unpaid on account of the purchase price or under the terms and conditions of the hiring; and

(*e*) A description of the land to which the goods are affixed or are to be affixed, sufficient for the purpose of identification in the Land Registry Office.

The notice shall be signed by the buyer or the seller or the agent of one of them, either before or after the goods are affixed to the land. There shall be attached to the notice a copy of the writing evidencing the conditional sale agreement together with an affidavit of the buyer or the seller or the agent of one of them in Form 2 verifying the notice. Upon the deposit of the notice and affidavit in the Land Registry Office, accompanied by the payment of a fee of one dollar, the Registrar shall file the notice and make a reference to it by entry in the proper register against the title of the parcel of land to which the notice relates; or, if the title has not been registered, the Registrar shall file the notice and make an entry of its particulars in an index to be kept in his office, to be known as the "Conditional Sales Index."

(5) The filing of a notice in the Land Registry Office pursuant to this section shall be deemed actual notice of the existence and provisions of the conditional sale agreement to which the notice relates to every person who is an owner of the land described in the notice or any interest in the land, or who is a purchaser, lessee, mortgagee, or other encumbrancer of the land or any interest in the land, whether or not he is registered in the books of the Land Registry Office as such owner, purchaser, lessee, mortgagee, or encumbrancer, and whether or not he became such owner, purchaser, lessee, mortgagee, or encumbrancer before or after the filing of the notice.

(6) The seller shall not be entitled to retake possession of or to remove from the land the goods so affixed unless he has given to each registered owner of the land within the meaning of section 2 of the "Land Registry Act" a notice in writing of his intention to retake possession of and to remove the goods, and each 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 shall be signed by the seller or his agent and shall set out the name and address of the seller, the name and address of the buyer, a description of the goods, the amount owing on them, and a description of the land to which the goods are affixed; and shall contain a demand that the amount so owing shall be paid on or before a day mentioned, not less than twenty days after the giving of the notice pursuant to this subsection, and a statement of the intention to take possession of and to remove the goods unless the amount owing thereon is paid within the time mentioned. The notice to any person for the purposes of this subsection may be given by the delivery of the notice to him personally 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 should reach its destination in the ordinary course of mail. The notice may in any case be given by such form of substituted service as any Judge of the Supreme or any County Court may direct. Every owner, purchaser, lessee, mortgagee, or other encumbrancer of the land, whether registered as such under the "Land Registry Act" or not, shall have the right as against the seller to redeem the goods upon payment of the amount owing thereon.

(7) The seller on becoming entitled to take possession of and to remove the goods from the land shall exercise his right of removal in such a manner as will cause no greater damage or injury to the land or to the other personal property situate thereon, or put the owner, lessee, or occupier of the land to any greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

(8) Upon the receipt of a certificate of discharge in Form 3, signed by the seller and accompanied by an affidavit of execution of an attesting witness, or signed by the agent of the seller and accompanied by an affidavit of the agent verifying his signature and stating that he is the duly authorized agent of the seller in that behalf, or, where a memorandum of satisfaction has been filed pursuant to section 11, upon the receipt of a copy thereof certified by the proper officer in whose office the memorandum was filed; and upon payment of the prescribed fee, the Registrar in whose office a notice has been filed under the provisions of this section shall cancel the entry of the same on the register or in the Conditional Sales Register, as the case may be. Cancellation of the entry may also be made by the Registrar in any case, upon the application of the registered owner of the land, if, after such notice to the seller as the Registrar may direct, the seller fails to show cause to the satisfaction of the Registrar why the entry should not be cancelled. A fee of one dollar shall be payable for cancellation of the entry of a notice under this section. Upon the cancellation by the Registrar of the entry of a notice pursuant to this subsection, the provisions of subsections (3) and (5) shall cease to apply in respect of the goods described in the notice.

(Add to the Act the following Schedule.)

SCHEDULE.

FORM 1.

Notice of Conditional Sale Agreement.

(Section 12(4)).

Notice is hereby given pursuant to section 12 of the "Conditional Sales Act" respecting a certain conditional sale agreement referred to in a writing duly signed for filing pursuant to the provisions of section 3 of that Act, of which writing a true copy is attached hereto.

The following are the facts with respect to the said conditional sale agreement:—

(*a*) The name and address of the seller are,—

(*b*) The name and address of the buyer are,—

(*c*) The following is a description of the goods,—

(*d*) The amount unpaid on account of the purchase price [*or* under the terms and conditions of the hiring] is,—

(*e*) The following is a description of the land to which the goods are affixed or are to be affixed,—

Dated this day of , 193 .

(Signature of buyer, or seller, or agent)

Witness:

FORM 2.

Affidavit verifying Notice

(Section 12(4)).

I, of , (occupation), make oath and say:—

1. I am the buyer [*or* seller] named in the notice hereto annexed [*or* I am the duly authorized agent of the buyer [*or* seller] named in the notice hereto annexed, and I have a full knowledge of the facts set out therein].

2. The statement of facts set out in the said notice is true and correct.

(Signature)

Sworn before me, etc

FORM 3.

Certificate of Discharge.

(Section 12(8)).

I hereby certify that the conditional sale agreement of which a notice dated the day of , 193 , was filed under the provisions of section 12 of the "Conditional Sales Act" in the Land Registry Office at in the Province of British Columbia, as No. , against the following described land,
is discharged.

Dated this day of , 193 .

(Signature.)

Witness:

Victoria, B.C.
August 3rd, 1933.

Messrs. McLellan & White,
Barristers, Etc.
Bank of Nova Scotia Building,
Corner Hastings & Seymour Streets,
Vancouver, B.C.

Sirs:

Re: *"Conditional Sales Act"—Section* 12.

I am obliged for your letter of the 27th ultimo.

The creation of a new kind of lien to cover the case of Boilers and other machinery along the lines of the former attempt to solve the problem of section 12 would entail several long subsections dealing with the creation, registration, enforcement, and discharge of the lien. Our previous efforts along this line met with so much misconstruction and opposition from your clients and others that I, for one, am not disposed to repeat the attempt.

It seems to me that our present efforts should be directed to determining, if possible, what goods can logically be dealt with by removal under a conditional sale, and then cease to worry about cases in which the goods cannot reasonably be removed and therefore should not be sold on conditional sale Common sense dictates that goods which

necessarily become an irremovable part of the structure of a building should be sold on the like terms, and the sellers be given the like protection only as in the case of building materials generally. Material men are already given greater protection here than they have in many places which exceed British Columbia in the magnitude of the building operations.

I quite agree with Mr. Dalton that boilers, such as are sold on conditional sale, are usually removable from the industrial plant, and should not be classed as building materials. It seems to me we should endeavour to meet his point by some modification of our definition of building materials. The difficulty, of course, is to strike a happy medium so as not to nullify the object of the definition.

As a suggestion for your consideration, I have tentatively redrawn the exception now found at the end of the definition of "building materials" to read as follows:—

> "but shall not include goods so used which are severable from the land merely by unscrewing, unbolting, unclamping, uncoupling, or some similar method of disconnection; and shall not include machinery installed in a building for use in the carrying on of any industry, where the only substantial damage that would necessarily be caused to the building in removing the machinery therefrom (apart from the value of the machinery removed) is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery."

You will note that I am suggesting a slight alteration in the wording of the present exception by substituting "severable from the land" for "removable." The additional exception as to machinery is for the purpose of meeting the case of a boiler or other similar machinery. No doubt the wording can be improved.

I would be glad to have your comments on this suggested alteration of the draft sometime within the next week or ten days, so I can hand the correspondence to the Commissioner (Mr. H. G. Lawson, K.C.) who will represent this Province at the Conference at Ottawa.

I have the honour to be, Sirs,

Your obedient servant,

A. V. PINEO,

Legislative Counsel.

UNIFORM CONDITIONAL SALES ACT.

TENTATIVE DRAFT SECTION TO REPLACE SECTION 12.

(As revised by direction of the Conference of Commissioners on Uniformity of Legislation, in September, 1933; and reprinted for further consideration.)

12.—(1) In this section,—

"Affixed," as applied to goods, means erected upon or fixed or annexed to land in such a manner and under such circumstances as to constitute fixtures;

"Building" includes any structure, erection, mine, or work built, erected, or constructed on or in any land;

"Building materials" includes any goods which become so incorporated or built into a building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building (apart from the value of the goods removed); but shall not include goods which are severable from the land merely by unscrewing, unbolting, unclamping, uncoupling, or some similar method of disconnection; and shall not include machinery installed in a building for use in the carrying on of any industry, where the only substantial damage that would necessarily be caused to the building in removing the machinery therefrom (apart from the value of the machinery removed) is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery;

"Goods" means all chattels personal capable of being affixed to land.

(2) This section shall not apply in respect of building materials, and shall cease to apply in respect of any goods otherwise within the scope of this section upon their becoming affixed to land in such a manner as to constitute building materials.

(3) Subject to the provisions of this section, and notwithstanding the provisions of the ("Land Registry Act"), where possession of goods has been delivered to the buyer, and where the goods have been affixed to land, and where a notice in respect thereof has been filed pursuant to subsection (4), then, as against every owner, purchaser, mortgagee or other encumbrancer of the land whose title or interest therein was not at the time of the filing of the notice pursuant to subsection (4) registered in the (Land Registry Office) of the land registration district in which the land is situate, the goods shall

be and remain subject to the rights of the seller as fully as they were before being affixed.

(4) In addition to compliance with the provisions of section 3, the seller may at any time, either before or after the goods have been affixed to the land, cause to be filed in the Land Registry Office of the land registration district within which the land is situate a notice in Form 1 setting out,—

(*a*) The name and address of the seller;

(*b*) The name and address of the buyer;

(*c*) A description of the goods by which they may be readily and easily known and distinguished;

(*d*) The amount unpaid on account of the purchase price or under the terms and conditions of the hiring; and

(*e*) A description of the land to which the goods are affixed or are to be affixed, sufficient for the purpose of identification in the Land Registry Office.

The notice shall be signed by the seller or his agent. There shall be attached to the notice a copy of the writing evidencing the conditional sale agreement together with an affidavit of the seller or his agent in Form 2, verifying the notice. Upon the deposit of the notice and affidavit in the Land Registry Office, accompanied by the payment of a fee of one dollar, the Registrar shall file the notice and make a reference to it by entry in the proper register against the title of the parcel of land to which the notice relates; or, if the title has not been registered, the Registrar shall file the notice and make an entry of its particulars in an index to be kept in his office, to be known as the "Conditional Sales Index."

(5) The filing of a notice in the Land Registry Office pursuant to this section shall be deemed actual notice of the existence and provisions of the conditional sale agreement to which the notice relates to every person who is an owner of the land described in the notice or any interest in the land, or who is a purchaser, lessee, mortgagee, or other encumbrancer of the land or any interest in the land, and who at the time of the filing of the notice was not registered in the books of the Land Registry Office as such owner, purchaser, lessee, mortgagee, or encumbrancer; but neither the filing of the notice nor any provision of this section shall apply to affect or prejudice in any way the rights of any person whose title or interest in the land was registered in the (Land Registry Office) prior to the filing of the notice.

(6) The seller shall not be entitled to retake possession of or to remove from the land the goods so affixed unless he has given to

each registered owner of the land within the meaning of section 2 of the "Land Registry Act" a notice in writing of his intention to retake possession of and to remove the goods, and each person so notified has for a period of twenty days after the giving of the notice to him, or for such longer period as any Judge of the Supreme or any County Court may fix on cause shown to his satisfaction, failed to redeem the goods by payment of the amount owing on them. The notice shall be signed by the seller or his agent and shall set out the name and address of the seller, the name and address of the buyer, a description of the goods, the amount owing on them, and a description of the land to which the goods are affixed; and shall contain a demand that the amount so owing shall be paid on or before a day mentioned, not less than twenty days after the giving of the notice pursuant to this subsection, and a statement of the intention to take possession of and to remove the goods unless the amount owing thereon is paid within the time mentioned. The notice to any person for the purposes of this subsection may be given by the delivery of the notice to him personally 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 should reach its destination in the ordinary course of mail The notice may in any case be given by such form of substituted service as any Judge of the Supreme or any County Court may direct. Every owner, purchaser, lessee, mortgagee, or other encumbrancer of the land, whether registered as such under the ("Land Registry Act") or not, shall have the right as against the seller to redeem the goods upon payment of the amount owing thereon.

(7) The seller on becoming entitled to take possession of and to remove the goods from the land shall exercise his right of removal in such a manner as will cause no greater damage or injury to the land or to the other personal property situate thereon, or put the owner, lessee, or occupier of the land to any greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

(8) Upon the receipt of a certificate of discharge in Form 3, signed by the seller and accompanied by an affidavit of execution of an attesting witness, or signed by the agent of the seller and accompanied by an affidavit of the agent verifying his signature and stating that he is the duly authorized agent of the seller in that behalf; or, where a memorandum of satisfaction has been filed pursuant to section 11, upon the receipt of a copy thereof certified by the

proper officer in whose office the memorandum was filed; and upon payment of the prescribed fee, the Registrar in whose office a notice has been filed under the provisions of this section shall cancel the entry of the same on the register or in the Conditional Sales Register, as the case may be. In case of a partial discharge, the form of the certificate may be varied accordingly; and the Registrar shall cancel the entry in respect only of the goods and land to which the partial discharge extends. Cancellation of the entry may also be made by the Registrar in any case, upon the application of the registered owner of the land, if, after such notice to the seller as the Registrar may direct, the seller fails to show cause to the satisfaction of the Registrar why the entry should not be cancelled A fee of one dollar shall be payable for cancellation of the entry of a notice under this section. Upon the cancellation in whole or in part by the Registrar of the entry of a notice pursuant to this subsection, the provisions of subsections (3) and (5) shall cease to apply in respect of the goods and land to which the cancellation extends.

(Add to the Act the following Schedule)

SCHEDULE

FORM 1.

Notice of Conditional Sale Agreement

(Section 12(4)).

Notice is hereby given pursuant to section 12 of the "Conditional Sales Act" respecting a certain conditional sale agreement referred to in a writing duly signed for filing pursuant to the provisions of section 3 of that Act, of which writing a true copy is attached hereto.

The following are the facts with respect to the said conditional sale agreement:—

(*a*) The name and address of the seller are,—

(*b*) The name and address of the buyer are,—

(*c*) The following is a description of the goods,—

(*d*) The amount now unpaid on account of the purchase price [*or* under the terms and conditions of the hiring] is,—

(*e*) The following is a description of the land to which the goods are affixed or are to be affixed,—

Dated this day of , 193 .

(Signature of buyer, or seller, or agent.)

Witness:

FORM 2.

Affidavit verifying Notice.

(Section 12(4)).

I, of , (occupation), make oath and say:—

1. I am the seller named in the notice hereto annexed [*or* I am the duly authorized agent in that behalf of the seller named in the notice hereto annexed, and I have a full knowledge of the facts set out therein].

2. The statement of facts set out in the said notice is true and correct.

(Signature.)

Sworn before me, etc.

FORM 3.

Certificate of Discharge.

(Section 12(8)).

I hereby certify that the conditional sale agreement of which a notice dated the day of , 193 , was filed under the provisions of section 12 of the "Conditional Sales Act" in the Land Registry Office at in the Province of British Columbia, as No. , against the following described land,—

is wholly discharged [*or* is discharged in part as follows (here state the description of goods in respect of which conditional sale agreement is discharged, and the description of the land to which those goods are affixed)].

Dated this day of , 193 .

(Signature.)

Witness:

APPENDIX K.

DRAFT PARTNERSHIPS REGISTRATION ACT.

(An Act to make uniform the law respecting the Registration of Partnerships.)

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

SHORT TITLE.

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

INTERPRETATION.

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

(*a*) "Carrying on business" means the doing of any act in the Province for the promotion of the lawful objects and purposes for which a partnership or a business, conducted by one person, with a name indicating a plurality of persons, has been formed or created, but does not include the taking of orders for or the buying or selling of goods, wares and merchandise by travellers or by correspondence, if the partnership has no resident agent or representative or no office or place of business in the Province;

(*b*) "Registration District" means a district established under this Act for the filing of certificates.

CERTIFICATES OF PARTNERSHIP.

3. Every person carrying on business in the Province in partnership for trading, manufacturing or mining purposes shall sign a certificate (Form A) setting forth the full name, address and occupation of every partner, the firm name of the partnership, the principal place of business in the Province, the time during which the partnership has existed, and stating that the persons named therein are the only members thereof.

4. Whenever any change takes place in the membership of the partnership, or in the name under which it carries on business, a certificate (Form B) setting forth the change in the membership of the partnership, or in its name, and the full name, address and occupation of every incoming partner, if any, shall be signed by every continuing partner and every incoming partner.

5. The certificates (Form A or Form B) may be made in one or nore counterparts, each of which may be signed by one or more of he partners, and the statements contained therein shall be verified ›y a statutory declaration of one of the partners, which declaration hall be deemed to be part of the certificate.

6. The certificate (Form A) shall be filed in the office of the ›roper officer within three months from the time the partnership ommences to carry on business in the Province, or, in the case of a ›artnership existing but unregistered at the coming into force of this ıct, within three months thereafter.

7. The certificate (Form B) shall be filed in the office of the ›roper officer within three months from the time that any change akes place in the membership of the partnership or in the name nder which it carries on business, or, if both such changes take lace within three months of each other, then the certificate shall be led within three months from the time that the last of such changes ıkes place.

8. Registration of a certificate (Form A or Form B) shall be ffected by filing it in the office of the proper officer of the registra- ion district in which is situate the principal place of business of ıe partnership in the Province.

CERTIFICATE OF DISSOLUTION OF PARTNERSHIP.

9. Upon the dissolution of the partnership, a certificate (Form ;) setting forth the name of the partnership, the names of its ıembers, the fact that it has been dissolved, and the date of the issolution, may be signed by any partner, and filed in the office of ıe proper officer in any registration district in which the certificate r certificates (Form A or Form B) is or are filed

EFFECT OF STATEMENTS IN CERTIFICATES.

10. The statements made in a certificate filed under this Act ıall not be controvertible by any person who has signed it, and, ıcept as against the other members of the partnership mentioned ıerein, shall not be controvertible by any person who was a member the partnership at the time the certificate was made, but who did ›t sign it.

11. Every person who has signed a certificate stating that he a partner shall, except in the case of a person to whom he is ıown not to be a partner, be deemed to continue a partner until certificate is filed showing that he has ceased to be a partner or that e partnership has been dissolved.

CERTIFICATE OF ONE PERSON IN BUSINESS UNDER FIRM NAME.

12. Every person engaged in business for trading, manufacturing or mining purposes, and who is not associated in partnership with any other person, but who uses as his business name or style some name or designation other than his own name, or who in such business uses his own name with the addition of "and company," or some other word or phrase indicating a plurality of persons, shall sign a certificate (Form D) setting forth his full name, address and occupation, his business name, his principal place of business in the Province, the time during which he has been engaged in business, and stating that he is engaged in business solely by himself under that business name or style, and shall file the certificate in the office of the proper officer in the registration district in which is situate his principal place of business in the Province, within three months from the time when he commences to carry on business in the Province, or, in the case of a person so carrying on business but unregistered at the coming into force of this Act, within three months thereafter.

COPY OF CERTIFICATES FOR PROVINCIAL SECRETARY.

13.—(1) Whenever a certificate is filed under this Act, a true copy thereof shall be furnished therewith to the proper officer, who shall forthwith transmit the copy to the Provincial Secretary.

(2) Upon the receipt by the Provincial Secretary of any certificate of any change in or dissolution of any partnership, he shall publish a notice thereof in Form E in the Gazette

PENALTY.

14. Any person required to file a certificate under this Act, who omits to do so, shall be guilty of an offence and shall be liable, on summary conviction, to a penalty not exceeding five hundred dollars and costs.

DISABILITY.

15.—(1) Subject to the provisions of sections 16 and 17, no action, suit or other proceeding in connection with any purpose or object of a partnership or of a business conducted by any person who by this Act is required to file a certificate in respect thereof shall be brought in any court by a person who has omitted to file any certificate required by this Act, nor by any person claiming through or under him.

(2) Subsection (1) of this section shall not apply to a trustee in bankruptcy, an assignee for the general benefit of creditors, a sheriff, bailiff or any officer of the court.

EXTENSION OF TIME FOR FILING.

16. In the case of a person required to file any certificate under this Act, a judge of the Court, in his discretion, and upon such terms and conditions, if any, as he may direct, and whether or not the time limited for compliance with the provisions of this Act has expired, may, from time to time, make an order,—

(*a*) extending the time for filing a certificate; or

(*b*) permitting one or more counterparts of a certificate to be filed without the other or others; or

(*c*) correcting any omission or misstatement in any certificate filed arising from accident, inadvertence or other sufficient cause,

and any order so made, or a copy thereof, shall be annexed to the certificate filed or tendered for filing, and appropriate entries shall be made in the register.

17. In the case of a person who in good faith claims through or under a person required by this Act to file a certificate, and who has omitted to do so, a judge of the Court, upon being satisfied that the omission to file a certificate within the time prescribed by this Act, or an omission or misstatement in a certificate, was accidental or due to inadvertence or impossibility or other sufficient cause, or that substantial injustice may result, may, from time to time, upon such terms and conditions, if any, as he may direct, and whether or not the time limited for compliance has expired, or such compliance is impossible of performance, make an order permitting such person to bring any action, suit or other proceeding in any court in connection with any purpose or object of the partnership or of a business conducted by any person who by this Act is required to file a certificate in respect thereof.

DUTIES OF OFFICIALS.

18. The proper officer shall cause every certificate filed in his office, and the Provincial Secretary shall cause every true copy of such certificate filed in his office, to be numbered, to be endorsed with the day of its filing, and to be indexed by entering, in alphabetical form, in a register to be kept for this purpose, the information, in an abbreviated form, contained in the certificate, in the manner shown in the Forms F, G and H. Each counterpart of a certificate subsequently filed shall bear the same number as the first counterpart filed, with the addition of consecutive alphabetical lettering after the number on all counterparts subsequently filed.

SEARCHES.

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

REGISTRATION DISTRICTS AND OFFICES.

20. For the purpose of filing certificates, each in the Province shall be a registration district, and the whose office is situate within a registration district shall be the proper officer for the filing of certificates in that registration district.

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

FEES.

21. For services under this Act the proper officer shall be entitled to receive such fees as the Lieutenant-Governor in Council may from time to time prescribe.

EVIDENCE OF RECORDS.

22.—(1) Whenever the proper officer furnishes a certified copy of a certificate, under his hand, such certified copy shall be received for all purposes as *prima facie* evidence of the facts set out therein, for all purposes as if the original certificate filed under this Act were produced.

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

SAVING CLAUSES.

23. Nothing in this Act shall prejudice or diminish the rights of any other party or parties as against any person who by this Act is required to file a certificate, or limit or restrict the liability of the different members of a partnership.

24. Nothing in this Act shall exempt from liability any person who, being a partner, omits to make and file a certificate as required by this Act, and such person may, notwithstanding the omission, be

sued jointly with the partners who have filed a certificate or certificates, or they may be sued alone, and if judgment is recovered against them he may be sued on the original cause of action upon which the judgment was recovered.

25. Any person who has heretofore complied with the provisions of any former Act respecting the registration of partnerships shall be deemed, as at the coming into force of this Act, to have complied with the provisions of this Act, and thereafter shall be subject to all the provisions hereof.

REPEAL.

26. "The Registration of Partnerships Act," being Chapter of the Revised Statutes of is hereby repealed.

(Note.—In provinces where registration of partnerships provisions form part of the Partnerships Act, the necessary change will have to be made in this section).

CONSTRUCTION OF ACT.

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

COMING INTO FORCE.

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

(Note.—Schedules are the same as at end of Act printed in 1932 Proceedings, with the exception that the words "or trade name" are struck out of Form D, at the end of the Form, and the words "name or style" substituted in their place. A new Form E, as set out below, is to be inserted after Form D, and Forms E, F and G become Forms F, G and H respectively)

FORM E.

The Partnerships Registration Act.

Certificates have been filed of a change affecting the following partnerships:—

of

of

Certificates of dissolution have been filed affecting the following partnerships:—

of

of

Deputy Provincial Secretary.

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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