

1936

PROCEEDINGS

OF THE

NINETEENTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION
IN CANADA

HELD AT

HALIFAX

AUGUST 13TH, 14TH, 15TH, 17TH AND 18TH, 1936

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, Sas-
katchewan.
- Vice-President*... I. A. Humphries, K.C., Toronto 5,
Ontario.
- Treasurer*... R. Murray Fisher, K. C., Winnipeg,
Manitoba.
- Secretary*... V. C. MacDonald, K.C., Dean, 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,
Montreal.
- Saskatchewan*... J. P. Runciman, Legislative Counsel,
Regina.
- Canada*... W. P. J. O'Meara, Assistant Under-
Secretary of State, Ottawa.

COMMISSIONERS AND REPRESENTATIVES OF THE
PROVINCES AND OF THE DOMINION OF
CANADA FOR THE PURPOSE OF PRO-
MOTING UNIFORMITY OF
LEGISLATION.

Alberta :

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

W. S. GRAY, K.C., Edmonton.

(Commissioners 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.

N. W. LOWTHER, Charlottetown.

D. L. MATHIESON, Charlottetown.

Quebec :

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

Saskatchewan :

DOUGLAS J. THOM, K.C., Regina.

J. P. RUNCIMAN, Legislative Counsel, Regina.

Canada :

JOHN E. READ, K.C., Legal Adviser, Dept. of External Affairs, Ottawa.

C. P. PLAXTON, K.C., Senior Counsel, Dept. of Justice, Ottawa.

W. P. J. O'Meara, Assistant Under-Secretary of State, Ottawa.

MEMBERS EX OFFICIO OF THE CONFERENCE.

Attorney-General of Alberta : Hon. J. W. Hugill, K.C.

Attorney-General of British Columbia : Hon. Gordon Sloan, 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 A. Campbell, K.C.

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

Attorney-General of Saskatchewan : Hon. T. C. Davis, K.C.

PREFACE

The National Conference of Commissioners on Uniform State Laws since 1892 have been meeting annually since 1892 and drafting model statutes which by subsequent adoption by many of the State Legislatures have promoted a substantial degree of uniformity in the United States on various important topics of legislation.

The benefits resulting from the work of the State Commissioners in the United States suggested the advisability of similar action being taken in Canada, and 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 a conference of Commissioners from the different provinces for the purpose of promoting uniformity of legislation in the provinces.

The first meeting of the Commissioners appointed under these statutes and of representatives from those provinces in which no provision had been made for the formal appointment of Commissioners, took place in Montreal on the 2nd day of September, 1918, and at this meeting the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. The following year the Conference adopted its present name.

Since its organization meeting in 1918 the Conference has met annually 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.

1936. August 13-15, 17-18, Halifax.

It is the established practice of the Conference to hold its meetings each year five days, exclusive of Sunday, before the annual meeting of the Canadian Bar Association and at the same place.

The object of the Conference is to promote uniformity of law throughout Canada, or in such provinces as uniformity may be found practicable, by such means as may appear suitable to that end, and in particular by facilitating the meeting of the Commissioners and Representatives of the different provinces in conference at least once a year, the consideration of those branches of the law with regard to which it is desirable and practicable to secure uniformity of provincial legislation, and the preparation of model statutes to be recommended for adoption by the provincial legislatures.

The Conference is composed of the Commissioners and Representatives appointed from time to time by the different provinces of Canada or under the statutory or executive authority of such provinces for the purpose of promoting uniformity of legislation in the provinces. Beginning in 1935 representatives of the Government of Canada have participated in the work of the Conference.

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

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

For a resumé of the proceedings of the Conference in each year of its existence see Conference Proceedings, 1935, pp. 7-9; and for a table of model uniform statutes suggested, reported on, drafted or approved see Conference Proceedings, 1934, pp. 72-84.

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), Manitoba (1936).
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 NINETEENTH 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. GRAY.

British Columbia :

MR. MAITLAND.

MR. LAWSON.

Manitoba :

MESSRS. CAMPBELL and McLEAN.

New Brunswick :

MESSRS. HUGHES, PORTER and DICKSON.

Nova Scotia :

MR. MATHERS.

MR. MACDONALD.

Ontario :

MESSRS. HUMPHRIES, LANG and SILK.

Prince Edward Island :

MESSRS. BENTLEY, LOWTHER and MATHIESON.

Saskatchewan :

MESSRS. THOM and RUNCIMAN.

Canada :

MESSRS. READ, PLAXTON and O'MEARA.

SUMMARY OF PROCEEDINGS

The statement of the work of the Conference annually made to the Canadian Bar Association was this year made by Mr. Maitland on behalf of the Conference and is here quoted as containing a useful summary of the work done this year.

“The committee was attended this year by twenty-one members, every common law province in Canada being represented, as well as the Dominion Government. The sittings were held for five full days from the 13th to 18th of August and during that time the committee dealt with the following acts :

(a) *Uniform Landlord and Tenant Act.*

This Act was drafted by the Alberta Commissioners and submitted in 1933. It was discussed at the 1934 conference and referred back to the Alberta Commissioners for further consideration. At the 1935 Conference it was again discussed, and referred back to the Alberta commissioners and this year the Act was dealt with in detail, but, owing to the fact that Mr. Andrew Smith, Legislature Counsel of Alberta, was recalled to Edmonton on urgent business before the conference opened, it was decided to postpone its final approval until next year and that, in the meantime, certain sections be withdrawn. The Commissioners hope that it will be finally approved in 1937.

(b) *Interpretation Act.*

This Act was presented to the Conference by the Manitoba Commissioners at the 1934 Conference and considered in 1935. It was again considered this year, as was the supplementary report by the Manitoba commissioners. It was discussed section by section and referred to the Commissioners of Canada for further consideration and redrafting, with instructions to present a further report to the Conference next year on the advisability of certain sections under discussion. The Commissioners hope that it will be finally approved next year.

(c) *Uniform Evidence Act.*

A draft Act was presented by the British Columbia Commissioners and considered by the Conference, being referred to the British Columbia Commissioners for further revision and report at next year's Conference.

(d) *Reciprocal Enforcement of Judgments Act.*

The Conference had previously approved of a uniform act to provide for the inter-provincial reciprocal enforcement of judgments. At the 1935 Conference the president raised the question as to extending the principle of enforcement of judgments to other parts of His Majesty's Dominions and to foreign countries and it was referred to the Ontario Commissioners to confer with the Representatives of the Dominion and report this year.

The result has been a very comprehensive and thorough report prepared by Mr. J. E. Read, legal adviser to the Department of External Affairs, one of the representatives of the Canadian Government at the Conference. The report of Mr. Read was left with each Commissioner for one year in order that it might be fully studied by the Commissioners. The Commissioners are deeply indebted to Mr. Read for this excellent piece of work.

(e) *Other Acts.*

The Conference still has under Consideration Uniform Acts on Libel and Slander, Partnerships Registration and Married Women's Property.

(f) *Other Matters.*

Various reports as to the desirability of considering amendments to uniform acts already approved were presented and dealt with."

MINUTES OF MEETING

NOTE :— The Conference held the following sessions :

August 13th.	10.30 a.m.—12.30 p.m. 2.00 p.m.— 4.30 p.m. 8.30 p.m.—10.30 p.m.
“ 14th.	9.00 a.m.—12.30 p.m. 2.30 p.m.— 4.00 p.m. 8.30 p.m.—10.30 p.m.
“ 15th.	2.30 p.m.— 5.00 p.m. 8.00 p.m.—10.30 p.m.
“ 17th.	9.30 a.m.—12.30 p.m. 2.30 p.m.— 4.30 p.m. 8.30 p.m.—10.30 p.m.
“ 18th.	9.30 a.m.—12.00 a.m.

 FIRST DAY

Thursday, August 13th, 1936.

The Conference assembled at 10.30 a.m. at the Nova Scotian Hotel, Halifax, the President in the Chair, and after a brief address by the President the Conference proceeded to take up the matters on the agenda.

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

It was Resolved that in future a summary of the proceedings of the Conference be printed as a prefix to the Minutes in substitution of the printing of the President's Address.

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

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

Messrs. Lawson, McLean, Lang, and Mathers 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.

The Report of the Manitoba Commissioners as to the desirability of the Conference undertaking the preparation of a draft uniform *Married Women's Property Act* (1935 Proceedings, p. 18) was received, and it was *Resolved* that the Nova Scotia Commissioners should prepare and submit next year a draft Act in accordance with the Report.

(Appendix A.)

It was *Resolved* that the point raised by Mr. Loftus of Winnipeg concerning the uniform *Bills of Sale Act* be referred to the Ontario Commissioners for Report next year.

(Appendix B.)

The Report of the Alberta Commissioners on the draft *Landlord and Tenant Act* (1935 Proceedings, Appendix H.) was received and the Conference proceeded to consider the clauses of that draft Act *seriatim*.

The Report of the Manitoba Commissioners on the *Assignment of Book Debts Act* (1935 Proceedings, p. 13) was received, discussed and adopted.

(Appendix C.)

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

SECOND DAY

Friday, August 14th, 1936.

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

The *Report of the Treasurer* as approved by the auditors, Messrs. Lang and Campbell, was received and adopted.

(Appendix D.)

Mr. Read presented the Report of the Dominion Commissioners on the *Reciprocal Enforcement of Judgments Act* (1935 Proceedings, p. 14) and explained it; and after discussion of that Report it was *Resolved* that the draft Report on the *Reciprocal Enforcement of Judgments* be referred to the Com-

missioners for Ontario in co-operation with the Dominion representative with instructions to submit to the next session of the Conference :

- (a) a report on the desirability of adopting the policy of international reciprocal enforcement of judgments; and
- (b) a report on the nature and scope of the legislation required to enable the adoption of such a policy; and
- (c) a report on the present position under the Model Acts, 1924 and 1933.

Mr. McLean gave to the Conference a statement of *money grants received by the Conference* from various provinces since the organization of the Conference and after some discussion it was *Resolved* that the Commissioners from the respective Provinces be requested to take up with their Governments the matter of further contributions to the funds of the Conference to enable it to continue to function.

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

It was *Resolved* that the *Landlord and Tenant Act* (1935 Proceedings, Appendix H.) be referred to the Saskatchewan Commissioners for revision in the light of the discussion this year.

The Report on the *Partnerships Registration Act* prepared by the New Brunswick Commissioners in accordance with a *Resolution* passed at the 1934 meeting of the Conference (Conference Proceedings, 1934, p. 15) and received but not discussed at the 1935 meeting (1935 Proceedings, p. 17) was considered, and it was *Resolved* that it be referred to the present New Brunswick Commissioners for revision and further report thereon next year, *AND it was further Resolved* that the memorandum prepared by Mr. Pineo commenting on this Act as it appears in Appendix K to the 1933 Proceedings be mimeographed and a copy thereof be sent by the New Brunswick Commissioners to the other Commissioners before the next annual meeting.

The Report of the British Columbia Commissioners on the draft *Evidence Act* (1935 Proceedings, p. 18) was received and the draft Act attached thereto was discussed in detail.

THIRD DAY

Saturday, August 15th, 1936.

The Conference resumed discussion of the *Evidence Act*, *supra*.

FOURTH DAY

Monday, August 17th, 1936.

The Conference resumed discussion of the draft *Evidence Act*. It was *Resolved* that the draft *Evidence Act* be referred to the British Columbia Commissioners to prepare a re-draft thereof in the light of the discussion this year, which Act as re-drafted should be printed in the 1936 Proceedings together with the Report submitted by them this year.

(Appendix E.)

Mr. Lang presented the Report of the Ontario Commissioners as to the matter concerning the *Contributory Negligence Act* referred to them last year (1935 Proceedings, p. 15). After discussion the Report was adopted.

(Appendix F.)

Mr. Silk presented the Report of the Ontario Commissioners on the advisability of the Conference preparing draft sections relating to *the form of Statutes* (1935 Proceedings, p. 18) and after discussion the Report was adopted.

(Appendix G.)

Mr. Humphries presented a verbal report of the Ontario Commissioners as to the matter relating to the *Conditional Sales Act* referred to them last year (1935 Proceedings, pp. 17-18).

It was then *Resolved* that this matter be recommitted to the Ontario Commissioners for preparation of a revised report to be circulated among the Commissioners and presented at the next annual meeting.

Discussion of the *Evidence Act* supra was resumed.

The Supplementary Report of the Manitoba Commissioners and the included *Draft of Uniform Sections for Inclusion in Interpretation Acts* (1935 Proceedings, Appendix G.) was presented by Mr. McLean and it was *Resolved* that the Conference should continue discussion thereon this year and that these draft sections be committed to the Canadian Commissioners for preparation of a complete re-draft thereof in the light of the discussion this year and that the sections as so re-drafted be printed in the 1936 Proceedings.

(Appendix H.)

The Conference then proceeded to consider the draft sections for *Interpretation Acts* in detail.

FIFTH DAY

Tuesday, August 18th, 1936.

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.
 Secretary —Vincent C. MacDonald, K.C., Halifax.
 Treasurer —R. Murray Fisher, K.C., Winnipeg.

The Conference expressed its deepest appreciation of the hospitality and courtesy extended to it by the Honourable J. H. MacQuarrie, Attorney-General of Nova Scotia, and by the Nova Scotia Barristers' Society and by various members of the Nova Scotia Bench and Bar.

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 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.

The Report of the Saskatchewan Commissioners on the *Libel and Slander Act* (1935 Proceedings, p. 18) was received and ordered to be printed and the Saskatchewan Commissioners were requested to prepare a revision thereof for the next meeting.

(Appendix I.)

The question of the desirability of preparing a draft section on the subject of the law as to *commorientes* was referred to the Ontario Commissioners for report next year.

After further discussion of the *Interpretation Act* the Conference adjourned.

APPENDICES

- A. Report on desirability of drafting a uniform Married Women's Property Act.
- B. Letter re Uniform Bills of Sale Act.
- C. Report as to proposed section to be added to Assignment of Book Debts Act.
- D. Treasurer's Report.
- E. Report on the Uniform Evidence Act.
- F. Report as to the Contributory Negligence Act.
- G. Report as to draft sections relating to the Form of Statutes.
- H. Report as to draft sections for inclusion in Interpretation Acts.
- I. Report on draft Libel and Slander Act.

APPENDIX A

REPORT OF MANITOBA COMMISSIONERS ON THE
DESIRABILITY OF DRAFTING A UNIFORM
MARRIED WOMEN'S PROPERTY ACT

At the 1935 Uniformity Conference 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 Women's Property Act'".

It is interesting to note that in 1921 a full report was submitted by the B.C. Commissioners on the provincial laws relating to the protection and property rights of married women. (Conference Proceedings 1921, pp. 88-107.) One of the subject-matters dealt with in that report was married women's property. The report was evidently laid over until the next year as at p. 19 of the Proceedings 1922 appears the following note :

"Other subjects before the Conference were disposed of as follows protection and property rights of married women—to stand for the present"

At the Conference of 1932 a committee on future business presented a report. In this report item No. 6 was as follows :

"6. It was decided that the subjects mentioned in the report of the B.C. Commissioners (Conference Proceedings 1921, p. 88; Canada Bar Association Year Book, 1921, p. 350) on the protection and property rights of married women should not be dealt with by the Conference."

The task of the Manitoba Commissioners is therefore to report on the desirability of the Conference undertaking the preparation of a draft uniform Married Women's Property Act. The following are the reasons which seem to make this object desirable.

1. It was obvious that today many persons engaged in commercial life are married women and therefore persons dealing with a married woman should be in a position to know definitely what her liability is and that in so far as possible the law should be uniform throughout the common law provinces of Canada. Further, with the increased use of the automobile, questions of liability will frequently occur. Also, as the relationship of man and wife are universal, it seems advisable that the property rights between the parties should be very clearly and definitely ascertained.

2. It is clear that in the common law provinces of Canada, with the exception of Alberta and Saskatchewan who have enacted legislation this year, there is an anomalous survival of the ancient position of the unity of the husband and wife in the eyes of the law, in the liability of the husband for the wife's torts. The leading case of *Edwards v. Porter* 1925 A. C. 1 definitely decided that by reason of an antiquated procedural provision a husband was liable for the naked tort of his wife. The suggestion of the modification of this ancient survival, in view of the emancipated position now occupied by women, is not peculiar to Canada. Much has been written in legal periodicals both in this country and England about the matter. The result of the agitation in the Old Country was that in January 1934 the Lord Chancellor appointed a committee to consider and report upon, amongst other matters, the liability "of the husband for the torts of the wife and the liability of a married woman in tort and the practice including the form of judgment in *Scott v. Morley*". The result was that in December 1934 that committee presented a report (Command Paper 4770). This report makes interesting and instructive reading. It deals with the historical development of the law and concludes with four recommendations as follows :

- "(a) that a husband shall no longer be liable to be sued or made responsible for his wife's ante-nuptial debts, or contracts, or wrongs, or for any wrongs committed by his wife during marriage;
- "(b) that the peculiar characteristics and consequences of the institution of the married women's 'separate property' shall be eliminated from the law so that in her ownership and enjoyment of her property she shall be in the same position as an unmarried woman or a man;
- "(c) that with regard to her capacity to contract, to her right to sue, to her liability to be sued in any civil proceedings, whether in contract, or tort, or otherwise (including liability for costs), or to be made bankrupt, and to the enforcement of judgments against her, a married woman shall in all respects be in the same position as an unmarried woman or a man, and
- "(d) that in any future settlement it will be illegal to create a restraint upon anticipation."

It is interesting to note that by the Law Reform (Married Women's and Tortfeasors) Act 1935, the British

Parliament carried the ideas of the committee into effect, but if this statute is examined it will be seen that the simple formula which the committee thought would be sufficient has not been adopted for the reform of the law. This report and the English provisions should be examined for the purpose of a clear understanding of the matter.

3. All the common law provinces of Canada have enacted Married Women's Property Acts. These are as follows :

"The Married Women's Act"—R.S.A. 1922, c. 214,
Repealed by S.A. 1936, c.

"Married Women's Property Act"—R.S.B.C. 1924,
c. 153.

"The Married Women's Property Act"—R.S.M.
1913, c. 123.

"The Married Women's Property Act"—R.S.N.B.
1927, c. 80.

"The Married Women's Property Act"—R.S.N.S.
1923, c. 141.

"The Married Women's Property Act" — R.S.O.
1927, c. 182.

"The Married Women's Property Act, 1903"—
S.P.E.I., 1903, c. 9.

"The Married Women's Property Act" — R.S.S.
1930, c. 190.

We think it is safe to say that with the exception of Alberta all of the statutes in force in Canada follow the English Acts of 1882, 1893 and 1907. It is to be noted here that Alberta by a new Act passed in 1936 has adopted the principle of the English Act, namely, that the husband of a married woman shall not by reason only of his being her husband be liable in respect of any tort committed by her. Saskatchewan by adding a section as 11a (S.S. 1936, c. 90) has adopted the same provision. Paragraph 11 of the report of the Law Revision Committee says in effect that it is clear that the Legislature when they came to amending the law (in 1870 and 1882) might have taken a simple course by following the precedent set them by section 21 of the Matrimonial Causes Act, 1857, and if they had done this a woman on marriage would not have changed her status as regards her capacity to contract and to hold property and to sue and be sued. Instead Parliament produced the complicated provisions of the Acts of 1870 and 1882.

In connection with this it is interesting to note that the Alberta statute as it appeared in the revision of 1922 as chapter 214 consisted of two short sections as follows :

“2. A married woman shall be capable of acquiring, holding and disposing of or otherwise dealing with all classes of real and personal property, and of contracting, suing and being sued in any form or action or prosecution as if she were an unmarried woman.

“3. A husband shall not have any right to sue in respect of a tort done to his wife, except where and in so far as he has sustained any separate damage or injury thereby.”

One would have thought that this fulfilled precisely the formula of the committee. In 1924 the Appellate Division of the Supreme Court of Alberta in *Quinn v. Beales* (1924) 3 W.W.R. 337, so held. However, in 1929 the same court in *Hill v. Hill* (1929) 2 W.W.R. 41, as a result of the *Edwards v. Porter* decision of 1925 in effect overruled this previous decision. Alberta in its 1936 Act has repealed the 1922 Act and enacted a new statute consisting of some ten sections and occupying not more than two pages of the statute book. The avowed purpose of this was to give effect to the law as it stood in that province before the *Edwards v. Porter* decision. There has, however, been added a definite provision, as we have pointed out above, precluding the suing of the husband in the case of a naked tort of the wife.

As before stated the Canadian statutes are almost universally based on the English Acts which have been severely criticized as being unnecessarily verbose and difficult to construe. To illustrate this it is only necessary to examine the Manitoba statute. Section 2(b) defines “property” in a definition consisting of twenty-seven lines. It was evident that this was adopted to avoid certain lengthy sections, namely 6 et seq. of the English Act of 1882, but as no extended definition of “property” was required in “The Wills Act” (see S.M. 1936, c. 52, s. 3 particularly) which was drafted by the Uniformity Commissioners, it seems unnecessary to have this definition. Without entering into a discussion of the various sections of the Manitoba Act it would be sufficient to point out that there are some twenty-one sections required to define the position of a married woman with respect to property. If Alberta can

do this in seven sections it seems that a case is made out for a simplification of this statute.

There are, however, certain things which must not be lost sight of. What is the position of the woman with regard to trusts where she holds the property only as a bare trustee or has an equitable interest therein only? By reason of her position at common law certain disabilities attach thereto. For example, she could not act as next friend. See *Hildebrand v. Franck* (1922) 3 W.W.R. 775. Is the wiping out of the reason for the rule sufficient to wipe out the rule? This will occur in other instances. Further, in the *Seredowicz v. Seredowicz* case, 42 M.R. 45, it is pointed out that a wife who wrongfully took a sum of money from her husband might very well be in the position of being deprived of his property, whereas by section 10 of our Act as it stood before 1935 and still stands in the other provinces the wife could protect herself in such a case but the husband could not. We notice that Alberta has not made any change in this regard. The above only illustrates some of the matters to be considered if the question of drafting arises. Also the effect of the Dower Act in those provinces having such an Act, must not be overlooked.

APPENDIX B

LETTER RE UNIFORM BILLS OF SALE ACT

Somerset Block, Winnipeg.

February 15th, 1936.

Wilson E. McLean, Esq.,
Legislative Counsel,
Legislative Buildings,
Winnipeg, Man.

Dear Wilson :

Under Section 3 of The Bills of Sale Act, a sale or mortgage is void as against creditors and as against subsequent purchasers or mortgagees for a valuable consideration and without notice, etc. We assume that this means without notice of the fact that there is a sale or mortgage.

Under Section 11 a Chattel Mortgage must be renewed within three years otherwise it ceases to be valid as against creditors and as against subsequent purchasers or mortgagees claiming from or under the Grantor in good faith and for valuable consideration without notice, etc.

The question arises as to what is meant by the words "without notice" whether it means notice that there is a bill of sale or notice that there is money still owing under the bill of sale or notice that a renewal statement has been made out.

The difficulty came to our attention this way : — We asked for a certificate as to a certain person and though the form of certificate, which we understand is provided by the Government, sets out that there are no creditors for the past three years, the Clerk inserted a Memorandum respecting a Chattel Mortgage which was registered in August 1931. My understanding has always been that unless a renewal statement was registered the Mortgage ceased to be valid as against subsequent purchasers or mortgagees.

It might be well to have this considered if you are revising the Statutes and amend so as to specify clearly what was intended. Our impression is that this is a uniform Act in the various Provinces but we think it ought to be clarified in some way.

Yours truly,

E. LOFTUS.

APPENDIX C

REPORT OF THE MANITOBA COMMISSIONERS AS TO
PROPOSED NEW SECTION TO BE ADDED TO
THE ASSIGNMENT OF BOOK DEBTS ACT.

At the 1935 Conference certain correspondence with Mr. W. P. Fillmore, K.C., containing a suggestion for the amendment of the Assignment of Book Debts Act was discussed and referred to the Manitoba Commissioners for consideration and report at the 1936 meeting (see Proceedings 1935, pp. 13-14; 22-23).

Mr. Fillmore pointed out that both B.C. and Ontario have added a provision to their Acts providing that

“in case two or more assignment of book accounts are given they shall have priority in order and date of registration respectively”.

Section 63 of The Bankruptcy Act, being chapter 11 R.S.C. 1927, provides that assignments of book debts by a person engaged in trade or business, if he is adjudged bankrupt shall be void as against the trustee unless there is a provincial statute providing for the registration of such assignments and the assignment is registered in accordance therewith. The various provincial Acts were designed to take advantage of this provision.

The adoption of the suggested amendment would, we believe, introduce into the statute something foreign to its original purpose. The position of the debtor may be prejudiced in certain circumstances by the amendment.

We feel that the introduction of a new principle into the registration of these assignments is a matter of policy on which there is not sufficient unanimity of opinion to warrant action at the present time.

APPENDIX D
TREASURER'S REPORT.

1935.

Aug. 31—Balance on hand as per Treasurer's Report Hon. Mr. Justice McTeague.....		\$708.12
Accrued interest allowed by Bank of Montreal, Windsor.....		5.49
Oct. 5—Paid V. C. McDonald, secretarial expenses.....	\$ 40.00	
Oct. 25—Paid V. C. McDonald, express books to Winnipeg	8 25	
Oct. 31—Interest to date.....		1.51

1936.

Feb. 4—Paid V. C. McDonald, a/c Royal Printing Co., Letterheads, etc...	11.24	
Mar. 24—Paid F. W. Micklewright, proof-reading proceedings, etc.	25 00	
April 30—Interest to date		6.56
May 15—Paid National Printers Ltd., 1935 Proceedings..	240.19	
July 18—Grant from Province of Manitoba.		100 00
Balance on hand.....	497.00	
	\$821 68	\$821 68

A. W. LANG,
ARCHIBALD C. CAMPBELL,
Auditors.

APPENDIX E
REPORT OF BRITISH COLUMBIA COMMISSIONERS
ON THE EVIDENCE ACT.

The Conference at its last meeting passed a resolution that the British Columbia Commissioners compile a report on the legislative provisions of the Dominion and of the various Provinces relating to the laws of evidence and submit a draft uniform Evidence Act.

Your Commissioners have, therefore, prepared a draft uniform Evidence Act which they beg to submit for your consideration. Underneath each section of the draft Act will be found references to the corresponding sections of the Evidence Acts of the other Provinces in cases where the uniform section is taken from one of the existing Provincial Acts. The references after the word "See" underneath each section of the draft Act refer to the sections of the Acts of other Provinces where the same subject matter is dealt with as in the section of the uniform Act but the uniform section is different.

Your Commissioners are of opinion that the provisions relating to the appointment of Commissioners for taking affidavits and for the appointment of Notaries, which are contained in the Evidence Act of certain of the Provinces, should not be included in an Evidence Act but should be the subject of separate Acts. Your Commissioners, therefore, have not dealt with those provisions.

There are certain sections contained in the Evidence Acts of some of the Provinces which your Commissioners have not included on the ground that they are suitable for particular Provinces only and shall not be included in a uniform Act. These sections and other sections not included in the uniform Act, no doubt, will be considered by the Conference so that those Provinces who so desire can have them inserted.

DRAFT EVIDENCE ACT AS REVISED BY THE
CONFERENCE IN 1936

An Act to make uniform the Law respecting Evidence.

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

SHORT TITLE.

1. This Act may be cited as the "Evidence Act".

INTERPRETATION.

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

(a) "Action" includes any civil proceeding, inquiry, arbitration and a prosecution for an offence committed against a statute of the Province or against a By-Law or regulation made under the authority of any such statute, and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of the Province.

(See Alta. Sec. 2 (a): Man. Sec. 2 (e): Ont. Sec. 1 (b): Sask. Sec. 26).

(b) "Bank" means any bank to which the "Bank Act" of Canada applies; and includes a branch, agency and, office of a bank.

(B.C. Sec. 37-A: Sask. Sec. 26).

(See 42 Vic. c. 11 s. 9: Man. Sec. 2 (a): Ont. Sec. 28-A (1)).

(c) "British Possession" means any dominion of His Majesty heretofore or now existing or hereafter constituted exclusive of the United Kingdom of Great Britain and Northern Ireland, and of Canada.

(Proceedings 1931 p. 66 (altered): B.C. Sec. 28 (altered): N.B. Sec. 59 (1) (a) (2) (altered)).
(See Man. Sec. 2 (b)).

(d) "Court" includes a judge, arbitrator, umpire, commissioner, police magistrate, stipendiary magistrate, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence.

(Alta. Sec. 2 (b) (altered): Ont. Sec. 1 (a) (altered)).

(See Man. Sec. 2 (c): N.B. Sec. 2 (b): N.S. Sec. 2 (c): Sask. Sec. 26).

(e) "Dominion" includes kingdom, empire, republic, commonwealth, state, province, territory, colony, possession, and protectorate heretofore or now existing or hereafter constituted; and, where parts of a dominion are under both a central and a local legislature, includes both all parts under the central legislature and each part under a local legislature.

(1931 Proceedings, p. 66 (altered): B.C. Sec. 28 (altered): N.B. Sec. 59, (1) (b) (2) (altered)).

(f) "Federal" as applied to state documents, means of or pertaining to Canada.

(1931 Proceedings, p. 66: B.C. Sec. 28: Man. Sec. 29 (a): N.B. Sec. 59 (1) (c)).

(g) "Foreign State" includes every dominion heretofore or now existing or hereafter constituted other than the United Kingdom of Great Britain and Northern Ireland, Canada, and a British possession.

(1931 Proceedings, p. 66 (altered): B.C. Sec. 28 (altered): N.B. Sec. 59 (1) (d) (2) (altered)).

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

(1931 Proceedings, p. 66: B.C. Sec. 28: N.B. Sec. 59 (1) (e)).
(See Man. Sec. 2 (d)).

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

(1931 Proceedings, p. 66: B.C. Sec. 27: N.B. Sec. 58 (2)).

(j) "King's Printer" includes government printer or other official printer.

(1931 Proceedings, p. 66: B.C. Sec. 28: N.B. Sec. 59 (1) (f)).

(k) "Legislature" includes any legislative body or authority competent to make laws for a dominion.

(1931 Proceedings, p. 66: B.C. Sec. 28: N.B. Sec. 59 (1) (g)).

(l) "Provincial" as applied to state documents, means of or pertaining to any Province, colony or territory which, or some portion of which, forms part of Canada: and "Province" when used in respect of federal or provincial state documents, shall have a corresponding meaning:

(1931 Proceedings, p. 66: B.C. Sec. 28: Man. Sec. 29 (b): N.B. Sec. 59 (1) (h)).

(*m*) "State document" includes;

(i) any Act or ordinance enacted or made or purporting to have been enacted or made (whether before or after the enactment of this section) by a legislature;

(ii) any order, regulation, notice, appointment, warrant, licence, certificate, letters patent, official record, rule of court, or other instrument issued or made or purporting to have been issued or made (whether before or after the enactment of this section) under the authority of any Act or ordinance so enacted or made or purporting to have been enacted or made; and,

(iii) any official gazette, journal, proclamation, treaty, or other public document or act of state issued or made or purporting to have been issued or made (whether before or after the enactment of this section).
(1931 Proceedings, p. 66: B.C. Sec. 28: Man. Sec. 29 (c): N.B. Sec. 59 (1) (i)).

(*n*) "Witness", in addition to its ordinary meaning, includes every person who, in the course of an action, is examined viva voce on discovery or who is cross-examined upon an affidavit made by him, or who answers any interrogatories or makes an affidavit as to documents.

(Man. Sec. 6 (3) (altered)).

COMPETENCY OF WITNESSES AND PRIVILEGES.

3. A person shall not be incompetent to give evidence by reason of crime or interest.

(See 6 and 7 Vic. c. 85: Alta. Sec. 4: B.C. Sec. 4: Can. Sec. 3: Man. Sec. 4: N.B. Sec. 3: N.S. Sec. 36: Ont. Sec. 3: P.E.I. Sec. 3: Sask. Sec. 29).

4. The parties to an action and the persons on whose behalf the same is brought, instituted, opposed or defended, and their wives or husbands, shall, except as hereinafter otherwise provided, be competent and compellable to give evidence on behalf of themselves or of any of the parties :

(See 16 and 17 Vic. c. 83 (1): Alta. Sec. 6: B.C. Sec. 8 (part): Can. Sec. 4 (1): Man. Sec. 5: N.B. Sec. 4 (1) and 10: N.S. Sec. 37 (part): Ont. Sec. 5: P.E.I. Secs. 5 and 10: Sask. Sec. 30 (1)).

5. (1) A witness shall not be excused from answering any question or producing any document upon the ground that the answer to the question or the production of the document may tend to criminate him, or may tend to establish his liability to an action at the instance of the Crown or of any person.

(2) If, with respect to any question, or the production of any document, a witness objects to answer or to produce upon any of the grounds mentioned in subsection 1, and if, but for this section of any Act of the Parliament of Canada, he would therefore have been excused from answering the question, or from producing the document then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer or produce, the answer so given or the document so produced shall not be used or receivable in evidence against him in any action.

(Ont. Sec. 6 (altered)).

(See 46 Geo. 3 c. 37: Alta. Sec. 7: B.C. Sec. 5: Can. Sec. 5: Man. Sec. 6: N.B. Secs. 7 and 8: N.S. Sec. 49: P.E.I. Sec. 6: Sask. Sec. 32).

6. The parties to an action instituted in consequence of adultery and their husbands and wives shall be competent to give evidence in the action, but no witness in such action whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery.

(15 and 16, Geo. 5, c. 49, s. 198).

(See Alta. Sec. 8 (altered): Man. Secs. 7 and 7-A: N.B. Secs. 4 (2), 5 and 9: N.S. Sec. 38: Ont. Sec. 7: P.E.I. Sec. 8: 16 and 17 Vic. c. 83 and 32 and 33 Vict. c. 68, s. 2).

7. A husband shall not be compellable to disclose any communication made to him by his wife during the marriage, nor shall a wife be compellable to disclose any communication made to her by her husband during the marriage.

(Alta. Sec. 9: Ont. Sec. 8).

(See 16 and 17 Vic. c. 83 (2): B.C. Sec. 9: Can. Sec. 4 (3): Man. Sec. 8: N.B. Sec. 6 and 11; N.S. Sec. 40: P.E.I. Sec. 9: Sask. Sec. 31).

EXPERT EVIDENCE.

8. Where it is intended by any party to an action to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence not more than three of such witnesses may be called upon either side to give opinion evidence on any issue in the action without the leave of the Court.

(Ont. Sec. 9 (altered)).

(See Alta. Sec. 10: Can. Sec. 7: Man. Sec. 22: Sask. Sec. 43).

CORROBORATIVE EVIDENCE.

9. The plaintiff in an action for breach of promise of marriage shall not obtain a verdict or judgment unless his or her testimony is corroborated by some other material evidence in support of the promise.

(Alta. Sec. 11: Man. Sec. 20: Ont. Sec. 10: P.E.I. Sec. 7).
(See 32 and 33 Vic. c. 68 (2): B.C. Sec. 8 proviso: P.E.I. Sec. 7 proviso: Sask. Sec. 38).

10. In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not on his own evidence obtain a verdict, judgment or decision, in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

(Alta. Sec. 12 (altered): Ont. Sec. 11 (altered)).
(See B.C. Sec. 11: N.S. Sec. 37 (part): P.E.I. Sec. 11).

11. In an action by or against a lunatic so found or an inmate of a lunatic asylum, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested party shall not obtain a verdict, judgment, or decision on his own evidence, unless such evidence is corroborated by some other material evidence.

(Alta. Sec. 13: B.C. Sec. 10: Ont. Sec. 12: P.E.I. Sec. 12).

12. No action shall be decided upon the evidence of a child of tender years given under the authority of Section 18 hereof, unless such evidence is corroborated by some other material evidence.

(See Alta. Sec. 19 (2): B.C. Sec. 6 (part): Can. Sec. 16 (2):
Man. Sec. 21 (2): Sask. Sec. 37 (2)).

OATHS AND AFFIRMATION.

13. Every Court shall have power to administer or cause to be administered an oath or affirmation to every witness who is called to give evidence before the Court.

(Man. Sec. 10 (1) (altered)).
(See 14 and 15 Vic. c. 99 s. 16: B.C. Sec. 26: Can. Sec. 13:
N.B. Sec. 13: N.S. Sec. 51: P.E.I. Sec. 14: Sask. Sec. 40).

14. An oath may be administered to any person while such person holds in his hand a copy of the Old or New Testament, without requiring him to kiss the same.

(Man. Sec. 11: Ont. Sec. 13 (part)).
(See 9 Ed. 7, C. 39, s. 2: Alta. Sec. 15 (part): B.C. Sec. 25 (part):
Man. Sec. 11).

15. (1) Where a person is about to give evidence, the oath may be in the following form :

I, (you) A.B., swear that the evidence to be given by me (you) shall be the truth, the whole truth, and nothing but the truth. So help me (you) God.

(Man. Sec. 12 (1) (altered)).

(2) Where a person is about to swear an affidavit, the oath may be in the following form :

I, (you) A.B., swear that the contents of this affidavit are true. So help me (you) God.

(Man. Sec. 53 (2) (part) (altered)).

(3) When a person objects to being sworn in any manner hereinbefore mentioned or declares that an oath so taken or administered is not binding upon his conscience, then an oath may be administered in such manner and form and with such ceremonies as he declares to be binding.

(Man. Sec. 12 (2) (altered)).

(See 9 Ed. 7 c. 39: Alta. Sec. 15: Ont. Sec. 13 (part): Sask. Sec. 41).

16. (1) If a person called or desiring to give evidence, objects, on grounds of conscientious scruples, to take an oath, or is objected to as incompetent to take an oath, the person may make the following affirmation :

"I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth."

(2) Upon the person making such solemn affirmation, his evidence shall be taken and have the same effect as if taken under oath.

(Can. Sec. 14).

(See 51 and 52 Vic. c. 46: Alta. Sec. 18: B.C. Sec. 24 and 61: Man. Sec. 13: N.B. Sec. 14: N.S. Sec. 50: Ont. Sec. 14: P.E.I. Sec. 13: Sask. Sec. 41).

(3) If a person required or desiring to make an affidavit or deposition in an action or on an occasion whereon or touching a matter respecting which an oath is required or is lawful, whether on the taking of office or otherwise, refuses or is unwilling to be sworn, on grounds of conscientious scruples, the court, or other officer or person qualified to take affidavits or depositions, shall permit the person, instead of being sworn, to make his solemn affirmation in the words following, viz.: "I, A.B., do solemnly affirm, etc."; which solemn affirmation shall be of

the same force and effect as if the person had taken an oath in the usual form.

(Can. Sec. 15).
(See Man. Sec. 53 (2)).

17. Where an oath has been administered and taken, the fact that the person to whom the same was administered and by whom it was taken did not at the time of taking the oath believe in the binding effect of the oath shall not, for any purpose, affect the validity of the oath.

(51 and 52 Vic. c. 46, sec. 3 (altered): Man. Sec. 15 (altered)).

18. In any action where a child of tender years is tendered as a witness, and the child does not, in the opinion of the Court, understand the nature of an oath, the evidence of the child may be received, though not given upon oath, if in the opinion of the Court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(See Alta. Sec. 19 (part): B.C. Sec. 6 (part): Can. Sec. 16 (1): Man. Sec. 21 (1): Sask. Sec. 37 (part)).

19. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible.

(Alta. Sec. 20: B.C. Sec. 22: Can. Sec. 6: Man. Sec. 23: Sask. Sec. 39).

EXAMINATION AND EVIDENCE OF WITNESSES.

20. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the matter in question, without the writing being shown to him; but if it is intended to contradict him by the writing, his attention shall, before the contradictory proof is given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the Court may require the production of the writing for the Court's inspection, and may thereupon make such use of it for the purposes of the trial or proceeding as the Court may think fit.

(See Alta. Sec. 22: B.C. Sec. 16: Can. Sec. 10: Man. Sec. 17: N.B. Sec. 17: N.S. Sec. 47: Ont. Sec. 16: P.E.I. Sec. 17: Sask. Sec. 35).

21. If a witness, upon cross-examination as to a former statement made by him relative to the matter in question, and inconsistent with his present evidence, does not distinctly admit that he did make the statement, proof may be given that he did in fact make it; but before the proof is given the circumstances of the supposed statement sufficient to designate the

particular occasion shall be mentioned to the witness, and he shall be asked whether or not he did make the statement.

(See Alta. Sec. 23: B.C. Sec. 17: Can. Sec. 11: Man. Sec. 18: N.B. Sec. 16: N.S. Sec. 46: Ont. Sec. 17: P.E.I. Sec. 16: Sask. Sec. 34).

22. (1) A witness may be asked whether he has been convicted of any offence, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved; and a certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the Court at which the offender was convicted, or by the deputy of the officer, shall, upon proof of the identity of the witness as the offender, be sufficient evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

(2) For such certificate a fee of \$1.00 and no more may be demanded or taken.

(Alta. Sec. 24 (altered): B.C. Sec. 18 (altered): Man. Sec. 19 (altered): Ont. Sec. 18 (altered)).
(See Can. Sec. 12: N.B. Sec. 18: N.S. Sec. 48: P.E.I. Sec. 18: Sask. Sec. 36).

23. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character but he may contradict him by other evidence, or if the witness in the opinion of the Court proves adverse the party may by leave of the Court prove that the witness made at some other time a statement inconsistent with his present testimony, but before the last-mentioned proof is given the circumstances of the proposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make the statement.

(Alta. Sec. 25: B.C. Sec. 19: Can. Sec. 9: Man. Sec. 16: N.B. Sec. 15: N.S. Sec. 45: P.E.I. Sec. 15: Ont. Sec. 19: Sask. Sec. 33).

JUDICIAL NOTICE AND PROOF OF STATE DOCUMENTS.

24. (1) Judicial notice shall be taken of :

- (a) All Acts of the Imperial Parliament :
- (b) All Acts of the Parliament of Canada :
- (c) All ordinances made by the Governor in Council of Canada :
- (d) All ordinances made by the Governor in Council, Lieutenant-Governor in Council, or Commissioner in Council

of any Province, colony, or territory which, or some portion of which, forms part of Canada, and all Acts and ordinances of the Legislature of, or other legislative body or authority competent to make laws for, any such Province, colony, or territory :

(e) All Acts and ordinances of the Legislature of, or other legislative body or authority competent to make laws for, any of His Majesty's dominions.

(2) The provisions of this section shall apply in respect of His Majesty's dominions at any time heretofore existing or hereafter constituted, as well as to those now existing, and shall also apply in respect of Acts and ordinances enacted or made before as well as to those enacted or made after the enactment of this section.

(Proceedings 1931, page 66 (altered): B.C. Sec. 27 (2) (3) (altered)).

(See Man. Secs. 24 and 25: N.B. Sec. 58: N.S. Section 9-A.).

25. (1) The existence and the whole or any part of the contents of any Imperial state document may be proved in any of the following modes :

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

(b) By the production of a copy of the Canada Gazette or a volume of the Acts of the Parliament of Canada purporting to contain a copy of or an extract from the same or a notice thereof :

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

(d) By the production of a copy thereof or an extract therefrom purporting to be certified as a true copy or extract by the minister or head, or by the deputy minister or deputy head, of any department of the Imperial Government :

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

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

(a) By the production of a copy of the Canada Gazette or of the official gazette of any Province or of a volume of the Acts of the Parliament of Canada or of the Legislature of any Province purporting to contain a copy of the state document or an extract therefrom or a notice thereof.

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

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

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

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

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

(4) It shall not be necessary to prove the signature or official position of the person by whom any copy or extract which is tendered in evidence under this section purports to be certified, or to prove that the original document or the public records from which the copy or extract purports to be made were deposited or kept in the custody of the person so

certifying; and where a copy or extract which is tendered in evidence under this section purports to be printed by, or for, or under the authority of a legislature or government, or of a King's Printer, government printer, or other official printer, it shall not be necessary to prove the authority, status, or official position of the legislature or government or of the King's Printer, government printer, or other official printer.

(Proceedings 1931, page 66 (altered): B.C. Sec. 28 (2) to (6) (altered): Man. Sec. 29 (2) to (6) (altered): N.B. Sec. 59 (2) to (6) (altered)).

(See Alta. Sec. 26 et seq: Can. Sec. 17 et seq: N.B. Secs. 50, 51, 52 and 53: N.S. Secs. 3 et seq, 9 and 9-A: Ont. Sec. 20 et seq: P.E.I. Secs. 21 and 30, 34: Sask. Sec. 3 et seq).

EVIDENCE OF OTHER PUBLIC AND CORPORATION DOCUMENTS.

26. Where an original document, by-law, rule, regulation, or proceeding, or any entry in any register or other book, of any corporation created by charter or by or under any Statute of Canada or of any Province thereof could be received in evidence a copy of the document, by-law, rule, regulation or proceeding, or of the entry purporting to be certified under the seal of the corporation, and the hand of the presiding officer, clerk, or secretary thereof, shall be admissible in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person appearing to have signed the same, and without further proof thereof.

(Ont. Sec. 25 (altered)).

(See 8 and 9 Vic. c. 113: Alta. Sec. 31: B.C. Sec. 32: Can. Sec. 24: Man. Secs. 30 and 34: N.B. Secs. 28, 39, 40, 72 and 73: N.S. Sec. 11: P.E.I. Sec. 31: Sask. Sec. 11).

(1) Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no other Statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence, if it is proved that it is a copy or extract or if it purports to be certified to be a true copy or extract by the officer to whose custody the original has been entrusted without any proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.

(See 14 and 15 Vic. c. 99 s. 14: Alta. Sec. 34: B.C. Sec. 33 (1): Can. Sec. 25: Man. Sec. 32: N.S. Sec. 14: Ont. Sec. 28: P.E.I. Sec. 27: Sask. Sec. 17).

(2) Such officer shall furnish the certified copy or extract to any person applying for the same within a reasonable time,

upon his paying therefor a sum not exceeding ten cents for every folio of one hundred words.

(Alta. Sec. 34 (2): B.C. Sec. 33 (2): Man. Sec. 32 (2): Ont. Sec. 28 (altered)).

27. An order in writing, signed by the Secretary of State for Canada, and purporting to be written by command of the Governor-General, shall be admissible in evidence as the order of the Governor-General.

(B.C. Sec. 35: Can. Sec. 30 (1): N.S. Sec. 7: Ont. Sec. 23 (part): P.E.I. Sec. 32: Sask. Sec. 8).

28. Any order in writing signed by the Provincial Secretary and purporting to be written by command of the Lieutenant-Governor shall be admissible in evidence as the order of the Lieutenant-Governor, without any proof that the person signing the same is the Provincial Secretary or of the signature of such person, and without further proof thereof.

(N.S. Sec. 8 (altered).
(See Ont. Sec. 23 (part): Sask. Sec. 9).

29. All copies of official and other notices, advertisements, and documents printed in the Canada Gazette or the Official Gazette of the Province shall be prima facie evidence of the originals, and of the contents thereof.

(B.C. Sec. 36: Can. Sec. 30 (2): N.B. Sec. 55: N.S. Sec. 10: Ont. Sec. 24: P.E.I. Sec. 33: Sask. Sec. 10).

30. A copy of any entry, or a statement of the absence thereof, in any book kept in any office or department of the Government of Canada or of the Province or of any other Province of Canada or in any commission, board or other branch of the public service of Canada or of the Province or of any other Province shall be admissible as evidence of the entry, and of the matters, transactions, and accounts therein recorded, if it is proved by the oath or affidavit of an officer of the office or department, or of the commission, board or other branch of any such public service that the book was, at the time of the making of the entry, one of the ordinary books kept in the office or commission department or the board or the branch of any such public service, the entry was made in the usual and ordinary course of business of the office or department, or the commission, board or other branch of any such public service, and that the copy is a true copy thereof.

(Can. Sec. 26 (altered)).
(See Alta. Sec. 33: B.C. Sec. 37: Man. Sec. 31: N.B. Sec. 57: N.S. Sec. 13: Ont. Sec. 27: P.E.I. Sec. 34 (b): Sask. Sec. 12 (1)).

31. Where a document is in the official possession, custody or power of a member of the Executive Council of the Province, or of the head of a department of the public service of Canada or of the Province, if the deputy head or other officer of the department has the document in his personal possession, and is called as a witness, he shall be entitled, acting herein by the direction and on behalf of the member of the Executive Council or head of the department, to object to produce the document on the ground that it is privileged; and the objection may be taken by him in the same manner, and shall have the same effect, as if the member of the Executive Council or head of the department were personally present and made the objection.

(Alta. Sec. 32 (altered): N.B. Sec. 56 (altered): Ont. Sec. 26 (altered): P.E.I. Sec. 29 (altered)).

EVIDENCE OF JUDICIAL PROCEEDINGS.

32. Evidence of any proceeding or record whatsoever of, in or before any court of record in the United Kingdom, or the Supreme or Exchequer Courts of Canada, or any court of record or any justice or any coroner in the Province or in any other Province of Canada, or any court of record in any British Dominion, colony or possession, or any court of record of any foreign country, may be made in any action by an exemplification or certified copy thereof, purporting to be under the seal of the Court or under the hand or seal of the justice or coroner as the case may be, without any proof of the authenticity of the seal or of the signature of the justice or coroner, or other proof whatever; and if the Court, justice or coroner has no seal, and so certifies, then the evidence may be made by a copy purporting to be certified under the signature of a judge or presiding magistrate of the Court, or of the justice or coroner, without any proof of the authenticity of the signature or other proof whatsoever.

(B.C. Sec. 30 (altered): N.S. Secs. 16 and 17 (altered)).
(See Alta. Secs. 35 and 37: Can. Secs. 23: Man. Secs. 26, 27 and 33:
N.B. Sec. 61: Ont. Secs. 29 and 31: P.E.I. Sec. 21 (part):
Sask. Secs. 19 and 20).

NOTARIAL DOCUMENTS OF QUEBEC.

33. A copy of a notarial act or instrument in writing made in the Province of Quebec, before a notary and filed, enrolled or enregistered by the notary, certified by a notary or prothonotary to be a true copy of the original thereby certified to be in his possession as such notary or prothonotary, shall be admis-

sible in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved.

(Alta. Sec. 38: Man. Sec. 35: Ont. Sec. 32).
(See B.C. Sec. 38 (part): Can. Sec. 27: N.B. Sec. 49: N.S. Sec. 28 (1): Sask. Sec. 18 (part)).

34. The proof by such certified copy may be rebutted or set aside by proof that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of the Province of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary.

(Alta. Sec. 39: Man. Sec. 36: Ont. Sec. 33).
(See B.C. Sec. 38 (part): Sask. Sec. 18 (part)).

35. No copy of any book or other document, as provided in Section 33, shall be received in evidence upon any trial unless the party intending to produce the same has, before the trial, given to the party against whom it is intended to be produced reasonable notice of such intention. The reasonableness of the notice shall be determined by the Court, but the notice shall not in any case be less than ten days.

(B.C. Sec. 39).
(See Can. Sec. 28: N.B. Sec. 49: N.S. Sec. 28 (2)).

BANK BOOKS.

36. (1) Subject to the provisions of this section, a copy of any entry in any book or record kept in a bank shall in all actions to which the bank is not a party be received as prima facie evidence of the entry, and of the matters, transactions, and accounts therein recorded :

(2) A copy of an entry in such book or record shall not be received in evidence under this section unless it is first proved that the book or record was, at the time of the making of the entry, one of the ordinary books or records of the bank, that the entry was made in the usual and ordinary course of business, that the book or record is in the custody or control of the bank or its successor, and that the copy is a true copy. The proof may be given by the manager or accountant or a former manager or accountant of the bank or its successor, and may be given orally or by affidavit.

(3) A bank or officer of a bank shall not, in any action to which the bank is not a party, be compellable to produce any book or record the contents of which can be proved under this section, or to appear as a witness to prove the matters,

transactions, and accounts therein recorded, unless by order of the Court made for special cause.

(4) On the application of any party to any action the Court may order that the party be at liberty to inspect and take copies of any entries in the books or records of the bank for the purposes of the action. The person whose account is to be inspected shall be notified of the application at least two clear days before the hearing thereof, and, if it is shown to the satisfaction of the Court that the person cannot be notified personally, the notice may be given by addressing the same to the bank.

(5) The costs of any application to a Court under or for the purposes of this section, and the costs of anything done or to be done under an order of a Court made under or for the purposes of this section, shall be in the discretion of the Court, who may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank were a party to the action.

(6) Holidays shall be excluded from the computation of time under this section.

(Alta. Sec. 34-A: B.C. Sec. 37-A: Man. Sec. 43: N.S. Sec. 17-A: Sask. Sec. 26).

(See 42 Vic. c. 11: Can. Sec. 29: N.B. Sec. 37: Ont. Sec. 28-A: P.E.I. Sec. 34-A).

WILLS.

37. (1) The probate of a will, or letters of administration with a will annexed, or a copy thereof certified under the seal of the Court of the Province in which the probate or letters of administration were granted, shall be admissible as evidence of the original will and of the death of the testator without any proof of the authenticity of the seal of the Court or of the signature of the officer of the Court purporting to certify to the same, but the Court may, upon due cause shown upon affidavit, order the original will to be produced in evidence or may direct such other proof of the original will as under the circumstances appears necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition and the correctness of the prepared copy.

(Man. Sec. 44 (1), (altered): N.S. Sec. 23 (1) (altered): Sask. Sec. 25 (2) (altered)).

(See Alta. Secs. 46 and 47: B.C. Secs. 40 and 42: N.B. Sec. 65: Ont. Secs. 41, 42 and 43: P.E.I. Secs. 23 and 24).

(2) The probate of a will or letters of administration with a will annexed, or a copy thereof certified as aforesaid, shall not be received in evidence upon any trial unless the party intending to produce the same has, at least ten days before the trial, given to the party against whom it is intended to be produced notice of such intention.

(See Alta. Sec. 42: B.C. Sec. 40: N.B. Sec. 65: N.S. Sec. 24: Ont. Sec. 42).

(3) This section shall apply to a probate of a will or letters of administration with a will annexed where the will is proved elsewhere than in the Province, provided that the original will has been deposited and the probate or letters of administration with will annexed granted in a court having jurisdiction over the proof of wills and administration of the estates of intestates or the custody of wills.

(Man. Sec. 44 (altered): N.S. Sec. 23 (altered): Sask. Sec. 25 (altered)).

(See Alta. Secs. 46, 47, 48: B.C. Secs. 40 and 42: N.B. Sec. 65: Ont. Secs. 41, 42, 43: P.E.I. Sec. 23).

38. In every case in which in any action the original will is produced and proved, the Court before whom the evidence is given may direct by which of the parties the costs thereof shall be paid.

(B.C. Sec. 41).

(See N.B. Sec. 65 (2)).

REGISTERED INSTRUMENTS.

39. In any action where it would be necessary to produce and prove an original instrument, deed, document, register or plan which has been deposited, filed, kept or registered in any Land Registry Office, Registry of the Supreme Court, or Registry of the County Court in the Province in order to establish the instrument, document, register or plan and the contents thereof, the party intending to prove the original instrument, document, register or plan may give notice to the opposite party, ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence, as proof of the original instrument, document, register or plan, a copy thereof certified by the registrar of the office where the same is so deposited, filed, kept or registered, under his hand and seal of office; and in every such case the copy so certified shall be sufficient evidence of the original instrument, document, register or plan, and of its validity and contents, without proof

of the signature or seal of office of the Registrar, and without proof that the instrument, document, register or plan was so deposited, filed, kept or registered, unless the party receiving the notice, within four days after its receipt, gives notice that he disputes the validity of the original instrument, document, register or plan. The cost attending any production or proof of the original document shall be in the discretion of the Court.

(See Alta. Sec. 49: B.C. Secs. 43 and 45: N.B. Secs. 28, 32, 62, 63, 70 and 71: N.S. Secs. 20, 21, 22, 24, and 25: Ont. Secs. 46 and 47: P.E.I. Secs. 42, 43, 44, 45 and 49: Sask. Sec. 21 (1)).

40. (1) Where a public officer produces upon a subpoena an original instrument, document or plan, it shall not be deposited in court, unless otherwise ordered, but if the instrument, document or plan or a copy is needed for subsequent reference or use, a copy thereof or of so much thereof as may be deemed necessary, certified under the hand of the officer producing the instrument, document or plan or otherwise proved, shall be filed as an exhibit in the place of the original; and the officer shall be entitled to receive in addition to his ordinary fees, the fees for any certified copy, to be paid to him before it is delivered or filed.

(2) Where an order is made that the original be retained, the order shall be delivered to the public officer, and the exhibit shall be retained in Court and filed.

(Alta. Sec. 50: Ont. Sec. 48).
(See B.C. Sec. 50).

MERCANTILE DOCUMENTS, TELEGRAMS AND ADVERTISEMENTS.

41. (1) A party intending to prove the original of a telegram, letter, shipping bill, bill of lading, delivery order, receipt, account, or other written instrument used in business or other transactions, may give notice to the opposite party, ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends to give in evidence as proof of the contents a writing purporting to be a copy of the document, and in the notice shall name some convenient time and place for the inspection thereof.

(2) The copy may then be inspected by the opposite party, and shall without further proof be sufficient evidence of the contents of the original document, and be accepted and taken in lieu of the original, unless the party receiving the notice within four days after the time mentioned for such inspection gives notice that he intends to dispute the correctness or genuineness of the copy at the trial or proceeding, and to require

proof of the original : and the cost of attending any production or proof of the original document shall be in the discretion of the Court.

(Alta. Sec. 51: Man. Sec. 46: Ont. Sec. 49).

(See B.C. Sec. 46: N.B. Secs. 35 and 36: N.S. Secs. 31 and 32: P.E.I. Sec. 48: Sask. Sec. 27).

42. The production of a printed copy of a newspaper in any action shall be prima facie evidence that any notice or advertisement contained therein was inserted, advertised and published in that newspaper by the person by whom, or in whose behalf, or in whose name, the notice or advertisement purports or appears to be inserted, advertised, or published.

(B.C. Sec. 51-A).

MISCELLANEOUS PROVISIONS AS TO DOCUMENTS AND EVIDENCE.

43. It shall not be necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not requisite.

(Alta. Sec. 53: Man. Sec. 47 (1): Ont. Sec. 50).

(See B.C. Sec. 47: Can. Sec. 32 (1): N.B. Sec. 19: N.S. Sec. 33: P.E.I. Sec. 19).

44. Comparison of a disputed writing with any writing proved to the satisfaction of the Court to be genuine, shall be permitted to be made by a witness; and the writing and the evidence of witnesses respecting the same, may be submitted to the Court or jury as evidence of the genuineness or otherwise of the writing in dispute.

(Alta. Sec. 54: B.C. Sec. 48: Can. Sec. 8: Man. Sec. 48: N.B. Sec. 20: N.S. Sec. 34: Ont. Sec. 51: P.E.I. Sec. 20: Sask. Sec. 42).

45. Where a document is received in evidence the Court admitting the same may direct that it be impounded and kept in such custody for such period and subject to such conditions as may seem proper or until the further order of the Court.

(Alta. Sec. 55: Ont. Sec. 52).

(See B.C. Sec. 49: Can. Sec. 33 and Man. Sec. 49).

46. The provisions of this Act shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any other statute or law.

(Alta. Sec. 57 (altered)).

(See B.C. Sec. 53: Can. Sec. 34: Man. Sec. 28: N.B. Secs. 44 and 54: Sask. Sec. 47).

AFFIDAVITS AND DECLARATIONS.

47. Any affidavit, affirmation or statutory declaration for use in the Province may be sworn, affirmed or declared within the Province before :

(a) a judge of any Supreme Court or County Court in the Province;

(b) a justice of the peace, stipendary magistrate, or police magistrate within the jurisdiction of such justice of the peace or magistrate in the Province;

(c) the registrar of the Supreme Court or of any County Court within the Province;

(d) a commissioner for taking affidavits within the Province;

(e) a notary public appointed for the Province; and every such officer shall designate his office below his signature to the jurat on an affidavit, affirmation or statutory declaration sworn, affirmed or declared before him.

(See B.C. Sec. 58: Man. Sec. 51).

48. Oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made out of the Province—

(a) in England or Northern Ireland before :—

(i) a judge of the Supreme Court of Judicature; or

(ii) a judge of any County Court within his county; or

(iii) a commissioner authorized to administer oaths in the Supreme Court of Judicature;

(b) in Scotland before :—

(i) a judge of the Court of Session or of the Justiciary Court of Scotland; or

(ii) a sheriff or sheriff substitute of any county of Scotland within his county;

(c) in the Irish Free State before :—

(i) a judge of the Supreme Court of Justice of the Irish Free State; or

(ii) a judge of the High Court of Justice of the Irish Free State; or

(iii) a judge of the Circuit Court of Justice of the Irish Free State within his circuit; or

(iv) a commissioner authorized to administer oaths in the Courts of Justice of the Irish Free State.

(d) in the British possessions in India before any magistrate or collector certified to be such under the hand of the governor of such possession;

(e) in Quebec before a judge or prothonotary of the Superior Court or a clerk of the Circuit Court;

(f) anywhere before :—

(i) a judge of any court of supreme jurisdiction or any court of record; or

(ii) the mayor or chief magistrate of any city, borough, or town corporate certified under the seal of such city, borough or town corporate; or

(iii) any ambassador, consul, vice-consul or consular agent of His Majesty exercising his functions; or

(iv) a notary public certified under his hand and official seal; or

(v) a commissioner authorized by the laws of the Province to take such affidavits—

shall be as valid and effectual and shall be of the like force and effect to all intents and purposes as if the oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in the Province before a commissioner for taking affidavits therein, or other competent authority of the like nature.

(Alta. Sec. 42: Ont. Sec. 37 (re-drawn)).

(See B.C. Sec. 59: Man. Sec. 52: N.S. Sec. 52 (1): Ont. Sec. 37: P.E.I. Secs. 38 and 40: Sask. Sec. 45).

49. Any document purporting to have affixed, impressed or subscribed thereon or thereto the signature of such judge or commissioner or the seal (if any) and signature of such sheriff, or sheriff substitute, prothonotary, clerk or notary public, or the signature of such mayor or chief magistrate and the seal of the city, borough or town corporate, or the seal and signature of such consul, ambassador, vice-consul, or consular agent, in testimony of the oath, affidavit, affirmation, or declaration having been administered, sworn, made or affirmed by or before him, shall be admitted in evidence without proof of the signature, or seal and signature, being the signature, or the seal and signature, of the person whose signature, or seal and signature, the same purports to be, or of the official character of such person.

(Alta. Sec. 43 (re-drawn)).

(See B.C. Sec. 60: Sask. Sec. 45 (2): N.S. Sec. 52 (2): Ont. Sec. 38).

50. No defect, by misdescription of parties or otherwise, in the title or jurat of any affidavit, and no other irregularity in the form of any affidavit, affirmation or declaration shall be an objection to its reception in evidence, if the Court before or to whom it is tendered thinks proper to receive it; and the Court may direct a memorandum to be made on the document that it has been so received.

(B.C. Sec. 62).

(See Alta. Sec. 44: Man. Sec. 55: Ont. Sec. 39: P.E.I. Sec. 41).

51. Where by an Act of the Legislature, or by a rule of the Legislative Assembly, or by an order, regulation, or commission made or issued by the Lieutenant-Governor-in-Council, under a law authorizing him to require the taking of evidence under oath, evidence under oath is authorized or required to be taken, or an oath is authorized or directed to be made, taken, or administered, the oath may be administered and a certificate of its having been made, taken, or administered may be given by any one authorized by the Act, rule, order, regulation, or commission to take the evidence or by anyone authorized to take affidavits under this Act having authority or jurisdiction within the place where the oath is administered.

(Man. Sec. 2A (altered): B.C. R.S. 1924, C. 1, s. 30 (altered)).

POWERS UNDER FOREIGN COMMISSIONERS.

52. (1) Where, upon application by motion for this purpose, it is made to appear to the Supreme Court or a judge thereof, or to a County Court judge in the Province, that any Court or tribunal of competent jurisdiction in the United Kingdom or in any other Province of Canada or in any British dominion, colony or possession, or in a foreign country has duly authorized, by commission, order or other process, the obtaining of testimony in or in relation to any action pending in or before the foreign Court or tribunal, of any witness out of the jurisdiction thereof, and within the jurisdiction of the Court or judge so applied to, the Court or judge may order the examination before the person appointed of the witnesses accordingly, and in a manner and form directed by the commission, order, or other process; and may, by the same order or a subsequent order, command the attendance of any persons named therein for the purpose of being examined, or the production of any writings or other documents mentioned in the order; and give all such directions as to the time, place, and manner of the examination and all other matters connected therewith as may

appear reasonable and just; and the order may be enforced, and any disobedience thereof punished, in like manner as in case of an order made by the same Court or judge in an action pending in the Court or before the judge.

(2) Every person whose attendance is so ordered shall be entitled to the like conduct-money and payment for expenses and loss of time as upon attendance at a trial in the Supreme Court.

(3) Every person examined under such commission, order or other process as aforesaid shall have the like right to refuse to answer any such questions which, in an action pending in the Court by which, or by a judge whereof, or before the judge by whom the order for examination was made, the witness would be entitled to refuse to answer; and no person shall be compelled to produce at the examination any writing or document which he would not be compellable to produce at the trial of such an action.

(4) Where the commission directs, or the instructions of the Court accompanying the same direct, that the persons to be examined shall be sworn or shall affirm before the commissioner or other person, the commissioner or other person shall have authority to administer an oath or affirmation to the person to be examined as aforesaid.

(B.C. Sec. 52 (altered)).

(See 6 and 7 Vic. c. 82: Alta. Sec. 52: Can. Sec. 41 et seq: Man. Sec. 73: N.B. Secs. 23 and 24: N.S. Secs. 55 to 60: Ont. Sec. 54: Sask. Sec. 46).

APPENDIX F

REPORT OF THE ONTARIO COMMISSIONERS AS TO
THE CONTRIBUTORY NEGLIGENCE ACT.

At the 1935 Conference it was resolved that the question of the desirability of inserting in the Uniform Contributory Negligence Act 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 next year.

The Ontario Commissioners report that they have given the matter serious consideration and have reached the conclusion that inasmuch as the Section referred to has been in force in Ontario for only a little more than a year and is legislation which has not been tested by experience it is your Commissioners, view that it is subject matter at this time that does not justify being dealt with in the Uniform Act.

APPENDIX G

REPORT OF THE ONTARIO COMMISSIONERS
ON THE ADVISABILITY OF PREPARING
DRAFT SECTIONS RELATING TO
THE FORM OF STATUTES.

At the 1935 session of the Conference the matter of the desirability of the Conference undertaking the preparation of draft sections relating to the form of statutes was referred to the Ontario Commissioners.

In certain of the Provinces sections relating to the form of statutes are contained in the Interpretation Act. In other Provinces the sections are contained in a separate Act, in most cases known as the "Statutes Act".

Your Commissioners are of the opinion that it is desirable that such Sections should be contained in the draft Interpretation Act now before the Conference and recommend that they be grouped together in a separate part of the Act so as to permit of the enactment of the Interpretation portion of the Draft Act by any Province which wishes to enact the Draft Interpretation Act, at the same time retaining its own Statutes Act. This will involve changing the name of the Interpretation Act to read "The Interpretation and Form of Statutes Act".

APPENDIX H

REPORT OF THE DOMINION REPRESENTATIVES ON DRAFT
SECTIONS FOR INCLUSION IN INTERPRETATION ACTS.

A draft Interpretation Act submitted by the Manitoba Commissioners in 1934, was re-committed to them for further consideration, the resultant draft being printed as Appendix "G" to the 1935 Report of the Proceedings of the 18th Annual Meeting of the Conference. Several matters, which had been given consideration by the Manitoba Commissioners, were submitted for decision by the 1936 Conference, some of which were referred to the Dominion representatives together with the preparation of a further revised draft Act.

Of the matters thus submitted, the first was the subject of including a section to provide 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. By direction of the Conference, a note to that effect has been added to the draft Interpretation Act herein submitted.

The next matter referred was the question of defining the term "land". We recommend that such a definition should not be included in a Uniform Interpretation Act for two reasons. It is considered to be primarily a local matter for each Province. In the second place, a definition, if desired, would, it is submitted, more properly be included, for example, in the Landlord and Tenant Act, as has been suggested by the Alberta Commissioners.

It is recommended that the definition of "statutory declaration" and "solemn declaration" be left for the draft Evidence Act.

The suggestion of adapting section 23, subsection (14), of the British Columbia act has been followed, this being found as a new section 3 in the draft Act herewith submitted.

Definitions of "bank" or "chartered bank" and of "mail" have been included in section 18 of the new draft Act.

The question of including a provision similar to that in section 51 of the British Columbia act having been considered, it is suggested that such a section is unnecessary.

Consideration was also given to the suggestion of inserting a section such as appears in the acts of Manitoba, Alberta and British Columbia dealing with "persona designata". We recommend that such a section should not be included.

Hereto annexed is the revised draft of uniform sections for inclusion in Interpretation Acts which we commend for approval by the Conference.

REVISED DRAFT OF UNIFORM SECTIONS FOR
INCLUSION IN INTERPRETATION ACTS.

INTERPRETATION.

Definition of

1. In this Act the expression

"Public officer"

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

"Regulation"

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

APPLICATION OF ACT.

Application to all statutes.

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

(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.

This part applies to itself.

(2) The provisions of this Act shall apply to the interpretation of this Act.

APPLICATION OF INTERPRETATION SECTIONS OR PROVISIONS.

Definitions or rules applicable to sections which contain definitions or rules.

3. In every Act or regulation hereafter enacted or made definitions or rules of interpretation contained therein shall, unless the contrary intention appears, apply to the construction of the sections of the Act or regulation which contain those definitions or rules of interpretation, as well as to the other provisions thereof.

OPERATION OF STATUTES.

4. (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 statutes}

(2) Where an Act or any provision thereof is not to come into operation immediately on its being passed and confers power ^{Powers exercisable under Acts not coming into force on assent.}

- (a) to make appointments;
- (b) to hold elections;
- (c) to make regulations;
- (d) to give notices;
- (e) to prescribe forms or
- (f) to do any other thing,

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

RULES OF CONSTRUCTION.

5. 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 true spirit, 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 receives the Royal assent. ^{Statute law always speaking.}

6. The expression "shall" shall be construed as imperative, and the expression "may" as permissive and empowering. ^{Interpretation of "may" and "shall".}

7. (1) No provision in an Act shall affect ^{Provision}

(a) The rights of His Majesty unless it is expressly stated therein that His Majesty is bound thereby; nor ^{Affecting Crown.}

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

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 person save only as therein mentioned or referred to.

Preamble
and
schedules
part of Act.

8. The preamble of an Act is part thereof and is intended to assist in explaining the purport and object of the Act.

Statutes to
be liberally
interpreted.

9. Every Act and every regulation and every provision thereof 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, regulation or provision.

Words in
regulations
interpreted
with Act.

10. 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 meanings as in the Act conferring the power.

Proclamation
to be under-
stood as
issued under
authority of
Order in
Council.

11. 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.

Powers
vested in
corporations.

12. In every Act words making a 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 purposes 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 from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the Act incorporating them.

Officials
appointed
during
pleasure.

13. 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.

Implied
power to
remove

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

- (a) of removing or suspending him; officials
and fix
remuneration
 (b) of re-appointing or reinstating him;
 (c) of appointing another in his stead or to act in his
stead, and
 (d) of fixing his remuneration and varying or termin-
ating it,

in the discretion of the authority in whom the power of appoint-
ment 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. Implied
power of
successors
in office.

(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. Implied
power of
deputy or
successor to
Minister.

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. Power of
official to
be exercised
by holder
of office.

15. In every Act or regulation, Implied
powers.

(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; Officer to
act within
jurisdiction.

(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; Additional
powers.

(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; Power
conditionally
conferred.

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

Continuance of powers.	(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;
Revocation and alteration.	(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;
Deviation in forms.	(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;
Gender.	(h) words importing the masculine gender include the feminine and any corporation to which the context may extend;
Number.	(i) words in the singular include the plural, and words in the plural include the singular;
Holidays.	(j) when the time limited 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;
Reckoning time.	(k) where in an Act, Order in Council, or any regulation made pursuant to any act any period of time dating from a given day, act, or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event.
Time.	(l) a reference to time is to be deemed a reference to the (each jurisdiction to provide its own definition).

REFERENCES.

16. (1) In any Act, regulation or document, an Act of the province or of Canada 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 or the regnal year in which the Act was passed.

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

17. (1) When reference is made by number or letter to two or more parts, divisions, sections, subsections, paragraphs, sub-paragraphs, clauses, 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.

(2) When in an Act reference is made to a part, ^{Reference in Act to parts of an Act.} 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.

(3) When in a section of an Act reference is made to a ^{Reference in section.} subsection, paragraph, sub-paragraph or clause without anything in the context to indicate that a subsection, paragraph, sub-paragraph or clause of some other section is intended to be referred to, the reference shall be deemed to be a reference to a subsection, paragraph, sub-paragraph or clause of the section in which the reference is made.

WORDS AND PHRASES.

18. The expressions used in any Act, either of the province ^{Expressions used in other Acts.} or Canada, constituting a judicial or quasi-judicial authority or a department or office of Government, and referring thereto, has the same meaning in all other Acts or regulations of the province; and a name commonly applied to any country, place, corporation, public officer, person or thing means the country, place, corporation, public officer, person or thing to which such name is ^{Used locally.} commonly applied although the name is not the formal designation thereof.

19. In every Act or regulation, the expression ^{Definitions.}

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

(2) "Bank" or "Chartered Bank" means an incorpo- ^{"Bank".}
rated bank carrying on the business of banking under the
"Bank Act";

(3) "Gazette" means the Royal or official gazette ^{"Gazette".}
published by the King's Printer (of the province);

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

(5) "His Majesty", "Her Majesty", "The King", ^{"His Majesty"}
^{"Her Majesty"}
"The Queen" or the "Crown" means the Sovereign of Great ^{"The King"}
^{"The Queen"}
Britain, Ireland and the British dominions beyond the seas; ^{or "Crown".}

- "Holiday". (6) "Holiday" includes Sunday, New Year's Day, Good Friday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Victoria Day, Labour Day, Remembrance Day, and any day appointed by Proclamation of the Governor-General or of the Lieutenant-Governor as a general holiday, and whenever a holiday other than Remembrance Day falls on a Sunday, the expression "holiday" includes the following day;
- "Legislature". (7) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province;
- "Lieutenant-Governor". (8) "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;
- "Lieutenant-Governor-in-Council". (9) "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;
- "Mail". (10) "Mail" means to deliver the matter to which the context applies into the exclusive custody of His Majesty's post office at any place within the province, postage prepaid, for transmission by post;
- "Month". (11) "Month" means calendar month;
- "Newspaper". (12) "Newspaper" where publication in a newspaper is required 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;
- "Oath" or "affidavit". (13) "Oath" or "affidavit" shall, in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, include affirmation and declaration; the word "swear" in the like case shall include affirm and declare; and the word "sworn" shall include the word "affirmed" or "declared".
- "Swear".
- "Peace officer". (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 a gaol, prison or reformatory, and a police officer, police constable, bailiff, constable or other person employed for the preserva-

tion and maintenance of the public peace or for the service or execution of civil process;

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

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

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

(18) "Surety" means a sufficient surety; "Surety".

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

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

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

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

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

REPEAL AND AMENDMENT.

20. (1) Every Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting or modifying a power, privilege or advantage thereby vested in or granted to a person. Power of repeal reserved.

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

21. (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 Effect of repeal.

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

(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 any such 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.

Effect of
repeal and
substitution.

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

(a) every 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, so far as consistently may be;

(c) every proceeding taken under the Act, enactment or regulation so repealed or revoked shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be;

(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 any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly.

repeal and
substitution
affecting.

22. When an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation,

regulations.

(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 substituted Act or enactment until they are annulled and others made in their stead; and

(b) a reference, in an unrepealed Act or enactment ^{Reference.} 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.

23. The Legislature by re-enacting an Act or enactment, ^{Effect of re-enactment, revision and consolidation} 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.

24. (1) The repeal of an Act or enactment in whole or in ^{Repeal does not imply any Act in force.} part shall not be deemed to be or to involve a declaration that the Act or enactment was or was considered by the Legislature to have been previously in force.

(2) The amendment of an Act or enactment in whole or in ^{Amendment does not imply a change in the law.} 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.

(3) The repeal or amendment of an Act or enactment in ^{Repeal does not declare previous-law.} 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.

25. This Act shall be so interpreted and construed as to ^{Uniform interpretation.} effect its general purpose of making uniform the law of those provinces which enact it.

26. This Act shall come into force on the day it is assented ^{Coming into force.} 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.

NOTE: In the opinion of the Conference of Commissioners on uniformity of legislation 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.

APPENDIX I.

REPORT OF THE SASKATCHEWAN COMMISSIONERS
ON DRAFT LIBEL AND SLANDER ACT.

At its last meeting the Conference passed a resolution that the Saskatchewan Commissioners submit this year a draft uniform Libel and Slander Act based on the legislation of the various provinces on that subject in its civil aspects.

The provincial Acts governing the matter are as follows :

Alberta	R.S.A., 1922, c. 101 as amended by 1935, c. 23.
British Columbia	R.S.B.C., 1924, c. 140.
Manitoba	R.S.M., 1913, c. 113, as amended by 1934, c. 23.
New Brunswick	R.S.N.B., 1927, c. 142.
Nova Scotia	R.S.N.S., 1923, c. 230.
Ontario	R.S.O., 1927 c. 101.
Prince Edward Island	28 Vict., c. 25, ss. 1 and 2; 12 Geo. V., c. 7, s. 4.
Saskatchewan	R.S.S., 1930, c. 69, as amended by 1931, c. 31.

The statutes of 1936 of New Brunswick and Prince Edward Island have not been examined.

Your Commissioners find that the Ontario, Alberta and Saskatchewan Acts run practically along the same lines; that the British Columbia, Manitoba and New Brunswick Acts, though not so closely aligned to the Ontario Act as those of Alberta and Saskatchewan, contain generally the same subject matter as the Ontario Act; that the Nova Scotia Act contains only two sections; and that the statutory provisions in Prince Edward Island are also very limited in their scope.

In framing the draft Act, which is submitted herewith, your Commissioners have included all the provisions of the Ontario Act in the sequence in which they appear in that Act, and have also included all other provisions on the subject which do not appear in the Ontario Act but are to be found in one or more of the other provinces.

For the purpose of easy reference the Ontario provisions have been numbered as in the Ontario Act. After each provision references to the same or similar provisions in the other provinces

have been inserted. When the provision referred to is not the same as in Ontario the word "See" has been used.

It will be noticed that certain sections and subsections of the draft Act have been numbered in double brackets. These provisions do not appear in the Ontario Act but form part of the law of one or more of the other provinces as shown by the references.

The marginal citations refer to the Imperial Statutes.

In the time at their disposal your Commissioners have been unable to do anything in the way of redrafting.

DRAFT UNIFORM LIBEL AND SLANDER ACT.

An Act to make uniform the Law respecting Libel and Slander.

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

SHORT TITLE.

1. This Act may be cited as "The Libel and Slander Act".

INTERPRETATION.

- 1a. In this Act, unless the context otherwise requires :

1. "Newspaper" means a paper containing public news, intelligence or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers, and includes a paper printed in order to be made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements.

Alta. s. 2 (a): See B.C. s. 2: See Man. s. 2 (a): See N.B. s. 2 (a):
See N.S. s. 1 (a): Ont. s. 1: Sask. s. 2, par. 1.

(2) "Proprietor" includes as well the person or corporation being the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who as partners or otherwise represent and are responsible for any share or interest in the newspaper as between themselves;

Sask. s. 2, par. 2.

64. (3) "Public meeting" means any meeting bona fide and lawfully held for a public purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto be general or restricted.

Alta. s. 2 (b): B.C. s. 2: See Man. s. 2 (b): N.B. s. 2 (b):
See N.S. s. 1 (b): Ont. s. 9 (5): Sask. s. 10 (5).

LIBEL AND SLANDER.

1ts
is
er. 2. In an action for libel or slander the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words or matter were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth,

with or without the alleged meaning, show a cause of action, the statement of claim shall be sufficient.

Alta. s. 3: B.C. s. 10: Man. s. 6: Ont. s. 2: Sask. s. 3.

3. In an action for libel or slander where the defendant has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such libel or slander before the commencement of the action; or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity.

Apology
mitigation
of damage

6 & 7
Vict. c. 9
s. 1.

Alta. s. 4: See B.C. s. 8: See Man. s. 7: See N.B. s. 5: See P.E.I. 28 Vict. c. 25, s. 1: Ont. s. 3: Sask. s. 4.

LIBEL.

4. On the trial of an action for libel the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff, merely on proof of publication by the defendant of the alleged libel, and of the sense ascribed to it in the action; but the Court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases.

General
or special
verdict.

Alta. s. 5: See B.C. s. 11: See Man. s. 13: See N.B. s. 9: Ont. s. 4: Sask. s. 5.

5. (1) The Court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels contained in articles the same or substantially the same published in different newspapers, brought by one and the same person, may make an order for the consolidation of such actions so that they shall be tried together; and after such order has been made, and before the trial of such actions, the defendants in any new actions instituted in respect of any such libel or libels shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Consolidation
of actions
for same
libel.

51 & 52
Vict. c. 6
s. 5.

Alta. s. 6 (1): See B.C. s. 12: See N.B. s. 10 (1): Ont. s. 5 (1): Sask. s. 6 (1).

Assessment
of damages
and appor-
tionment of
damages and
costs.

51 & 52
Vict. c. 64,
s. 5.

(2) In a consolidated action under this section the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against such last mentioned defendants; and the judge at the trial in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of the costs between and against such defendants.

Alta. s. 6 (2); B.C. s. 13; N.B. s. 10 (2) and (3); Ont. s. 5 (2);
Sask. s. 6 (2).

"Article",
meaning of

(3) For the purposes of this section "article" shall include anything appearing in a newspaper as an editorial or as correspondence or otherwise than as an advertisement.

Ont. s. 5 (3); Sask. s. 6 (3).

One clear
day between
cause of
action and
issue of
writ.

((4)) In an action for libel contained in a public newspaper or other periodical publication, one clear day must be allowed to elapse between the cause of action complained of and the issue of the writ thereupon.

B.C. s. 6 (1).

NEWSPAPER LIBEL.

Plea
negating
malice and
negligence
and that
apology
published.

6 & 7
Vict. c. 96,
s. 2.

6. In an action for libel contained in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel; or if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff.

Alta. s. 7; B.C. s. 6 (2); Man. s. 8; N.B. s. 6; See P.E.I., 28
Vict. c. 25, s. 2 (part); Ont. s. 6; Sask. s. 7.

Notice of
action.

7. (1) No action for libel contained in a newspaper shall lie unless the plaintiff has, within six weeks after the publication thereof has come to his notice or knowledge, given to the defendant notice in writing, specifying the statement complained of, which shall be served in the same manner as a statement of

claim or by delivering the notice to a grown up person at the place of business of the defendant.

Alta. s. 8 (1): See Man. s. 5: See N.B. s. 4: Ont. s. 7 (1): See Sask. s. 15.

(2) The plaintiff shall recover only actual damages if it appears on the trial :

When plaintiff to recover actual damages only.

(a) that the alleged libel was published in good faith;

(b) that there was reasonable ground to believe that the publication thereof was for the public benefit;

(c) that it did not involve a criminal charge;

(d) that the publication took place in mistake or misapprehension of the facts; and

(e) that a full and fair retraction of any statement therein alleged to be erroneous was published either in the next regular issue of the newspaper, or in any regular issue thereof published within three days after the receipt of such notice, and was so published in as conspicuous a place and type as was the alleged libel.

Alta. s. 8 (2): See B.C. s. 6 (3): Ont. s. 7 (2): See Sask. s. 8 (1).

(3) The provisions of this section shall not apply to the case of a libel against any candidate for public office in unless the retraction of the charge is made editorially in a conspicuous manner, at least five days before the election.

Case of candidate for public office.

Alta. s. 8 (3): See B.C. s. 6 (4): Ont. s. 7 (3): See Sask. s. 8 (2)

(4) It shall not be necessary in any action for libel to set out in any pleading or process any obscene passages, but it shall be sufficient to deposit in the proper registry the book, newspaper, or other document containing the alleged libel, together with particulars showing precisely by reference to pages, columns, and lines where the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in pleading or process.

Obscene matter need not be set forth in pleadings.

51 & 52 Vict. c. 64, s. 7.

B.C. s. 14.

8. A defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of any libel to which the two next preceding sections apply, and, except so far as regards the additional facts hereinbefore required to be pleaded by a defendant, such payment shall have the same effect as payment into court in other cases.

Payment into court.

Alta. s. 8a: See B.C. s. 7: See Man. s. 9: See N.B. s. 7: See P.E.I. 28 Vict. c. 25, s. 2 (part): Ont. s. 8: Sask. s. 9.

Privileged
Publications

9. (1) A fair and accurate report published in a newspaper of any proceedings in the Senate or House of Commons of Canada, in any Legislative Assembly of any of the Provinces of Canada, or in any committee of any of such bodies or of a public meeting, or, except where neither the public nor any newspaper reporter is admitted, of any meeting of a municipal council, school board, board of education, board of health, or of any other board or local authority formed or constituted under any of the provisions of any public Act of the Legislatures of any of the Provinces of Canada or of the Parliament of Canada, or of any committee appointed by any of the above mentioned bodies, and the publication of the whole, or a portion or a fair synopsis, of any report, bulletin, notice or other document, issued for the information of the public from any Government office, bureau or department, or by any board of health or medical health officer, or the publication, at the request of any Government or municipal official, commissioner of police or chief constable, of any notice or report issued by him for the information of the public, shall be privileged, unless it is proved that such publication was made maliciously.

51 & 52
Vict. c. 64,
s. 4.

Alta. s. 9 (1): See B.C. s. 4 (in part): See Man. ss. 3 and 4:
See N.B. s. 3 (1): See N.S. s. 2: Ont. s. 9 (1): Sask. s. 10 (1).

Improper
matter.
51 & 52
Vict. c. 64,
s. 4.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.

Alta. s. 9 (2): B.C. s. 4 (in part): Ont. s. 9 (2): Sask. s. 10 (2).

When
defendant
refuses to
publish
explanation.

51 & 52
Vict. c. 64,
s. 4.

(3) The protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff shows that the defendant has refused to insert in the newspaper making such publication a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff.

Alta. s. 9 (3): See B.C. s. 4 (in part): Man. s. 4 (in part): N.B.
s. 3 (2): N.S. s. 2 (b): Ont. s. 9 (3): Sask. s. 10 (3).

Saving

51 & 52
Vict. c. 64,
s. 4.

(4) Nothing in this section shall limit or abridge any privilege now by law existing, or protect the publication of any matter not of public concern or the publication of which is not for the public benefit.

Alta. s. 9 (4): B.C. s. 4 (in part): Ont. s. 9 (4): Sask. s. 10 (4).

Report of
proceedings
in courts.

10. (1) A fair and accurate report without comment in a newspaper of proceedings publicly heard before a court of justice if published contemporaneously with such proceedings shall be absolutely privileged, unless the defendant has refused or neglected to insert in the newspaper in which the report

complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff.

See Alta. s. 10 (1): See B.C. s. 3 (in part): See Man. s. 3:
See N.S. s. 2 (in part): Ont. s. 10 (1): Sask. s. 11 (1).

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter.

See Alta. s. 10 (1) (d): B.C. s. 3 (in part): Ont. s. 10 (2): Sask. s. 11 (2).

(3) For the purposes of this section, every headline or caption in the newspaper which is referable to any report therein shall be deemed to be a report, and the expression "proceedings publicly heard before any court" shall be deemed not to include any proceedings in a civil action heard ex parte in chambers.

Alta. s. 10 (2).

11. (1) In an action for libel contained in a newspaper the defendant may, at any time after the delivery of the statement of claim, or the expiry of the time within which it should have been delivered, apply to the Court for security for costs, upon notice and an affidavit by the defendant, or his agent, showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a judgment is given in favour of the defendant, that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, or that the grounds of action are trivial or frivolous; and the court may make an order that the plaintiff shall give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of , and the order shall be a stay of proceedings until the security is given.

See Alta. s. 11 (1): See B.C. s. 16 (1) (in part): See Man. s. 10 (in part): Ont. s. 11 (1): See Sask. s. 12 (1).

(2) Where the alleged libel involves a criminal charge the defendant shall not be entitled to security for costs under this Act, unless he satisfies the Court that the action is trivial or frivolous, or that the circumstances which under section 7 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge.

B.C. s. 16 (1) (in part): Ont. s. 11 (2): See Sask. s. 12 (2).

(3) For the purposes of this section the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim.

Alta. s. 11 (2): B.C. s. 16 (2): Ont. s. 11 (3): Sask. s. 12 (3).

When order
of judge
respecting
security
final.

(4) An order made under this section by a judge of the Supreme Court shall be final and shall not be subject to appeal, but where the order is made by a local judge an appeal therefrom shall lie to a judge of the Supreme Court sitting in Chambers, whose order shall be final and shall not be subject to appeal.

See Alta. s. 11 (4): Ont. s. 11 (4).

Suit in
forma
pauperis.

(5) This section shall not apply to any action wherein the plaintiff sues in forma pauperis.

Alta. s. 11 (3): Man. s. 10 (in part).

Place of
trial.

12. An action for libel contained in a newspaper shall be tried in the county where the chief office of such newspaper is, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the Court may direct the action to be tried, or the damages to be assessed, in any other county if it appears to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to the payment of witness fees and otherwise as may seem proper.

Alta. s. 12: B.C. s. 15: See Man. s. 11: See N.B. s. 8: Ont. s. 12: Sask. s. 13.

Limitation
of actions.

13. An action for libel contained in a newspaper shall be commenced within three months after the publication thereof has come to the notice or knowledge of the person defamed; but where an action is brought and is maintainable for a libel published within that period the same may include a claim for any other libel published against the plaintiff by the defendant in the same newspaper within a period of one year before the commencement of the action.

See Alta. s. 13 (1): Ont. s. 13: See Sask. s. 14.

Joinder.

Publication
of name of
publisher
and address.

14. (1) No defendant shall be entitled to the benefit of sections 7 and 13 of this Act unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

See Alta. s. 13 (2): Man. See s. 15: See N.B. s. 11 (in part): Ont. s. 14 (1): Sask. s. 16 (1).

Copy of
newspaper
to be prima
facie
evidence.

(2) The production of a printed copy of a newspaper shall be prima facie evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection (1).

See Alta. s. 14: See N.B. s. 11 (in part): Ont. s. 14 (2): Sask. s. 16 (2).

Services of
notices and
of writ.

15. Service of any notice under this Act and of the writ of summons may be made upon the proprietor or publisher of the newspaper by serving the same upon any grown up person at such address.

Ont. s. 15: See Sask. s. 16 (3).

(2) In any action for the publication in a newspaper of any defamatory matter which has been communicated in writing to such newspaper with a view to its publication therein by a person other than a person employed by the defendant, the defendant may at any stage of the proceedings apply on notice to such person to a judge of the Court in which the action is taken, for an order joining such person as a party defendant in the action, and such person may be so joined on such terms as may appear to be just.

Alta. s. 15 (1).

(3) The application shall be supported by an affidavit verifying the facts entitling the defendant to have such person joined as a party defendant, and showing that the defamatory matter was not known by the applicant to be untrue and that it was not contained in an anonymous communication, and judgment may be given in the action against one or both of the defendants or for such remedy or relief over to the person or company against whom the action was in the first instance taken against the person so joined as a party defendant, as the court before which the action is tried shall determine.

Alta. s. 15 (2).

16. In an action for libel contained in a newspaper, the defendant may prove in mitigation of damages that the plaintiff has already brought actions for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought.

B.C. s. 9: Ont. s. 16: Sask. See s. 17.

17. Subsection (1) of section 7 and section 13 shall only apply to newspapers printed and published in

Ont. s. 16.

(2) The publication of a libel against a race or creed likely to expose persons belonging to the race or professing the creed to hatred, contempt or ridicule, and tending to raise unrest or disorder among the people, shall entitle a person belonging to the race or professing the creed to sue for an injunction to prevent the continuation and circulation of the libel; and the Court of King's Bench is empowered to entertain the action.

Man. s. 13a (1).

(3) The action may be taken against the person responsible for the authorship, publication, or circulation of the libel.

Man. s. 13a (2).

"Publica-
tion".

((4)) The word "publication" used in this section shall be interpreted to mean any words legibly marked upon any substance or any object signifying the matter otherwise than by words, exhibited in public or caused to be seen or shewn or circulated or delivered with a view to its being seen by any person.

Man. s. 13a (3).

SLANDER OF WOMEN.

Proof of
special
damage not
required
in certain
cases.

18. (1) In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery, it shall not be necessary to allege in the plaintiff's statement of claim, or to prove that special damage resulted to the plaintiff from the utterance of such words, and the plaintiff may recover damages without averment or proof of special damage.

54 & 55
Vict. c. 51,
s. 1.

Alta. s. 16 (1): B.C. See s. 5 (in part): Man. See s. 12 (1):
See P.E.I. 12 Geo. V. c. 7, s. 4: Ont. s. 18 (1): Sask. See s. 25.

Security
for costs.

(2) The defendant may, at any time after the delivery of the statement of claim, apply to the Court for security for costs, upon notice and an affidavit showing the nature of the action, and that the plaintiff is not possessed of property sufficient to answer the costs of the action if a verdict or judgment is given in favour of the defendant, and that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous; and the Court may make an order that the plaintiff shall give security for the costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of , and the order shall be a stay of proceedings until the security is given.

Alta. s. 16 (2): Man. s. 12 (3): Ont. s. 18 (2).

Examination
of parties.

(3) For the purposes of subsection (2) the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim.

Alta. s. 16 (3): Man. s. 12 (4): Ont. s. 18 (3).

Statement
of claim to
invoke
section.

((4)) A plaintiff shall not under this section, or because or by reason of the provisions in this section contained, be entitled to recover a verdict in any such action unless the statement of claim contains an allegation that the action is brought by the plaintiff under the provisions of this section.

Man. s. 12 (2).

COSTS.

((19.)) The judge before whom any such action as afore-^{Costs.} said is tried shall not award costs to the plaintiff where he recovers merely nominal damages:

Provided that, in any case coming under section 12, costs^{54 & 55} may be awarded to the plaintiff although she recovers merely^{Vict. s. 51,} nominal damages.^{s. 1.}

Man. s. 14: See B.C. s. 5 (part).

CONSTRUCTION.

((20.)) This Act shall be so interpreted and construed^{Construction.} as to effect its general purpose of making uniform the law of those provinces which enact it.

REPEAL AND COMING INTO FORCE.

((21.)) The following enactments are hereby repealed: ^{Repeal.}

((22.)) This Act shall come into force on the _____ day ^{Coming into}
of _____ 19 _____ ^{force.}

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