

Department of the  
**ATTORNEY GENERAL**  
Edmonton.

1935

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PROCEEDINGS

OF THE

EIGHTEENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION  
IN CANADA

HELD AT

WINNIPEG

AUGUST 22ND, 23RD, 24TH, 26TH AND 27TH, 1935

CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
OF LEGISLATION IN CANADA.

OFFICERS OF THE CONFERENCE.

- Honorary President* . . . Hon. W. J. Major, K.C., Winnipeg,  
Manitoba.
- President* . . . . . Douglas J. Thom, K.C., Regina, Sask-  
atchewan.
- Vice-President* . . . . . I. A. Humphries, K.C., Toronto 5,  
Ontario.
- Treasurer* . . . . . R. Murray Fisher, K.C., Winnipeg,  
Manitoba.
- Secretary* . . . . . V. C. MacDonald, K.C., 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* . . . . . Hon. R. L. Maitland, K.C., 626 West  
Pender St., Vancouver.
- Manitoba* . . . . . R. Murray Fisher, K.C., Parliament  
Buildings, Winnipeg.
- New Brunswick* . . . . . J. Bacon Dickson, Deputy Attorney-  
General, Fredericton.
- Nova Scotia* . . . . . Frederick Mathers, K.C., Province  
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 Surveyer, Judges'  
Chambers, Superior Court, Mont-  
real.
- Saskatchewan* . . . . . J. P. Runciman, Legislative Counsel,  
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.

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

*British Columbia :*

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.

WILSON MCLEAN, Legislative Counsel, Parliament Buildings, Winnipeg.

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

*New Brunswick :*

PETER J. HUGHES, K.C., Fredericton.

HORACE A. PORTER, K.C., St. John.

J. BACON DICKSON, Deputy Attorney-General, Fredericton.

(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, K.C., Dean, Dalhousie Law School, Halifax.

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

*Ontario :*

I. A. HUMPHRIES, K.C., Deputy Attorney-General,  
Parliament Buildings, Toronto.

DANIEL W. LANG, K.C., Sterling Tower Building, Toronto.

ERIC H. SILK, Legislative Counsel, 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.

J. P. RUNCIMAN, Legislative Counsel, Regina.

## MEMBERS EX OFFICIO OF THE CONFERENCE,

*Attorney-General of Alberta:* Hon. J. W. Hugill, 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. J. B. McNair, 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. Thane  
Campbell, 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 inter-provincial conference for the purpose of promoting uniformity of legislation.

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

Subsequent annual meetings have been held as follows:—

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

- 1925. August 21-22, 24-25, Winnipeg.
- 1926. August 27-28, 30-31, St. John.
- 1927. August 19-20, 22-23, Toronto.
- 1928. August 23-25, 27-28, Regina.
- 1929. August 30-31, September 2-4, Quebec.
- 1930. August 11-14, Toronto.
- 1931. August 27-29, 31, September 1, Murray Bay.
- 1932. August 25-27, 29, Calgary.
- 1933. August 24-26, 28-29, Ottawa.
- 1934. August 30-31, September 1-4, Montreal.
- 1935. August 22-24, 26-27, Winnipeg.

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

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

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

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

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

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

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

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

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

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

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

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

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

In 1935 the Conference approved (with one important modification) the uniform Contributory Negligence Act as revised in 1934 and also considered matters relating to existing and proposed uniform Acts such as the Assignment of Books Debt Act, the Reciprocal Enforcement of Judgments Act, the Landlord and Tenant Act, the Limitation of Actions Act, and the Interpretation Act and provided for further consideration of 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 meetings of the Conference does not of course bind any province to adopt any conclusions reached by the Conference, but it is hoped that the voluntary acceptance by the provincial legislatures of the recommendations of the Conference will secure an increasing measure of uniformity of legislation.



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

1920. Bulk Sales Act (amended, 1925): adopted in Alberta (1922), British Columbia (1921), Manitoba (1921), New Brunswick (1927), and Prince Edward Island (1933).  
 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), Nova Scotia (1930), and Prince Edward Island (1934).
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), Saskatchewan (1925), and New Brunswick (1931).  
 Reciprocal Enforcement of Judgments Act (amended 1925): adopted in Alberta (1925, amended 1935), British Columbia (1925), New Brunswick (1925), Ontario (1929), and Saskatchewan (1924).  
 Contributory Negligence Act: adopted in British Columbia (1925), New Brunswick (1925), and Nova Scotia (1926). Revised in 1934 and 1935.
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).  
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, amended, 1934).
1931. Limitation of Actions Act (amended, 1932): adopted in Manitoba (1932), Saskatchewan (1932), and Alberta (1935).  
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 EIGHTEENTH ANNUAL MEETING OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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

*Alberta :*

MR. SMITH.

*British Columbia :*

MR. MAITLAND.

*Manitoba :*

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

*Nova Scotia :*

MR. MACDONALD.

*Ontario :*

MESSRS. HUMPHRIES, LANG and SILK.

*Saskatchewan :*

MR. THOM.

MESSRS. JOHN E. READ, K.C., and C. P. PLAXTON, K.C.,  
representing the Dominion Government were also present.

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### FIRST DAY.

Thursday, August 22, 1935.

The Conference assembled at 10.30 a.m. at the Fort Garry Hotel, Winnipeg, Mr. Thom, the Vice-President, in the chair.

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

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

(*Appendix A.*)

The Chairman expressed the gratification of the Conference in the presence for the first time of representatives of the Dominion Government, Mr. John E. Read, K.C., of the Department of External Affairs, and Mr. C. P. Plaxton, K.C., of the Department of Justice. This innovation was welcomed by the Conference which expressed the hope that such representation would be continued.

The *Treasurer's Report* was received and referred to Messrs. Lang and Campbell, for audit and report.

Mr. Isaac Pitblado, K.C., President of the Canadian Bar Association, addressed the Conference speaking in terms of commendation of the utility of its work and suggesting that the members of the Conference should seek to spread knowledge of that work among the members of their respective Bars and, also, that they should request the Local Councils of the Canadian Bar Association to co-operate with the Conference in securing the adoption of uniform Acts in their respective Provinces.

Remarks of welcome were made by Sidney E. Smith, President of the University of Manitoba, and a former member and Secretary of the Conference.

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

Messrs. Lang, Fisher, Smith and Read were appointed a *Nomination Committee* to submit recommendations as to the election of officers of the Conference.

Reports of the various Commissioners as to the several matters set out in the Agenda were received.

Mr. Smith presented the Report of the Alberta Commissioners on the *Limitation of Actions Act* (Conference Proceedings, 1934, p. 16), and the Report was discussed.

Certain suggestions made by Mr. W. P. Fillmore, K.C., for the amendment of the *Assignment of Book Debts Act* (Conference Proceedings, 1928, p. 47) were read and discussed and it was *Resolved* that same be referred to the Manitoba Commissioners for consideration and report next year.

*(Appendix B.)*

A letter from Mr. Thom relating to the *Reciprocal Enforcement of Judgments Act* (Conference Proceedings, 1924, p. 60) was read and discussed.

At 12.30 p.m. the Conference adjourned.

At 2.00 p.m. the Conference re-assembled and resumed discussion of the above mentioned Act.

The following Resolution was adopted :

*Resolved* that the matter referred to in the letter of Mr. Thom relating to the *Reciprocal Enforcement of Judgments Act* together with any other matters arising out of the reciprocal enforcement of judgments be referred to the Ontario Commissioners to confer with the representatives of the Dominion and to report thereon next year.

*(Appendix C.)*

Mr. Smith presented the Report of the Alberta Commissioners on the draft *Landlord and Tenant Act* (Conference Proceedings, 1933, pp. 43-68) and the same was received, and the Conference proceeded to consider the clauses of that draft Act *seriatim* in the light of the above-mentioned Report.

At 4.00 p.m. the Conference adjourned.

At 8.30 p.m. the Conference re-assembled and resumed discussion of the draft *Landlord and Tenant Act* and the Report thereon.

At 10.30 p.m. the Conference adjourned.

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 SECOND DAY.

Friday, August 23, 1935.

The Conference re-assembled at 9.30 a.m.

The Conference resumed discussion of the Report on the *Limitation of Actions Act*.

*(Appendix D.)*

And after consideration it was *Resolved* that there was no necessity for any change in the present uniform Act.

The Conference resumed discussion of the draft *Landlord and Tenant Act* and Report thereon.

At 12.30 p.m. the Conference adjourned.

At 2.00 p.m. the Conference re-assembled and proceeded to reconsider the *Contributory Negligence Act* as revised last year (Conference Proceedings, 1934, pp. 69-70) and which had been

disapproved by the representatives of British Columbia and Ontario last year.

After a statement by Mr. MacDonald and further consideration of the Act in the light of the objections thereto expressed by Hon. F. J. Hughes, and Messrs. Phelan, Cartwright and McTague of the Ontario Bar and Mr. Maitland of the British Columbia Bar the following *Resolution* was passed :

*Resolved* that the uniform *Contributory Negligence Act* as revised in 1934 and printed in Appendix K to the 1934 Proceedings of the Conference *except Section 5 thereof* be recommended to the legislatures of the several Provinces for enactment *And Further Resolved* that section 5 of the Act as so revised be printed with an explanatory note that as it appears to the Conference that that section enunciates the law laid down in *Admiralty Commissioners v. S.S. Volute*, [1922] 1 A.C. 129 and *Swadling v. Cooper*, [1931] A.C. 1 the same is printed in order that the several Provinces may consider the advisability of embodying that section in the uniform Act.

(*Appendix E.*)

Mr. MacDonald presented the Report of the Nova Scotia Commissioners on the question of difficulties arising in British Columbia out of certain decisions concerning the proper interpretation of section 2 of the *British Columbia Contributory Negligence Act* (which re-enacts the provisions of the uniform Act as adopted in 1924) in the matter of costs and referred to them last year (Conference Proceedings, 1934, p. 19) and after consideration thereof and of certain memoranda submitted by Mr. Pineo it was *Resolved* that no action be taken thereon this year.

The following Resolution was passed :

*Resolved* that the question of the desirability of inserting in the uniform *Contributory Negligence Act* (see *Appendix E, infra*) a section corresponding to the provision added to the Ontario Negligence Act in 1935 in relation to contribution where the plaintiff is the spouse of a negligent person be referred to the Ontario Commissioners for report thereon next year.

The provision in question which is Section 3, sub-section 3 of the Ontario Negligence Act, 1930, c. 27 is as follows :

(3) *Where plaintiff is spouse of negligent person.* In any action founded upon fault or negligence and brought for loss or damage resulting from bodily injury to, or the death of any married person where one of the persons found to be at fault or negligent is the spouse of such married

person, no damages, contribution or indemnity shall be recoverable for the portion of loss or damage caused by the fault or negligence of such spouse, and the portion of the loss or damage so caused by the fault or negligence of such spouse shall be determined although such spouse is not a party to the action.

At 4.15 p.m. the Conference adjourned.

The Conference re-assembled at 8.30 p.m. and resumed discussion of the *Landlord and Tenant Act*.

At 10.20 p.m. the Conference adjourned.

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### THIRD DAY.

Saturday, August 24, 1935.

The Conference re-assembled at 9.30 a.m.

After some discussion of the *Treasurer's Report* the auditors were instructed to get further particulars as to certain items therein.

The Conference continued discussion of the *Landlord and Tenant Act* and adjourned at 12.30 p.m.

The Conference re-assembled at 8.30 p.m. and continued discussion of the *Landlord and Tenant Act* and adjourned at 10.30 p.m.

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### FOURTH DAY.

Monday, August 26, 1935.

The Conference assembled at 9.30 a.m. Mr. Fisher presented the Report of the Manitoba Commissioners on Uniform Sections for Inclusion in *Interpretation Acts* together with the 1934 Draft Interpretation Act (Conference Proceedings, 1934, Appendix B) as since amended by the Manitoba Commissioners and the Conference proceeded to consider same.

The Conference adjourned at 12.30 p.m.

The Conference re-assembled at 2.00 p.m. and resumed discussion of the Report of the Manitoba Commissioners on the Interpretation Acts.

At 4.30 p.m. the Conference adjourned.

At 8.30 p.m. the Conference re-assembled. The *Report of the Treasurer* as approved by the auditors Messrs. Lang and Campbell was received and adopted.

*(Appendix F.)*

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

Hon. President—Hon. W. J. Major, K.C., Winnipeg.  
 President —Douglas J. Thom, K.C., Regina.  
 Vice-President —I. A. Humphries, K.C., Toronto.  
 Treasurer —R. M. Fisher, K.C., Winnipeg.  
 Secretary —V. C. MacDonald, K.C., Dalhousie Law  
 School, Halifax.

The Conference expressed its deep appreciation of the hospitality and courtesies extended to the Commissioners by Mr. Major, Mr. Pitblado, Mr. E. K. Williams, and President Sidney Smith and by various members of the Winnipeg Bar.

The Conference expressed its sincere regret in the tragic death of one of its valued members, Mr. J. C. Collinson, K.C.

The Conference learned with regret of the resignation from the Conference of Mr. Pineo of British Columbia and Mr. R. P. Hartley of New Brunswick, and Messrs. R. L. Foster and C. P. McTague of Ontario.

The Conference extended to Mr. C. P. McTague, one of its members, its sincere congratulations upon his elevation to the Bench of Ontario.

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.

It was *Resolved* that the matter of the *Partnerships Registration Act* (Conference Proceedings, 1934, p. 15) and the Report of the New Brunswick Commissioners thereon (received but not discussed this year) be re-committed to the New Brunswick Commissioners for further consideration and report next year.

It was *Resolved* that the matter relating to the *Conditional Sales Act* referred to the Ontario Commissioners last year



(Conference Proceedings, 1934, p. 18) be re-committed to them for report next year.

It was *Resolved* that the matter of the desirability of the Conference undertaking the preparation of draft sections relating to the *form of statutes* be referred to the Ontario Commissioners for report next year.

It was *Resolved* that the British Columbia Commissioners compile a report on the legislative provisions of the Dominion and of the various Provinces relating to the law of Evidence and submit next year a draft uniform *Evidence Act*.

It was *Resolved* that the Saskatchewan Commissioners submit next year a draft uniform *Libel and Slander Act* based on the legislation of the various Provinces on that subject in its civil aspects.

It was *Resolved* that the Manitoba Commissioners submit next year a report on the desirability of the Conference undertaking the preparation of a draft uniform *Married Womens' Property Act*.

The Conference resumed discussion of the *Interpretation Act* and report thereon and adjourned at 10.30 p.m.

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#### FIFTH DAY.

Tuesday, August 27, 1935.

The Conference re-assembled at 9.30 a.m. and resumed discussion of the *Interpretation Act* and it was *Resolved* that that Act be re-committed to the Manitoba Commissioners to prepare a complete re-draft thereof in the light of the discussion this year which Act as so re-drafted should be printed in the 1935 Proceedings together with their Report.

(*Appendix G.*)

It was *Resolved* that the *Landlord and Tenant Act* be re-committed to the Alberta Commissioners to prepare a complete re-draft thereof in the light of the discussion this year which Act as so re-drafted should be printed in the 1935 Proceedings together with the Report submitted by them this year.

(*Appendix H.*)

The representatives of the Dominion, Messrs. Read and Plaxton, expressed their appreciation of the courtesy of the Conference in allowing them to participate in its deliberations.

At 12.45 p.m. the Conference adjourned.

APPENDICES.

- A. Vice-President's Address.
- B. Correspondence re Assignment of Book Debts Act.
- C. Letter re Reciprocal Enforcement of Judgments Act.
- D. Report on Questions relating to the Limitation of Actions Act.
- E. Uniform Contributory Negligence Act.
- F. Treasurer's Report.
- G. Supplementary Report on Uniform Sections for Inclusion in Interpretation Act with draft of such sections annexed.
- H. Report on Draft Landlord and Tenant Act with Draft Act annexed.

## APPENDIX A.

## VICE-PRESIDENT'S ADDRESS

At the meeting last year in the absence of Mr. Falconbridge, the President, we managed, without a formal President's address to give us a start, to do a great deal of work and to have on the whole, I think, a good meeting of the Conference. Encouraged by that precedent, I think we may very well do the same again this year so far as any general remarks on the progress of uniformity of legislation are concerned.

I do wish before I go further, however, to express my very great regret that we have been unable to move Mr. J. D. Falconbridge, K.C., of Osgoode Hall, Toronto, from his determination to retire from the Conference. We placed on record last year in our minutes our very high appreciation of Mr. Falconbridge and I want to repeat and emphasize all that we said about him then. It is going to be very difficult to fill the gap left by his retirement from the Presidency and from the Conference.

Another familiar face which we will miss is that of Mr. A. V. Pineo of British Columbia. Mr. Pineo was one of the original Commissioners who attended the first meeting in 1918, has been a member ever since and has attended the great majority of the Conferences. He was a tireless worker and a keen mind and he also will be very greatly missed.

Our congratulations are extended to His Lordship Mr. Justice C. P. McTague of the High Court Division of Ontario, on his recent elevation to the Bench. He has been with us for the last three years. We found him a very valuable member of the Conference and a fine man to be associated with in every way.

Mr. Stanley McCuaig, K.C., of Alberta, who likewise has been with us for the last three years, will also be very much missed. Compared to the task of a mere Judge, who is presumed to be administering law which has some stable foundation in precedent and in the statutes, he is engaged in a task which requires, I say it with deference, much more the wisdom of a Solomon if indeed not omniscience itself. I refer, of course, to the problem of holding the balances evenly between debtor and creditor under the Farmers' Creditors Arrangement Act. The intrepidity of the men who are administering this Act can only be compared to that of Columbus in striking out on an uncharted sea.

I also regret very much that we are not going to have with us, as in the past two years, Mr. Leighton Foster, K.C., of Ontario. He brought to bear a trained mind and sound judgment to our problems; but without belittling in any way his contribution to our gatherings in that way, I cannot overlook the fact that as our Social Manager I believe we have suffered irreparably in losing him.

I have reserved to the last mention of the profound sorrow with which we heard of the tragic death last fall of Mr. J. C. Collinson, K.C., of Manitoba. Mr. Collinson was with us for the first time last year, but that was long enough for us to realize that in him we were going to find counsel and wisdom of a very high type. Personally we had him with us just long enough to realize that he was a delightful man to be acquainted with. It is with deep sadness that we record his loss from among us.

Although I know some of the new faces that we are to meet, I had not a complete list at the time of preparing these remarks and refrain from any individual comment.

What I have said will certainly serve to emphasize the fact that this year perhaps more than any previous single year we have suffered a great change in the personnel of our Conference. I am exceedingly glad to see the old timers who are here again. I believe it is a fact, however, that no organization has ever been ruined by the infusion of new blood if the new members approach their task with the realization of what it means and a determination to do their best. May I ask the new members to make themselves thoroughly familiar with our problems and what has been accomplished in the past, and, realizing that, to do as their predecessors have done, namely give of their best to the success of the Conference and toward the attainment of its objectives.

APPENDIX B.  
CORRESPONDENCE.  
ASSIGNMENT OF BOOK DEBTS ACT.

Winnipeg, 5th April, 1935.

Wilson McLean, Esq.,  
Legislative Counsel,  
Winnipeg, Manitoba.

*Re "Assignment of Book Debts Act 1929," Chapter 1.*

Dear Sir :

This Act is in a very unsatisfactory state. Section 4, s.s. (3) reads as follows :

"Every assignment which is required to be in writing and to be registered under this Act shall, as against creditors and subsequent purchasers, take effect only from the time of the registration of the assignment."

Does registration amount to notice, and if so to whom? Does the old law still prevail and would the assignee who first gives notice to the debtors be in the best position? See—Snider's Limited v. Furniture Finance Company, 66 O.L.R. 79. Since that decision, however, Section 4 s.s. (3) was enacted in Ontario.

The British Columbia Act, Statutes of British Columbia 1924, Chapter 16, Section 13, provides that in case two or more assignments of book accounts are given . . . they shall have priority in the order and date of registration respectively.

Something like this is badly needed to clear up the situation.

Yours truly,

SWEATMAN, FILLIMORE, RILEY & WATSON,

Per W. P. FILLIMORE.

W. P. Fillimore, Esq., K.C.,  
Winnipeg, Man.

April 23, 1935.

*Re "The Assignment of Book Debts Act" S.M. 1929, c. 1.*

Dear Sir :

I have now had an opportunity of looking at the matter referred to in your letter of April 5th under the above heading. I have sent a copy of this to Mr. Fisher who is Secretary of the Manitoba Uniformity Commissioners as it would seem to me that this matter might properly be dealt with by that body in order that uniformity of legislation may not be unduly disturbed.

It would seem to me that there would be great difficulty in providing that registration would constitute notice as it would interfere very largely with retail and commercial transactions and impose a very heavy burden upon the debtor.

Yours truly,

WILSON McLEAN,  
Legislative Counsel.

Wilson E. McLean, Esq.,  
Legislative Counsel,  
Parliament Buildings,  
Winnipeg, Manitoba.

April 25th, 1935.

Dear Sir :

We acknowledge receipt of your letter of the 23rd inst., addressed to our Mr. Fillimore.

We quite agree with the statement made in the last paragraph of your letter and we do not want you to think that we are advocating that registration would constitute notice especially to the debtor. It had been suggested to a client of ours that registration under The Assignment of Book Debts Act was notice to the world of the assignment. We disagreed with this opinion and advised our client to the contrary, pointing out that if such was the case no debtor could safely pay his creditor without making a search in the registration office, and also that if registration was notice to everybody it would be simply impossible for the commercial world to do business. Nevertheless it seems to us that the situation can be clarified by at least indicating that The Assignment of Book Debts Act does not in any way change the old law under which the assignee who first gives notice has priority, provided such assignee had no notice of the other assignment at the time he took his assignment.

Yours truly,

SWEATMAN, FILLIMORE, RILEY & WATSON,

## APPENDIX C.

LETTER Re RECIPROCAL ENFORCEMENT OF  
JUDGMENTS ACT.

Regina, August 2, 1935.

The Secretary,

The Conference of Commissioners on Uniformity of Legis-  
lation in Canada.*Re "Reciprocal Enforcement of Judgments Act."*

Dear Sir :

My attention has been drawn to certain matters in connection with this Act through correspondence with Mr. John Allen, K.C., Deputy Attorney-General of the Province of Manitoba.

The Reciprocal Enforcement of Judgments Act was promulgated by the Conference in 1924. (See 1924 Proceedings). There was a small amendment by the Conference in 1925 which is immaterial for the purposes of this letter. The Act was adopted in Saskatchewan in 1924, in Alberta in 1925, in British Columbia in 1925, in New Brunswick in 1925 and in Ontario in 1929.

Our uniform Act was confined to interprovincial arrangements within Canada pursuant to discussion of the Conference in 1921, and a resolution in 1924 reading:—

“Resolved that in the opinion of the Conference the enactment of provincial legislation permitting the enforcement in any Province of Canada of judgments. . .made in courts outside of Canada is a matter of policy to be determined by the proper provincial authorities, and that when any Province signifies its desire of enacting such legislation, the Conference will be pleased to assist in the drafting of an Act”.

In the meantime there was on the statute books of the Imperial Parliament the Administration of Justice Act, 1920, Part II, which contained an offer of reciprocity in enforcement of judgments.

In 1927 Saskatchewan passed the Judgments Extension Act (Statutes of 1927, Chapter 12, now R.S.S. 1930, Chapter 63). This Act was modelled on the Reciprocal Enforcement of Judgments Act but related to judgments obtained in the Superior Court in any part of His Majesty's Dominions outside of Canada

to which the Act might extend. Under that Act reciprocal arrangements have been made between Great Britain and Saskatchewan.

In 1933 the Imperial Parliament enacted the Foreign Judgments (Reciprocal Enforcement) Act 1933, Part 1 of which provided for the registration of foreign judgments. Section 1 enacts that:

“His Majesty, if he is satisfied that, in the event of the benefits conferred by this part of the Act being extended to judgments given in the superior courts of any foreign country, as respects the enforcement in that country of judgments given in the superior courts of the United Kingdom, may direct that Part 1 of the Act shall extend to that foreign country”.

and section 7 enacts that in the same way the Act may be made to apply to any part of His Majesty's Dominions outside the United Kingdom, and in that event Part 2 of the Administration of Justice Act, 1920, shall cease to have effect except where it has already been brought into operation.

At the recent session of the Alberta Legislature (1935, c. 7) an amendment has been made to their Reciprocal Enforcement of Judgments Act (the uniform Act) to enable the Act to be extended not only to courts in any other Province of the Dominion, but

“in the United Kingdom of Great Britain and Northern Ireland or in any of His Majesty's Dominions outside the United Kingdom or in any territory which is under His Majesty's protection or in any territory in respect of which mandate has been accepted by His Majesty or in any foreign country.”

This Alberta legislation does not make any difference in the principle of the Reciprocal Enforcement Act as between Provinces and would appear to be quite in accord with the resolution of our Conference of 1924 above quoted.

I do not think any action has been taken by any other Provincial Government or Legislature.

The Home authorities are now apparently interesting themselves in the extension of reciprocity and by Circular No. 323, addressed to the Secretary of State for External Affairs, Canada, have made enquiries with respect to such a programme.

As mentioned at the outset, the objective of our Conference being to bring about uniformity as between the Provinces in their



dealings with one another, I am not writing this letter with the idea of recommending any specific action, but in view of the fact that it has a bearing on one of our uniform Acts I thought it advisable to bring the matter up so that the Conference itself could decide if there were any recommendations which it should make.

Yours truly,

D. J. THOM.

APPENDIX D.  
REPORT ON QUESTIONS IN CONNECTION WITH THE  
UNIFORM LIMITATION OF ACTIONS ACT.  
RAISED BY MR. THOM.

(CONFERENCE PROCEEDINGS, 1934, APPENDIX F.)

Paragraph (f) on section 3 of the draft Uniform Act (Proceedings, 1931, pp. 38-53) reads as follows:

“Actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant or other specialty or on a simple contract, express or implied, and actions for an account or for not accounting, within six years after the cause of action arose.”

Section 12 prescribes a limitation of ten years for proceedings to recover any rent charge or any sum of money secured by any mortgage or otherwise charged upon or payable out of any land or rent charge or to recover any legacy, whether it is or is not charged upon land, or to recover the personal estate of any person dying intestate and possessed by his personal representative.

It further provides that time begins to run after a present right to recover the same accrued to some person capable of giving a discharge therefor unless prior to the expiry of such ten years some part of the rent charge, sum of money, legacy or estate or share or some interest thereon has been paid by a person bound or entitled to make a payment thereof or his agent in that behalf to a person entitled to receive the same or some acknowledgment in writing of the right assigned by any person so bound or entitled or his agent has been given to the person entitled to receive the same or his agent, and in such case the limitation period commences to run from the date of the payment or acknowledgment or the last payment or acknowledgment if more than one.

By section 32 proceedings for foreclosure or sale under any mortgage of real or personal property must be taken within ten years next after the right to take the proceedings first accrued and by section 33 it is provided that the limitation period commences to run from the time of making the last payment or acknowledgment in respect of the mortgage deed.

By section 50 of the Act the same applies to all causes of action whether the same arose before or after the coming into force of the Act, but no action shall be barred merely by its operation until the expiry of six months from its coming into force, provided that all actions that would have been barred by effluxion of time during such six months under the provisions of the law existing immediately prior to the coming into force of the Act, shall be barred as if such law were still existing.

It is suggested by Mr. Thom that the Act should be amended by providing,—

- (1) that the period of limitation be extended in the case of bonds given collaterally to a mortgage of real or personal property; and
- (2) that the period of limitation be extended in the case of bonds given for the due administration of an intestate's estate and for other bonds which are required to be furnished other than by statute or pursuant to the order of a court; and
- (3) that in both the above cases the limitation period should commence to run from the last payment on account of the liability or the last acknowledgment given in respect thereof; and
- (4) that the Act should be made inapplicable to any of the bonds above mentioned and subsisting at the time of the passing of the Act.

As to suggestions (1) and (2), in *Re Brown's Estate, Brown v. Brown* (1893) 2 Ch. 300, it was held per Chitty, J. that,—

“(1) Where there is a present debt and a covenant or promise to pay on demand, the demand is not considered a condition precedent to bringing the action; but (2) where there is a covenant or promise to pay a collateral sum, on demand, e.g., in a covenant by a surety for the principal debtor, then request must be made before action brought, or before the money can be considered as owing by the collateral debtor.”

In this case the facts are as follows:—

By a mortgage of September, 1867, a father and his son jointly and severally covenanted to pay to the mortgagee £3,000 on demand and in the meantime, from the date of the mortgage, to pay interest on the same at the rate therein mentioned. The father was joined as a surety only and died in November, 1872, and his estate was being administered in an action commenced in April, 1880. No claim was made against the father's estate

in respect of his liability on the covenant until July, 1889, when the mortgagee claimed to be let in as a creditor of the father's estate in respect of the amount due on the mortgage which the son was unable to pay. It was held that the right of action did not accrue against the father's estate until July, 1889, when demand was first made and consequently the mortgagee was entitled to come in and prove his claim against the father's estate without disturbing any dividends already distributed. (See *Bradford Old Bank v. Sutcliffe*, (1918) 2 K.B. 833).

It would appear that the liability under a bond or covenant collateral to a mortgage would depend on the terms in which the obligation is expressed: consequently it would seem that by apt words the obligation could be so framed that the right of action under the covenant would accrue at any specified time or upon the happening of any specified event.

It would appear that with regard to bonds for the due administration of an estate and similar bonds the condition could be so framed that the right to commence proceedings thereunder against the surety should commence at any time on demand after default by the person for whom he was surety, or upon the happening of any specified event.

It would therefore appear that there is no good reason for amending the draft Act with regard to any of the classes of securities above mentioned which are created after the commencement of the Act.

As to suggestion (3), section 7 of the draft Act seems to be of general application to all cases where one person has the right to recover an ascertained sum of money from another: it provides an additional period of limitation of six years from the last payment, promise of payment or acknowledgment of indebtedness made or given by the person liable or by his agent. Accordingly,—

- (a) if the right to sue the surety under the bond has not accrued, time has not commenced to run; and
- (b) if the right to sue has accrued, and the surety or his agent makes a payment, promise of payment or acknowledgment of indebtedness, a new limitation period of six years commences to run from the last payment, promise of payment or acknowledgment of indebtedness.

It would therefore appear that sufficient provision is made for cases of payment, promise of payment and acknowledgment of indebtedness where the debtor is a surety.

As to suggestion (4), in view of the fact that section 43 of the Uniform Draft Act allows a period of six months from the passing of the Act during which the law as to limitation applicable to a subsisting security is not affected by the passage of the Act, it would appear that an ample opportunity is provided for the persons entitled to the benefit of subsisting securities of the nature above mentioned to obtain from the persons liable thereunder a new bond or covenant framed for the purpose of meeting any change in the law affected by the uniform Act, the alternative being that steps would be taken within such six-month period for the purpose of realizing on the mortgage security and enforcing the terms of the collateral covenant; consequently there appears to be no necessity for making the Act inapplicable to bonds of the nature above referred to which subsist at the commencement of the Act.

Respectfully submitted.

R. ANDREW SMITH,  
For the Alberta Commissioners.

## APPENDIX E.

## THE CONTRIBUTORY NEGLIGENCE ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 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. (See Note infra).*

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 \_\_\_\_\_

*Explanatory Note re Section 5 (supra).*

The above Act was approved by the Conference in August, 1935 (see *supra* p. 15) in the form in which it had been approved in 1934 (Conference Proceedings, 1934, Appendix F) but with the omission therefrom of Section 5. That section is here reprinted in its original context with the recommendation that the several Provinces consider its enactment as part of any statute adopting the uniform Act in view of the opinion of the Conference that it correctly enunciates the law as declared in *Admiralty Commissioners v. S.S. Volute* and *Swadling v. Cooper*.

APPENDIX F.  
TREASURER'S REPORT.

1934

Aug. 2—	Balance on hand .....	\$755 02
Dec. 31—	Bank Interest .....	8.86

1935

Jan. 12—	Grant from Province of Ontario..	200.00
Feb. 8—	Bank Interest .....	1.28
April 30—	Bank Interest.. ..	3.16
		\$968.32

1935

Feb. 12—	Bank transfer charges from Sack- ville, N.B., to Windsor...	\$ 2 41
Feb. 18—	Vincent MacDonald, Secretarial expenses. ....	25.00
June 28—	National Printers, Ltd., printing 500 copies proceedings of 1934	232.79
		\$260.20
	Balance on hand .....	\$708.12

Audited and found correct,

A. W. LANG,  
ARCHIBALD C. CAMPBELL.



## APPENDIX G.

## SUPPLEMENTARY REPORT OF MANITOBA COMMISSIONERS ON UNIFORM SECTIONS FOR INCLUSION IN INTERPRETATION ACTS.

In 1934 the Manitoba Commissioners submitted to the Conference a draft of an Interpretation Act. Under instructions of the Conference they submitted in 1935 draft uniform sections for inclusion in an Interpretation Act retaining the original numbering of the sections in the meantime and incorporating suggestions made by other Commissioners with which the Manitoba Commissioners were in agreement and certain amendments which the Manitoba Commissioners considered improvements.

The Manitoba Commissioners also submitted in 1935 a report to the Conference. Many matters in the report were finally dealt with by the 1935 Conference and these will not again be referred to it, but certain matters were not dealt with and to enable the Conference to finally deal with them they are referred to in this supplementary report.

The Manitoba Commissioners have also revised their 1935 draft of uniform sections in accordance with the decisions of the 1935 Conference and the sections as amended are set out in schedule "A" to this report.

The following are matters referred to in the 1935 report which were either not considered or left over for further consideration :

- I. Whether the following section should be included, viz:—  
 "Every Act, unless by express provision it is declared to be a private Act, shall 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.

II. The Conference decided that the matter of including a section, providing that the interpretation section of the Supreme Court or Judicature Act should extend to all Acts relating to legal matters and that the interpretation section of The Municipal Act should extend to all Acts relating to municipal matters, should be left to each province to deal with in the light of its own particular circumstances. Should reference be made to this by way of memorandum in the final draft?

III. Messrs. Lawson and Maitland of British Columbia have raised the question as to the inclusion of the following sections

of "The British Columbia Act". As no decision was made as to the following sections they are again referred to the Conference for decision.

Sec. 24 (20) "Land" includes all messuages, tenements and hereditaments, houses and buildings of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure.

Manitoba Commissioners inclined to think this is entirely a local matter for each province.

Sec. 24 (44) "Statutory declaration" or "solemn declaration" means a solemn declaration in the form and manner provided in the "Evidence Act" of the province or in the "Canada Evidence Act" of the Dominion.

The Manitoba Commissioners in doubt whether this section should be included in draft sections or in Evidence Act. Cf. sec. 18 (11) Draft.

Sec. 36. Where under any Act any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a corporation where the corporation is the party aggrieved. R.S. 1911, c. 1, s. 44.

Manitoba Commissioners think this should be included in Summary Convictions Act or other appropriate legislation.

Sec. 37. Every provision of an Act relating to offenses punishable on summary conviction shall, unless the contrary intention appears, be deemed to refer to corporations as well as to persons. R.S. 1911, c. 1, s. 45.

This should also be included in Summary Convictions Act or other appropriate legislation.

Sec. 12. Where any Act repeals in whole or in part any former Act, and substitutes some provision or provisions repealed, the provision or provisions so repealed shall remain in force until the substituted provision or provisions come into operation by force of the last made Act. R.S. 1911, c. 1, s. 15.

Partly covered by section 20 of draft. Matter of drafting of section bringing into force new Act — Manitoba not convinced this is necessary.

Sec. 23 (14). Definitions or rules of interpretation contained in any Act shall, unless the contrary intention appears, apply to the construction of the sections of the Act which contain those definitions or rules of interpretation, as well as to the other provisions of the Act.

See section 2 (2) Manitoba draft.

Sec. 24 (3). "Chartered bank" or "bank" means an incorporated bank carrying on the business of banking under the "Bank Act" of the Dominion.

Manitoba feels this is a local matter but it could be included in sec. 18 of draft.

Sec. 24 (26). "Mail", "mailing" and "mailed" refer to the deposit of the matter to which the context applies in His Majesty's post office at any place within the province, postage prepaid, for transmission by post.

Manitoba inclined to think this is unnecessary but have no objection to its inclusion in section 18.

Sec. 45. Where in any Act, or in any order made in pursuance of any Act, it is provided that any matter, dispute or question shall be decided by arbitration or under or pursuance to the "Arbitration Act", such provision shall be deemed to be a "submission" within the meaning of the "Arbitration Act". R.S. 1911, c. 1, s. 47.

Manitoba inclined to think this is a local matter.

Sec. 51. Where in any Act reference is made to rules or regulations, without anything in the context to indicate that rules or regulations made under some other Act are intended to be referred to, the reference shall be deemed to be a reference to rules or regulations made under the Act in which the reference is made. 1922, c. 1, s. 4 (part).

Manitoba thinks this section not necessary.

Respectfully submitted,

A. C. CAMPBELL

W. E. MCLEAN

R. M. FISHER

Commissioners for Manitoba.

## SCHEDULE "A".

1936.

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 REVISED DRAFT OF UNIFORM SECTIONS FOR  
 INCLUSION IN INTERPRETATION ACTS.
 

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## PART

## INTERPRETATION.

1. In this part the expression

(a) "Public officer" includes any person, official or employee in the public service by or under public statute authorized to do or enforce the doing of any act or thing, exercise any power or upon whom any duty is imposed;

Definition  
"Public  
officer"

(b) "Regulation" includes any rule, rule of court, tariff, form or by-law made in the execution of a power given by statute.

"Regulat

## APPLICATION OF PART.

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

Applicati  
to all  
statutes

(a) is inconsistent with the intent or object of the 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 the interpretation section of the Act or regulation; or

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

(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).

Interpret  
tion clau  
subject  
certain  
exception

(3) The provisions of this part shall apply to its interpretation.

This par  
applies to  
itself.

## OPERATION OF STATUTES.

3. (1) Where an Act or regulation or any provision thereof 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.

Date of  
operation  
of statut

Powers exercisable under Acts not coming into force in assent.

(2) Where an Act or enactment is not to come into operation immediately on the passing thereof and confers power

- (a) to make appointments;
- (b) to hold elections;
- (c) to make regulations;
- (d) to give notices; or
- (e) to do any other thing for the purposes of the Act or enactment;

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

RULES OF CONSTRUCTION.

Statute law always speaking.

4. The law shall be considered as 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 so that effect may be given to each Act and every part thereof according to its spirit, true intent and meaning; but the expressions "now", "next", "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 is presented for the Royal assent.

Interpretation of "may" and "shall".

5. In every Act or regulation, the expression "shall" shall be construed as imperative, and the expression "may" as permissive and empowering.

Provision

6. (1) No provision in an Act shall affect

Affecting Crown.

(a) the rights of His Majesty unless it is expressly stated therein that His Majesty is bound thereby; nor

Affecting pending litigation.

(b) litigation pending at the time of its enactment unless so expressly stated therein, except in matters of procedure.

Contained in private Acts.

(2) Where an Act is of the nature of a private Act no provision thereof shall affect the rights of any persons save only as therein mentioned or referred to.

Preamble and schedules part of Act.

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

Statutes to be liberally interpreted.

8. Every Act and every provision of an Act shall be deemed 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.

9. Where an Act confers power to make regulations or to grant, make or issue any Order in Council, order, writ, warrant, scheme or letters patent, expressions used therein shall have the same respective meaning as in the Act conferring the power.

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

11. In every Act words making any person or number of persons a corporation shall

(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 or moveables 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 others by their acts; and

(c) exempt such individual members of the corporation from personal liability for its debts, obligations or acts as do not contravene the provisions of the Act incorporating them.

NOTE: Par. (C) was left for further consideration.

12. Every public officer now or hereafter appointed under the authority of any Act or otherwise shall remain in office during pleasure only, unless it is otherwise expressed in his commission or appointment.

13. (1) Words authorizing the appointment of a public officer or a deputy include the power

(a) of removing or suspending him;

(b) of re-appointing or reinstating him;

(c) of appointing 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.

(2) Words directing or empowering a public officer 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.

(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, a Minister designated to act 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: This subsection was stood over for further consideration. The meaning of the words "lawful deputy" is not clear. Do they mean "deputy Minister"—a civil servant? If not, is not the acting Minister the deputy and if so, these last words are unnecessary?

(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 person for the time being charged with the execution of the powers and duties of the office.

**14.** In every Act or regulation,

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

(b) when power is given to the Lieutenant-Governor-in-Council or a public officer 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;

(c) when the existence of a state of things is conditional upon the Lieutenant-Governor-in-Council or a public officer doing an act or thing, he shall have power to do the act or thing;

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

(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;

(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;

(g) when a form is prescribed, deviations therefrom in the use thereof not affecting the substance or calculated to mislead, shall not invalidate the form used;

(h) words importing the masculine gender include the feminine and the word "he" includes the word "it";

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

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

(k) when any period of time is prescribed or allowed the same shall be reckoned exclusively of the first day; Reckoning time.

(l) a reference to time is to be deemed a reference to the (each jurisdiction to provide its own definition). Time.

#### REFERENCES.

**15.** (1) In any Act, regulation or document, an Act of the province or Dominion may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter in the Revised Statutes or by reference to the year of Our Lord in which the Act was passed. Citation statutes.

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

**16.** (1) When 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 or letter first mentioned and the number or letter last mentioned shall both be deemed to be included in the reference. Citation sections number inclusive

(2) When in an Act reference is made to a part, division, section, schedule or form without anything in the context 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. Referenc Act to F of an Ac

(3) When in a section of an Act reference is made to a subsection, paragraph or sub-paragraph without anything in the context 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, paragraph or sub-paragraph of the section in which the reference is made. Referenc section.

#### WORDS AND PHRASES.

**17.** The expressions used in any Act, either of the province or the Dominion, constituting a judicial or quasi-judicial authority Expressi used in other Ac



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, corporation, public officer, person or thing means the country, place, corporation, public officer, person or thing to which such name is commonly applied although the name is not the formal designation thereof.

18. In every Act or regulation, the expression

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

(2) "Corporation" includes an incorporated company, body politic and corporate and a corporation sole.

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

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

(5) "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;

(6) "His Majesty", "Her Majesty", "The King", "The Queen" or the "Crown" means the Sovereign of Great Britain, Northern Ireland and the British Dominions beyond the seas;

NOTE : Mr. Read to submit a redraft.

(7) "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;

(8) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province;

(9) "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;

(10) "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; "Lieutenant-Governor-in-Council"

(11) "Month" means calendar month; "Month"

(12) "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; "Newspaper"

(13) "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; "Oath" or "affidavit"

(14) "Peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer and justice of the peace, and also the superintendent, governor, gaoler, keeper, guard or any other officer or permanent employee of the gaol or reformatory, and any police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process; "Peace officer"

(15) "Person" includes a corporation and the (heirs)? executors, administrators or other legal representatives of a person; "Person"

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

(17) "Province" means the province of "Province"

(18) "Sureties" mean sufficient sureties; "Sureties"

(19) "Security" means sufficient security; "Security"

(20) "Will" includes codicil; "Will"

(21) "Writing", "written", or any term of like import includes any mode of representing or reproducing words in a visible form; and "Writing"

(22) "Year" means calendar year. "Year"

NOTE: The requirements of each jurisdiction will have to be considered by it.

#### REPEAL AND AMENDMENT.

19. (1) Every Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, Power of repeal reserved

restricting or modifying a power, privilege or advantage thereby vested in or granted to a person.

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

(3) An Amending Act, so far as consistent with the tenor thereof, shall be construed as part of the Act which it amends.

**20.** (1) Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part the repeal or revocation shall not

(a) revive any Act, enactment, regulation or thing not in force or existing at the time at which the repeal or revocation takes effect;

(b) affect the previous operation of any Act, enactment 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, enactment or regulation so repealed or revoked;

(d) affect any offence committed against, or any violation of the provisions of the Act, enactment 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, and the investigation, legal proceeding or remedy may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the Act, enactment or regulation had not been repealed or revoked.

(2) Where an Act or enactment is repealed in whole or in part or a regulation revoked in whole or in part and a new Act, enactment or regulation is substituted therefor,

(a) every (public officer and . . .) person acting under the Act, enactment 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 any person appointed under the Act, enactment or regulation so repealed or revoked shall remain in force, and all offices, books, papers and things made or used under a repealed Act, enactment or regulation shall continue as before the repeal;

(c) every proceeding taken under the Act, enactment or regulation so repealed or revoked shall, as far as possible,

be taken up and continued under the repealing Act, enactment or regulation if it provides therefor, otherwise in conformity with the provisions of the repealed Act, enactment 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, enactment 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

(e) if the penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act, enactment 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.

**21.** When an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, Repeal  
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(a) all regulations made under the repealed Act, or enactment, shall continue good and valid in so far as they are not inconsistent with the new Act or enactment until they are annulled and others made in their stead; and Regul

(b) a reference, in an unrepealed Act or enactment or in a regulation made thereunder, to the repealed Act or enactment, shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject-matter as the repealed Act or enactment; and if there be no provisions in the substituted Act or enactment relating to the same subject-matter, the repealed Act or enactment 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, enactment or regulation. Refere

**22.** The Legislature by re-enacting an Act or enactment, or by revising, consolidating or amending the same, shall not 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. Effect  
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**23.** (1) The repeal of an Act or enactment in whole or in part shall not be deemed to be or to involve a declaration Repeal  
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(2) The amendment of an Act or enactment in whole or in part shall not be deemed to be or to involve a declaration that the law under the Act or enactment was or was considered by the Legislature to have been different from the law as it is under the Act or enactment as so amended.

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

#### UNIFORM CONSTRUCTION.

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24. 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.

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25. This Act shall come into force on the day it is assented to and shall be retroactive to and have force and effect from the first day of the session of the Legislature at which it was passed.

## APPENDIX H.

REPORT OF THE ALBERTA COMMISSIONERS ON THE  
DRAFT LANDLORD AND TENANT ACT.

The draft of this Act appears on pages 43 to 68 of the Proceedings of the 1933 Conference.

Part I of the draft, up to and including section 28, received preliminary consideration at the 1934 Conference and it was resolved that the same be referred again to the Alberta Commissioners for consideration and report next year (1934 Proceedings, p. 20).

A number of recommendations were made by the Conference, and the following suggestions are designed to conform to those recommendations and otherwise to improve the draft.

(1) As to section 2 of the draft it was suggested that clause (a) stand for further consideration. The definition in the draft is the same as the definition in the Manitoba Act and is somewhat more precise than the definition contained in the Saskatchewan Act. It would appear to be necessary to define "crops" particularly having regard to sections 26 and 36.

It was suggested that clause (b) be struck out. It will be noted that The Law of Property Act, 1925 (Imp.) section 205 (ix) reads as follows :

"(ix) 'Land' includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over an derived from land; but not an undivided share in land; and 'mines and minerals' include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof; and 'manor' includes a lordship, and reputed manor or lordship; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir."

It would appear desirable to define "land" so as to include special interests therein and the following definition is suggested:

“(b) ‘Land’ includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way); also a rent charged upon or payable in respect of any land, and an easement, right, privilege or benefit in, over or derived from land; but not an undivided share in land; and ‘mines and minerals’ include any strata or seam of minerals or substances in or under any land and powers of working and getting the same, but not an undivided share thereof.”

It was suggested that clause (c) stand. “Landlord” is defined in the Ontario, Manitoba and Saskatchewan Acts and a definition seems imperative.

Possibly the following words might be struck out of the draft: “every person who makes any assurance of land whereby any rent is reserved by condition”.

It was suggested that clauses (d), (e), (h), (i) and (j) stand; these definitions have particular reference to sections 12, 13 and 14 of the draft. Possibly it would be better to restrict the application of these definitions to the last mentioned sections rather than to make the same of general application with the exception of the definition of “tenant” which I think should be of general application. In drafting the Act I have used the word “tenant” repeatedly and in preparing the draft I had in mind the definition which is set out in clause (j).

(2) As to section 3, a somewhat strong opinion was expressed that the same should be omitted altogether.

This section was suggested by section 2 of the Ontario Act which reads as follows :

“2. The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there shall be an agreement for that purpose between the parties.”

The Ontario section has been the subject matter of considerable debate and an account of the discussions will be found in Williams, pp. 2 and 144. Possibly the section may not be essential but it would appear desirable to make a definite break with some of the archaic theories incidental to the English land law which have their origin in systems of tenure which have long ago become obsolete. (See Jenks' Modern Land Law, Part I, ch. 1).

(3) As to section 5, the same should be amended by striking out the word "affected", where the same occurs in subsection (2), and by substituting therefor the word "effected".

(4) The following provision deals with leases invalidated by reason of non-compliance with terms of powers under which they are granted. It is in the terms of section 152 of The Law of Property Act, 1925, Imp. This provision should be inserted in the draft immediately after section 6.

"6a.—(1) Where in the intended exercise of any power of leasing, whether conferred by a statute or by any other instrument, a lease (in this section referred to as an invalid lease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

"(a) as against the person entitled after the determination of the interest of the grantor to the reversion; or

"(b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease;

"the lease, if it was made in good faith, and the lessee has entered thereunder, shall take effect in equity as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the powers:

"Provided that a lessee under an invalid lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

"(2) Where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease shall take effect as a valid lease in like manner as if it had been granted at that time.

"(3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof:



Confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

“(4) Where a receipt or a memorandum in writing confirming an invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against that person, be deemed to be a confirmation of the lease.

“(5) The foregoing provisions of this section do not affect prejudicially—

“(a) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or

“(b) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.

“(6) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.

“(7) This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.”

(5) With reference to section 8, it was suggested that subsection (1) of this section should be made inapplicable to cases which are covered by section 12.

In view of the fact that subsection (1) of section 8 applies solely to rent and section 12 applies solely to the breach of any covenant or condition in a lease other than a proviso in respect of the payment of rent, this suggestion does not seem to be necessary.

Some exception was taken to the expression "demised premises"; possibly it might be better to say "the premises in respect of which the land is payable."

(6) As to section 10, it was decided to amend subsection (2) to read as follows:

"(2) Where the landlord refuses or neglects to give a license or consent to assign or sublet, a judge of the court, upon the application of the tenant, or assignee or sub-tenant may make an order determining whether or not such license or consent is unreasonably withheld, and where it is so withheld permitting the assignment or sub-lease to be made, and such order shall be the equivalent of the license or consent of the landlord within the meaning of any covenant or condition requiring the same, and such assignment or sub-lease shall not be a breach thereof."

(7) As to section 11, it was decided that the same should stand.

Section 145 of the Imperial Act reads as follows:

"145. Every lessee to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver, and if he fails so to do, he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years' improved or rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount."

It would appear that the words "bailiff or receiver" might well be struck out and that the word "agent" be inserted in lieu thereof.

The Ontario and Manitoba Acts make the tenant liable to pay the landlord for all damages sustained by him by reason of the failure to give the notice.

The question as to the extent of the responsibility for notifying the landlord is one of policy and the liability imposed on the tenant for not giving the notice by the Imperial Act seems to be in the nature of a penalty. It would also appear that to require the tenant to pay the landlord for all damages sustained by him by reason of the failure to give the notice would involve considerable difficulty of computation and would likely lead to expensive litigation. Accordingly it is suggested that the section be adopted as drafted, substituting the word "agent" for the words "bailiff or receiver".

(8) With regard to section 12 which stood for further consideration, it is suggested,—

(a) that subclause (iii) of clause (a) of subsection (1) be struck out and the following substituted therefor:

“(iii) in any case which is capable of being compensated by money payment requiring the tenant to make compensation in money for the breach and”;

(b) that subsection (5) be amended by striking out the words “the proceedings in the action shall be stayed”, and by substituting therefor the words “the action shall be at an end”;

(c) that subsection (7) be amended by striking out the words “an insurance on foot”, and by substituting therefor the words “a policy of insurance in existence”, and also by striking out the word “affected” and by substituting therefor the word “effected”, and

(d) that subsections (9) and (10) be amended by combining the same to read as follows :

“(9) This section shall not extend,—

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

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

“(c) to a condition for forfeiture on the bankruptcy of the tenant or on the taking in execution of the lessee’s interest if contained in,—

“(i) a lease of agricultural or pastoral land;

“(ii) a mining lease;

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

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

It would appear that provision should be made in this section for the service of notices given pursuant to subsection (1) and it is suggested that the section be further amended by adding at the end thereof the following new subsection:

“(9) The notice referred to in subsection (1) may be served on the tenant by delivering the same to the lessee personally or by leaving the same at the place of residence of the tenant with any adult person for the time being in charge thereof, and if the whereabouts of the tenant is unknown and is not ascertained after reasonable enquiry, the notice may be served by posting up the same in a conspicuous manner upon some part of the demised premises.”

(9) As to section 13, it is suggested that the expression “shall think fit” be struck out and the expression “thinks fit” be substituted therefor.

(10) Section 14 stood for reconsideration. A similar section appears in the Manitoba Act (section 21), in the Ontario Act (section 21) and in the Saskatchewan Act (section 12). The section appears to be necessary and does not appear to require any amendment

(11) As to section 16 it was suggested that the same should be extended to include tenancies from year to year and tenancies created by overholding. The following redraft is suggested:

“16. In the absence of an express provision in writing to the contrary,—

“(a) in the case of a tenancy from year to year the same may be determined by three months’ notice to quit in writing, to take effect upon the date upon which the tenancy commenced;

“(b) in the case of an overholding tenancy, other than an overholding tenancy created on the expiration of a monthly tenancy, a weekly tenancy or a tenancy for a term of less than twelve months the same may be determined by three months’ notice to quit in writing to take effect upon the date upon which the tenancy commenced;

“(c) in the case of a monthly tenancy, and in the case of an overholding tenancy created on the expiration of a monthly tenancy the same may be determined by a month’s notice to quit in writing to take effect at the end of the next ensuing month; and

“(d) in the case of a weekly tenancy, and in the case of a weekly tenancy created on the expiration of a monthly

tenancy a week's notice to quit in writing to take effect at the end of the next ensuing week."

(12) It was decided to eliminate sections 17, 18 and 19.

(13) As to section 21 it was suggested that the same be recast. Manitoba (section 30), Ontario (section 40) and Saskatchewan (section 20) are similar to the first part of the section as it appears in the draft. The proviso is taken from the British Columbia legislation which re-enacts VIII Anne, chapter 14 (18, section 7).

The following re-draft is suggested:

"21. Upon the determination of any lease the person entitled as landlord to receive any rent made payable thereby may at any time

"(a) within six months next after the determination of the lease

"(b) within such six months during the continuance of the landlord's interest and

"(c) within such six months during the possession of the tenant from whom the rent became due

"distrain for any rent due and in arrear in the same manner as he might have done if the lease had not been determined."

(14) As to section 23, it was suggested that section 4 of chapter 14 of the Statutes of British Columbia, 1930, should be substituted for it. This section reads as follows:

"Where chattels are distrained for rent justly due, the person taking the distress shall not be liable to any action for excessive distress by reason only of the fact that more chattels are distrained than are reasonably necessary to satisfy the rent due with the expenses, if within three days after the taking of the distress he abandons the excess and thereafter holds under the distress no more chattels than are reasonably necessary to satisfy the rent due with the expenses."

Possibly section 23 of the draft should be retained as subsection (1) and the British Columbia provision added as subsection (2).

(15) As to section 24, it was suggested that the same should be replaced by section 35 of the Manitoba Act which is as follows:

"35. Save as herein otherwise provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent."

(16) As to section 25, it is suggested that the same be deleted and the following substituted for it.

“25. No distress for rent shall be made at any time in the interval between five o'clock in the afternoon and eight o'clock in the following morning.”

(17) As to section 26, it was suggested that the same be re-cast. The following re-draft is offered.

“26. (1) No goods and chattels shall be liable to be taken under a distress for rent except only the following, namely,—

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

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

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

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

“(i) by virtue of any execution against the tenant; or

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

“(e) The interest of the tenant in any of the goods and chattels before mentioned under any contract for the purchase thereof or under any contract whereby the tenant may become the owner thereof upon the performance of any condition;

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

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

“(2) Where any goods and chattels lawfully seized under a distress for rent are at the time of seizure subject to any conditional sale agreement or any chattel mortgage, which agreement or mortgage is valid against the creditors of the purchaser or mortgagor, as the case may be, the distrainer shall sell such goods and chattels subject to any such agreement or mortgage affecting the same, and none of the rights of the vendor or mortgagee under any such agreement or mortgage shall be affected thereby.”

(18) As to section 27, the Conference suggested a re-draft and the following new section is suggested in lieu thereof:

“27. Where a tenant of land held under any kind of tenancy under which rent is payable, fraudulently or clandestinely removes or causes to be removed from the land so held by him at a time when there are any arrears of rent payable in respect thereof which are recoverable by distress any goods or chattels liable to such distress with intent to prevent the landlord from distraining the same for arrears of rent so payable, the landlord or any person by him duly authorized may, within thirty days next after such removal, take and seize as a distress for such arrears any goods and chattels so removed except any such goods and chattels which have been sold or mortgaged in good faith and for valuable consideration before the seizure to a person not privy to the fraud wherever the same are found and may sell or otherwise dispose of the goods and chattels so taken in such manner as if the same had actually been distrained by the landlord for arrears of rent upon the premises from which the same had been so removed.”

(19) As to section 28, it was suggested that the expression “Every sheriff or sheriff’s bailiff”, which occurs in the first line of subsection (2), should be amended by including therein “every person designated by the sheriff.”

It would seem to me that the right of entry and search given by this subsection should be restricted to responsible persons.

Under the Alberta Seizures Act (1933, ch. 16, s. 18) it is provided as follows :

“18. Unless it is otherwise ordered by a Court or judge, no distress shall be made, taken, levied, executed or carried into effect except only by a sheriff, assistant sheriff, deputy sheriff or sheriff’s bailiff, or some other person authorized so to do by a sheriff, an assistant sheriff or a deputy sheriff, in writing.”

It would appear that the power should be limited to the class of persons referred to in the section of the Alberta Act above quoted, and the subsection might be amended by striking out the words "Every sheriff or sheriff's bailiff charged with the duty of executing a warrant of distress for rent", and by substituting therefor the words "Every sheriff, assistant sheriff, deputy sheriff and sheriff's bailiff charged with the duty of executing a warrant of distress for rent and every other person so charged and authorized in that behalf by a sheriff, assistant sheriff or a deputy sheriff, in writing."

Subsection (3) requires amendment and it is suggested that the same should read as follows:

"(3) In case any person encounters any resistance in doing any of the acts and things which he is authorized by subsection (2) to do, he may call upon any peace officer to assist him in overcoming that resistance, and such person in the presence of a peace officer and all peace officers are and each of them is hereby empowered to use such force as is reasonably necessary for the purpose of overcoming that resistance."

Respectfully submitted,

R. ANDREW SMITH,  
For the Alberta Commissioners.



DRAFT LANDLORD AND TENANT ACT AS REVISED  
BY THE CONFERENCE IN 1935.

*An Act to make uniform the Law respecting Landlord and Tenant.*

**H**IS 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 Landlord and Tenant Act*.

PRELIMINARY:

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

(a) "Crops" mean the products of the soil, and without  
limiting the generality of the foregoing, includes all sorts  
of grain, grass, hay, hops, fruits, pulse, potatoes, beets,  
turnips and other products of the soil.

(b) "Land" includes land of any tenure, and mines and  
minerals, whether or not held apart from the surface, build-  
ings or parts of buildings (whether the division is horizontal,  
vertical or made in any other way) also a rent charged  
upon or payable in respect of any land, and an easement,  
right, privilege or benefit in, over or derived from land,  
but not an undivided share in land and 'mines and minerals'  
include any strata or seam of minerals or substances in or  
under any land and powers of working and getting the same,  
but not an undivided share thereof;

(c) "Landlord" means and includes every lessor, every  
owner, every person giving or permitting the occupation of  
any land, every person who makes any assurance of land  
whereby any rent is reserved by condition, and their respec-  
tive successors in title;

3. The relation of landlord and tenant shall not depend  
on tenure, and a reversion in the lessor shall not be necessary  
in order to create the relation of landlord and tenant, or to  
make applicable the incidents by law belonging to that relation;  
nor shall it be necessary in order to give a landlord the right  
of distress that there shall be an agreement for that purpose  
between the parties.

PART I.

COVENANTS RUNNING WITH THE REVERSION.

4. (1) Rent reserved by a lease, and the benefit of every  
covenant or provision therein contained, relating to his leased

premises and on the tenant's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate.

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

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

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

(a) any severance of the reversionary estate; or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent, covenant or provision,—effected before the commencement of this Act.

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

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

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

#### APPORTIONMENT OF CONDITION OF RE-ENTRY.

6. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

#### MERGER, ETC., OF REVERSIONS.

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

#### WASTE BY TENANTS.

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

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

(b) every tenant at will shall be liable to his landlord and every other person having a reversionary interest in the leased premises for voluntary waste in respect of the

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

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

#### DEFECTS IN LEASE MADE UNDER POWERS OF LEASING.

9. (1) Where in the intended exercise of any power of leasing whether conferred by a statute or by any other instrument, a lease (in this section referred to as an invalid lease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

(a) as against the person entitled after the determination of the interest of the grantor to the reversion; or

(b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease;

the lease, if it was made in good faith, and the lessee has entered thereunder, shall take effect as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the powers :

Provided that a lessee under an invalid lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

(2) Where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease shall take effect as a valid lease in like manner as if it had been granted at that date.

(3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person

so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof :

Confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

(4) Where a receipt or a memorandum in writing confirming the invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against that person, be deemed to be a confirmation of the lease.

(5) The foregoing provisions of this section do not affect prejudicially—

(a) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or

(b) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.

(6) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall for the purposes of this section be deemed to have been granted in the intended exercise of the power although the power is not referred to in the lease.

(7) This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

#### RIGHT OF RE-ENTRY.

**10.** In every lease in writing whenever made, unless it is otherwise agreed and in every lease by parol there shall be implied an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the

days on which the same ought to have been paid, although no formal demand thereof shall have been made, the landlord may, at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, re-enter and the same have again, re-possess and enjoy as of his former estate.

**11.** In every lease whenever made there shall be implied an agreement that if the tenant or any other person shall be convicted of keeping a disorderly house, within the meaning of The Criminal Code, on the demised premises, or any part thereof, the landlord may at any time thereafter, into the demised premises, or any part thereof, re-enter and the same have again, re-possess and enjoy as of his former estate.

#### LICENSES TO TENANTS.

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

- (a) to the permission actually given; or
- (b) to the specific breach of any provision or covenant referred to; or
- (c) to any other matter thereby specifically authorized to be done;

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

(2) Notwithstanding any such license,—

(a) all rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorized or waived, in the same manner as if no license had been granted; and

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

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

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

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

the license does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees

of the other shares or interests in the property, or by the tenant or tenants of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the license.

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

#### LICENSES TO ASSIGN, SUBLET, ETC.

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

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

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

(2) Where the landlord refuses or neglects to give a license or consent to assign or sublet, a Judge of the . . . . . Court, upon the application of the tenant, or assignee or sub-tenant, may make an order determining whether or not such license or consent is unreasonably withheld, and where it is so withheld permitting the assignment or sublease to be made, and such order shall be the equivalent of the license or consent of the landlord within the meaning of any covenant or condition requiring the same, and such assignment or sublease shall not be a breach thereof.

#### NOTICE BY TENANT TO LANDLORD OF PROCEEDINGS.

**14.** Every tenant to whom there is delivered any process of any Court for the recovery of premises demised to or held by him, or to whose knowledge any such process comes, shall forthwith give notice thereof to his landlord or his agent, and, if he fails so to do, he shall be answerable for all damages sustained by the landlord by reason of the failure to give the notice.

## FORFEITURE OF LEASES.

**15.** In sections 15, 16 and 17, unless the context otherwise requires, the expression,—

(a) “Lease” means every agreement in writing, and every parol agreement whereby one person as landlord confers upon another person as tenant the right to occupy land, and every sublease and every agreement for a sublease and every assurance whereby any rent is secured by condition;

(b) “Mining lease” means a lease for mining purposes, which purposes include the searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and includes a grant or license for mining purposes;

(c) “Sublease” includes an agreement for a sublease where the sublessee has become entitled to have his sublease granted;

(d) “Subtenant” includes any person deriving title under a sublease;

(e) “Tenant” means a person who holds any land subject to the obligation to pay rent in respect thereof, and includes every owner, every lessee, every occupant, every sub-tenant and their respective successors in title.

**16.** (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, in any case in which the breach is capable of remedy or of being compensated by money payment, unless and until,—

(a) the landlord serves on the tenant a notice specifying the particular breach, and requiring the tenant to remedy or to make compensation in money for the breach; and

(b) the tenant fails, within a reasonable time after the service of the notice, to remedy the breach, or to make compensation in money to the satisfaction of the landlord for the breach.

(2) Where a landlord is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the tenant may in the landlord’s action, if any, or if there is no such action pending, then



in an action brought by himself, apply to the Court for relief, and the Court may grant such relief as having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the Court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court may deem just.

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

(4) For the purposes of this section a lease limited to continue as long as the tenant abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

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

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

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

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

(9) This section shall not extend,—

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

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

(c) to a condition for forfeiture on the bankruptcy of the tenant or on the taking in execution of the lessee's interest if contained in,—

- (i) a lease of agricultural or pastoral land;
- (ii) a mining lease;
- (iii) a lease of a house let as a dwelling-house with the use of any furniture, books, works of art or other chattels not being the nature of fixtures;
- (iv) a lease of land with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the landlord, or to any person holding under him.

(10) If the whereabouts of the tenant cannot be ascertained after reasonable enquiry or if the tenant is evading service, the notice referred to in subsection (1) may be served on the tenant by leaving the same at the place of residence of the tenant with any adult person for the time being in charge thereof, and if the premises are unoccupied, the notice may be served by posting up the same in a conspicuous manner upon some part of the demised premises.

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

**18.** Where a landlord is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the landlord that he claims such right or interest or if the

instrument under which he claims is registered in the proper (Land Titles Office) shall be made a party to the action.

**19.** (1) Where the actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

(2) This section applies unless a contrary intention appears and extends to waivers effected after the \_\_\_\_\_ day of

#### COVENANT TO PAY TAXES.

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

#### NOTICES TO TERMINATE TENANCIES.

**21.** (1) Subject to any express agreement to the contrary, sufficient notice to quit shall be deemed to have been given if there is given in writing,—

(a) in the case of a weekly tenancy, a clear week's notice ending with the week;

(b) in the case of a monthly tenancy, a clear month's notice ending with the month;

(c) in the case of a tenancy from year to year, three clear months' notice, to take effect upon such a day of the month as the tenancy determined.

provided that, in the case of an agricultural lease, not less than six months' notice to quit shall be given.

(2) When a tenant whose lease, whether created in writing or parol, has expired or been determined, remains in possession with the consent, express or implied, of the landlord, he shall be deemed to be holding, subject to the terms, so far as they are applicable, of the lease that has expired or been determined:

Provided that where the tenancy created by the lease which has expired or been determined was neither a weekly nor monthly tenancy nor a tenancy from year to year, the over-holding tenant shall be deemed to be holding as a tenant from year to year.

**22.** Where any rent of any kind is payable by virtue of any deed, transfer or other assurance, or by will, and there exists no

express right of distress for enforcing the payment thereof, the person entitled to receive the rent shall have the same right of distress for enforcing the payment thereof as if the same were rent reserved upon lease.

#### DISTRESS FOR RENT.

**23.** Upon the determination of any lease the person entitled as landlord to receive any rent made payable thereby may at any time

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

(b) within such six months during the continuance of the landlord's interest and

(c) within such six months during the possession of the tenant from whom the rent became due

distrain for any rent due and in arrear in the same manner as he might have done if the lease had not been determined.

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

**25.** (1) No person shall take under distress more goods than are reasonably sufficient to satisfy the rent in arrear and the costs of the distress.

(2) Where chattels are distrained for rent justly due, the person taking the distress shall not be liable to any action for excessive distress, if within seven days after the taking of the distress he abandons the excess and thereafter holds under the distress no more chattels than are reasonably necessary to satisfy the rent due with the expenses.

**26.** Save as herein otherwise provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent.

**27.** No distress for rent shall be made at any time in the interval between five o'clock in the afternoon and eight o'clock in the following morning.

#### PROPERTY LIABLE TO DISTRESS.

**28.** (1) No goods and chattels shall be liable to be taken under a distress for rent except only the following, namely,—

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

(b) Crops upon the premises whether growing or severed;

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

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

(i) by virtue of any execution against the tenant;

or

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

(e) The interest of the tenant in any of the goods and chattels before mentioned under any contract for the purchase thereof or under any contract whereby the tenant may become the owner thereof upon the performance of any condition;

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

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

(2) Where any goods and chattels lawfully seized under a distress for rent are at the time of seizure subject to any conditional sale agreement or any chattel mortgage, which agreement or mortgage is valid against the creditors of the purchaser or mortgagor, as the case may be, the distrainer shall sell such goods and chattels subject to any such agreement or mortgage affecting the same, and none of the rights of the vendor or mortgagee under any such agreement or mortgage shall be affected thereby.

## FRAUDULENT REMOVAL.

**29.** Where a tenant of land held under any kind of tenancy under which rent is payable, fraudulently or clandestinely removes or causes to be removed from the land so held by him at a time when there are any arrears of rent payable in respect thereof which are recoverable by distress any goods or chattels liable to such distress with intent to prevent the landlord from distraining the same for arrears of rent so payable, the landlord or any person by him duly authorized may, within thirty days next after such removal, take and seize as a distress for such arrears any goods and chattels so removed except any such goods and chattels which have been sold or mortgaged in good faith and for valuable consideration before the seizure to a person not privy to the fraud wherever the same are found and may sell or otherwise dispose of the goods and chattels so taken in such manner as if the same had actually been distrained by the landlord for arrears of rent upon the premises from which the same had been so removed.

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

(2) Every person lawfully charged with the duty of executing a warrant of distress for rent who has reason to believe that any goods or chattels have been fraudulently or clandestinely removed for the purpose of preventing the landlord from distraining the same, and that the said goods are in any building, yard, enclosure or place in such circumstances so as to prevent them from being taken or seized as a distress for arrears of rent, shall be entitled at any time between eight o'clock in the morning and five o'clock in the afternoon to enter into and upon the building, yard, enclosure or place and every part thereof for the purpose of searching for any goods and chattels so removed and to seize any such goods and chattels there found for arrears of rent as he might have done if they were in an open field or place upon the premises from which they were removed as aforesaid, and for that purpose is empowered to obtain entry upon and access to the premises by breaking or removing any doors or any locks or other fastenings whereby such entry and access is hindered.

(3) In case any person encounters any resistance in doing any of the acts and things which he is authorized by subsection (2) to do, he may call upon any peace officer to assist him in overcoming that resistance, and such person in the presence of a peace officer and all peace officers are and each of them is hereby empowered to use such force as is reasonably necessary for the purpose of overcoming that resistance.

#### SET-OFF AGAINST RENT.

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

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

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

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

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

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

**33.** (1) Where any goods or chattels are distrained for rent and the tenant does not replevy the same within five days next after notice in writing of the distress, setting out the cause of the taking, has been posted upon a conspicuous place at the premises in respect of which the rent is payable and in case the distress is impounded elsewhere, at the place of impoundment, then, after the expiration of the said five days, the person distrain-

ing shall cause the goods and chattels so distrained to be appraised by two appraisers.

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

(3) After the appraisement has been made the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for use of the person lawfully entitled thereto and pay the same over to him on demand.

#### RIGHTS OF LANDLORD ON TENANTS' BANKRUPTCY.

**34.** (1) In case of an assignment for the general benefit of creditors, or in case an order is made for the winding up of an incorporated company, or in case a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, in any such case the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of three months next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, liquidator or trustee for the period of his occupation.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, in case of an assignment for the general benefit of creditors, or in case an order is made for the winding up of an incorporated company, or in case a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, in any such case the assignee, liquidator or trustee may at any time within three months thereafter for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by such lease or agreement, and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct



upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who shall on application of the assignee, liquidator or trustee, be approved by a judge of the (insert title of Court) as a person fit and proper to be put in possession of the leased premises.

**35.** (1) The assignee, liquidator or trustee shall have the further right at any time before so electing by notice in writing to the landlord, to surrender possession or disclaim any such lease, and his entry into possession of the leased premises and their occupation by him, while required for the purposes of the trust estate, shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to the provisions of this section.

(2) Where the assignor, or person or firm against whom a receiving order has been made in bankruptcy, or a winding up order has been made, being a lessee, has, before the making of the assignment or such order demised by way of under-lease, approved or consented to in writing by the landlord, any premises and the assignee, liquidator or trustee surrenders, disclaims or elects to assign the lease the under-lessee shall, if he so elects in writing within three months of such assignment or order, stand in the same position with the landlord as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the said landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

(3) In the event of any dispute arising under this section such dispute shall be disposed of upon a summary application by a judge of the (insert title of Court).

#### DISTRAINABLE GOODS TAKEN IN EXECUTION.

**36.** (1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the (insert title of Court) or out of a country or district court on any pretence whatsoever, unless the party at whose suit

the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money.

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

#### WRONGFUL OR IRREGULAR DISTRESSES.

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

**39.** (1) Subject to the provisions of section 23, a distrainer who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

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

to recover full satisfaction for the damage sustained by the distress and sale.

#### OVERHOLDING TENANTS.

**40.** Where a tenant or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over the land or any part thereof after the determination of the term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, the tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief.

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

#### ATTORNMENT.

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

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

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

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

**43.** (1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual

without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

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

#### RENEWALS OF LEASES.

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

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

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

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

(3) In every such case it shall be in the discretion of the court to direct an action to be brought to establish the right of the person seeking renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

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

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

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

#### DETERMINATION OF TENANCIES WHERE LANDLORD'S INTEREST IS AS TENANT FOR LIFE OR OTHERWISE UNCERTAIN.

**46.** Where any farm land is held by a tenant subject to the payment of a rent which substantially represents the fair annual letting value of the land of a landlord whose interest in the land is liable to be determined by death or by any uncertain event, upon the interest of the landlord being determined by death or other uncertain event,—

(a) in lieu of any claim for emblements, the tenant shall continue to hold and occupy such land until the expiration of the then current year of his tenancy and shall then quit upon the terms of his tenancy in the same manner as if the tenancy were then determined by effluxion of time or other lawful means during the continuance of the landlord's estate,

(b) the person succeeding to the interest of the landlord shall be entitled to recover from the tenant in the same manner as his predecessor could have done if his interest in

the land had not been determined, a fair proportion of the rent for the period between the day upon which the interest of the predecessor ceased and the time of quitting, and

(c) the person so succeeding and the tenant respectively, as between themselves and as against each other, shall be entitled to all the same benefits and advantages and be subject to the same liabilities as the predecessor and the tenant would have been entitled or subject to in case the tenancy had been determined by effluxion of time or other lawful means at the expiration of the current year and during the continuance of the predecessor's interest in the land.

## PART II.

### DISPUTES AS TO DISTRESSES.

**47.** In this Part, the expression "Judge" shall mean a judge of the (insert title of Court) in which a distress to which this Part applies is made.

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

(2) Where the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may before any distress has been made apply to the judge to determine the matter so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just.

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

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

(b) for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of

the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay.

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

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

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

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

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

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

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

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

**56.** Where the amount claimed by the landlord does not exceed eight hundred dollars the costs of the proceedings before the judge shall be on the Court scale, and where the amount claimed exceeds eight hundred dollars they shall be on the scale of an action or issue in the (insert title of Court) directed under section .

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

### PART III.

#### PROCEEDINGS AGAINST OVER-HOLDING TENANTS.

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

(2) The landlord shall,—

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

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

(c) annex a copy of the demand; and

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



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

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

(4) Unless the tenant has been previously served with the notice and other documents prescribed by subsection (1), notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition to every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the Judge's appointment and of the affidavit on which it was obtained, and copies of the documents to be used upon the application other than of the instrument creating or containing the lease or right of occupation.

**59.** The application in the preceding section mentioned shall be made as follows:—(each province will make its own provision).

**60.** A Judge of the . . . . . Court may, upon any such application being made to him, or at any time thereafter pending the proceedings, having regard to the convenience of the parties, the costs of the proceedings and other considerations, and subject to such conditions as may to him seem just, direct that the case be referred to a Judge of (insert title of Court) to be heard and disposed of.

**61.** Except as otherwise varied by this Part, the provisions of (insert title of appropriate statute) shall apply to applications made and proceedings had under this Part.

**62.** The proceedings under this Part shall be intituled in the Court in which taken and shall be styled :

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

**63.** (1) If, at the time and place appointed the tenant fails to appear, the Judge, if it appears to him that the tenant wrong-

fully holds against the right of the landlord, may order a writ of possession in Form B in the Schedule to this Act, directed to the sheriff of (insert title of Court) in which the land lies, commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter and may take evidence orally or by affidavit as he thinks fit, and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ, and the proceedings in such case shall be transmitted to and form part of the records of the Province or the (insert title of Court) as the case may be.

(3) Upon any such application the Judge may by order award costs according to the tariff of costs from time to time in force under (insert titles of appropriate statutes) as the Judge orders, and such an order may be filed in the Court in which the proceedings are taken and shall thereupon become a judgment of the said Court.

**64.** The Judge shall have the same power to amend or excuse irregularities in the proceedings as he would have in an action.

**65.** (1) An appeal shall lie from the order of the Judge granting or refusing a writ of possession to (insert title of Appellate Court) and the provisions of (insert titles of appropriate statutes) as to appeals shall apply, respectively, to such an appeal.

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

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

#### SUMMARY PROCEEDINGS FOR NON-PAYMENT OF RENT.

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

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

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

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

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

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

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

**67.** (1) The Judge or Police Magistrate may by order award the successful party his necessary and proper disbursements and an inclusive solicitor and counsel fee as the Judge or Police Magistrate may see fit.

(2) If the landlord is awarded costs against the tenant, the costs so awarded may be added to the cost of the levy for rent, if any such is or is to be made.

(3) An order for the payment of costs by the Judge or Police Magistrate may be filed in the office of the Clerk of (insert title of County or District Court) in which the demised premises are wholly or partially situated and shall thereupon become a judgment of the said Court.

**68.** An appeal shall lie to the Court of Appeal from the order of the Judge or Police Magistrate and the provisions of (insert titles of appropriate Acts, etc.) shall apply to such an appeal.

**69.** From and after the coming into force of this Act no statute of the Parliament of the United Kingdom relating to the relationship of landlord and tenant shall have any force or effect in the Province.

**70.** The following Acts or parts of Acts are hereby repealed :—

**71.** 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.

**72.** This Act shall come into force on the day upon which it is assented to.



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

Witness, etc.

(Signed)

Prothonotary (or Clerk of the Court  
of \_\_\_\_\_).

FORM C.

(Section \_\_\_\_\_).

*Summons for Eviction.*

In the Court of \_\_\_\_\_

In the matter of \_\_\_\_\_

landlord,

and \_\_\_\_\_

tenant,

and The Landlord and Tenant Act.

To the above named \_\_\_\_\_

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

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

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

By the Court.

Clerk.

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