1934

PROCEEDINGS

OF THE

SEVENTEENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

MONTREAL

AUGUST 30TH, 31ST, SEPTEMBER 1ST, 3RD, 4TH, 1934

Conference of Commissioners on Uniformity of Legislation in Canada.

OFFICERS OF THE CONFERENCE.

Honorary President.....Hon. W. J. Major, K.C., Winnipeg, Manitoba.

President.....

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

Treasurer.....C. P. McTague, K.C., Windsor, Ont.

Secretary.....V. C. MacDonald, 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.....Ralph P. Hartley, K.C., Fredericton.

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

Ontario.....I. A. Humphries, K.C., Parliament Buildings, Toronto 5.

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

Quebec.....Hon. Ed. Fabre Surveyor, 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.

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.

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. (Deceased, October 1934).

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

New Brunswick:

E. RENE 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.

VINCENT C. MACDONALD, Dean, Dalhousie Law School, Halifax.

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

Ontario:

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

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

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

DANIEL W. LANG, K.C., Sterling Tower Building, 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. Gordon Floan, 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. A. W. Roebuck, 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. T. C. Davis, K.C.

PREFACE

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

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

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

Subsequent annual meetings have been held as follows:—

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

1925. August 21-22, 24-25, Winnipeg.
1926. August 27-28, 30-31, St. John.
1927. August 19-20, 22-23, Toronto.
1928. August 23-25, 27-28, Regina.
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.
1934. August 30-31, September 1-4, Montreal.

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 statistics are now in force in all the provinces of Canada except Quebec.

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

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

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

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

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

reciprocal enforcement of judgments. The subjects of devolution of estates, intestate succession and defences to actions on foreign judgments were also discussed.

In 1925 the Conference revised and approved a model uniform statute respecting intestate succession, and discussed and approved certain amendments of the Bulk Sales Act as revised and approved by the Conference of 1920. It also discussed and referred again to committees an act respecting devolution of real property, a report on defences to actions on foreign judgments, and a report on a uniform Wills Act. Other subjects upon which reports were received and which were referred again to committees were chattel mortgages and bills of sale and trustees.

In 1926 the Conference considered a draft Wills Act, a draft Bills of Sale Act and a draft Devolution of Real Property Act, and referred them again to committees for further consideration and report.

In 1927 much of the time of the Conference was devoted to the discussion of the draft Bills of Sale Act, which was again referred to a committee. The Conference also revised and approved a model uniform Devolution of Real Property Act.

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

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

In 1934 the Conference provisionally approved a revised uniform Contributory Negligence Act to supersede that adopted by it in 1924. It also approved of an important amendment to the uniform Conditional Sales Act and considered matters relating to the uniform Registration of Partnerships Act, the uniform Limitation of Actions Act and to proposed uniform Interpretation and Landlord and Tenant Acts and appointed committees to consider and report upon these and other matters.

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 meeting 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, 1025): 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), Saskatchewan (1928), and, in part, in New Brunswick (1934).

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: adopted in Saskatchewan (1934).

V. C. M.

PROCEEDINGS

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

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

Alberta:

Hon. J. F. LYMBURN, K.C., Attorney-General of Alberta.
MESSRS. SMITH and MCCUAIG.

British Columbia:

MR. PINEO.

Manitoba:

HON. W. J. MAJOR, K.C., Attorney-General of Manitoba.
MESSRS. FISHER, CAMPBELL and COLLINSON.

New Brunswick:

MESSRS. HARTLEY and RICHARD.

Nova Scotia:

MR. MACDONALD.

Prince Edward Island:

MR. BENTLEY.

Ontario:

MESSRS. MCTAGUE, HUMPHRIES, FOSTER and LANG.

Saskatchewan:

MR. THOM.

FIRST DAY

Thursday, August 30, 1934.

The Conference assembled at 10.30 a.m. at the Windsor Hotel, Montreal, Mr. Thom, the Vice-President, in the chair.

The minutes of last year's meeting, as printed, were taken as read and confirmed, subject to the correction in the resolution

on page 20 of the 1933 Proceedings concerning Mr. Shannon wherein the date "1919" should read "1918".

The Vice-President read a communication from Mr. John D. Falconbridge, indicating that the latter would not be present at the Conference. The Vice-President spoke regretfully of this fact, and expressed the hope that Mr. Falconbridge's services would not be lost to the Conference.

Under the circumstances the Vice-President announced that there would not be any *Address* from the President or Vice-President.

On motion, Mr. MacDonald was appointed *Secretary* of the meeting.

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

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

On motion of Mr. Pineo, the matter of certain amendments suggested to be made to the uniform *Conditional Sales Act, Section 3 (1)* and the matter of a memorandum respecting *Infants' Trade Contracts*, were added to the agenda.

Mr. Pineo, for the British Columbia Commissioners, presented the report of the Commissioners on draft amendments to the uniform *Conditional Sales Act* relating to section 12 of the Act. (Conference Proceedings, 1933, p. 17, Appendix J.).

(*Appendix A.*)

At 12.30 p.m. the Conference adjourned.

At 2.00 p.m. the Conference reassembled and resumed discussion of the amendment of Section 12 of the uniform *Conditional Sales Act.*

The Conference adjourned at 4.00 p.m. and reassembled at 8.30 p.m. and resumed discussion of the amendment of section 12 of the uniform *Conditional Sales Act.*

The Conference adjourned at 10.30 p.m.

SECOND DAY

Friday, August 31, 1934.

The Conference re-assembled at 9.30 a.m.

Mr. Fisher presented the Report of the Manitoba Commissioners on the "*Interpretation Acts*" (Conference Proceedings,

1933, p. 20) and there was discussion as to the desirability of the Conference attempting the preparation of a draft uniform Interpretation Act. It was *Resolved* that this matter be referred again to the Manitoba Commissioners with instructions to prepare uniform *Sections* for inclusion in Interpretation Acts rather than to prepare a uniform Act.

The Conference then proceeded to discuss the sections of the draft Act contained in the above Report from the point of view of the propriety of their inclusion among the uniform sections above mentioned and suggestions were made for the information of the Manitoba Commissioners as to various matters of form and substance.

It was *Resolved* that the Commissioners for each Province study the draft sections contained in this Report and, after comparison with the similar sections contained in the Interpretation and similar Acts of their respective Provinces, submit suggestions and criticisms to the Manitoba Commissioners for their consideration.

It was *Resolved* that the Report of the Manitoba Commissioners, as presented, be printed in the annual Proceedings.

(*Appendix B.*)

The Ontario Commissioners reported that they had not prepared a draft section 5 (1) of the uniform *Assignment of Book Debts Act* (Conference Proceedings, 1933, p. 16) as there had not been any amendment to section 63 (2) of the Bankruptcy Act upon the enactment of which the preparation of the draft section was conditional. This Report was concurred in.

The Report of the Ontario Commissioners on the *Partnerships Registration Act* (Conference Proceedings, 1933, pp. 21, 105) was presented by Mr. McTague and received.

(*Appendix C.*)

The following Resolution, moved by Mr. Humphries, seconded by Mr. Pineo, was adopted unanimously:

Whereas Mr. John D. Falconbridge, K.C., has been a member of this Conference continuously since its organization in 1918 and his unavoidable absence from the Annual Meetings during the past two years has been keenly felt by the members of the Conference.

And Whereas it is felt that the achievements of the Conference during the past fifteen years have been the result of the indefatigable labours of Mr. Falconbridge, first as Secretary, until 1929, and subsequently as President of the Conference,

And Whereas this Conference has been informed that it is the desire of The Honourable Arthur W. Roebuck, K.C., Attorney-General for the Province of Ontario, that Mr. Falconbridge continue to represent that Province at the Conference and that his appointment from Ontario as a Commissioner be continued and has been so continued;

NOW, THEREFORE, BE IT RESOLVED:

1. THAT the order of business usually followed in the election of officers of the Conference be varied and that Mr. John D. Falconbridge, K.C., of Toronto, Dean of the Osgoode Hall Law School, be re-elected President of the Conference for the ensuing year.

2. THAT a copy of this Resolution be forwarded by the Secretary to Mr. Falconbridge with a communication from the Secretary expressing the expectation of the members of the Conference that Mr. Falconbridge will continue in the office of President for this and many years to come.

(At a later date Mr. Falconbridge informed the Secretary that while he appreciated the kindness of the mover and seconder of the resolution and of the other members of the Conference, he would be unable, to his great regret, to continue as a member of the Conference).

Messrs. Fisher, Hartley, Smith, McTague and Pineo were appointed a *Nomination Committee* to submit recommendations as to the election of officers of the Conference (except that of President) for the ensuing year.

At 12.30 p.m. the Conference adjourned.

The Conference re-assembled at 2.00 p.m. and resumed discussion of the Report on the *Partnerships Registration Act*. It was *Resolved* that a section be introduced into the draft uniform Partnerships Registration Act providing that the Act shall not apply to a limited partnership.

It was further *Resolved* that the draft *Partnerships Registration Act* (Conference Proceedings, 1933, Appendix K) be not this year adopted but be referred again to the New Brunswick Commissioners to consider the comments made thereon by the British Columbia Commissioners and that the New Brunswick Commissioners report again to the Conference next year.

The Conference reconsidered the classes of partnerships (trading, manufacturing, and mining) to which the Act was recommended to apply, and after discussion it was *Resolved* that no change should be made therein.

The Report of the Ontario Commissioners on *Collection Agencies* (Conference Proceedings, 1933, p. 20) was presented by Mr. Foster, received by the Conference and, after discussion, concurred in by the Conference.

(*Appendix D.*)

Mr. Pineo presented a memorandum respecting *Infants' Trade Contracts* submitted by the Canadian Credit Mens' Trust Association of Vancouver, suggesting certain amendments to the *British Columbia Infants' Act*, and forwarded to the Conference at the instance of the Attorney-General of British Columbia. This memorandum was carefully considered but, it being felt that conditions in the various provinces were not so uniform as to justify the Conference in recommending legislation of this nature at this time, it was *Resolved* that no action be taken this year in the matter.

(*Appendix E.*)

Certain questions relating to the uniform *Limitation of Actions Act* (Conference Proceedings, 1931, p. 38 and 1932, p. 29) and contained in a letter from Mr. Thom to the Secretary of the Conference, dated February 14, 1934, the substance of which had been circulated among the Commissioners prior to the meeting, were discussed.

(*Appendix F.*)

At 4.30 p.m. the Conference adjourned.

At 8.30 p.m. the Conference re-assembled and resumed discussion of the matters relating to the *Limitation of Actions Act* above referred to. It was *Resolved* that the matters relating to the uniform *Limitation of Actions Act* referred to in the excerpt from Mr. Thom's letter (Appendix F.) be referred to the Alberta Commissioners for consideration and that a report with recommendations, be made to the next meeting of the Conference.

A letter from the Retail Merchants Association of Canada presented by Mr. Fisher, suggesting certain amendments to the *Warehousemen's Lien Act*, was received and fyled, but on motion it was *Resolved* that it was not advisable to amend the Act in the manner suggested therein.

The Conference resumed discussion of the Report on the draft amendments to Section 12 of the uniform *Conditional Sales Act*, and the following resolution was adopted:

Resolved that the draft of Section 12 of the uniform *Conditional Sales Act*, as revised at this meeting of the Conference, be

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

(*Appendix G.*)

The Report of the Nova Scotia Commissioners on the Report of the Committee on Comparative Provincial Legislation of the Canadian Bar Association as to the uniform *Contributory Negligence Act* (Conference Proceedings, 1933, pp. 13, 29) was presented by Mr. MacDonald, received by the Conference, and its contents outlined by Mr. MacDonald.

(*Appendix H.*)

At 11.30 p.m. the Conference adjourned.

THIRD DAY

Saturday, September 1, 1934.

The Explanatory Notes to the draft *Landlord and Tenant Act* prepared by the Alberta Commissioners (Conference Proceedings, 1933, pp. 20, 42) were presented by Mr. Smith and received by the Conference.

(*Appendix I.*)

A Motion that it was not desirable for the Conference to proceed further to consider the above Act, supported by the Commissioners from Nova Scotia, New Brunswick and British Columbia, was defeated and the Conference proceeded to consider the sections of the Act together with the Explanatory notes thereon and criticisms and suggestions were made for the instruction of the Commissioners to whom the matter might be referred.

At 2.30 p.m. the Conference adjourned.

The Conference re-assembled at 8.30 p.m. and resumed discussion of the sections of the *Landlord and Tenant Act*, and explanatory notes thereon.

At 10.30 p.m. the Conference adjourned.

FOURTH DAY

Monday, September 3, 1934.

The Conference re-assembled at 9.30 a.m. and resumed discussion of the *Landlord and Tenant Act.*

Mr. Pineo presented a memorandum prepared by the Canadian Credit Mens' Trust Association, Limited, proposing a further amendment of sub-section 1 of section 3 of the *Conditional Sales Act* (See Conference Proceedings, 1929, Appendix C).

(*Appendix J.*)

The following resolution was adopted:

Resolved that the Memorandum of the Canadian Credit Mens' Trust Association advocating the amendment of section 3 of the uniform *Conditional Sales Act,* having been discussed in general by the Conference, be referred to the Commissioners for Ontario to be considered in detail in connection with the uniform Acts respecting Bills of Sale, Assignment of Book Accounts, and Corporate Securities Registration relating to the protection of creditors, and in connection with the question of procedure under the Bankruptcy Act involved in the working out of those provisions; and that the Commissioners be requested to submit their report at the next meeting of the Conference together with such draft amendments as they consider advisable; and that in the preparation of any draft amendments consideration be given to the direction of the Conference that protection be extended to creditors without notice and not limited to judgment creditors, and that the same class of creditors be protected after bankruptcy as is protected before bankruptcy.

The Conference resumed discussion of the Report of the Nova Scotia Commissioners as to the *Contributory Negligence Act.*

The following Resolution was adopted:

Resolved that this Conference express its thanks to the Committee on Comparative Provincial Legislation for its Report as to the Contributory Negligence Act (Conference Proceedings, p. 13, Appendix C.).

The Conference then proceeded to re-consider the uniform *Contributory Negligence Act* (Conference Proceedings, 1924, p. 26) in the light of the Committee's report and of the report of the Nova Scotia Commissioners.

Mr. E. H. Coleman addressed the Conference on the desirability of certain suggested amendments to the *Evidence Act* relating to *Proof of Foreign Documents*.

The following resolution was adopted:

Resolved that this Conference is desirous of securing the co-operation of the proper Federal authorities in matters relating to the *Interpretation Act* and invites the co-operation of the Federal authorities in any other matters of mutual interest and that the President and Secretary of the Conference be hereby authorized to extend such an invitation at any time deemed proper.

At 12-30 p.m. the Conference adjourned.

The Conference re-assembled at 8.30 p.m. and resumed discussion of the uniform *Contributory Negligence Act*. The following resolution was then adopted:

Resolved that the uniform *Contributory Negligence Act* as revised at the present (1934) meeting of the Conference be printed and that copies be sent by the Secretary to all members of the Conference and that, if within two months thereafter, the revised draft is not disapproved by the representatives of two or more Provinces it shall be recommended to the legislatures of the several Provinces of Canada for enactment.

(*Appendix K.*)

(Subsequently the draft was disapproved by the representatives of more than two provinces, and it will therefore be further considered in 1935).

Mr. Pineo having raised the question of certain difficulties arising in British Columbia from the decision of the *Katz Case*, 42 B.C.R., p. 14, concerning the proper Interpretation of section 2 of the *British Columbia Contributory Negligence Act*, the following motion was adopted:

"In view of the decisions of the Courts in British Columbia with respect to the interpretation of a section in the British Columbia Statute corresponding to section 2 of the revised draft of the uniform Contributory Negligence Act, *Resolved* that section 2 of that draft Act be referred to the Nova Scotia Commissioners for further consideration and to report at the next meeting of the Conference".

The Report of the Treasurer for the year ending July 31, as approved by the auditors, Messrs. McTague and McCuaig, was received and adopted.

(*Appendix L.*)

The offer of Mr. Pineo to compile a Table of Model Uniform Statutes to supplement that appearing in Appendix E of the Conference Proceedings of 1929 was accepted. Said Table when completed to be printed in the 1934 Proceedings of the Conference.

(*Appendix M.*)

The following Resolution was adopted:

Resolved that the Secretary be instructed to express to Mr. Sidney E. Smith the Conference's sincere appreciation of the high value of the services rendered to it by him, both as a Commissioner and as Secretary of the Conference, and extend to Mr. Smith its congratulations upon his promotion to the Presidency of Manitoba University.

The Report of the Nomination Committee, which is as follows, was received and adopted:

"Your Committee on Nomination of officers submits the following nominations:

Hon. President—Hon. W. J. Major, K.C.
President—John D. Falconbridge, K.C.
(Previously elected).
Vice-President—Douglas J. Thom, K.C.
Treasurer—Charles P. McTague, K.C.
Secretary—Vincent C. MacDonald.

At 10.30 p.m. the Conference adjourned.

FIFTH DAY

Tuesday, September 4, 1934.

At 9.30 p.m. the Conference re-assembled and the following resolution was adopted:

Resolved that the *Landlord and Tenant Act* be referred again to the Alberta Commissioners for consideration and report next year.

The Conference expressed its deep appreciation of the courtesy of Mr. J. A. Ewing, K.C., in providing for the entertainment of the Commissioners.

The Conference expressed its grateful appreciation of the hospitality of the members of the Montreal Bar and of Mr. Leighton Foster.

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 shall have authority to employ such secretarial assistance as he may require, to be paid for out of the funds of the Conference.

The Secretary was instructed (1) to arrange with the Canadian Bar Association to have the Report of the Proceedings of the Conference printed as an addendum to the Report of the Proceedings of that Association, the expenses 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 printed in pamphlet form and to send copies to the other Commissioners.

At 11.30 p.m. the Conference adjourned.

APPENDICES

A. Report on Draft Amendments to uniform Conditional Sales Act.
B. Report of Committee on the Interpretation Acts.
C. Report on the Partnerships Registration Act.
D. Report on Collection Agencies.
E. Memorandum respecting Infants Trade Contracts.
F. Excerpt re Limitation of Actions Act.
G. Tentative Draft Section to Replace Section 12 of the uniform Conditional Sales Act.
H. Report of Nova Scotia Commissioners on Contributory Negligence Act.
I. Draft Landlord and Tenant Act—Explanatory Notes.
J. Memorandum re Amendment Section 3 (1) Conditional Sales Act.
K. Contributory Negligence Act as Revised.
L. Treasurer's Report.
M. Table of Model Uniform Statutes.

APPENDIX A.

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

In pursuance of the resolution passed at the last meeting of the Conference (Proceedings 1933, p. 17), your Committee revised the tentative draft section proposed to replace section 12 of the uniform Conditional Sales Act in the light of the discussion which took place at that meeting. This revised draft will be found at page 100 of the 1933 Proceedings, and is now before the Commissioners for further consideration.

As this matter came before the Conference in 1930 at the request of the Attorney-General for British Columbia, your Committee thinks it proper to point out that the matter has now been settled so far as British Columbia is concerned by the enactment of a new section 12 at the 1934 session of the British Columbia Legislature. This will be found in the Statutes of British Columbia for 1934, chapter 14, section 5. Section 6 of the amending Act makes provision for certain fees, and section 7 provides a schedule of forms for use in connection with the new section 12 of the principal Act.

This action on the part of the British Columbia Legislature was based on the urgent request of the manufacturing interests that the existing defects in section 12 be remedied by amendment without waiting any longer for the final decision of the Conference in the matter. The new section so enacted follows substantially the draft reported by your Committee for consideration of the Conference last year. It retains the fundamental principle of the uniform section that the goods when affixed to land do not, so far as the seller is concerned, become a part of the land, but retain their character as chattels; and it does not adopt the principle favoured by a majority of the members present at the Conference last year that the goods on being affixed should become subject to existing registered encumbrances.

A. V. PINEO,
for British Columbia Commissioners.

Victoria, June 20th, 1934.

APPENDIX B.

REPORT OF COMMITTEE ON THE INTERPRETATION ACTS.

Your committee was 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. With a view of saving time a draft Bill respecting the form and interpretation of statutes was prepared and is submitted herewith, embodying clauses occurring more or less uniformly in the statutes considered, namely, the Dominion, Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.

If sections which are really not concerned with the interpretation of statutes are deleted and provision made to enable each province to deal with matters of purely local concern, it would seem to be feasible to draft a Uniform Act.

Ontario, Saskatchewan and Alberta have each two Acts, one dealing with the form of statutes and the other with interpretation, placing in the first, the sections in the draft under the caption "Form and Commencement of Statutes", with other provisions relating to their printing, distribution and certification, which occur in the Public Printing Acts of some of the provinces. This method of dealing with the subject matter may be a preferable one.

There are four items of new matter in the draft to be considered. Section 2, defining "regulation", is with a view of making the interpretation provisions apply not only to every act, but as much as possible to every instrument made in the execution of a power given thereby. Paragraph (c) of section 7 is designed to cover the situation so often occurring where an enactment authorizes a state of things upon the condition that a public official make an order or do some other act, there being no express authority for making the order or doing the act. Subsection (3) of section 18 is an attempt to clarify the expression "this Act" or "the Act" when used in amendments. Subsection (c) of section 20 authorizes abbreviated expressions in describing departments of Government and judicial and other tribunals and dispenses with the necessity of defining them seriatim.

I. Many provisions contained in the Interpretation Acts considered appeared to your committee to be improperly included in such an Act. The following provisions are more or less common and should be referred to the undermentioned Acts or other appropriate provincial legislation.

A. Referred to "The Treasury Act".

(1) If a sum of public money is by an Act appropriated for any purpose, or directed to be paid by the Lieutenant-Governor, and no other provision is made respecting it, such sum shall be payable, under warrant of the Lieutenant-Governor directed to the Treasurer of the province, out of the Consolidated Fund of the province.

(2) All persons entrusted with the expenditure of the sum or any part thereof shall account for the sum in such manner and form and with such vouchers at such periods and to such officer as the Lieutenant-Governor directs.

A debt, penalty or sum of money, or the proceeds of a forfeiture which is by any Act given to the Crown shall, if no other provision is made respecting it, form part of the Consolidated Revenue Fund.

(1) Where a pecuniary penalty or forfeiture is imposed for a contravention of an Act or regulation, then if no other mode be described for the recovery thereof, the penalty or forfeiture may be recovered with costs by civil action at the suit of the Crown, or by any person suing as well for the Crown as for himself before a court having jurisdiction.

(2) If no provision be made for the appropriation of the penalty or forfeiture one-half thereof shall belong to the Crown, and the other half to the person suing, if any, and there be no such person, the whole shall belong to the Crown.

(3) The imposition of a penalty shall not relieve a person from liability to answer for special damages to any person injured.

B. Referred to "The Summary Convictions Act".

Where an act or omission constitutes an offence under two or more Acts, or an offence both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same act or omission.

Where power to impose imprisonment is given by or pursuant to the provisions of an Act or regulation, it shall authorize the imposing of imprisonment with hard labour.

(1) Where in an Act or regulation a person is directed to be imprisoned or committed to prison, the imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to the common gaol of a locality in which the order for the imprisonment is made, or if there be no common gaol there, then in or to the nearest common gaol in the same (Judicial District).

(2) The keeper of the gaol shall receive the person and safely keep him in the gaol under his custody until released therefrom in due course of law.

C. Referred to "The Limitations Act".

No action, suit or information shall be brought or laid for a penalty or forfeiture under an Act, except within six months after the cause of action arises or after the offence is committed, unless the time is otherwise limited by the Act.

D. Referred to "The Evidence Act".

An officer authorized to administer an oath or to take an affidavit may take a declaration authorized or required by an Act of the Legislature.

Where an oath, affirmation or declaration is directed to be made before a person, he shall have full power and authority to administer it and to certify to its having been made.

Where by an Act or regulation evidence is required to be taken under oath by a person, or an oath is authorized or directed to be made or taken, the oath may be administered and a certificate of its having been made or taken may be given by the person mentioned in the Act or regulation, or by a person authorized to administer oaths under "The Evidence Act" having authority or jurisdiction within the district where the oath is administered.

II. The following provisions commonly occur but they would seem to be unnecessary:

A. The omission in any Act of a declaration that this Act shall apply thereto shall not be construed to prevent it so applying, although such express declaration may be inserted in some other Act of the same or any other session.

NOTE: It is suggested that this section may have been considered necessary to cover the ancient rule that the statute law passed at a session of a Parliament was one statute. If this is so the section is unnecessary as statutes have been divided into separate chapters and Acts since the first year of Edward I. Prior to that time, of course, the statutes were cited by the name of the place where the Parliament was held.

B. Nothing in this Act shall exclude the application to any Act of any rule of construction applicable thereto and not inconsistent with thls Act.

C. Every Act shall, unless by express provision it is declared to be a private Act, be deemed to be a public Act.

NOTE: The various Acts relating to evidence provide that every Act shall be judicially noticed which was not the law when this section was originally enacted in England.

III. There remain several sections as to the insertion of which in the draft opinions will differ.

A. Whenever by an Act judicial or quasi judicial powers are given to a judge or officer of a court, the judge or officer shall be deemed to exercise such power in his official capacity and as representing the court to which he is attached; and for the purpose of performing the duties imposed upon him by the Act, subject to the provisions thereof, may exercise the powers he possesses as a judge or officer of the court.

NOTE: This section is the Manitoba one, but the same provision appears in British Columbia and Alberta. This section does away with the persons designate rule as applied to judicial officers.

B. The Lieutenant-Governor-in-Council may make regulations for the due enforcement and carrying into effect of any Act of the Legislature, and may prescribe forms and may, where there is no provision in the Act, fix fees to be charged by all officers and persons by whom anything is required to be done.

NOTE: This is an Ontario section. A similar provision occurs in "The Statutes Act" of Saskatchewan.

C. Where any Bill is introduced in any session of the Legislature for the continuance of any Act which would expire in that session, and the Act expires before the Bill for continuing the same receives the assent of the Lieutenant-Governor, the continuing Act shall be deemed and taken to have effect from the date of the expiration of the Act intended to be continued, as fully and effectually, to all intents and purposes, as if the continuing Act had actually passed before the expiration of the Act intended to be continued, except it

is otherwise especially provided in the continuing Act; but nothing herein contained shall extend, or be construed to extend, to affect any person with any punishment, penalty, or forfeiture whatsoever, by reason of anything done or omitted to be done by such person contrary to the provisions of the Act so continued, between the expiration of the same and the date on which the continuing Act received the assent of the Lieutenant-Governor.

NOTE: This section appears in the British Columbia Act.

D. The Legislature shall not by re-enacting an Act or enactment, or by revising, consolidating or amending the same, be deemed to have adopted the construction which has by judicial decision or otherwise been placed upon the language used in such Act or enactment, or upon similar language.

NOTE: This provision occurs in the Dominion, New Brunswick, Nova Scotia, Ontario and Saskatchewan.

It is clear that the Dominion would require the incorporation in its legislation of several sections not included in the draft, and there are sections in the Acts of various provinces which may be locally required. Your committee suggests that a representative or representatives of the Dominion be invited to collaborate in the revision of the draft Act.

In its work on this draft your committee were fortunate in having the assistance of President Smith of Manitoba University, a member of the Conference.

ARCHIBALD C. CAMPBELL
J. C. COLLINSON,
R. MURRAY FISHER,
Commissioners for Manitoba.

1934

PRELIMINARY DRAFT

An Act respecting the Form and Interpretation of Statutes.

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

SHORT TITLE.

1. This Act may be cited as "The Interpretation Act".

NOTE: This draft is based on Dom., B.C., Alta., Sask., Man., Ont., N.B., N.S., and P.E.I. Interpretation Acts, and the Alta., Sask., and Ont. Statutes Acts.

INTERPRETATION.

2. In this Act the expression

(*a*) "Regulation" includes any order-in-council, order, warrant, scheme, letters patent, rule, rule of court, tariff, form, by-law, or other instrument made in the execution of a power given by statute. *New.*

NOTE: Dom. s. 40; B.C. s. 44; Alta. s. 10 (c), (d); Sask. s. 28; Man. s. 19; Ont. s. 6; N.B. s. 18; N.S. s. 23 (42).

APPLICATION OF ACT.

3. (1) The provisions of this Act shall extend and apply to every Act of the Legislature and to every regulation now or hereafter enacted or made, except in so far as such a provision.

(*a*) is inconsistent with the intent or object of such Act or regulation;

(*b*) would give to any word, expression or clause of the Act or regulation an interpretation inconsistent with the context thereof; or

(*c*) is by the Act or regulation declared not applicable thereto.

NOTE: Dom. s. 2 (1); B.C. s. 2 (1); Alta. s. 2; Sask. s. 2; Man. s. 2 (1); Ont. s. 1; N.S. s. 22 (1); N.B. s. 7 (1); P.E.I. s. 43 part.

(2) Where an Act or regulation contains an interpretation section or provision, it shall be read and construed as subject to the same exceptions as those contained in subsection (1).

NOTE: Ont. s. 2.

(3) The provisions of this Act shall apply to its construction and to the words and expressions used herein.

NOTE: Dom. s. 4; B.C. s. 3; Alta. s. 3; Sask. s. 51; Man. s. 4; Ont. s. 3; N.B. s. 45; and P.E.I. s. 44.

FORM AND COMMENCEMENT OF STATUTES.

NOTE: Sections under this caption appear in a separate statute in Ont., Sask. and Alta.

4. (1) The enacting clause of a statute may be in the following form: "His Majesty, by and with the advice and consent of the Legislative Assembly of , enacts as follows:".

(2) The enacting clause shall follow the setting forth, if any, of the considerations or reasons upon which the law is grounded, and shall, with the considerations or reasons, constitute the preamble, and the various provisions of the statute shall follow in a concise and enunciative form.

NOTE: Dom. ss. 5 and 6; B.C. ss. 4 and 5; Alta. ss. 2 and 3 of "The Statutes Act"; Sask. ss. 2 and 3 of "The Statutes Act"; Man. ss. 5 and 6; Ont. ss. 1 and 2 of "The Statutes Act"; N.B. s. 5; N.S. s. 2; P.E.I. s. 2.

(3) The preamble of an Act and schedules, forms and tariffs referred to in an Act or made under the authority thereof, are each part thereof.

NOTE: Dom. s. 14; B.C. s. 23 (15); Alta. s. 8; Sask. s. 5; Man. s. 13 pt.; Ont. s. 8; N.B. s. 37; N.S. s. 23 (3).

5. (1) The clerk of the Legislative Assembly shall enter on every Act of the Legislature, immediately after its title, the day, month and year when it was assented to or reserved by the Lieutenant-Governor.

(2) When an Act is reserved, the clerk shall also enter thereon the day, month and year when the Lieutenant-Governor signifies either by speech or message to the Legislative Assembly, or by proclamation, that it was laid before the Governor-General-in-Council and that the Governor-General was pleased to assent thereto; and the entry shall be part of the Act.

(3) If no other date of commencement is provided in an Act, the date of the assent, or when the Act is reserved, of the signification, shall be the date of its commencement.

NOTE: Dom. s. 7; B.C. s. 6; Alta. s. 4 of "The Statutes Act"; Sask. s. 4 of "The Statutes Act"; Man. ss. 8 and 9; Ont. s. 4 (2) of "The Statutes Act"; N.B. s. 4; N.S. s. 3; P.E.I. s. 1.

In Man. the Act comes into force sixty days after assent and in Ont. the sixtieth day after prorogation, and in Alta. on July 1st following the assent.

6. Where an Act or regulation is expressed to come into operation on a particular day, it shall be construed as coming into operation immediately on the expiration of the previous day.

NOTE: Dom. s. 11; B.C. s. 7; Alta. s. 10 (d).

7. Where an Act is not to come into operation immediately on assent or signification, and confers power

(*a*) to make appointments;

(*b*) to make regulations;

(*c*) to give notices; or

(*d*) to do any other thing for the purposes of the Act;

that power may, so far as is necessary or expedient for the purpose of making the Act effective at the date of its commencement, be exercised at any time after assent or signification of the Act, subject to the restriction that a regulation made under the power shall not, unless the contrary is necessary for making the Act

effective from its commencement, come into operation until the Act comes into operation.

NOTE: Dom. s. 12; B.C. s. 8; Alta. s. 5; Sask. s. 30; Ont. s. 5; N.B. s. 40; N.S. s. 23 (44).

RULES OF CONSTRUCTION.

8. The law is always speaking, and whenever a provision in an Act is expressed in the present tense, it shall be applied to the circumstances as they arise; but the expressions "commencement", "now", "heretofore" and "hereafter" when used with reference to an Act or the passing thereof, shall be interpreted as referring to the time when the Act comes into force.

NOTE: Dom. ss. 10 and 37 (18); B.C. ss. 23 (4) and 24 (29); Alta. ss. 4 and 36 (aa); Sask. s. 3; Man. ss. 10 and 27 (1); Ont. ss. 4 and 31 (w); N.B. ss. 38 and 8 (29); N.S. s. 23 (1); P.E.I. s. 8.

9. In every Act or regulation, the expression "shall" is imperative, and the expression "may" is permissive and empowering.

NOTE: Dom. s. 37; B.C. s. 24; Alta. s. 36; Sask. s. 17; Man. s. 27; Ont. s. 31; N.B. s. 8; N.S. s. 23; P.E.I. s. 9.

10. No provision in an Act affects

(*a*) the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty is bound thereby;

NOTE: Dom. s. 16; B.C. s. 33 Man. s. 11 part; Ont. s. 10; N.B. s. 43 part.

(*b*) litigation pending at the time of its enactment unless so expressly stated therein, except in matters of procedure; nor

NOTE: Man. s. 11 part.

(*c*) if it be of the nature of a private Act, the rights of any person save only as therein mentioned or referred to.

NOTE: Dom. s. 17; B.C. s. 32; Alta. s. 7 part; Sask. s. 12; Man. s. 11 part; Ont. s. 11; N.B. s. 43 part.

11. Every Act and every provision of an Act is remedial, and shall receive such fair, large and liberal construction and interpretation as best insures the attainment of the object of the Act, or provision.

NOTE: Dom. s. 15; B.C. s. 23 (6); Alta. s. 9; Sask. s. 4; Man. s. 13 pt.; Ont. s. 9; N.B. s. 39; N.S. s. 23 (2).

12. Where an Act confers power to make regulations, expressions used in the regulations shall have the same respective meaning as in the Act conferring the power.

NOTE: Dom. s. 40; B.C. s. 44; Alta. s. 10 (c); Sask. s. 11; Ont. s. 6; N.B. s. 18; N.S. s. 23 (42).
See Blashill v. Chambers, 14, Q.B.D., 479, at p. 485.

13. Where the Lieutenant-Governor is authorized to do an act by proclamation, the proclamation shall be issued under an order of the Lieutenant-Governor-in-Council, but it is not necessary that it be mentioned in the proclamation that it is issued under such an order.

NOTE: Dom. s. 23; B.C. s. 25; Alta. s. 18; Sask. s. 18; Man. s. 16; Ont. s. 20; N.B. s. 8 (40); N.S. s. 23 (40); P.E.I. s. 13.

14. In every Act, unless the contrary intention appears, words making any person or number of persons a corporation.

(*a*) vest in the corporation power to sue and be sued, to contract and to be contracted with by its corporate name, to have a common seal, and to alter or change it at pleasure to have perpetual succession, to acquire and hold personal property for the purpose for which the corporation is constituted, and to alienate the same at pleasure;

(*b*) vest in a majority of the members of the corporation the power to bind the other by their acts; and

(*c*) exempt individual members of the corporation from personal liability for its debts or acts if they do not contravene the provisions of the Act incorporating them.

NOTE: Dom. s. 30; B.C. s. 23 (13); Alta. s. 30; Sask. s. 20; Man. s. 17; Ont. s. 27; N.B. s. 14; N.S. s. 23 (34).

15. Every public official now or hereafter appointed by the Lieutenant-Governor-in-Council shall remain in office during pleasure only, unless it is otherwise expressed in his commission or appointment.

NOTE: Dom. s. 24; Alta. s. 28; Sask. s. 26; Man. s. 37; Ont. s. 21; N.B. s. 13 (1); N.S. s. 23 (39).

16. (1) Words authorizing the appointment of a public official or a deputy include the power

(*a*) of removing or suspending him;

(*b*) of re-appointing or reinstating him;

(*c*) of installing another in his stead; and

(*d*) of fixing his remuneration and varying or terminating it;

in the discretion of the authority in whom the power of appointment is vested.

NOTE: Dom. s. 31 (k); B.C. s. 26 part; Alta. s. 25; Sask. s. 24; Man. s. 14 (1); Ont. s. 28 (k); N.B. s. 8 (2); N.S. s. 23 (37); P.E.I. s. 29.

(2) Words directing or empowering a public official to do any act or thing, or otherwise applying to him by his name of office, include his successors in the office and his or their lawful deputy.

NOTE: Dom. s. 31 (m); B.C. s. 26 part; Alta. s. 27; Sask. s. 25; Man. s. 15; Ont. s. 28 (1); N.B. s. 8 (6); N.S. s. 23 (38); P.E.I. s. 30.

(3) Words directing or empowering a Minister of the Crown to do an act or thing, or otherwise applying to him by his name of office, include a Minister acting for him, or, if the office be vacant, in the office, under the authority of an order-in-council, and also his successors in the office, and his or their lawful deputy.

NOTE: Dom. s. 31 (1); B.C. s. 23 (9); Alta. s. 26; Sask. s. 29.

(4) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

NOTE: Dom. s. 31 (f); Ont. s. 28 (f); N.B. s. 10.

17. In every Act or regulation.

(*a*) when anything is directed to be done by or before a public official, it shall be done by or before one whose jurisdiction or power extends to the place where such thing is to be done;

NOTE: Dom. s. 31 (a); B.C. s. 23 (10); Alta. s. 22; Sask. s. 7; Man. s. 23 part; Ont. s. 28 (a); N.B. s. 8 (26); N.S. s. 23 (31).

(*b*) wherever power is given to a public official to do or enforce the doing of an act or thing, all such powers are also given as are necessary to enable him to do or enforce the doing of the act or thing;

NOTE: Dom. s. 31 (b); B.C. s. 23 (11); Alta. s. 23; Sask. s. 21; Man. s. 23 part; Ont. s. 28 (b); N.B. s. 9; N.S. s. 23 (32).

(*c*) whenever the existence of a state of things is conditional upon a public official doing an act or thing, he shall have power to do the act or thing; *New.*

(*d*) when any act or thing is required to be done by more than two persons, a majority of them may do it;

NOTE: Dom. s. 31 (c); B.C. s. 48; Alta. s. 29; Sask. s. 22; Man. s. 38; Ont. s. 28 (c); N.S. s. 23 (35); P.E.I. s. 11; N.B. s. 8 (1).

(*e*) when a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires;

NOTE: Dom. s. 31 (e); Ont. s. 28 (e).

(*f*) when a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others;

NOTE: Dom. s. 31 (g); B.C. ss. 27 and 28; Alta. s. 32; Sask. s. 28; Man. s. 19; Ont. s. 28 (g); N.S. s. 23 (48); N.B. s. 8 (4).

(*g*) whenever forms are prescribed, deviations therefrom in the use thereof not affecting the substance or calculated to mislead, shall not invalidate anything done under the Act or regulation;

NOTE: Dom. s. 31 (d); B.C. s. 29; Alta. s. 31; Sask. s. 23; Man. s. 18; Ont. s. 28 (d); N.S. s. 23 (36); P.E.I. s. 32.

(*h*) words importing the masculine gender include females;

(*i*) words in the singular include the plural, and words in the plural include the singular;

NOTE: Dom. s. 31 (i), (j); B.C. s. 23 (2); Alta. s. 19; Sask. s. 10; Man. s. 20; Ont. s. 28 (i), (j); N.B. s. 12; N.S. s. 23 (33); P.E.I. s. 18.

(*j*) when the time limited by an Act for the doing of any thing under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and the thing done, on the day first following which is not a holiday; and

NOTE: Dom. s. 31 (h); B.C. s. 42; Alta. s. 20; Sask. s. 9; Man. s. 21; Ont. s. 28 (h); N.B. s. 8 (21); N.S. s. 23 (41); P.E.I. s. 33.

(*k*) a reference to time is to be deemed a reference to the time of the meridian of west longitude.

NOTE: B.C. s. 43; Alta. 2. 21; Sask. s. 8 and 2 of "The Statutes Act"; Man. s. 24; N.B. s. 8 (22).

REFERENCES.

18. (1) In any Act, regulation or document, an Act may be cited by reference to its short title, if any, either with or without reference to the chapter, or by reference to the chapter and the year of Our Lord in which it was passed.

(2) A citation or reference to an Act shall be a citation of or reference to the Act as amended.

NOTE: Dom. s. 42; B.C. s. 52; Sask. ss. 5 and 6; Man. s. 26 (1), (4) and 5; N.S. ss. 29 and 30; N.B. s. 2; P.E.I. s. 3.

(3) In an amendment to an Act, the expression "this Act" or "the Act" is a reference to the Act amended. *New.*

19. (1) Where reference is made by number or letter to two or more parts, divisions, sections, subsections, paragraphs, sub-paragraphs, schedules or forms in an Act or regulation, the number first mentioned and the number last mentioned shall both be deemed to be included in the reference.

(2) Where in an Act reference is made to a part, division, section, schedule or form without anything in the text to indicate that a part, division, section, schedule or form of some other Act is intended to be referred to, the reference shall be deemed to be a reference to a part, division, section, schedule or form of the Act in which the reference is made.

(3) Where in a section of an Act reference is made to a subsection, paragraph or sub-paragraph without anything in the text to indicate that a subsection, paragraph or sub-paragraph of some other section is intended to be referred to, the reference shall be deemed to be a reference to a subsection, pargraph or sub-paragraph of the section in which the reference is made.

NOTE: B.C. s. 50; Alta. ss. 33 and 35; Sask. ss. 13 and 14; Man. s. 26 (2); Ont. 28 (m); N.B. s. 15; N.S. s. 23 (43); P.E.I. s. 48.

WORDS AND PHRASES.

20. The expressions used in any Act, either of the province or the Dominion, constituting a judicial or quasi-judicial authority or a department or office of Government, and referring thereto, has the same meaning in all other Acts or regulations of the province; and a name commonly applied to any country, place, body corporate, society, official, person, or thing means the country, place, body corporate, society, official, person, or thing to which such name is commonly applied although the name is not the formal designation thereof. *Partly New.*

NOTE: As to the last clause—See Alta. s. 10.

New Plymouth Borough Council v. Toronto Electric Power Board, 1933, AC 680, citing Lord Heward in Spillers Limited v. Cardiff (Borough) Asst. Committee, 1931, 2 K.B. 21 at p. 43.

"It is the rule that words used in an Act of Parliament are used correctly and exactly and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of this proposition lies heavily and they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning is to be preferred".

21. In every Act or regulation, the expression

(1) "Assembly" or "Legislature" means the Legislative Assembly of the province;

(2) "Dominion" means the Dominion of Canada;

(3) "Gazette" means the official gazette published by the King's Printer of the province;

(4) "Herein" used in a section or provision of an Act or regulation relates to the whole Act or regulation, and not to that section or provision only;

(5) "His Majesty", "Her Majesty", "The King", "The Queen", or the "Crown" means the Sovereign of Great Britain, Ireland and the Dominions beyond the Seas;

(6) "Holiday" includes Sundays, Christmas Day, Boxing Day (being the 26th day of December), New Year's Day, Good Friday, Victoria Day (being the 24th day of May), the birthday of the reigning sovereign (or in lieu thereof the day fixed by the Governor-General for the celebration of such birthday), Dominion Day, Labour Day, Remembrance Day, but when Remembrance Day falls on a holiday the following day shall not be a holiday, and any day appointed by proclamation of the Governor-General or the Lieutenant-Governor, or designated by any law in force in the province as a day for general thanksgiving, or a general holiday, or as Arbour Day;

(7) "Lieutenant-Governor" means the Lieutenant-Governor of the province or the chief executive officer or administrator carrying on the Government of the province by whatever title he is designated;

(8) "Lieutenant-Governor-in-Council" means the Lieutenant-Governor of the province or person administering the Government of the province, acting by and with the advice of the Executive Council of the province;

(9) "Month" means calendar month;

(10) "Newspaper" in an Act or regulation requiring publication in a newspaper means a printed publication in sheet form intended for general circulation, published regularly at intervals of not longer than a week, consisting in part of news of current events of general interest and sold to the public and to regular subscribers upon a *bona fide* subscription list;

(11) "Oath" or "affidavit" in the case of persons allowed by law to affirm instead of swearing includes affirmation, and the expression "swear" in like cases includes affirm;

(12) "Person" includes a body corporate, and the heirs, executors, administrators or other legal representatives of a deceased person;

(13) "Proclamation" means a proclamation under the Great Seal of the province;

(14) "Province" means the province of;

(15) "Sureties" mean sufficient sureties;

(16) "Security" means sufficient security;

(17) "Will" includes codicil;

(18) "Writing" includes any characters which render visible connected ideas; and

(19) "Year" means calendar year.

NOTE: Dom. s. 37; B.C. s. 23 part and 24; Alta. s. 36; Sask. ss. 17 and 3 of "The Statutes Act"; Man. s. 27; Ont. s. 31; N.B. s. 8; N.S. s. 23; P.E.I. ss. 9-37.
Expressions may be defined to an indefinite extent. The requirements of each jurisdiction will have to be considered by it.

REPEAL AND AMENDMENT.

22. (1) Every Act reserves to the Legislature the power of repealing or amending it and revoking, restricting or modifying a power, privilege or advantage thereby vested in or granted to a person.

NOTE: Dom. s. 18 (1); B.C. s. 23 (8); Alta. s. 12; Sask. s. 36; Man. s. 28; Ont. s. 12; N.B. s. 25; N.S. s. 7.

(2) An Act may be amended or repealed by an Act of the same session.

NOTE: Dom. s. 8; B.C. s. 10; Alta. s. 11; Sask. s. 35; Man. s. 7; N.B. s. 24; N.S. s. 26; P.E.I. s. 4.

(3) An amending Act, so far as consistent with the tenor thereof, is part of the Act which it amends.

NOTE: Dom. s. 22; B.C. s. 18.

23. (1) Where an Act is repealed or a regulation revoked, the repeal or revocation does not

(*a*) revive any Act, regulation or provision of law not in force or existing at the time at which the repeal or revocation takes effect;

(*b*) affect the previous operation of the Act or regulation so repealed or revoked or anything duly done or suffered thereunder;

(*c*) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act or regulation so repealed or revoked;

(*d*) affect any offence, committed against, or any violation of the provisions of the Act or regulation so repealed or revoked, or any penalty, forfeiture or punishment incurred in respect thereof; nor

(*e*) affect any investigation, legal, proceeding or remedy in respect of such a privilege, obligation, liability, penalty, forfeiture or punishment, but the investigation, legal proceeding or remedy may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the Act or regulation had not been repealed or revoked.

NOTE: Dom. s. 19 (1) and (2) part; B.C. ss. 12-13; Alta. s. 13; Sask. ss. 37, 42 and 43; Man. ss. 29-32; Ont. ss. 13-14; N.B. s. 26; N.S. ss. 8, 11, 12 and 15; P.E.I. ss. 5 and 50.

(2) Where an Act is repealed or a regulation revoked and new Act or regulation is substituted therefor.

(*a*) every official and person acting under the Act or regulation so repealed or revoked shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;

(*b*) every bond and security given by an official or person appointed under the Act or regulation so repealed or revoked shall remain in force, and all offices, books, papers and things made or used under a repealed Act or regulation shall continue as before the repeal;

NOTE: B.C. s. 15; Sask. s. 38; Man. s. 36; N.B. s. 32; N.S. s. 13.

(*c*) every proceeding taken under the Act or regulation so repealed or revoked shall, as far as possible, be taken up and continued under the repealing Act or regulation if it provides therefor, otherwise in conformity with the provisions of the repealed Act or regulation;

(*d*) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the Act or regulation so repealed or revoked, or in any proceedings in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adapted; and

NOTE: Dom. s. 19 (2); B.C. s. 11; Alta. s. 14; Sask. s. 39; Man. s. 30; Ont. s. 15; N.B. ss. 29-30, P.E.I. s. 6.

(*e*) if the penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act or regulation whereby such other provisions are substituted, the penalty, forfeiture or punishment if imposed or adjudged after such

repeal or revocation, shall be reduced or mitigated accordingly.

NOTE: Dom. s. 19 (d); B.C. s. 14; Alta. s. 14 (d); Ont. s. 14 (d). Fortesque v. Bethnal Green Vestry, 1891, 2 Q.B., 170-178. Henderson v. Sherborne, 2 M & W 226 at p. 239: "Where punishment is lessened by the repealing Act the punishment ought to be under the repealing Act".

24. When an Act is repealed and other provisions are substituted by way of amendment, revision or consolidation,

(*a*) all regulations made under the repealed Act shall continue good and valid in so far as they are not inconsistent with the new Act until they are annulled and others made in their stead; and

NOTE: B.C. s. 16; Alta. s. 14 (c); Sask. s. 40; Man. ss. 33 and 35; Ont. s. 15; N.S. s. 14.

(*b*) a reference, in an unrepealed Act or in a regulation made thereunder, to the repealed Act, shall, as regards a subsequent transaction, be held to be a reference to the provisions of the substituting Act relating to the same subject matter as the repealed Act; and if there be no provisions in the substituting Act relating to the same subject matter, the repealed Act shall stand good and be read and construed as unrepealed, but in so far only as is necessary to maintain or give effect to the unrepealed Act or regulation.

NOTE: Dom. s. 20; B.C. s. 17; Alta. s. 15; Sask. s. 41; Man. s. 34; Ont. s. 15 (1); N.B. s. 27; N.S. s. 9.

25. (1) The repeal of an Act shall not be deemed to be or to involve a declaration that the Act was or was considered by the Legislature to have been previously in force.

NOTE: Alta. s. 16.

(2) The amendment of an Act shall not be deemed to be or to involve a declaration that the law under the Act was or was considered by the Legislature to have been different from the law as it is under the Act as so amended.

(3) The repeal or amendment of an Act shall not be deemed to be or to involve any declaration as to the previous state of the law.

NOTE: Dom. s. 21; B.C. ss. 19-22; Sask. ss. 45-47; Ont. ss. 16-18; N.B. ss. 33-35; N.S. ss. 17-19.

UNIFORM CONSTRUCTION.

26. 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.

APPENDIX C.

REPORT ON THE PARTNERSHIPS REGISTRATION ACT

The Ontario Commissioners have been asked to report on the relation of the proposed Partnerships Registration Act to Limited Partnerships, as to whether the Partnerships Registration Act should be made to apply to Limited Partnerships and if so, in what manner.

Primary consideration should be given to the proposition as to whether or not it is the part of wisdom to advise the Attorneys General of the Provinces of British Columbia, Manitoba and Ontario that the Limited Partnerships Acts in those particular Provinces should be repealed.

In recent years Corporations have become much more prevalent than before and primarily the corporation is used to limit liability of the investor to the actual amount of capital invested. Limited Partnerships have narrowed down in actual practice largely to brokerage and financial businesses. There seems little doubt that corporations would be used to accomplish the same purpose that the Limited Partnership does, if it were not that many of the Stock Exchanges prohibit corporations from trading. It is fair to assume that the ground for such prohibition is a desire on the part of the Exchanges that there should be full personal liability of individuals engaged in the brokerage and financial business. The Limited Partnership provides, to a limited extent, a means of evading full, personal liability and, under these circumstances, serious consideration should be given with respect to advising the Attorneys General, as suggested above.

Assuming that the Commissioners, for varied reasons, do not see fit to make such a recommendation, then consideration must be given as to how to relate up the Limited Partnerships Acts to the proposed Partnerships Registration Act. In this connection, consideration must be given to the following points:

(1) The place of registration, in the Limited Partnership Act of Ontario is at the office of the Clerk of the County Court, while in the case of ordinary partnership, registration is provided to be made at the office of the Registrar of the Registry Division in which the partnership exists and there seems no reason why the place of registration should not be made the same in both cases.

(2) Registration of proper partnership certificates holds much more significance in the case of a limited partnership than it does in the case of a general partnership. The filing of the Statutory certificate is of the very essence of a limited partnership and, under sections 9 and 10 of the Ontario Limited Partnerships Act, any false statement in the certificate and failure to properly renew the same renders all the members of the partnership liable as general partners. In other words, there ceases to be a limited partnership and an ordinary general partnership results. The draft Partnership Registration Act, although it imposes a certain degree of legal disability (Sec. 15) upon an unregistered partnership, remains very much in the nature of a penal Statute. There is also to be considered the incontrovertibility features of Sections 10 and 11. It might be well to add a Section to the draft Partnerships Registration Act so that the disabilities under that Act would be made to apply against limited partnerships which have ceased to be such by virtue of failure to comply with the provisions of the Limited Partnership Act.

All of which is respectfully submitted.

C. P. McTAGUE,
For Ontario Commissioners.

July 23, 1934.

APPENDIX D.

REPORT OF COLLECTION AGENCIES

1. At the 1933 Conference, to quote from the Proceedings at page 20:

> "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."

2. Legislation respecting collection agencies is today in force in six provinces as follows:

British Columbia: The Collection Agents' Licensing Act (1930 chapter 31; as amended by 1932 chapter 25; as amended by 1934 chapter 37).

Saskatchewan: The Collection Agents' Act (R.S.S. 1930 chapter 186).

Ontario: The Collection Agencies Act 1932 (1932 chapter 51) as reenacted by the Collection Agencies Act 1933 (chapter 6, 1933).

Quebec: The Collecting Agents' Act (1933 chapter 95).

New Brunswick: An Act respecting Collection Agencies (1933, chapter 18) in force January 1st, 1934).

Nova Scotia: An Act respecting Collection Agencies (R.S.N.S. 1923, chapter 126 as amended by 1931 chapter 38; as further amended by 1933 chapter 39).

There is no legislation respecting collection agencies in force in the provinces of Alberta, Manitoba or Prince Edward Island.

3. Your Commissioners are directed to report upon "the desirability of the consideration by the Conference" of a uniform Act respecting collection agencies. The following extracts from the Presidential address of the late Sir James Aikins, K.C., as reported in the 1921 Proceedings is in point:

> "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."

4. Your attention is directed to the fact that legislation respecting collection agencies has been in force in the six provinces for an average of less than four years and that, with the exception of the province of Nova Scotia, such an Act has not been in force in any province more than four years. Under the circumstances, it is doubtful if the legislation can be said to have been "tested by experience". It can probably be more properly said that such Acts are "untried Acts on new subjects". Certainly no evidence has been presented to the Ontario Commissioners to establish that the regulation of collection agencies is one of the commercial business and industrial subjects in which "uniformity of law is an essential" thing. Further it cannot be shown that the existing legislation embodies "legal principles of which there is an approximation in the provinces."

5. The Ontario Commissioners, accordingly, respectfully report that in their opinion it is not desirable that the Conference should consider a uniform Act respecting collection agencies at this time.

Submitted on behalf of the Ontario Commissioners by

R. LEIGHTON FOSTER.

APPENDIX E.

MEMORANDUM RESPECTING INFANTS' TRADE CONTRACTS.

We beg to appeal for an amendment to the Infants Act, particularly Section 33, so as to make a minor who starts in business for himself liable for the liabilities incurred in connection with that business. That, we understand, is the state of the law in the Province of Quebec and we think it should be adopted in this Province.

In support thereof we beg to submit the following argument.

We have recently had one or two cases to investigate where minors under 21 years of age had been carrying on business with rather unfortunate results to their creditors. The principal case concerned a young man who was reported to be in partnership with his father in the grocery business in Vancouver. Later, the father denied that he (the father), was a partner, and at any rate, he had practically no means of his own. This left the business in the name of the young man, who, it developed, was under 21 years of age, although he looked older and had given his creditors the impression that he was of age. He had taken over a business which had been long established in the same location, under the name of the "White Grocery," and it was not a case of where a new business was starting originally. The young man was the sole heir under his mother's will, which involved property valued at about $12,000.00. The business soon got into financial difficulties through mismanagement by the young man and the creditors found themselves in this position: They could not sue the young man because he was not of age; they could not make an application for a Bankruptcy Order against him; the young man could not give our Association Power of Attorney authorizing us to wind up his business; they could not legally take their goods back from the store; they could not take any criminal action against the young man for fraudulent misrepresentation or defrauding his creditors, as technically, he had no creditors. The young man took legal advice and when he found out his position he proceeded to sell off the stock, which amounted to between $1,500.00 and $2,000.00, and the proceeds he retained and applied to his own purposes, paying nothing at all to any of the creditors, whose accounts aggregated over

$3,000.00. He also collected his outstanding accounts. He openly boasted that the creditors could not do a thing to him.

Three of the creditors consulted their own solicitors in the matter and each of those firms agreed that the law was such in this Province that no action could be taken.

We feel that instances such as the above are liable to be of very frequent occurrence unless some modification of the law as it stands at the present time is made. As it is just now, a minor is not responsible for any debts incurred by him during his minority, except for necessities, and even after he comes 21 he cannot ratify any obligation incurred by him during his minority.

We feel that the modern trend is for younger people to get into business and many minors are earning large sums. We feel that if a minor has the privilege of entering into business then he should be responsible for the liabilities that he may incur in connection with that business.

The law, as it stands at present, follows the English law on the subject, which aims to protect minors who would succeed to valuable property on coming of age from any improvident actions they might make during their minority, and which would affect their inheritance. Evidently, the possibility of a minor being engaged in business was not contemplated at all. We are informed that in Quebec the law is to the effect that a minor who enters into business is responsible for debts connected with that business, and our Montreal Office advises us that this law seems to work quite satisfactorily in the Province of Quebec.

We therefore submit that the law in British Columbia be changed to correspond with the law in Quebec.

This subject was discussed at a general meeting of our members recently and a resolution was passed unanimously instructing us to continue our efforts to have the above suggestions passed into law.

Respectfully submitted,

THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD.

Per JOHN COWAN,

Vancouver, B.C. Manager.

APPENDIX F.

EXCERPT FROM THE LETTER OF MR. THOM RELATING TO THE UNIFORM LIMITATION OF ACTIONS ACT.

1. That the limitation period of six years applicable to actions on a bond under seal is too short.

(a) In the case of bonds collateral to mortgages the cause of action under the bond arises when default is made under the mortgage, but payments on account by the mortgagor are of no effect in keeping alive a right of action against the separate bondsman under a collateral bond. Mortgages frequently continue in default, particularly in regard to principal payments, for a number of years. This suits the convenience of all parties, but now that the period of limitation under collateral bonds has been reduced to six years the result may be that a mortgagee, to save his rights under the bonds, may have to take action at a time when he has no desire to enforce the bonds.

(b) In the case of administration and other court bonds, it might readily be that the administrator or other person bonded has made a default creating a cause of action under the bond, but that such default might not come to the notice of the person entitled to enforce the bond until after a number of years. If more than six years have expired from the time the cause of action first arose there will be no recourse under the bond in respect of such default.

2. That provision should be made for extending the period of limitation on bonds by payment or acknowledgment. As it stands now, in the case of a bond the claim sounds in damages and not in debt and there is no provision for the operation of a payment or acknowledgment.

3. That the Act should not be retroactive, particularly with reference to bonds given as collateral to mortgages. In certain classes of loans, such as loans to churches, the bond is the main part of the security and substantial sums have been advanced on the security of bonds having a life of at least twenty years at the time the loan was made while the Act cuts down the life of these bonds to six years.

APPENDIX G.

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, 1934, and reprinted for distribution to the Commissioners).

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, 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 twenty 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 seller or his agent, 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 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 the prescribed fee, 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, or for such longer period as any Judge of the (County or District) Court may fix on cause shown to his satisfaction, failed to pay the amount due and payable on the goods. 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 total amount owing and the amount presently due and payable on them, and a description of the land to which the goods are affixed; and shall contain a demand that the amount so due and payable 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 due and payable 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 (County or District) Court may direct. Every person having any interest in the land, whether registered or not, shall have the right as against the seller to pay the amount so due and payable within the time mentioned in the notice; and thereupon the goods shall, subject to any remaining rights of the seller under the conditional sale, remain affixed to the land.

(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 registrar 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 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:

NOTE.—The references in the above draft section to the "Land Registry Act" relate to the British Columbia Statutes. In other Provinces appropriate references to the local Statutes should be substituted. The above section does not cover all cases. See, for example, "The Conditional Sales Act," Ontario Statutes, 1932, Ch. 18, s. 2, and 1933, Ch. 8, s. 2, with respect to mining machinery affixed to lands. See also "The Mechanics' Lien Act," Alberta Statutes, 1930, ch. 7, s. 22A (as enacted 1931, ch. 24, s. 3), with respect to liens in the case of certain oil and gas wells.

APPENDIX H.

REPORT ON DRAFT REPORT OF COMMITTEE ON COMPARATIVE PROVINCIAL LEGISLATION AS TO CONTRIBUTORY NEGLIGENCE ACT.

The purpose of this Report is to discuss the above mentioned Report and, in particular, the amendments to the model Uniform Contributory Negligence Act suggested by the Committee.

Historical.—The movement in the direction of ameliorating the rigour of the common law rule whereby a contributorily negligent plaintiff was debarred from recovery of any part of his loss, by legislation adopting the more equitable rule of division of loss in proportion to fault, received great impetus from a paper read by Angus MacMurchy, K.C., before the Canadian Bar Association in 1923 (Proceedings C. B. A. 1923, p. 338ff, 104ff) when the suggestion contained therein was by it recommended to the Conference, (Proc. ibid p. 119) which referred the subject to the Ontario Commissioners for the preparation of a draft Act. (Conference Proc. 1923, p. 17). In July 1924 the Conference approved of a Model Contributory Negligence Act and resolved to recommend it to the various Provinces for enactment (Proc. C. B. A. 1924, pp. 11, 34-36). This Act has been adopted in British Columbia (1925), New Brunswick (1925), and Nova Scotia (1926), after having adopted, in 1925, the Ontario Act of 1924. The model Act and those of each of the three Provinces above mentioned conform closely to the wording of the Maritime Conventions Act, 1911. Ontario enacted its first Act in 1924, differing in form but not in principle from the model Act, and substituted another for it in 1930 which, as amended in 1931, is still in force.

In 1927 Mr. Falconbridge addressed the C. B. Association on the subject of these Acts (Proc. C. B. A. 1927, pp. 195-8) and in 1928 the Ontario Commissioners reported upon the feasibility of amending them (Conference Proc. 1928, p. 90). In 1931 the Conference sought the co-operation of the Committee on Comparative Provincial Legislation of the C. B. Association (Conference Proc. 1931, p. 19) which made a Report on the subject to the Association (Proc. C. B. A. 1932, pp. 152-6) and in 1933 presented a further Report which was adopted by that Association and which included a new draft Act, based upon the Ontario

Statute. (For text see Proc. C. B. A. 1933, p. 203, 253 and Conference Proc. 1933, p. 29).

Purpose of the Act.—The model Contributory Negligence Act was intended to abate the rigour of the common law rule that where from the *concurring* negligence of two parties one party suffers all the injury he must bear the whole loss *although the other party may have been equally or more negligent.* The remedy was thought to lie in the adoption of the principle of division of loss according to the respective degrees of culpability, already to be found in the Maritime Conventions Act, 1911, and in the law of Quebec, by legislation directing the tribunal to answer an additional question: "To what *degree* was each of the parties in fault," with the further direction that "liability to make good the damage" should be in proportion to the degree in which each was in fault, and in case no such degrees could be ascertained then that liability should be apportioned equally.

Construction by Courts.—Each of the Provincial Courts concerned and the Supreme Court of Canada early evolved the doctrine that the Acts only apply to *concurrent negligence, i. e.,* to cases of pure contributory negligence in which at common law each party would have been held guilty of negligence contributing to the causation of the accident; that they do not apply to cases of negligence in sequence in which one party had a later chance than the other of avoiding the accident and was therefore the Cause of it by his *ultimate negligence,* i.e., a finding of ultimate negligence excludes their application.

Restricted Scope.—The result of this construction is that the Acts apply only to one situation, viz., concurrent negligence. This constitutes a serious curtailment in their scope.

Actual Operation of the Acts.—Within this restricted area the Acts have worked well and in numerous cases (roughly half of the whole) and have proven sufficiently flexible to enable the apportionment of damages in varying percentages as the following Table indicates.

TABLE A.

Division of Loss in 60 Reported Cases in which Acts were Applied.

Apportionment	No. of Cases
90:10%	2
80:20%	5
75:25%	9
70:30%	1
66:33%	14
65:35%	1
60:40%	6
50:50%	20

Considering that in each of these cases the plaintiff at common law would have recovered nothing, the conclusion must be that the Acts constitute a distinct achievement.

Desired Extension of Acts—Abolition Ultimate Negligence. Many have expressed disappointment that the Acts are restricted to the one type of situation—concurrent negligence—and have blamed the Courts for what they deem an unwarranted enervation of them.

There have been various methods suggested whereby their scope may profitably be enlarged so as to bring their principle of division of damage into play in more cases, or, more specifically, to make them apply to cases of *successive as well as concurrent negligence*. This has resolved itself down to attempts either (1) to abolish the doctrine of ultimate negligence directly, or, (2) to nullify its effect indirectly. Thus, in 1927 Mr. Falconbridge said: "Is it not desirable that the search for the ultimate negligence or the last chance to avoid the accident should be, as far as possible, rendered unnecessary?" In 1928, Mr. Francis King, for the Ontario Commissioners, admitted the desirability of legislation which would not only remove the plaintiff's common law bar to recovery but also "*protect a party against a finding of sole liability based on 'ultimate' negligence*" (but went on to advise that it would be unwise to attempt so to extend the Act).

In 1933 the problem before the Committee on Comparative Provincial Legislation was stated to be "to frame a statute that would in addition to providing for contribution between joint tort feasors [already accomplished] *do away with the doctrine of ultimate negligence.*" "Working then on the premise that *there can be both ultimate negligence and contributory negligence*" they

propose to solve the difficulty by S. 7 of their draft Act which provides in effect that a finding of ultimate negligence *"shall be material only in fixing the respective contributions of the persons found negligent."*

Criticism as to Abolition of Ultimate Negligence.—With deference, the attempt to abolish the doctrine of ultimate negligence is misconceived: because (a) it is just and convenient in its result, for it merely means that he who *caused* the injury should pay for or bear it; (b) ultimate negligence only occurs when there is negligence in sequence and in such cases it is possible to attach causal responsibility to one party or the other and therefore no justification for contribution or abatement; (c) to abolish ultimate negligence is to abolish our whole doctrine of sausality in the one type of situation in which sole cause can be determined; (d) the sin is not in the doctrine but in its application.

Contributory Negligence in General at Common Law.—Since the Acts apply to concurrent negligence, and it is desired to extend them to sequential negligence, by the abolition of another common law doctrine—ultimate negligence—it is submitted that no such extension or abolition can succeed unless preceded by an analysis of the common law on these subjects.

In determining which of the two parties, each of whom was negligent, is to be regarded as the sole cause of the resultant injury, regard has to be had to two types of situations, into one of which the accident must come:

1. The negligent acts of the parties may have *followed* one another in point of time; the situation is one of negligence in sequence; or

2. The negligent acts may have *accompanied* one another, have occurred simultaneously or contemporaneously and operated in conjunction to bring about the injury. Such negligence is called concurrent or combined negligence.

In the first situation the *"last clear chance rule"* governs. That is, the party having the last clear chance to avoid the accident, notwithstanding the negligence of the other, is treated as the sole cause and his negligence is characterized as Ultimate Negligence, the "primary" or "contributory" negligence of the other party being disregarded. Ultimate negligence thus presupposes a perceptible interval of time between the two acts of negligence—that one was subsequent to and severable from the other.

In the second situation the last clear chance rule can have no application because there is no .severance in point of time. Accordingly the determinant is the *onus of proof* and the plaintiff fails entirely because he has not proved the defendant to have caused his injury; discrimination as to the casual effectiveness of the negligent acts being impossible the loss lies where it falls.

The first situation (sequential negligence) is one of ultimate negligence, wherein the acts are severable in point of time, and the later is the proximate cause; the second (concurrent negligence) is one of Contributory Negligence proper, wherein the acts are not severable in point of time, and since the Proximate Cause was Joint Negligence neither can succeed.

Quantification of Blame; Ultimate Negligence.—Our law of contributory negligence is predicated upon causal responsibility and not upon any evaluation of the relative impropriety of the conduct of the parties. Accordingly if the sole cause can be ascertained to be the act of the plaintiff then *cadit quaestio* as to contributory negligence, for there can be none; for "if the negligence of the plaintiff is the sole cause it cannot be in the proper sense contributory." Similarly if the sole cause be that of the defendant the contributory negligence of the plaintiff is irrelevant. When causal responsibility can be assigned to one of two parties then no rule of diversion of loss can operate; for, ex hypothesi, that person is solely to blame and must pay or suffer 100% of the loss of which he was the cause.

It is for this reason that a finding of ultimate negligence (or its equivalent) has been held to exclude any quantitative division of loss even under those systems, e. g. Admiralty and Quebec, which provide for division of loss according to culpability; and as the Acts are derived therefrom, and as sole cause can only be found under our system in cases of sequential negligence, and then by virtue of our doctrine of ultimate negligence, it is clear that the construction of our Acts as being excluded by a finding of ultimate negligence is correct.

Modern Approach to Contributory Negligence Problem.—Since the result of the last clear chance rule is to regard one only of two negligent persons as the effective cause, and to debar him completely from recovery, or, to make him completely responsible, as the case may be, and as this result depends on their acts being successive and severable in point of time rather than contemporaneous, the House of Lords has recently (in the Volute Case), laid down the principle that in order to apply that rule the

separation in point of time must be *substantial*, that "the question of contributory negligence must be dealt with broadly and upon *common-sense principles* as a jury would probably deal with it." That is, that "where a clear line can be drawn" and one party is "subsequently and severably" negligent that negligence only is looked to, and responsibility attaches in full to that party, both at common law and in Admiralty; yet where the two acts come so closely together as to render it unjust to treat one of them as the sole cause the case is to be regarded as one of contemporary or concurrent negligence, i. e., of true contributory negligence.

This approach was exemplified in Swadling v. Cooper [1931] A. C. 1, by the House of Lords in a land case which also decides that no direction as to ultimate negligence need be given when there is no reasonably substantial separation in time.

Attitude of Courts; Necessity of Common Sense Approach.— That it was necessary for the House of Lords in 1922 to seek to bring about a broad "common-sense" approach to contributory negligence cannot be doubted; for in applying a rule which made causality depend upon time-sequence the Courts had become increasingly technical. The Courts forgot that the rule was based on a last *clear* chance and looked only to the *last* chance and found liability to turn upon what was very often an unreal chance. The movements of the parties in time and space were reconstructed in the most minute detail to the end that ground could be laid for the isolation of some act as the ultimate cause. The result was that many cases in which the acts were substantially contemporaneous were treated as if they were cases of ultimate negligence, i. e., of successive negligence. This judicial attitude and practice has continued notwithstanding the occasional lip homage done to the "common-sense" rule above mentioned and it is this which has so largely restricted the scope of the Acts.

Application of Acts.—

TABLE B.

Negligence Situations

Number of Cases dealt with	Ultimate Negligence on part of Defendant	Ultimate Negligence on part of Plaintiff	Contributory Negligence Acts apply to
30	11 "A"	2 "B"	17

These statistics lead to three conclusions:

1. In 13 cases, roughly 45% of those dealt with, the Contributory Negligence Acts have not been applied because of a finding of ultimate negligence which the Courts have been so astute in trying to reach that they have used the "stop-watch" and "tape-measure" methods referred to earlier; so that in a number of the cases in "A" and "B" groupings the broad treatment indicated by Viscount Birkenhead has been disregarded.

2. In view of the 17 cases to which the Acts did apply (roughly 55%) it is submitted that the Acts are satisfactory in cases of concurrent negligence. (See Table A *supra* for statistics showing the varying percentages in which damages have been divided).

3. That what is required is some *formula* which will result in a transfer of more cases from the category of ultimate negligence to that of concurrent negligence.

The Committee's Formula.—The Committee's formula is to *disregard* a finding of ultimate negligence except in fixing the respective contributions. With deference, this is unsatisfactory, because: (a) founded on the misconception that the doctrine of ultimate negligence is wrong, whereas the doctrine is not only right but so basic as to admit of no such indirect nullification; (b) founded on the premise "that there can be both ultimate negligence and contributory negligence," whereas ultimate negligence once found necessarily obliterates the finding of contributory negligence reached at an earlier stage in the search for the Cause, and when the jury has found the plaintiff wholly to blame there is no way in logic or justice of entitling him to contribution; (c) because, in any case, the jury must be directed as to *causation*, including the last clear chance rule, and any such direction will be a futility if their finding thereon is to be disregarded; (d) it proposes to disregard ultimate negligence as a determinant of *causation*, and thereby gain automatic jurisdiction for the Acts whilst using the finding as a determinant of the *quantum of liability;* (e) it will add enormously to the difficulty of directing juries and of giving judgment consistent with their findings, for no jury can find as to ultimate negligence without thereby being influenced as to relative culpability; (f) it rests on the fallacy that there should be contribution in all cases, whether of concurrent or successive negligence, a result inconsistent with the very systems from which the Acts were borrowed.

Suggested Remedy.—The vice in the present situation is that the Courts have found, and have strained to find, ultimate negligence, where none existed in any real sense.

What is required is an enactment which will nullify this *practice* of the Courts, while leaving intact the *doctrine* as to the inapplicability of the Acts to ultimate negligence. The Courts should be prevented from persisting in the practice of applying stop-watch and tape-measure methods to the reconstruction of an accident whereby the conclusion too often emerges, that one party, at a distance of a few yards in space or seconds in time, had a last *clear* chance of avoiding the other man's negligence. The doctrine of the *Volute Case* must be written into the Acts so that the Courts will be precluded from allowing any such finding to be made except in appropriate cases. Unless it appears to the judge, at the end of the evidence, that there is such an ample separation in point of time, place and other circumstances between the negligent acts of the parties that the jury, in a reasonably common sense view of things, could find that the plaintiff had a substantially later opportunity of averting the accident than the defendant he should not allow any question as to the plaintiff's ultimate negligence to go to the jury at all.

By such a method many cases of so-called ultimate negligence will hereafter be deemed substantially contemporaneous, and thereby the scope of the Act enlarged so as to afford relief to many more plaintiffs—the doctrine of ultimate negligence being left to operate unimpaired in the smaller area to which it will be confined, but within which it must be preserved.

Functions of Judge and Jury.—Judges are merely to be forced to adopt the "common sense" point of view which the House of Lords adopted in the Volute Case and to do what it indicated in Swadling v. Cooper was proper, namely, to refrain from submitting to the jury any question as to ultimate negligence when the negligent acts of the parties are *substantially contemporaneous*. Ample scope will still be left for the judge's discretion, controllable as before, with the difference that there will be a definite criterion to determine the propriety of its exercise. Above all the margin of error by the jury will be reduced, it being left as free as before to evaluate relative culpability under the Acts in even more cases than at present. Defendants also need protection from the over-extensive operation of the ultimate negligence rule. Accordingly the formula must reduce—without eliminating—the number of findings of ultimate negligence whether against plaintiffs or defendants.

Suggested Amendment—Alternative Forms.

Substitute one of the following for Section 7 of the Committee's Draft:

7. The Judge shall not submit to the jury any question as to whether notwithstanding the negligence of one party the other could have avoided the consequences thereof unless in his opinion the jury could reasonably find that the act or omission of the latter was perceptibly subsequent to and clearly severable from the act or omission of that other so as not to be substantially contemporaneous with it.

7. Unless the judge is of the opinion that the plaintiff or defendant respectively had after the negligence or contributory negligence respectively of the other party, a reasonably clear opportunity of averting the accident, he shall not submit any question to the jury nor direct it upon the subject of ultimate negligence, but shall submit the case to the jury as one of concurrent negligence, liability for which is to be apportioned by the jury in accordance with Section——— of this Act.

VINCENT C. MacDONALD,
For Nova Scotia Commissioners.

APPENDIX I.

DRAFT LANDLORD AND TENANT ACT EXPLANATORY NOTES

General

The object of the draft is the codification of the existing nglish law of Landlord and Tenant, as the same has been odified by Canadian legislation to meet Canadian needs.

The general basis of the draft is The Manitoba Act (1931 1. 29).

In preparing the draft the following statutes were consulted id considered:

The Landlord and Tenant Act (R.S.O. 1927 ch. 190).
The Landlord and Tenant Act (R.S.S. 1930 ch. 199).
The Landlord and Tenant Act (R.S.B.C. 1924, c. 130).
The Law of Property Act 1925 (Imp.) 15 Geo. V. c. 20).

Notes to Sections

Below will be found notes to sections setting out the statury source of the section in the draft.

The statute first cited may be regarded as the one upon ich the draft section is based; the other statutes cited are more less in pari materia.

Reference is also made to Halsbury, Laws of England and to r. E. K. Williams' Canadian Law of Landlord and Tenant, d Edition, for the law on the subject matter of the section.

Abbreviations Used in Notes

e following abbreviations have been used in the notes:

The Landlord and Tenant Act (R.S.O. 1927 ch. 190)—Ont.
The Landlord and Tenant Act (R.S.S. 1930 ch. 199)—Sask.
The Landlord and Tenant Act (Manitoba 1931 ch. 29)—Man.
The Landlord and Tenant Act (R.S.B.C. 1924 ch. 130)—B.C.
The Law of Property Act 1925 (Imp.) 15 Geo. V. c. 20)—Imp.
Halsbury, Laws of England—Hals.
Williams, Canadian Law of Landlord and Tenant—W.

Notes on Sections

Sec. 2.

(a) Man. 2 (a): Ont. 1. Sask 2 (1). W. 508: the definition includes more than emblements.

(b) This definition is not in Statutes above cited cf. Imp. 205 (ix).

(c) Ont. 1. Man. 2 (b): Sask. 2 (2). W. 281.

(d) See Man. 18 (b): Ont. 18 (b) Sask. 10 (2): cf. Imp. 146 (5) (a) and 205 (xxiii) W. ch. III: Hals. (xviii) 369.

(e) Imp. 205 (xiv): Man. 18 (e): Ont. 18: Sask. 10 (3).

(f) Not in cited statutes: perhaps not applicable to all Provinces.

(g) Man. 2 (c): Sask. 2 (3): Ont. 1.

(h) Not in cited statutes. cf. Imp. 146 (5) (d): 205 (xxiii).

(i) Not in cited statutes. cf. Imp. 146 (5) (e): 205 (xxiii): Man. 18: Ont. 18: Sask. 10.

(j) Variation of def. in Man. 2 (d): Sask. 2 (d).

3. Ont. 2. cf. W. p. 2: and p. 144.

4. Imp. 141: Sask. 4: Man. 4: Ont. 4: Hals. (xviii) 586-7.

5. Imp. 142: Man. 3, 6 & 7: Ont. 3, 6 & 7: Sask. 3, 5 & 6: Hals. (xviii) 586-7.

6. Imp. 140: Man. 8: Ont. 8: W. 176: Hals. (xviii) 596-7.

7. Imp. 139: Man. 16: Ont. 16: Sask. 8: Hals. (xviii) 553: W. 442.

8. Sask. 9: Man. 17: Ont. 17: W. 469.

9. Imp. 143: Man. 23, 24: Ont. 23, 24: Sask. 14, 15: W. 460.

10. Imp. 144: Man. 22: Ont. 22: Sask. 13: W. 661.

11. Imp. 145: Man. 28: Ont. 28: W. 97.

12. Imp. 146 (1): Man. 18, 19: Ont. 18, 19: Sask. 10: W. 470.

13. Imp. 146 (2): Man. 20: Ont. 20: Sask. 11.

14. Man. 21: Ont. 21: Sask. 12.

15. Man. 26: Ont. 26 (1): Sask. 17.

16. Man. 27: Ont. 27: Sask. 18.

17. Crop payment Act, Alberta 1933 c. 10; W. 160-162.

18. Crop payment Act, Alberta 1933 c. 10; W. 160-162.

19. Crop payment Act, Alberta 1933 c. 10; W. 160-162.

20. Man. 29 (3): Ont. 39: Sask. 16: W. 231 & 240.

21. Man. 30: Ont. 40: Sask. 20: W. 237.

22. Man. 31: Ont. 41: Sask. 21.

23. Man. 29 (2): Ont. 42: Sask. 22.

24. Variation: cf. Man. 33, 34, 35: Ont. 43, 44, 46; Sask. 23, 24, 25.
25. W. 262: Hals. X 478.
26. Variation: cf. Sec. 24 supra: W. 273-286.
27. Man. 40: Ont. 47: Sask. 30.
28. Man. 41: Ont. 48: Sask. 31: W. 264: Hals. X 523.
29. Man. 39: Ont. 34, 35 and 36: Sask. 27: W. 255.
30. Not in cited statutes: Hals. (xviii) 496-501: W. 385.
31. Sask. 33: Man. 43: Ont. 50.
32. Variation: Man. 44: Ont. 51: Sask. 34: Hals. X 526-529: W. 303.
33. Man. 45: Ont. 52: Sask. 35: W. 305-307.
34. Variation: Man. 46, 47: Ont. 37, 38: Sask. 42-48: Alberta 1924 c. 12: W. 618-628.
35. Variation: Man. 48: Ont. 55: Sask. 61: W. 320.
36. Man. 49: Ont. 56: Sask. 39: W. 327.
37. Man. 50: Ont. 53: Sask. 36: W. 312.
38. Man. 51: Ont. 54: Sask. 37: W. 294.
39. Man. 52: Ont. 57: Sask. 49: W. 544.
40. Man. 53: Ont. 58: Sask. 50: W. 543.
41. Man. 54: Ont. 60: Alberta 1924 c. 3 s. 43 (c); Sask. R.S. 1930, c. 80, s. 125: W. 140-145.
42. Man. 55: Sask. 57:
43. Man. 56: Ont. 61: Sask. 58.
44. Man. 57: Ont. 62: Sask. 59.
45. Man. 58: Ont. 63: Sask. 60.
46. Man. 59: Ont. 64.
47. Man. 60: Ont. 65.
48. Man. 61: Ont. 66.
49. Man. 62: Ont. 67.
50. Man. 63: Ont. 68.
51. Man. 64: Ont. 69.
52. Man. 65: Ont. 70.
53. Man. 66: Ont. 71.
54. Man. 67: Ont. 72.
55. Man. 68: Ont. 73.
56. Man. 69: Ont. 74.
57. Man. 70: Ont. 75: Sask. 51.
58. Man. 71.
59. Man. 72.
60. Man. 73.
61. Man. 74: Ont. 76.
62. Man. 75: Ont. 77.

63. Man. 76: Ont. 78.
64. Man. 77: Ont. 79.
65. Man. 78.
66. Man. 79.

In the preparation of the first draft the substance of the provisions of Man. 9 to 15, Ont. 9 to 15 were omitted. It is suggested that the substance of Man. 10-15 be inserted in the draft in the form of the enactment in Imp. 152.

Man. 9 deals with the right of a sub lessee to call for title to the reversion; it was omitted as being unnecessary in Alberta; if other Provinces require it, there is no objection to its insertion.

Man. 36, Sask. 26 have been omitted; they deal with exemptions from distress; and provisions of this nature might possibly be better dealt with by a separate statute.

R. ANDREW SMITH,
For the Alberta Commissioners.

APPENDIX J.

MEMORANDUM RESPECTING SUB-SECTION (1) OF SECTION 3 OF THE CONDITIONAL SALES ACT OF BRITISH COLUMBIA.

Revised Statutes (1924) C. 44, amended as follows:
1924: Ch. 8.
1929: Ch. 13.
1930: Ch. 9.
1932: Ch. 7.
1933: Ch. 10.
1934: Bill 8.

This sub-section as it now appears is as follows:

"3 (1). After possession of goods has been delivered to a buyer under a conditional sale, every provision contained therein whereby the property in the goods remains in the seller shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith, for valuable consideration and without notice, and as against creditors of the buyer who at the time of becoming creditors had no notice of the provision and who subsequently obtained judgment, execution, or an attaching order, under which the goods, if the property of the buyer, might have been seized, *and, for the purpose of enforcing the rights of such creditors but not otherwise, shall be void as against a creditor suing on behalf of himself and other creditors, and as against an assignee for the general benefit of creditors, and as against a trustee under the 'Bankruptcy Act' of the Dominion, and as against a receiver of the estate and effects of the buyer, and as against a liquidator of a corporation under the 'Winding-up Act' of the Dominion or under any Statute of the Province in a compulsory winding-up proceeding, without regard to whether or not the creditor so suing had at the time of becoming a creditor notice of the provision or whether or not the assignee, trustee, receiver, or liquidator at the time of his appointment had notice of the provision,* and the buyer shall, notwithstanding such provision, be deemed as against such persons the owner of the goods, unless the requirements of this Act are complied with."

The italicized words were added in 1929.

It is clear that the only creditors whose claims were protected by the section (as it was before 1929) were judgment creditors.

When the amendment of 1929 was made it was argued that since unregistered conditional sale agreement were rendered void against Trustees in Bankruptcy they became void as against all creditors because the Trustee represented all creditors.

This question came before Mr. Justice Robertson in the Supreme Court of British Columbia on the 28th October 1933 in the case of the *Lytton Canners Ltd.* His decision was that the added words were all governed by the phrase "for the purpose of enforcing the rights of such creditors but not otherwise", and therefore that the Act only made unregistered sales void against Trustees in Bankruptcy if, at the date of the bankruptcy, some one creditor at least of the bankrupt buyer had obtained a judgment against the debtor for his debt.

It is submitted that the section should be amended so as to make unregistered conditional sale contracts void against Trustees in Bankruptcy of the conditional sale purchaser.

THE PROPOSED AMENDMENT.

It is suggested that the sub-section be re-enacted as follows:

"3 (1). After possession of goods has been delivered to a buyer under a conditional sale every provision contained therein whereby the property in the goods remains in the seller shall be void as against:

(a) Subsequent purchasers or mortgagees claiming from or under the buyer in good faith for valuable consideration and without notice:

(b) Creditors of the buyer who at the time of becoming creditors had no notice of the provision, and

(c) Assignees for the general benefit of the buyer's creditors, trustees of the property of the buyer under the Bankruptcy Act, liquidators of the buyer under the Winding-up Act or under any statute of the Province in a compulsory winding-up proceeding;

and the buyer shall, notwithstanding such provision, be deemed as against such persons, the owner of the goods, unless the requirements of the Act are complied with".

The reasons for the proposed change are:

(1) The present section runs counter to the accepted view that priority of one creditor over another is unfair.

(2) The position of unregistered conditional sales would, by this change, in the case of a buyer who goes into bankruptcy, be made the same as that of unregistered chattel mortgages and assignment of book accounts, and there is no reason why the holder of an unregistered conditional sale contract should be in a better position than the holder of an unregistered chattel mortgage.

(3) A statute which does not invalidate unregistered conditional sale contracts when the buyer goes into bankruptcy offers an opportunity for the creation of fictitious sale transactions.

(4) It is in the interest of trade and of the country that holders of conditional sale contracts who decide not to register them should run the risk of their being rendered void by the bankruptcy of the buyer.

The questions involved in the proposed changes were submitted to our Legislation Committee and were later discussed at a full meeting of the membership and a resolution was passed unanimously requesting the officials of the Association to continue their efforts to have the changes put into effect.

As most of the wholesale firms, manufacturers, and manufacturers' agents in British Columbia are members of our organization, their views can be taken as representative of the commercial community.

The main principle of the Bankruptcy Act is to level off the creditors' claims as far as possible so that no one creditor will get priority over another. If security held by a creditor is to be recognized by a Trustee in bankruptcy, the documents evidencing same should be in compliance with all statutory and other regulations and these regulations should include some form of public notice, such as registration. If there is no such notification by registration it leaves a loophole for all kinds of dishonest practices by those who are so inclined and this country is undoubtedly suffering more from financial frauds today than from any other form of crime.

It was this difficulty in connection with hidden securities that led to the principle being adopted in the cases of chattel mortgages and assignments of book accounts, namely that these securities are invalid if unregistered, against not only subsequent purchasers for value or mortgagees, but also against trustees in bankruptcy, receivers, etc. If the principle is applicable to these latter forms of security, we see no reason why it should not apply to conditional bills of sale. As a matter of fact the

Assignment of Book Account Act requiring registration was introduced to overcome this same difficulty regarding latent securities.

Once a document has been registered there are commercial agencies available for distribution the information to parties interested but, until some such registration is made, there is no means of gaining information regarding security given by a debtor and this leaves the way open to many frauds. Many of the benefits of the Bankruptcy Act would be wiped out if conditions with regard to registering security were not adhered to strictly.

THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD.

JOHN COWAN,
Manager.

Vancouver, B.C.

APPENDIX K.

THE CONTRIBUTORY NEGLIGENCE ACT

As revised by the Conference of Commissioners on Uniformity of Legislation in Canada, in August 1934.

(Subject to further consideration in 1935).

An Act to make Uniform the Law respecting Liability in Actions for Damages for Negligence where more than one party is at fault.

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 Contributory Negligence Act.*

2. Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault:

Provided that:

(a) 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, and

(b) Nothing in this section shall operate so as to render any person liable for any loss or damage to which his fault has not contributed.

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

4. In any action the amount of damage or loss, the fault, if any, and the degrees of fault shall be questions of fact.

5. The Judge shall not submit to the jury any question as to whether notwithstanding the fault of one party, the other could have avoided the consequences thereof unless in his opinion there is evidence upon which the jury could reasonably find that

the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous with it.

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

7. 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.

8. This Act shall come into force on the day of 1934.

APPENDIX L.

REPORT OF THE TREASURER OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA FOR THE YEAR ENDING, JULY 31st., 1934.

1933			
Aug. 1	—Balance on Hand		$1,348.98
Oct. 26	—Grant from Province of Ontario		200.00
Dec. 31	—Bank Interest		17.71
1934			
June 30	—Bank Interest		19.22
			$1,585.91
1933			
Sept. 16	—Cheque to S. E. Smith, Secretary, for Secretarial expenses	$ 15.00	
1934			
June 30	—Cheque to Carswell Law Book Co. 500 copies Proceedings of the 16th Annual Meeting	367.78	
	2700 copies Proceedings of the 16th Annual Meeting reprinted in C.B.A. Year Book	435.34	
July 6	—Cheque to S. E. Smith, Secretary, for Secretarial expenses	12.77	
			$830.89
	Balance on hand		$755.02

Respectfully submitted,

E. R. RICHARD,
Treasurer.

August 2, 1954.

Audited and found correct,

S. H. MCCUAIG,
C. P. MCARGUE.

August 30, 1934.

APPENDIX M.

TABLE OF MODEL UNIFORM STATUTES.

(Suggested, proposed, reported on, drafted, or approved, as appearing in the printed Proceedings of the Conference, 1918-1934.)

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

INDEX.