1937

PROCEEDINGS

OF THE

TWENTIETH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

TORONTO

AUGUST 12TH, 13TH, 14TH, 16TH AND 17TH, 1937

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

OFFICERS OF THE CONFERENCE

Honorary President.....Hon. J. B. McNair, K.C., Fredericton, New Brunswick.

President.... .....I. A. Humphries, K.C., Toronto, Ontario.

Vice-President..... R. Murray Fisher, K.C., Winnipeg, Manitoba.

Treasurer..... ...R. Andrew Smith, K.C., Edmonton, Alberta.

Secretary.....Wilson E. McLean, Winnipeg, Manitoba.

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 PROMOTING UNIFORMITY OF LEGISLATION.

Alberta :

R. ANDREW SMITH, K.C., Legislative Counsel, Parliament Buildings, Edmonton.
W. S. GRAY, K.C., Edmonton.
STANLEY H. MCCUAIG, 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, K.C., 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 E. 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 S. Wisemer,
Attorney-General of Manitoba : Hon. W. J. Major, K.C. K.C.
Attorney-General of New Brunswick : Hon. J. B. McNair, K.C.
Attorney-General of Nova Scotia : Hon. J. H. MacQuarrie, K.C.
Attorney-General of Ontario : Hon. Gordon D. Conant, K.C.
Attorney-General of Prince Edward Island: Hon. Thane A. Campbell, K.C.
Attorney-General of Quebec : Hon. L. Duplessis, 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.
1937. August 12-14, 16-17, Toronto.

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: adopted in Alberta (1937) as revised.

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).

1937. Landlord and Tenant Act.

W.E.M.

PROCEEDINGS

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

The following Commissioners or Representatives of the provinces were present at some or all of the sessions of the Conference :

Alberta :

HON. J. W. HUGILL, Messrs. SMITH, GRAY and MCCUAIG.

British Columbia :

MR. MAITLAND.

Manitoba :

MESSRS, FISHER, CAMPBELL and MCLEAN.

New Brunswick :

MESSRS. HUGHES, PORTER and DICKSON.

Nova Scotia :

MR. MACDONALD.

Ontario :

MESSRS. HUMPHRIES, LANG and SILK.

Saskatchewan :

MESSRS. THOM and RUNCIMAN.

Canada :

MESSRS. 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. Fisher on behalf of the Conference, and is here quoted as containing a useful summary of the work done this year:

"This year 18 members representing the Dominion and all the common law provinces except Prince Edward Island met for five days immediately preceding the meeting of the Canadian Bar Association. Three sessions were held each day except the last day when adjournment took place at noon to permit some members of the Conference to attend the council meeting of the Bar Association.

"During the 20 years the Conference has been operating it has completed and recommended to the various provinces for enactment 18 uniform statutes and now has in various stages of completion 6 others. It is also considering the advisability of making the Provincial Reciprocal Enforcement of Judgments Act adopted in 1925 and amended in 1935 international in its scope. As the name implies, this statute provides for the enforcement of judgments where reciprocal arrangements have been made between provinces or nations.

"In 1922 the Conference completed a Conditional Sales Act and this year decided to have the whole subject reconsidered because of the increasing use made of this form of contract.

"A uniform Landlord and Tenant Act was finally completed this year after having been before the Conference for some five years. Next year it is hoped to complete a uniform Partnership Registration Act.

"Originally the Conference directed its attention to statutes dealing with commercial law but more recently has taken under consideration such subjects as Libel and Slander, Married Women's Property, Commorientes, Evidence and Interpretation of Statutes.

"In the consideration of such subjects as Interpretation of Statutes, Evidence and the international aspects of Reciprocal Enforcement of Judgments the assistance of the Dominion representatives is invaluable.

"The method of procedure usually followed in dealing with any subject is to have the representatives of a particular province report on the existing law in each province, noting similarities

and differences. After this report has been considered, a draft statute is prepared which is subsequently discussed by the Conference clause by clause. When the draft has been thus considered it is referred back usually to another group of commissioners for revision in the light of the discussion and to resubmit it for further consideration. This method has the advantage of bringing fresh minds to bear on the problems that present difficulty. This redraft is again considered and may be either completed or referred back for further consideration. When a statute has been finally completed it is recommended to the various provinces for enactment.

"Of the 17 statutes completed previous to this meeting, 2 have been enacted in all the common law provinces—2 in seven —1 in six—3 in five—2 in four—5 in three—1 in two and 1 in only one.

"It is perhaps not fitting that any member of the Conference should attempt to appraise its work but I think it is a fair statement to make that where uniform statutes have been enacted they have been received favorably by the public and the profession and practically no litigation has resulted from their enactment.

"The commissioners receive no remuneration but the expenses of representatives attending meetings and the printing of the Conference proceedings are paid by the provinces.

"The Conference has no publicity agent. We would appreciate it very much if members of the profession would familiarize themselves with what the Conference is attempting to do and assist us with your constructive criticisms and suggestions.

"While it is realised by your commissioners that the decision as to the enactment of uniform statutes is one to be made by each provincial legislature, we feel it is only through the general adoption of these statutes that the best results from uniformity of legislation can be obtained."

MINUTES OF MEETING

NOTE :—The Conference held the following sessions :

August	12th.	10.30 a.m.—12.30 p.m.
		2.00 p.m.— 4.30 p.m.
		8.30 p.m.—10.30 p.m.
"	13th.	9.00 a.m.—12.00 noon
		2.00 p.m.— 4.15 p.m.
		8.30 p.m.—10.30 p.m.
"	14th.	9.00 a.m.—12.00 noon
		1.30 p.m.— 3.00 p.m.
"	16th.	9.00 a.m.—12.00 noon
		2.00 p.m.— 4.00 p.m.
		8.30 p.m.—10.30 p.m.
"	17th.	9.00 a.m.—12.00 noon

FIRST DAY

Thursday, August 12th, 1937.

The Conference assembled at 10.30 a.m. at the Royal York Hotel, Toronto, 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.

Brief addresses were made to the Conference by Hon. Paul Leduc, K.C., Attorney-General of Ontario, by Hon. J. W. Hugill, K.C., Attorney-General of Alberta, and by Leighton Foster, K.C.

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

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

Messrs. O'Meara, Porter, McLean and Lang 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.

A verbal report was given by the Nova Scotia Commissioners concerning the preparation of a draft uniform *Married Women's Property Act* (1936 Proceedings, App. A.). The matter was referred to the Manitoba Commissioners with instructions to submit next year a draft Act on this subject.

The Report of the Ontario Commissioners on the *Bills of Sale Act* (1936 Proceedings, p. 14) was presented by Mr. Lang and discussed by the Conference.

(*Appendix A.*)

The following Resolution was then passed :

RESOLVED that inasmuch as the uniform *Bills of Sale Act* has been enacted in several provinces and the point referred to in the Report of the Ontario Commissioners has not been raised before the Courts and that as, in the opinion of the Conference the words "without notice" add nothing to the section and that any change might be interpreted as an intention to alter the law, this Conference decides against proposing any change at the present time.

The Report of the Ontario Commissioners on the draft *Reciprocal Enforcement of Judgments Act* (1936 Proceedings, p. 14) was received and discussed, whereupon the following Resolution was adopted:

RESOLVED that in the opinion of the Conference the adoption of a policy of international reciprocal enforcement of judgments is desirable and that the Dominion representatives be requested to prepare a Report on the nature and scope of the legislation required to enable the adoption of such a policy together with a draft uniform Act thereon.

(*Appendix B.*)

The Report of the Ontario Commissioners on the law regarding the *Conditional Sales Act* was received, discussed and adopted.

(*Appendix C.*)

The following Resolution was adopted:

WHEREAS the uniform *Conditional Sales Act* drafted by this Conference in 1922 has not been adopted by any provinces except British Columbia, New Brunswick and Nova Scotia; and WHEREAS the remaining provinces have Acts as to conditional

sales which differ in substance between themselves as well as from the uniform draft Act; and WHEREAS the conditions of business have materially altered since 1922,

THEREFORE BE IT RESOLVED that the uniform draft *Conditional Sales Act* as amended be referred to the New Brunswick Commissioners for the purpose of submitting a new draft Act on that subject.

The Report of the Saskatchewan Commissioners on the *Landlord and Tenant Act* was received and discussed in detail.

(*Appendix D.*)

SECOND DAY

Friday, August 13th, 1937.

Discussion of the above Report was continued.

The Report of the Ontario Commissioners on the law relating to "*Commorientes*" was received and discussed.

(*Appendix E.*)

THIRD DAY

Saturday, August 14th, 1937.

The Conference resumed discussion of the Report above mentioned and the following Resolution was then passed :

RESOLVED that the Conference approve in principle the Report of the Ontario Commissioners and that the Report be referred back to the Ontario Commissioners for further consideration with the suggestion that subsection 3 of the proposed section therein contained should be re-drafted in the light of the discussion this year, and that the above Report with the section as so re-drafted should be published in the Canadian Bar Review with a request for comment thereon by members of the Bar.

The Report of the New Brunswick Commissioners on the *Partnership Registration Act* was received and the draft Act therein contained was discussed in detail.

(*Appendix F.*)

FOURTH DAY

Monday, August 16th, 1937.

Detailed discussion of the draft *Landlord and Tenant Act* (See appendix D. supra) was resumed.

The following Resolution was then passed :

RESOLVED that the draft *Landlord and Tenant Act* be referred back to the Saskatchewan Commissioners for incorporation of the amendments made this year and that it be printed in the Prpceedings of this year.

(*Appendix G.*)

IT WAS FURTHER RESOLVED by the Conference that the draft of a model Act entitled "*An Act to make uniform the law respecting Landlord and Tenant*" as revised at the present annual meeting of the Conference be approved and adopted, and that this draft Act be now recommended to the legislatures of the several provinces for enactment.

The Report of the Canadian Commissioners on the draft *Interpretation Act* (1936 Proceedings, App. H.) was considered in detail.

The following Resolution was adopted :

RESOLVED that the Secretary communicate with each local Secretary with a view to obtaining from the Government of the Dominion and of each province a fixed annual grant of $50.00 for the necessary support of the Conference.

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

(*Appendix H.*)

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

Hon. President	Hon. J. B. McNair, K.C., Fredericton, N.B.
President . . .	I. A. Humphries, K.C., Toronto, Ont.
Vice-President . .	R. Murray Fisher, K.C., Winnipeg, Man.
Treasurer	R. Andrew Smith, K.C., Edmonton, Alta.
Secretary. . .	Wilson E. McLean, Winnipeg, Man.

The Conference expressed its sincere appreciation of the value of the services rendered by the retiring President, Mr. Thom, and the retiring Secretary, Mr. MacDonald.

The Conference expressed its deepest appreciation of the hospitality and courtesy extended to it by the Hon. Paul Leduc, Attorney-General of Ontario, by the Law Society of Upper Canada, by the Ontario members of the Conference, and by various members of the Ontario 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 British Columbia Commissioners on the draft *Evidence Act* (1936 Proceedings, pp. 27-49) was received and upon Motion it was *Resolved* that consideration of this Report be deferred until next year.

The following Resolutions were then passed :

RESOLVED that in the first draft of any proposed uniform Act there should be inserted, at the end of each section, reference to relevant legislation existing in various provinces.

RESOLVED that when any proposed draft Act has been referred back to the Commissioners of any province for revision, the revising Commissioners should indicate in their revised draft any changes which they have made.

The Report of the Saskatchewan Commissioners containing a revision of the draft *Libel and Slander Act* (1936 Proceedings, App. I) was received, but on Motion consideration thereof was deferred until next year.

(*Appendix I.*)

FIFTH DAY

Tuesday, August 17th, 1937.

The Conference resumed discussion of the draft *Partnership Registration Act* supra, dealing with the re-draft of amendments prepared by Mr. Hughes arising out of the previous consideration given to the draft during the present Conference.

The following Resolution was then passed :

RESOLVED that the draft *Partnership Registration Act* be referred back to the New Brunswick Commissioners to prepare a re-draft thereof in the light of the discussion at the 1937 Conference, and that the Act as re-drafted be printed in the 1937 Proceedings together with the report submitted by the said Commissioners this year.

(*Appendix J.*)

It was *Resolved* that the draft sections for the *Interpretation Act* (1936 Proceedings, pp. 52-63) be laid over for discussion at the meeting next year.

Mr. O'Meara made the suggestion that some method be devised of having a record of the decisions arrived at by the Conference recorded so that continual changes may be obviated. A discussion followed and the suggestion was that the Secretary endeavor to arrange at each place of meeting to have competent stenographic help to take notes of decisions reached.

APPENDICES

A. Report re Uniform Bills of Sale Act.
B. Report re Reciprocal Enforcement of Judgments Act.
C. Report re Conditional Sales Act.
D. Report on Landlord and Tenant Act.
E. Report on Law relating to "Commorientes".
F. Report and Draft Uniform Partnership Registration Act.
G. Draft Landlord and Tenant Act.
H. Treasurer's Report.
I. Report containing revision of Draft Libel and Slander Act.
J. Re-draft of Partnership Registration Act.

APPENDIX A

REPORT OF ONTARIO COMMISSIONERS

Re Uniform Bills of Sale Act

The matter relating to The Uniform Bills of Sale Act referred to the Ontario Commissioners last year is covered rather fully in a memorandum prepared by Mr. Wilson McLean, which reads as follows :

"On February 15, 1936, Edwin Loftus, K.C., of Winnipeg, wrote me as follows :

> '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.'

"On February 17, 1936, I wrote to R. M. Fisher, K.C., as follows :

> 'I am in receipt of a letter under date of February 15th from Mr. Edwin Loftus, K.C., in connection with section 3, etc., of the above mentioned Act.
>
> 'In view of the fact that this is a uniform Act, would it not be advisable to communicate the contents of this letter to the Conference? I enclose two copies of the said letter for your information.'

"The point raised by Mr. Loftus in connection with section 11 of the Act is an important one and in view of the subsequent review of authorities herein it will appear that the section is not as free from doubt as it should be, especially having regard to the fact that this is a uniform Act.

"A consideration of the Manitoba legislation with respect to this subject matter is essential to a proper understanding of the cases to be noted.

"In the Consolidated Statutes of Manitoba (1880-81) there appears 'An Act respecting the mortgage and selling of Personal Property' as cap. 47. Section 1 of that Act provided that

> 'every mortgage or conveyance intended to operate as a mortgage of goods and chattels . . . shall within six days from the execution thereof be filed as hereinafter provided' . . .

Section 2 provided—

> 'In case such mortgage or conveyance and affidavit be not filed as herein provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor and as against subsequent purchasers or mortgagees in good faith for valuable consideration *without actual notice.*'

Section 8 of the Act required a mortgage which had been filed to be renewed within thirty days preceding the term of two years or otherwise it would cease—

> 'to be valid as against the creditors of the persons making the same, and as against subsequent purchasers or mortgagees in good faith for valuable consideration.'

It will be noted with respect to sections 2 and 3 that they include the words 'without actual notice' whereas these words do not appear in the renewal section, namely, section 8."

"By cap. 35, S.M. 1885, section 2 of the Act above referred to was repealed and section 1 was so amended that it provided that a chattel mortgage would be void—

> 'as against execution creditors of the mortgagor and as against purchasers or mortgagees in good faith for valuable consideration.'

It will be observed that the result of this amendment was to omit the words 'without actual notice' insofar as those referred to chattel mortgages. It did not, however, change the law with respect to bills of sale."

"The Act was consolidated as 'The Bills of Sale Act' by cap. 10, R.S.M. 1891. Section 2 of that Act provided that every sale of goods and chattels must be evidenced by writing and filed—

> 'otherwise the sale shall be absolutely void as against creditors of the bargainer and as against subsequent purchasers and mortgagees in good faith for valuable consideration without actual notice.'

Section 3 required every chattel mortgage to be evidenced by writing and filed and further provided—

> 'and every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of filing thereof and not before as against execution creditors of the mortgagor and as against purchasers or mortgagees in good faith for valuable consideration.'

Section 7 provided that every mortgage must be renewed or otherwise it would—

> 'cease to be valid as against the creditors of the persons making the same and as against subsequent purchasers or mortgagees in good faith for valuable consideration.' "

"The Act of 1891 was by cap. 31, s.m. 1900 repealed and a new Act substituted. This Act by section 3 provided that every sale must be evidenced by writing and registered—

> 'otherwise the sale shall be absolutely null and void as against the creditors of the bargainer and as against subsequent purchasers or mortgagees in good faith for good or valuable consideration.'

Section 5 required a chattel mortgage to be registered and provided that otherwise—

'it shall be absolutely null and void as against creditors of the mortgagor and as against subsequent purchasers or mortgagees in good faith for good or valuable consideration.'

Section 21 dealing with renewal of chattel mortgages required these to be renewed as therein provided otherwise they would cease to be valid—

'as against the creditors of the person or persons making the same and against subsequent purchasers and mortgagees in good faith for good or valuable consideration.' "

" 'The Bills of Sale Act' was carried forward in the revision of 1902 as cap. 11, and the same language was therein used as in the 1900 Act. The Act of 1902 was carried forward in the 1913 revision as cap. 7 with the same language used therein. In 1929 this province adopted the uniform Bills of Sale Act. Section 3 of that Act provides as follows :

'3. Every sale or mortgage which is not accompanied by an immediate delivery and an actual and continued change of possession of the chattels sold or mortgaged shall be absolutely void as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered or are valid without registration, unless the sale or mortgage is evidenced by a bill of sale duly registered; and the sale or mortgage, and the bill of sale, if any, evidencing the sale or mortgage, shall, as against creditors and such subsequent purchasers or mortgagees, take effect only from the time of the registration of the bill of sale.'

and section 11 (1) provides as follows :

'11. (1) Where a registered bill of sale evidences a mortgage of chattels, it shall, after the expiration of the period of three years from its registration cease to be valid as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered, or are valid without registration, unless, before the expiration of that period, a renewal statement accompanied by the affidavit hereinafter mentioned is registered in accordance with subsections (2) and (3).'

It will be noted that section 3 uses the words 'without notice' as does section 11 (1). Apparently at no time has Manitoba ever had the words 'without notice' in the renewal provision though as the previous discussion of the legislation indicates we have had the words 'without actual notice' in the sections dealing with chattel mortgage and bills of sale in the first instance."

"The Ontario Act by section 7, R.S.O. 1927, c. 164, provides:

> '7. If the mortgage and affidavits are not registered as by this Act provided, the mortgage shall be absolutely null and void as against creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith for valuable consideration.'

Section 8 requires every sale to be evidenced in writing and registered—

> 'otherwise the sale shall be absolutely null and void as against the creditors of the bargainer and as against subsequent purchasers or mortgagees in good faith.'

Section 24 of that Act requires every mortgage to be renewed, otherwise it will—

> 'cease to be valid as against the creditors of the person making the same and as against subsequent purchasers and mortgagees in good faith for valuable consideration.' "

"The Manitoba Act of 1880-81 as amended by 1885 was first considered in *King v. Kuhn* (1887) 4 M.R. 413. In this case the defendant held a chattel mortgage upon some oxen. It was duly filed in the first instance but after the lapse of two years it was not renewed or refiled. The plaintiff after the expiry of the two year period bought the oxen with notice that the mortgage was not paid and it was held that as against the plaintiff the mortgage was valid and effectual.

"The court said :

> 'It is true the mortgage had not been again filed with the necessary statement and affidavit required by the statute within two years from the filing thereof and the plaintiff claims that he is protected in his purchase and comes within the description of a purchaser in good faith for valuable consideration.
>
> 'It is clear from the evidence that this plaintiff bought with notice of the mortgage, and that his purchase was direct from the mortgagor.

> 'The object of refiling is simply to give notice and if a purchaser has notice independent of the refiling, it seems to me impossible that he can be said to be a bona fide purchaser. And it is only bona fide purchasers, not any purchaser, who are protected by the statute.'

Apparently in this case the plaintiff as soon as knowing about the fact that the mortgage was unpaid wrote to the clerk of the court wherein the mortgage had been originally filed and ascertained that it had not been renewed or refiled before he made the deal.

"No reference in this case was made to the change effected to section 1 by the 1885 amendment, that is to say, the omitting of the words 'without actual notice' insofar as they relate to chattel mortgages.

"The statute again was considered in the case of *Roff* v. *Krecker* (1892) S.M.R. 230. In this case the plaintiff recovered a judgment against one Harder in the County Court of Manchester, and he directed the bailiff to try to realize upon the judgment. The bailiff induced Harder to execute a chattel mortgage on certain horses to the plaintiff for the amount of the debt and costs. This mortgage was executed in October, 1891. Harder was then living and had for several years lived in the County Court Division of Manchester. The mortgage was immediately filed in the proper County Court office. No other mortgage was registered in this County Court against the horses, but at the time of taking the chattel mortgage the bailiff knew that the horses were already included in a mortgage that Harder had previously executed to the defendant and that the defendant's mortgage was registered in the adjoining County Court of Dufferin. Evidence accepted by the court was that at least the agent of the plaintiff, and in all probability the plaintiff, knew definitely that the defendant's mortgage was in existence and unpaid at the time the mortgage was taken by the plaintiff. The court consisting of Taylor, C.J., and Dubuc and Killam, J.J. held that the plaintiff's mortgage was one made in good faith and for valuable consideration and took priority over the prior unfiled chattel mortgage of the defendant (as it was not filed in the proper division it was regarded as unfiled) even if the second mortgagee had actual notice of the prior mortgage. The court drew attention to the amendment effected to the Act of 1880-81 in 1885 and declined to follow the case of *King* v. *Kuhn* supra. The Ontario cases of—

Moffat v. *Coulson* 19 U.C.R. 341
Tidey v. *Craib* 4 O.R. 696

were recited in the judgment and relied upon. Killam, J., who had taken part in the preceding decision felt that he should concur in reversing the preceding decision. He took the view that the expressions 'bona fide purchaser' or 'purchaser in good faith' referred to the transaction itself as between the transferor and the transferee, and that as the transaction as between the mortgagor and the second mortgagee and a bona fide transaction the mere fact of notice did not vitiate it. The wording of a similar Saskatchewan statute was considered in—

Ferrie v. *Meikle* 8 Sask. L.R. 161

and the full court there held that the person was purchaser in good faith within the meaning of the statute notwithstanding knowledge of a previously unregistered mortgage."

"The three preceding authorities were considered in the Supreme Court of Canada in—

Lanston Monotype Co. v. *Northern Publishing Company*
(1922) 63 S.C.R. 482.

Also the Ontario decisions were referred to. Duff, J., particularly throws doubt upon the validity of these decisions. The statute in question in this case was The Saskatchewan Conditional Sale Act. This Act required a conditional sale agreement to be in writing and filed or the seller was precluded from setting up any right of property or right of possession as against any purchaser or mortgagee from the buyer of the goods in good faith for valuable consideration. The Lanston Company sold the Phoenix Company two machines subject to lien notes. The Northern Publishing Company subsequently purchased from the Phoenix Company the machines with the full knowledge of the lien notes which had not been registered. In this case apparently the amount of the outstanding lien constituted part of the purchase price. In the circumstances the court held that the subsequent purchaser was not one taking in good faith.

"The matter was again considered in the Supreme Court of Canada in—

The Canadian Bank of Commerce v. *Munro*
(1925) S.C.R. 303.

"In this case it was the Alberta Bills of Sale Act. This statute provided that a renewal must be filed within a certain period or

otherwise the mortgage would cease to be valid as against the creditors of the person making the same and as against purchasers and mortgagees in good faith for valuable consideration.

"The bank held a chattel mortgage from one Cline. This mortgage was duly registered but a renewal was not registered. Subsequent to the time for renewal Cline sold the goods to Munro. It was found at the trial that Munro knew of the mortgagee's claim and appreciated the fact that his purchase would deprive the bank of its security. In this case Munro searched the record and found that the mortgage had not been renewed. The question was, was Munro a purchaser in good faith? The Supreme Court held that he was not a purchaser in good faith because he had knowledge that his vendor had no title or right to sell the goods. The *Moffat* v. *Coulson*, *Roff* v. *Krecker* and *Ferrie* v. *Meikle* cases were referred to. Anglin, C.J.C., says:

> 'We find it impossible to accept the view that a purchaser who knows that goods which he is buying belong to a third person and that his vendor has neither title to them or right to sell them but on the contrary is bound as between himself and such third person to protect the right and title of the latter, and who also knows that any right or title he may acquire by his purchase must be in defeasance of that of such third person, can be said, either legally or morally, to be a purchaser in good faith. He is knowingly taking part in a dishonest dealing. He is assisting his vendor to commit a fraud. He cannot establish in regard to such dealing that 'honesty and fact' which is prescribed by the words 'in good faith'. These words import a requisite of honesty in the transaction and not merely that it be real and not feigned or simulated. . . Insofar as the judgments in *Roff* v. *Krecker* and *Tidey* v. *Craib* may be contrary to these views, these decisions must be overruled.'

"The Manitoba statute was also considered in—

Banque d'Hochelaga v. *Brownstone*
(1925) 35 M.R. 62.

This decision of the Court of Appeal in Manitoba was apparently given prior to the decision in the immediately preceding case in the Supreme Court. Both the plaintiff and the defendant claimed title to a tractor under chattel mortgages from one Falconer. In 1929 Falconer owed the defendant Brownstone about $480.00. Falconer agreed to give the defendant a chattel

mortgage on the tractor but he wanted further goods on credit and the defendant was willing to supply them. It was accordingly agreed that the mortgage should be made for $750.00. The affidavit was in the usual form to cover a present existing indebtedness. In 1922 Falconer gave the plaintiff bank a chattel mortgage on certain goods including the tractor. Late in 1922 the defendant Brownstone seized the tractor under his chattel mortgage. The plaintiff bank claimed that they were mortgagees in good faith for good or valuable consideration within the meaning of section 5, cap. 17, R.S.M. 1913, and that the defendant's chattel mortgage not having a proper affidavit was null and void as against them. The judgment of the majority of the court was delivered by Fullerton, J.A. He found against the plaintiff bank on their claim that they were mortgagees in good faith. He refers to *Roff* v. *Krecker* but he does not distinctly deal with the point. Trueman, J.A., however, specifically refers to this case. He takes the view in view of the Lanston case that a chattel mortgagee who takes a mortgage with actual notice of a prior mortgage is not a mortgagee in good faith within the meaning of the 1913 Manitoba Act."

"It is interesting to note that notwithstanding the preceding Ontario decisions the courts of that province have somewhat modified their construction of their statute. See—

National Discount Corporation v. *Frech et al*
(1927) 610 L.R. 659 at 666.

Also—

Richardson v. *Noble (1934) O.W.N. 297.*

In this case a mortgage was given on certain chattels and duly registered. Subsequently the plaintiff failed to renew his mortgage. The defendant took a chattel mortgage on the property with the full knowledge of the preceding mortgage, evidently regarding himself as a second mortgagee. Subsequently a contest arising as to the priority the defendant relied upon the word of the Ontario statute. The Court of Appeal of Ontario following the Munro case held that the defendant was not a purchaser in good faith.

"It will be noted in all of the authorities which have been cited that the subsequent mortgagee knew of the existence of an unpaid prior mortgage which had not been either filed or renewed, as the case may be. In not one of the instances does the notice consist merely of a search disclosing a previously filed mortgage which had not been renewed. In a number of instances particularly the two cases which have gone to the

Supreme Court the subsequent purchaser was definitely either purchasing subject to the prior mortgage or aware of the fact that he was defeating the prior mortgagee. Also none of the decisions are given on a statute where the words 'without notice' are used. They all turn on the element of good faith.

"A number of the states of the United States have statutes similar to the Ontario and Manitoba statute of 1913 and before. In no case can I locate a statute which is similar to section 11 of the 1929 Manitoba Act, namely, in including the words 'without notice'.

"I have examined the authorities cited in vol. 11, Corpus Juris, p. 520, note 54, wherein the matter of unrenewed chattel mortgage is dealt with and in every authority under a similar statute to the Canadian Statutes it has been held that where there is actual notice of the existence of the prior mortgage the subsequent mortgagee cannot be said to be a mortgagee in good faith. Reference might be had also to an annotation in 51 Am. L.R. 591. In certain of the states it is definitely stated that the filing of the mortgage will cease to be notice as against subsequent purchasers in good faith. Even in these cases certain of the decisions are that if actual notice other than the filing is obtained a subsequent purchaser is not one in good faith. See—

First State Bank v. *McGregor etc. Co.* 251 Pac. 865.
Schnavely v. *Bishop* 55 Pac. 667.
Hunt v. *Grogg* 145 Pac. 136.

"The question then is, is a person who takes a chattel mortgage or buys subsequent to the time for the renewal of a previous chattel mortgage which is not renewed a mortgagee or purchaser in good faith, etc., and without notice?

"A number of different situations will arise :

1. A chattel mortgage may be filed as required by the statute but not renewed within the prescribed time. After the time for renewal has gone by the mortgagor gives a chattel mortgage or a bill of sale to a third party who has no actual knowledge of the prior chattel mortgage which has not been renewed and makes no search whatsoever in the registration office.

   It would seem under the law of this province and elsewhere as it stood previous to the year 1929 that the third party might successfully rely on the failure to renew if he had no knowledge that the previous mortgage was unpaid or unsatisfied.

Do the words 'without notice' in section 11 mean that it cannot today be argued that the subsequent purchaser in this instance is one in good faith and without notice"

2. A chattel mortgage is duly filed but not renewed within the prescribed time. An intending purchaser searches in the registry office or obtains a certificate of search and there is disclosed to him a prior unrenewed mortgage. He makes no inquiries whatsoever from either the original mortgagor or the mortgagee and purchases the goods for a proper consideration.

   In this instance is the purchaser one in good faith and without notice?

   Suppose this purchaser inquires of the mortgagor who wrongly informs him that the mortgage has been paid or satisfied. He accepts his word and this is incorrect. Should the purchaser have gone to the prior mortgagee and inquired from him? If he does not is he a purchaser in good faith and without notice?

3. A chattel nortgage is given and duly registered in the proper time but is not renewed as required. A purchaser who knows about the prior mortgage and that it is unpaid buys the chattels in question paying a proper consideration and relying on the failure to renew as giving him good title. It would appear upon the authorities which have been decided on the law prior to 1929 that he is not a purchaser in good faith. The statute at that time did contain the words 'without notice' yet notwithstanding this the Supreme Court have held that on these facts the subsequent purchaser was not one in good faith.

"To restate the problem; has the Uniform Act changed the law when the words 'without notice' were added to the two sections in question? It is arguable that 'notice' may be given by the unrenewed prior mortgage. The words are not 'without actual notice' but 'without notice'.

"If 'good faith' was intended to relate merely to the character of the transaction as suggested by Killam, J., in *Roff* v. *Krecker*, the *Lanston case* and the *Munro case* have definitely decided that these words standing alone have a much wider connotation, that is to say, they relate not merely to the payment of a proper consideration but also to the character of the transaction with relation to the defeating of third parties' rights. If

the words 'good faith' are to be given a restricted meaning and by reason of the addition of 'without notice' then a change in the law has been effected.

"If the meaning of section 11 is that 'without notice' requires more than an unrenewed prior registration then the law is as the Supreme Court has laid down under the earlier wording which omitted these two words. On the other hand if the unrenewed prior registration constitutes notice then at no time is a renewal really necessary to preserve the rights of a prior mortgagee insofar as subsequent purchasers or mortgagees are concerned. It is otherwise with respect to creditors. If it only applies as notice when a search is made then it favours the careless against the one who inquires and draws the inference, perhaps wrongly, that because the mortgage has not been renewed that it has been satisfied. The person who searches is penalized for not inquiring whereas the person who does not search is not.

"My conclusion rightly or wrongly is that a bona fide purchaser, that is one paying a proper consideration and not purchasing for an ulterier motive, who has no actual notice that the prior mortgage is unpaid is a bona fide purchaser without notice.

"However, it would not take much under those circumstances, it seems to me, to put a person on his guard and in the absence of inquiry in such case he might be held to be otherwise than a bona fide purchaser without notice. An American decision reported in 12 N.W. 1926 lays it down that the burden of showing good faith and lack of notice is on the subsequent purchaser or mortgagee. If this is good law a subsequent purchaser or mortgagee may have a heavy burden to discharge under section 11.

"In view of the possible doubt, would it not be better to adopt a new subsection to section 11 providing that a chattel mortgage which is not renewed shall cease to be notice after the period for renewal expires? Certain American Acts have a similar provision."

Mr. McLean's memorandum suggesting the adoption of a new subsection to section 11 providing that a chattel mortgage which is not renewed shall cease to be notice after the period for renewal expires, raises a very interesting point. That point briefly stated is—what is the effect of failure to renew a chattel mortgage which has not been discharged, where the statute uses the words "without notice"?

The memorandum contains a very careful analysis of the legislation in Manitoba in this connection and a summary of the relevant case law. The result of this analysis is to indicate that there is no authority in Canada as to the interpretation of the words "without notice", and it is suggested that difficulties of construction should be anticipated by making express provision in the Act.

On page 7 the result of the examination of the cases is expressed in these words: "None of the decisions are given on a statute where the words 'without notice' are used. They all turn on the element of good faith." The probable reason for this trend in the cases is that the statute law throughout Canada has, generally speaking, been concerned with "good faith" and "valuable consideration".

It is clear from the memorandum itself that from the year 1885 until 1929 the elements of good faith and valuable consideration were the substance of the provisions relating to chattel mortgages in the Manitoba statute. It is also noted in the memorandum that the Ontario statute fixes upon the elements of good faith and valuable consideration. It appears that corresponding statutes in Alberta, British Columbia and New Brunswick at least of the other Provinces use the words "good faith" and "valuable consideration".

It would, therefore, appear that the introduction of the words "without notice" constitute a change in the law. It is not the object of a uniform Act to effect changes in the law however desirable in themselves. It is much less the object of a uniform Act to raise new points of doubt.

It is obvious from the memorandum that the statute in its present form raises a point of doubt. The question is how should this doubt be removed.

Because the words "without notice" effect a change in the law, it is submitted that the uniform Act should be amended not by the insertion of the proposed new subsection, but by the deletion of the words "without notice".

I. A. HUMPHRIES

D. W. LANG

E. H. SILK

APPENDIX B

RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT

Report of the Dominion Representatives and the Ontario Commissioners.

At the 1935 Conference the matter of extending the Reciprocal Enforcement of Judgments Act to render it of an international scope was referred to the Ontario Commissioners who were to confer with the representatives of the Dominion and report thereon next year.

At the 1936 Conference, Mr. J. E. Read, K.C., one of the Dominion representatives, presented a draft report which, after consideration, was referred to the Commissioners for Ontario in co-operation with the Dominion representatives 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.

Some difficulty was experienced in arranging for a meeting largely because the Dominion representatives were engaged in a series of conferences with provincial officials respecting proposals for uniformity with respect to company law throughout Canada and uniformity of regulations under the respective Security Frauds Prevention Acts. There was the further difficulty that appeals to the Privy Council and international arbitrations occupied a very considerable amount of the time of the Dominion representatives. When it became evident that the attendance of Mr. Read, whose report to the 1936 meeting was to be the basis of the further reference, could not be facilitated by further delay, a meeting was held in Toronto when the problems referred to at the 1936 Conference were carefully considered.

In the discussions it was agreed that the subject of international reciprocal enforcement of judgments was of great and increasing importance while at the same time it was recalled that there had been a conspicuous lack of unanimity in the past among the respective Provinces.

Although the Model Act adopted in 1924, as amended the following year, has been adopted by the Provinces of Alberta, British Columbia, New Brunswick, Ontario and Saskatchewan, replies received from the Provinces in 1924 to a query concerning the proposed international scope of such a measure appear to have made it clear that the Provinces at that time were not prepared to take such a step.

Bearing in mind the efforts now being put forth by both provincial and Federal Governments towards facilitating the expansion of Canadian export trade and the extent to which this trade has been increasing, the opinion of the meeting was as pointed out in Mr. Read's report—"Looking at the problem from a long time point of view it can safely be said that Canadian interests would not have anything to lose by the adoption of the policy under consideration and would have a considerable amount to gain".

Under these circumstances it has been felt desirable that efforts should be made to canvass the situation as existing in each of the Provinces in order that a more effective report may be presented on the first of the three items referred by the 1936 meeting—"A report on the desirability of adopting the policy of international reciprocal enforcement of judgments".

To this end it is suggested that the respective provincial Commissioners might be requested to indicate their views of the attitudes of their respective Provinces as to the desirability of adopting such a policy. It has been felt that only after securing some indication of the situation in this regard among the Provinces could an effective report be prepared as to the "nature and scope of the legislation required to enable the adoption of such a policy", which is the second subject of reference from the 1936 meeting of the Commissioners.

The development of Mr. Read's report on the present position under the Model Acts, 1924 and 1933, the third subject of reference can only be dealt with effectively it is felt, after the first subject has been determined.

W. P. J. O'MEARA	I. A. HUMPHRIES
C. P. PLAXTON	D. W. LANG
J. E. READ	E. H. SILK

Toronto, 29th June, 1937.

APPENDIX C

THE CONDITIONAL SALES ACT

Report of Ontario Commissioners

At the 1936 meeting of the Conference it was resolved that the matter relating to The Conditional Sales Act referred to the Ontario Commissioners at the 1935 Conference be recommitted to them for preparation of a revised report to be circulated amongst the Commissioners who are present at the next annual meeting.

The matter relating to The Conditional Sales Act, referred to above, is contained in a letter signed by John Cowan, Manager, Canadian Credit Men's Trust Association, Limited, appearing as appendix "J" at page 65 of the Proceedings of 1934. Subsection 1 of section 3 of the draft Uniform Conditional Sales Act relates to the effect of non-registration of a conditional sales contract. The section was amended in 1929 and the words added in that year are indicated in italics where the section is quoted on page 65 of the 1934 Proceedings. So far as we are able to ascertain, the section since its amendment has only been the subject of judicial interpretation on one occasion and that was in the case of the Lytton Canners Limited in the Supreme Court of British Columbia on the 28th of October, 1933. The case does not appear to be reported and the above information is taken from Mr. Cowan's letter, which also indicates that the decision of Mr. Justice Robertson in that case "was that the added words were all governed by the phrase 'for the purpose of enforcing the rights of such creditors but not otherwise', and, therefore, that the Act only made unregistered sales void against Trustees in Bankruptcy if, at the date of the bankruptcy some one creditor at least of a bankrupt buyer had obtained a judgment against the debtor for his debt".

It is submitted in the letter that such a conditional sale should be void as against "assignees for the general benefit of the buyers' creditors, trustees of the property of the buyer under The Bankruptcy Act, liquidators of the buyer under The Winding-up Act, or under any Statute of the Province in a compulsory winding-up proceeding". In the proposed section the rights of subsequent purchasers or mortgagees claiming from or under the buyer in good faith, for valuable consideration and without notice, and as against creditors of the buyer who at the time of becoming creditors had no notice of the provision, would be preserved as under the present section.

If the indication in Mr. Cowan's letter of the effect of the Lytton Canners case is correct, and as we have been unable to locate a report of the case we presume it to be so, the present situation under the Act is that if one of the creditors represented by a trustee, or other person having a similar capacity, happens to have obtained judgment the gate is opened for all the creditors, regardless of their sins or other omissions, while if it happens that no creditor has obtained judgment all of the creditors are out of luck. The words "out of luck" are used intentionally because for a creditor who has not obtained judgment to be given a right by reason of another person whom he does not know but who also happens to be a creditor having obtained judgment can be described only as "luck". If, therefore, a group of creditors are to be given certain rights because one of their number happens to have obtained judgment, it is the view of your Commissioners that in order to render the law uniform in all cases so that the rights of creditors will not be dependent upon the obtaining of judgment by one of them, whether he be a large creditor or a small creditor, the proposed amendment should be approved by this Conference. However, having regard to the fact that the section appears to have been interpreted, as Mr. Cowan indicates, in only one case which does not appear to have been recorded in any of the regular reports, it would seem advisable to allow the section to stand in its present form until some further indication of its meaning as interpreted by the courts is available, and your Commissioners recommend accordingly that no amendment be adopted by the Conference at this time.

If, however, it should be determined to adopt the section proposed in Mr. Cowan's letter, the wording of clause 3 (c), which replaces much of the wording appearing in italics on the previous page, should be considered. The omission of the words "a person suing on behalf of himself and other creditors" should be considered.

In concluding this report your Commissioners desire to recommend that where an amendment to an Act already adopted by the Conference is to be considered, it should be referred to Commissioners representing a province where the uniform Act has been adopted in order that the proposed amendment may be discussed with solicitors having actual knowledge of the operation of the Act.

I. A. HUMPHRIES,
D. W. LANG,
E. H. SILK.

Toronto, July 5th, 1937.

APPENDIX D

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

This Act was considered section by section at the 1935 Conference and was referred to the Saskatchewan Commissioners for revision in the light of discussion at that meeting.

The Act appears on pages 58 to 85 of the Proceedings of the 1935 Conference.

This report indicates by reference the provisions which were passed without amendment at the 1935 Conference and sets forth the amendments made at that Conference and the amendments proposed by your Commissioners in the light of discussion at that Conference, the Act being dealt with section by section.

Section 1—Passed.

Section 2 (*a*)—Passed.

Section 2 (*b*)—Stood over, the suggestion having been made that the mines regulations of the various provinces might require to be considered.

Recommendation.—No change in this respect.

Insert before the words "mines and minerals" in the seventh line the words "for the purpose of this paragraph".

Section 2 (*c*)—This paragraph was amended by striking out the words "means and" and the words "every person who makes any assurance of land whereby any rent is reserved by condition".

The paragraph now reads as follows:

(c) "Landlord" includes every lessor, every owner, every person giving or permitting the occupation of land and their respective successors in title.

Stood over for further consideration.

Recommendation.—No further change.

Section 3—Was fully discussed in 1935 and 1936 and stands for further consideration.

Recommendation.—Delete the section.

New Heading.

Recommendation.—Place the heading "Covenants and Conditions" between "Part 1" and the heading "Covenants running with the Reversion".

Section 4 (1)—The word "the" was substituted for "his" in the second line and the subsection as so amended was passed.

Section 4 (2)—Passed.

Section 4 (3)—Passed.

Recommendation.—Delete the words "as aforesaid" at the end of the subsection and insert "so" before the word "becomes".

Section 4 (4)—Passed.

Section 5 (1)—Passed.

Recommendation.—Delete the word "aforesaid" in the line next to the last.

Section 5 (2)—Passed.

Section 5 (3)—Passed.

New provisions—Insert after section 5 sections 3 and 5 of the Saskatchewan Act, as set forth in Schedule A hereto. Similar provisions appear in the Ontario Act (as. 3 and 6) and in the Manitoba Act (ss. 3 and 6)—Taken from 32 Henry VIII, c. 34, ss. 1 and 2.

Section 6—Passed.

Section 7—Passed.

Section 8—Passed.

Section 9—Passed.

Section 10—Passed.

Section 11—This section was struck out.

Section 12—Passed.

Section 13 (1)—Passed.

Recommendation.—Strike out the words "or property" in the third line.

Section 13 (2)—Passed.

Section 14—Passed.

Section 15—Passed, except paragraph (e), in substitution for which the following was proposed :

(e) "Tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives.

The paragraph stands for further consideration.

Recommendation.—No further change.

Section 16 (1)—Passed.

Section 16 (2)—Passed.

Section 16 (3)—The word "whether" was substituted for the word "although" in the first line, and the subsection was passed.

Section 16 (4) (10)—Passed.

Section 17—In the sixth and seventh lines the following words: "or in any action or upon summary application to the Court brought by"

were altered to read as follows :

"or in any action brought or application made to the Court by"

Stood over with reference to the type of machinery necessary for the application to the Court.

Recommendation.—No further change.

Section 18—Passed.

Section 19—The last line of subsection (2) was struck out, and it was suggested that the remainder of the subsection be included in subsection (1), as in the Ontario and Manitoba Acts.

That suggestion would be carried out by adding at the end of subsection (1) the words "unless a contrary intention appears".

Recommendation.—Insert these words after the word "not" in the fourth line of the subsection.

Section 20—Passed.

Section 21 (1)—The words "in writing" in the third line were struck out.

Section 21 (1) (a)—The word "clear" was struck out.

Section 21 (1) (b)—The word "clear" was struck out.

Section 21 (1) (c)—The following paragraph was suggested.

(c) in the case of a tenancy from year to year, three months' notice, to take effect upon the anniversary of the last day of the original tenancy or if a letting were originally from year to year then upon an anniversary of the last day of the first year thereof.

Recommendation.

(c) in the case of a tenancy from year to year, three months' notice ending, in the case of a tenancy originally from year to year, with an anniversary of the last day of the first year thereof, and in the case of all other tenancies from year to year, with an anniversary of the last day of the original tenancy.

Section 21 (2)—The words "has expired or been" in the second line were struck out and the word "is" was substituted therefor, and reference was made to section 23 for wording.

Recommendation.—Strike out subsection (2) and substitute the following :

> (2) When a tenant, upon the determination of his lease, whether created by writing or by parol, remains in possession with the consent, express or implied, of the landlord, he shall be deemed to be holding subject to the terms of the lease, so far as they are applicable :

In the proviso to this subsection strike out the words "which has expired or been determined".

Section 22—Passed.

Section 23—Was amended by changing the words "had not been" in the last line to "were not".—Passed.

Section 24—Passed.

Section 25 (1)—Passed.

Section 25 (2)—Was amended by striking out the word "justly" in the first line; by striking out the word "taking" in the second and third lines and substituting "making"; and by striking out the word "expenses" in the last line and substituting "costs of the distress".—Passed.

Section 26—Passed.

Recommendation.—Transpose and place before section 28 under the heading "Property liable to Distress".

Section 27—Passed.

Section 28—This section was discussed at length and stands for further consideration.

Recommendation.—Strike out this section and sections 29 and 30 and redraw and re-arrange them along with section 26 in the manner set forth in Schedule B to this Report.

Section 29—Passed.

Section 30—Passed.

Recommendation.—In the fourteenth line of subsection (2) strike out the words "as aforesaid".

Section 31—Passed.

Recommendation.—In subsection (2) strike out the words "as aforesaid" in the first line; change "rent" to "debt" in the fourth line; and strike out the word "justly" in the last line.

In subsection (4) change "proceeding" to "notice given".

Section 32—Passed.

Section 33 (1) (2)—Passed.

Section 33 (3)—Was amended by striking out the word "charges" in the fifth line and substituting "costs".

Sections 32 and 33—These sections appear to be out of place under the heading "Set-Off against Rent".

Recommendation.—Place over section 32 the heading:

"Impounding, Appraisement and Sale"

and transpose sections 32 and 33 and the new heading and place them after section 28.

Section 33, subsection (3), should be a separate section.

Section 34 (1)—The meaning of the words "the preferential lien of the landlord for rent" was queried, and reference was made to the New Brunswick statute, R.S.N.B. c. 169.

It was also suggested that after the word "restricted" in the sixth line there be added the following :

"to an amount not exceeding the value of the distrainable assets and".

Recommendation.—Strike out the subsection and substitute the following :

> (1) In case of an assignment for the general benefit of creditors, or in case a receiving order in bankruptcy or an authorised assignment has been made against or by a tenant, the right of the landlord to distrain or realize his rent by distress shall cease from and after the date of the assignment or receiving order and the assignee or trustee shall be entitled to immediate possession of the property of the tenant; but in the distribution of the property of the tenant the assignee or trustee shall pay to the landlord, in priority to all other debts, an amount not exceeding the value of the distrainable assets and restricted to the arrears of rent due during the period of three months next preceding and the rent for the three months following the execution of the assignment, and from thence so long as the assignee or trustee retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee or trustee for the period of his occupation.

Note.—Section 126 of the Bankruptcy Act is set forth in Schedule C to this Report.

Section 34 (2)—Passed.

Recommendation.—Strike out the words "or in case an order is made for the winding up of an incorporated company" in the third and fourth lines.

Strike out the words "in any such case" in the sixth line.

Strike out the word "liquidator" in the seventh and twentieth lines.

Section 35 (1)—Passed.

Recommendation.—Strike out the word "liquidator" in the first line.

Section 35 (2)—Passed.

Recommendation.—Strike out the words "or a winding up order has been made" in the second and third lines.

Strike out the word "liquidator" in the sixth line.

Insert "or" before the word "bankrupt" in the twelfth line, and strike out the words "or insolvent company" in the same line.

Section 35 (3)—Passed.

Sections 34 and 35—Transpose along with the heading over section 34 and place after section 39.

Section 36—Stood over, with instructions to put a limitation as to amount of rent and to see the Manitoba Act, section 48 (2).

This section is the same as that in Ontario, New Brunswick, British Columbia and Saskatchewan, but it was evidently thought that the Manitoba provision should be followed.

Recommendation.—Strike out the words "one year's rent" at the end of subsection (1) and substitute the following:

"three months' arrears of rent when the same is payable quarterly or more frequently or to more than one year's arrears when the same is payable less frequently than quarterly."

Strike out subsection (2) and substitute the following :

(2) If such arrears exceed three months' rent when the rent is payable quarterly or more frequently or one year's rent when the rent is payable less frequently than quarterly, the party at whose instance such execution is sued out, on paying to the landlord or his bailiff the three months' arrears in cases where the rent is payable quarterly or more frequently or the one year's rent in other cases, may proceed to execute his judgment.

Section 37—Passed.

Section 38—Was amended by striking out the word "justly" in the first line; by transposing "be" at the beginning of the fifth line and placing it after "therefore"; and by inserting "be" before "deemed" at the beginning of the sixth line.—Passed.

Section 39 (1)—Was amended by changing "23" in the first line to "25"; and by changing "takes" in the second line to "makes".—Passed.

Section 39 (2)—Passed.

Recommendation.—Change "taken" to "made" in the fourth line.

Section 40—Passed.

Recommendation.—Strike out the words "remainder or" in the sixth line.

Section 41—Passed.

Sections 40 and 41—

Recommendation.—Transpose these sections, along with the heading "Overholding Tenants", and place them at the beginning of Part III before the heading "Proceedings against Overholding Tenants"; also place under the heading "Overholding Tenants" the sub-heading "Liability of Tenants Overholding".

Part III would then commence as follows :

Part III

Overholding Tenants.

Liability of Tenants Overholding.

40.

41.

Proceedings against Overholding Tenants.

58 - 65.

Section 42—Passed.

Section 43—Passed.

Recommendation.—In subsection (1) strike out the words "or remainder" in the second and last lines.

Section 44—Passed.

Section 45—Passed.

Section 46—Passed, with the exception of clause (b).

Recommendation.—At the beginning of the section insert the words "Unless otherwise provided in any lease".

As to clause (b), the words "a fair proportion of the rent for the period", etc., were criticized as being ambiguous.

Recommendation.—Strike out the words "a fair proportion of the rent for" and substitute the words "the proportion of the yearly rent applicable to".

Sections 47-57.—These sections (Part II of the Act) provide a summary procedure in case of disputes as to distresses.

Recommendation.—Omit these sections.

Section 58 (1)—Passed, subject to a query as to the words "has expired or been determined".

Recommendation.—Strike out all the words down to and including "or put an end to" in the seventh line and substitute the following :

> "When a tenant, upon the determination of his lease or right of occupation, whether created by writing or by parol."

Section 58 (2)—Passed.

Section 58 (3)—Passed.

Recommendation.—Strike out the words "to the complainant" in the third line and substitute the words "of the land".

Section 58 (4)—Amended and redrawn. The subsection now reads as follows :

> (4) A copy of the Judge's appointment and of the affidavit on which it was obtained, and copies of the documents to be used upon the application other than of the instrument creating or containing the lease or right of occupation, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition to every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles.

Section 59—Amended by striking out the words "as follows" and substituting "to".—Passed.

Section 60—Amended by striking out "A Judge of the . . . . . Court" and substituting "The Judge".—Passed.

Section 61—Passed.

Section 62—Passed.

Section 63 (1)—Passed.

Section 63 (2)—Amended by striking out all the words after the word "writ" in the sixth line.—Passed.

Section 63 (3)—The part of the subsection following the word "orders" in the fourth line was queried, and the suggestion was made that it should be left to each province to deal in its own way with the method of collection of costs.

Recommendation.—Strike out all the words after "statutes" in the fourth line and add a new subsection as follows:

(4) An order for the payment of costs by the Judge may be filed in the office of the of (insert title of Court) in which the demised premises are in whole or in part situated and shall thereupon become a judgment of the said Court.

Add to subsection (3) the following :

"or may order payment of a lump sum by way of costs."

Section 64—The necessity of this section was questioned in view of the provisions of section 61.

Recommendation.—Retain the section.

Section 65—Passed.

New Section—It was suggested that after section 65 a new section should be inserted saving the rights of the landlord, along the same lines as the saving provision in favour of the tenant which appears as section 57.

Recommendation.—Insert after section 65 the following section :

"Nothing in this Part shall take away or affect any remedy which a landlord may have against his tenant or require a landlord to proceed under this Part instead of by bringing an action".

It was further suggested that this new provision and section 57 might be placed among the miscellaneous provisions at the end of the Act.

Recommendation.—No further change.

Heading over Section 66—The question was raised as to whether the portion of Part III headed "Summary Proceedings for Non-payment of Rent" should be a separate Part of the Act.

Recommendation.—Insert "Part " over the above heading.

Section 66 (1)—It was thought that three days was not sufficient time to allow for payment of rent. It was also suggested that there might be no fence on the premises upon which to post a notice and reference was made to section 658 of the Criminal Code. Instructions were also given to consider section 29 (b) of R.S.B.C. c. 130, as to covenants other than those relating to payment of rent.

Recommendation.—Change "three" to "seven" in the first line.

Strike out the words :

"which demand shall be served upon the tenant or upon some grown-up person upon the premises, or if the premises be vacant, be affixed to the dwelling or other building upon the premises or upon some portion of the fence thereon"

and substitute the following :

"which demand shall be served upon the tenant either by delivering it to him personally or, if he cannot be conveniently met with, by leaving it for him at his last or most usual place of abode with an inmate thereof apparently not under sixteen years of age."

Strike out the words "situate or partially situate" in the ninth and tenth lines and substitute "in whole or in part situated".

Section 66 (2)—Passed.

Section 66 (3)—Amended by inserting "D" after the word "Form" in the last line.

A draft Form D is set forth in Schedule D to this report.

Section 66 (4)—(6)—Passed.

Section 67 (1)—Was amended to read as follows :

"The Judge may by order award the successful party his necessary and proper disbursements and such solicitor costs and counsel fee as the Judge may see fit."

Instructions were given to make the subsection clear.

Recommendation.—The Judge may by order award costs according to the tariff of costs from time to time in

force under (*insert title of appropriate statute*), or may order payment of a lump sum by way of costs.

Section 67 (2)—Passed.

Section 67 (3)—Was amended by striking out the words "or Police Magistrate"; and by striking out the words "wholly or partially" and substituting "in whole or in part". Passed.

Section 68—Was amended by striking out the words "or Police Magistrate".

The necessity of the words after "Judge" in the second line was queried.

Recommendation.—Strike out the section and sunstitute the following :

> An appeal shall lie from the order of the Judge made under section 66 to (*insert title of Appellate Court*) and the provisions of (*insert titles of appropriate statutes*) as to appeals shall apply, respectively, to such an appeal.

Section 69—Struck out.

New Heading—

Recommendation.—Insert the following before section 70:

"Part"

"Miscellaneous".

Section 70—Passed.

Section 71—Passed.

Section 72—Was amended by striking out the words "the day upon which it is assented to".—Passed.

Respectfully submitted,

D. J. THOM,
J. P. RUNCIMAN.

Regina, July 3, 1937.

SCHEDULE A.

(See Page 2 of Report)

Saskatchewan Landlord and Tenant Act—sections 3 and 5.

3. All persons being grantees or assignees of land under lease and their executors, administrators and assigns, shall have and enjoy like advantage against the lessees, their executors, administrators and assigns, by entry for non-payment of the rent or for doing of waste or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit and remedies, by action, for the non-performance of other conditions, covenants or agreements, contained and expressed in the indentures of their leases, demises or grants against all and every of the said lessees, their executors, administrators and assigns, as the lessors or grantors themselves or their legal representatives might have had and enjoyed at any time or times.

5. All lessees and grantees of lands, tenements, rents or any other hereditaments for term of years, life or lives, their executors, administrators and assigns, shall and may have like action, advantage and remedy against all and every grantee or assignee of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their leases, as the same lessees or any of them, might and should have had against their said lessors and grantors or their legal representatives.

SCHEDULE B.

Property Liable to Distress

Sections 26, 28, 29 and 30.

These sections deal with different phases of this matter, and it would appear that section 28, on account of the inclusion therein of different phases, is ambiguous and difficult of construction.

The sections deal with the following matters :

1. Only goods on the premises are liable to distress.

   There are two exceptions to this rule, namely :

   (a) Horses, cattle, etc., on neighbouring highway;

   (b) Goods fraudulently removed.

2. Only the goods of the tenant are liable to distress.

At common law any goods on the premises were liable to distress, no matter to whom they belonged. The Act reverses that rule and states that only the goods of the tenant are liable to distress—subject to certain exceptions.

3. At common law growing crops and cocks and sheaves of corn, etc., were not liable to distress. The Act declares that crops on the premises whether growing or *severed* are liable to distress. The reference to severed crops is confusing because, with the exception of cocks and sheaves, severed crops are distrainable, being goods of the tenant.

It is submitted therefore that the reference to severed crops should be omitted and that special provision should be made with regard to cocks and sheaves.

Authority should also be given to cut, gather and thresh growing crops.

It appears that these different phases of the matter should be dealt with separately and the following redraft is submitted for the consideration of the Conference.

Property Liable to Distress.

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

29. The landlord may take under a distress for rent any horses, cattle, sheep, swine, poultry, fowl, livestock, and other domestic animals which are grazing, pasturing or feeding upon any highway or road allowance or upon any way belonging or appertaining to the premises in respect of which the rent distrained for is payable.

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

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

(2) In case any person encounters any resistance in doing any of the acts and things which he is authorized by subsection

(1) to do, he may call upon any peace officer to assist him in overcoming that resistance, and such person in the presence of a peace officer and all peace officers are and each of them is hereby empowered to use such force as is reasonably necessary for the purpose of overcoming that resistance.

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

33. A landlord may take under a distress for rent any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent.

34.—(1) Subject to the provisions of subsection (3) a landlord may take growing crops as a distress for rent, and may cut, gather, make, cure, thresh, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises, then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charge of such distress and sale in the same manner as other goods and chattels may be seized, distrained and disposed of.

(2) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

(3) If, after a distress of growing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured, threshed or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the growing crops so distrained shall be delivered up to the tenant.

(4) Where growing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or market the same.

(5) Any person purchasing growing crops at such sale shall be liable for the rent of the land upon which the same are growing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it.

35. No goods and chattels shall be liable to be taken under a distress for rent excepting the goods and chattels of the tenant and :

(a) goods and chattels which are claimed by a person other than the tenant;

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

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

(iii) being the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative of the tenant who lives upon the premises in respect of which the rent distrained for is payable as a member of the household of the tenant;

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

(c) goods and chattels which have been exchanged between the tenant and another person, or which have been borrowed by the one from the other, for the purpose of defeating the claim of or the right of distress by the landlord.

SCHEDULE C.

Section 126 of the Bankruptcy Act.

Rights of Landlord.

126. When a receiving order or an assignment is made against or by any lessee under this Act, the same consequences shall ensue as to the rights and priorities of his landlord as would have ensued under the laws of the province in which the demised premises are situate if the lessee at the time of such receiving order or assignment had been a person entitled to make and had made an abandonment or a voluntary assignment of his property for the benefit of his creditors pursuant to the laws of the province; and nothing in this Act shall be deemed to suspend, limit or affect the legislative authority of any province to enact any law providing for or regulating the rights and priorities of landlords consequent upon any such abandonment or voluntary assignment; nor shall anything in this Act be deemed to interfere or conflict with the operation of any such provincial law heretofore or hereafter enacted in so far as it provides for or regulates the rights and priorities of landlords in such an event.

SCHEDULE D.

(See Page 10 of Report)

FORM D.

(Section).

Order for Possession.

In the matter of landlord,

and

tenant,

and "The Landlord and Tenant Act".

Upon reading the notice of demand in this case, the affidavit of service thereof, the affidavit of proof of the terms of the demise, of the summons issued herein from this court and the affidavit of service thereof on the said tenant, and no cause being shown by said tenant upon the return of said summons (*or*, and the said tenant appearing, but failing to disprove the allegations of said landlord, *as the case may be*), I do order that the said tenant do, upon the production to him of this order, forthwith deliver up possession of the premises in question, namely (describe as in notice and summons), to the said landlord, or his proper agent or attorney, of whose authority the possession of this warrant shall be sufficient proof; and in case of refusal by said tenant so to deliver up possession, or of said tenant being absent or said premises vacant, I do hereby, in accordance with the provisions of the statutes in that behalf, authorize a bailiff of the County Court (*or* a bailiff of this Court), with such assistance as he may require, forthwith to proceed to eject and remove the said tenant, together with his goods and chattels, if any, from and out of the said premises, and, whether said tenant be found in possession or said premises be vacant, and put the landlord in possession thereof, that the said landlord take and hold possession thereof freed from said demise; and I do further order that the said bailiff do make the rent in arrear for said premises, amounting to the sum of together with the costs of the levy therefor, and of all necessary proceedings in respect thereof, subject to the provisions of the said Act.

I further award the sum of dollars to the said landlord, as his costs of this proceeding, to be paid by said tenant or, in default of payment, to be proceeded for and recovered as allowed by law.

Dated at this day of A.D. 19 .

(Signed)

Judge.

(Note—The order to be entitled in the Court out of which the summons issued).

APPENDIX E

COMMORIENTES

(Report of Ontario Commissioners)

At the 1936 Conference "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 a report next year."

In determining the desirability of preparing a draft section it was found necessary to consider the form of such a section. Accordingly, having arrived at the opinion that such a section is desirable and having considered the form which such a section might take, your commissioners have included in this memorandum a draft section.

In considering whether the preparation of such a section by the Conference is advisable, it is proper to indicate briefly the type of situation which will be taken care of. In brief—the proposed section would raise a presumption as to the order of death where two persons meet death in the one disaster. The legal problems which have arisen and may arise out of such a situation are numerous. The most recent case is that of—*Re Warwicker* [1936] O.W.N. 329, more fully reported in [1936] O.R. page 379. The facts of this case are briefly as follows :

Charles Frederick Warwicker was driving an automobile on the Hull-Maniwaki Highway in the Province of Quebec. He was accompanied by Douglas Warwicker, a supposedly adopted son, Jessie McLeod Warwicker, his wife, and a Miss Helen White, a nurse. The automobile left the highway, rolled down a bank and was submerged in the Gatineau River. The only survivor of the tragedy was Douglas Warwicker.

Charles Frederick Warwicker and Jessie McLeod Warwicker left joint wills, the husband leaving all his property, real and personal to the wife provided that in the event of the wife predeceasing her husband, all such property should go to Douglas McLeod Warwicker. The wife's will contained precisely corresponding privisions, so that whether the husband survived the wife or the wife survived the husband Douglas McLeod Warwicker was entitled to the property of both. However, besides the two possibilities, namely the survivorship of the husband and the survivorship of the wife, there was a further possibility of simultaneous death, so remote perhaps as to amount

to a legal fiction but nevertheless recognized in law. In the last event Douglas Warwicker would have no rights at all as neither the condition in the wife's will or that in the husband's would be performed.

Douglas McLeod Warwicker was not the legal child by birth or adoption of Charles Frederick Warwicker and Jessie McLeod Warwicker although he believed himself to be and was not aware of the real facts until after their death. Accordingly upon failure to prove that either spouse predeceased the other, the undoubted intention of the husband and wife to leave all their worldly possessions to their supposedly adopted son as indicated in both wills, would be defeated and the property would pass as upon intestacy, to actual relatives of the deceased persons to whom it was their intention to leave nothing.

Although in the Warwicker case the learned trial Judge found, upon the evidence, that the wife predeceased the husband, it was one of those cases where expert witnesses disagreed, making it difficult to determine with any degree of certainty which of the parties did in fact die first. Although the case was appealed it is understood a settlement was affected and accordingly it is impossible to determine what the decision of the Appeal Court might have been. In this particular set of circumstances, however, a section raising a presumption as to the order of death would have simplified the problem of the distribution of the estates, eliminated expensive litigation and effected the intention of the deceased persons.

In the English case of *Wing* v. *Angrave* (1860) 8 H.L.C. 183 which followed the decision in *Underwood* v. *Wing* (1855) 4 DeG., M. & G. 633, a case arising out of the same set of circumstances, the facts were similar to those in the Warwicker case and a provision raising a presumption of death would have had the effect there also of effecting the intention of the deceased persons as expressed in their joint wills instead of permitting their obvious intentions to be defeated by reason of the inability of the court to determine which of the deceased persons died first.

Other circumstances might suggest that a section raising a presumption as to the order of death is not desirable as it would defeat the second choice of a testater presumed to have predeceased his beneficiary who has in fact met death in the same disaster, but it is suggested that it would be a simple enough matter for a person sufficiently cautious to provide for a second disposition of his property, or some part of it, in the event of a named beneficiary predeceasing him, to provide also for the

event of the beneficiary and himself meeting death simultaneously. This argument however carries little weight against the desirability of such a section as the section may be made sufficiently wide to take care of it.

Another relevant case, the facts of which would seem to render the desirability of legislation of the type under consideration doubtful, is—*In re McCabe* (1922) 16 Sask L.R. 109, which is the subject of an article on the subject of commorientes and survivorship appearing in Volume 3 of "The Canadian Bar Review" (1925). In that case a question arose as to the proper devolution of an estate of which the testator (a father) and the sole beneficiary (his son) had been the victims of a cyclone which demolished the shack in which they lived and scattered its pieces over the prairie. The father was old and bedridden, the son was a young man in good health, but with artificial feet. On the facts, the learned judge was unable to determine the order of the deaths, and the contest arose between the father's heir and next-of-kin, and the creditors of the son, whose estate was insolvent. The Court held that there was no presumption that one of them survived the other, and the burden of proof was on the son's representatives to show that he had survived his father, and that since they were unable to do this, the father's representatives were entitled to the property. The writer of the article points out that under the law of Quebec where, in such circumstances, the father, being over sixty, would be presumed to have predeceased the son, the next-of-kin of the father would not have shared in the estate.

The same subject is dealt with in an article by Dr. C. A. Wright appearing in Volume 14 of "The Canadian Bar Review" (1936) and following (in point of time) the Warwicker case. The article is a helpful one and several quotations from it are here given. His opening paragraph which points out that situations such as that encountered in the Warwicker case may be expected to occur more frequently, reads :

> COMMORIENTES — Survivorship — Presumptions.—The advent of the "family automobile" has caused far-reaching changes to be made in the law of vicarious liability. To suggest that it has given rise to a difficult situation concerning testate and intestate succession may seem a far cry, but one has only to recall the numerous occasions in which an entire family has been swept out of existence in one motor accident to realize that problems of survivorship and passing of title in the case of commorientes is likely to increase.

> In the present state of the law in the common law provinces in Canada, this problem is one which not only seems destined to produce litigation, and thus places a strain on the estates involved, but such litigation itself will be based on an array of flimsy opinion evidence on which courts will be asked to make a decision of fact in situations that are all but impossible of determination. That some courts will be prone to act in such situations in accordance with their sympathies in order to reach a fair result is natural, and in no way reflects on the judicial process. On the other hand, some courts will refuse to enter into what is at best mere guesswork, and this regardless of harsh results.

Furthering the suggestion that where a section of the proposed nature is not in existence to assist the Court in its determination of the order of death, the Court may allow sympathy to enter into its judgment to effect "natural justice", Dr. Wright, after discussing the Warwicker case states :

> "Without in any way intending to be disrespectful, one may well wonder whether, had either testator left all his property to a stranger, in the event of the other predeceasing him, the same result would have followed, or whether the Court might not have felt less inclined to make a definite finding."

One further reference to Dr. Wright's article in which he suggests possible reasons why the Imperial Parliament saw fit to enact a section raising a presumption as to the order of death in 1925 is given :

> "He (Lord Cranworth) admits that it is practically impossible for two persons to die at the same time, but states that because you cannot prove which died first it is the only thing to do. It is amazing that if a court refuses to indulge in theoretical speculation as to which of two persons survived it is forced to proceed on an assumption that that is generally believed practically impossible. It is probably due to this fact, as well as the feeling, expressed by a New York Court, that 'it is as unbecoming as it is idle for a judicial tribunal to speculate or guess whether during the momentary life struggle one or the other may not have ceased to gasp first', that England departed from the position of 'no presumption' in 1925."

Before departing from the consideration of the desirability of drafting such a section it may be well to indicate that the law

is well established that no presumption as to the order of death exists in the absence of statutory enactment. An early case (*Colvin* v. *Procurator General*, (1827) 1 Hagg. Ec. 92) indicates the presence of a presumption similar to that of the French law. There are a number of cases however deciding that all are presumed to have died simultaneously; *Wright* v. *Netherwood*, 2 Salk. 593; *Taylor* v. *Diplock* (1815) 2 Philli.280; *Goods of Selwyn* (1831) 3 Hagg. Ec. 748; *Statterthwaite* v. *Powell*, (1838) 1 Curteis, Ec. 705. The writer of the earlier article in "The Canadian Bar Review" points out—"Both lines of cases, however, must be taken to be overruled by *Underwood* v. *Wing* . . . . The rule there laid down is that the order of the deaths is a pure question of fact, and if the evidence on the point is insufficient, it remains unascertainable. There is no presumption of survivorship or of simultaneous death". In such cases leave has been given to swear that both died at the same time and that there was no reason to believe that either survived the other. (In the *goods of Beynon* [1901] p. 141) and so where both were lost in a disaster to a ship, administration was granted to the next-of-kin of each. (In the *goods of Alston* [1892] p. 142,) McKay J. in *Re Warwicker* supra at p. 382, says: "There being in law no presumption of survivorship, the question for the Court is: Is there evidence, having due regard to the *onus probandi* and to the requirements of the law, from which the Court can properly make a finding of survivorship."

It may also be indicated that the fact that the ultimate beneficiary is the same in the event of either of the deceased persons surviving the other (as in the Warwicker case and the Wing case) does not dispense with the necessity of proof that the deceased persons did not die simultaneously regardless of the small possibility of such an occurrence. This was determined by the majority of the House of Lords in *Wing* v. *Angrave*.

While it may be argued that a rule of the type under discussion is artificial and arbitrary or one based merely on convenience and would result in arbitrary determinations of the devolution of property, it is difficult to argue that the results which it would effect would be more conducive to unfairness than the existing rules concerning the burden of proof as applied in the Warwicker and Wing cases. In those cases the burden of proof was on the persons contending that death was not simultaneous although as Sargant J. stated in *In re Fisher, Robinson* v. *Eardley* [1915] 1 Ch. 302 at 305 ". . . . having regard to the infinite divisibility of time it seems to me impossible

that both should die at exactly the same moment". Whether or not the word "impossible" is strictly accurate, it is apparent that the chances of simultaneous deaths as compared with the chances against such a likelihood are infinitely small. Accordingly a presumption of survivorship in accordance with the usual probabilities of life is more conducive to an equitable result than no presumption or a presumption of simultaneous death for although the cases indicate that there is no presumption at all, the final result appears to be the same in fact as though the presumption were in favour of simultaneous death.

Your Commissioners, having duly considered the desirability of drafting a section in the light of the matters above recited are of opinion that the drafting of a section is desirable.

Assuming that the Conference finds it desirable to frame such a section, the principle to be followed must be determined. So far as your Commissioners have been able to ascertain the statutes of the common law Provinces contain no provisions raising a presumption as to the order of death (except for certain purposes of insurance as indicated, post). The only Province having such a provision is Quebec where in Articles 603 to 605 of the Civil Code a presumption is rather elaborately worked out according to difference in ages and sex. The Articles read :

> 603. Where several persons, respectively called to the succession of each other, perish by one and the same accident, so that it is impossible to ascertain which of them died first, the presumption of survivorship is determined by circumstances, and, in their absence, by the considerations of age and sex, conformably to the rules contained in the following articles.—N. 720.
>
> 604. Where those who perished together were under fifteen years of age, the oldest is presumed to have survived;
>
> If they were all above the age of sixty, the youngest is presumed to have survived;
>
> If some were under the age of fifteen and others over that of sixty, the former are presumed to have survived;
>
> If some were under fifteen or over sixty years of age, and the others in the intermediate age, the presumption of survivorship is in favour of the latter.—No. 721.
>
> 605. If those who perished together were all between the full ages of fifteen and sixty, and of the same sex, the order of nature is followed, according to which the youngest is presumed to survive;

But if they were of different sexes, the male is always presumed to have survived.—N. 722.

The Civil Code of Louisiana has rather similar provisions in Articles 936 and 939 which read :

936.—930.—770.—If several persons, respectively entitled to inherit from one another, happen to perish in the same event, such as a wreck, a battle, or a conflagration, without any possibility of ascertaining who died first, the presumption of survivorship is determined by the circumstances of the fact.

937.—931.—In the absence of circumstances of the fact, the determination must be guided by the probabilities resulting from the strength, age and difference of sex, according to the following rules.

938.—932.—721.—If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived.

If both were above the age of sixty years, the youngest shall be presumed to have survived.

If some were under fifteen years, and some above sixty, the first shall be presumed to have survived..

939.—933.—722.—If those who have perished together were above the age of fifteen years and under sixty, the male must be presumed to have survived, where there was an equality of age, or a difference of less than one year.

If they were of the same sex, the presumption of survivorship, by which the succession becomes open in the order of nature, must be admitted, thus the younger must be presumed to have survived the elder.

Although these sections are worked out in some detail having regard, as they do, to the probabilities of survivorship, according to what is usually the comparative physical condition as between persons in different stages of life and of the different sexes, it must be borne in mind that any such rule is bound to be an artificial one. Having regard to this fact it is submitted that the principle enacted in section 184 of the Law of Property Act, 1925, (Imperial) is, in its brevity, as efficient in principle as either of the above more detailed sections. The section reads:

In all cases where after the commencement of this Act, two or more persons have died in circumstances rendering

> it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court) for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

Before adopting the section as it stands however, three matters warrant consideration :

The appearance of the words "subject to any order of the Court" are difficult to understand unless their purpose is to give the Court a very free hand where it would appear that in the circumstances of the particular case, to rigidly follow the provisions of the section would be to effect an injustice. Their effect may perhaps be to lighten the burden of proof which would exist in the absence of such a section. Such a provision would indeed be unusual and would leave much to the discretion of the trial judge. It is the view of your Commissioners that these words should be omitted as their meaning and effect is by no means plain. It would appear reasonable that as such a section is only effective where proof of the order of death cannot be proven, any rule to be invoked in that event should be, to that extent, absolute.

The second matter to be considered is the situation where the testator provides for the disposition of his property in the event of a beneficiary predeceasing him. This has been discussed briefly and is taken care of in the draft section.

The third matter of concern is to draft the section so that it will not be in conflict with a section appearing in the uniform portions of the various provincial Insurance Acts (Manitoba section 151; Ontario section 161) which reads :

> 161. Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary or beneficiaries died first.

In case it may seem anomalous to place another section on the statute books which would in some instances indicate a different order of death than that provided by the section of The Insurance Act quoted above, it should be borne in mind that where a husband and wife have policies of insurance payable to each other and both meet death in the same disaster, the one section presumes different orders of death for the purposes of the two different policies.

It will be observed that subsection 1 of the proposed section comprises substantially the provisions of section 184 of the Law of Property Act, 1925, (Imperial) while the following two subsections take care of the other two situations to be provided for as indicated in this memorandum, supra.

PROPOSED SECTION.

(1) Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections 2 and 3, for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.

(2) Two provisions of this section shall be read and construed subject to the provisions of section 161 of The Insurance Act.

(3) Where a person named as a beneficiary of property in the will of a testator and such testator die in circumstances rendering it uncertain which of them survived the other and the will makes further provision for the disposition of such property in the event of such beneficiary predeceasing the testator, for the purposes of such bequest such beneficiary shall be presumed to have predeceased such testator.

LOCATION OF THE SECTION.

The section is one which, dealing with the devolution of real property as it does, would appear to fit somewhere in the uniform draft Devolution of Estates Act appropriately enough. Most, if not all of the common law Provinces have Devolution of Estates Act, and only two of them (Alberta and Saskatchewan) have enacted the uniform Act adopted some ten years ago. A third (New Brunswick) has enacted the uniform Act in part. It appears therefore that the uniform Act is not one which will be quickly adopted by the various Provinces. It is the opinion of your Commissioners, however, that the shorter enactment covered by this memorandum may well be adopted by the various Provinces without causing a great deal of interference with their respective Devolution of Estates Acts and your Commissioners accordingly recommend that the provision, if adopted, be adopted as a separate Act.

I. A. HUMPHRIES,
D. W. LANG,
E. H. SILK.

APPENDIX F

To the Conference of Commissioners on Uniformity of Legislation in Canada:

Gentlemen :

The Report of the Commissioners for the Province of New Brunswick on the draft Partnerships Registration Act presented at the 1935 Conference contained a new draft Act. This report was referred to the present New Brunswick Commissioners for further consideration. The said Commissioners have considered the proposed draft and while accepting the same in substance they recommend certain changes.

In the uniform Partnership Act the word "partnership" is used to designate the relationship existing between partners, and the word "firm" is used to designate the persons who have entered into a partnership. We have thought that the same words should be used in the same way in the draft Act. This necessitated changes in the wording of the draft referred to us for consideration.

We also suggest that the sections dealing with disability arising from failure to fyle a certificate be substantially changed.

We attach a draft Act containing the changes which we suggest.

Respectfully submitted,

PETER J. HUGHES,
H. A. PORTER,
J. BACON DICKSON.

August 6th, 1937.

DRAFT PARTNERSHIPS REGISTRATION ACT.

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

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

Short title.

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

Interpretation

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

"Carry on business" and words of like import, in respect of a partnership, mean the doing of any act for the promotion or execution of any purpose for which the partnership is formed; and, in respect of a person within the scope of section 11, mean the doing of any act for the promotion or execution of any purpose of his business;

"Proper officer" means the proper officer designated by this Act ;

"Registered" means registered according to the manner of registration required by this Act, and "register" shall have a corresponding meaning ;

"Registration district" means a registration district established under this Act.

Application of Act.

3. (1) This Act shall apply only to businesses carried on for trading, manufacturing, or mining purposes.

(2) This Act shall not apply to:

Exemption from application

(a) A partnership formed out of the Province which has no agent in the Province and no warehouse, office, or place of business in the Province;

(b) The business of a person otherwise within the scope of section 11 who has no agent in the Province and no warehouse, office, or place of business in the Province;

(c) A limited partnership formed under the provisions of (Part III of "The Partnership Act") and subsisting at or after the commencement of this Act;

(d) A limited liability partnership duly constituted as such under the provisions of (section 103 of the "Mineral

Act" or section 76 of the "Placermining Act") and subsisting at or after the commencement of this Act.

Application in respect of Partnerships and persons registered under former Act.

(3) Every firm within the scope of this Act and every person within the scope of section 11 which is carrying on business in the Province at the time of the coming into force of this Act and was immediately before that time duly registered in the manner prescribed therefor in the Act repealed (in part) by this Act, shall be deemed to be duly registered under this Act; and all certificates, declarations, or other documents filed by the said firm or partners thereof or persons under that Act shall be deemed to be certificates duly filed under this Act to the like extent and effect as if they were in the form of certificate prescribed by this Act corresponding thereto, and the provisions of this Act shall apply in respect of that firm or person accordingly.

Duty of members to register certificate of partnership.

4. (1) The members of every firm which carries on in the Province any of the businesses mentioned in section 3 (1) shall cause a certificate of partnership (Form A) to be registered within three months after the time the firm commences to carry on business in the Province, or, in the case of a firm carrying on business in the Province as the time of the coming into force of this Act, within three months after that time.

Contents of certificate.

(2) The said certificate shall set forth the full name, address, and occupation of each partner, the firm name, the principal place of business of the firm in the Province, and the time during which the partnership has subsisted; and shall state that the persons named therein are the only members of the firm.

Signature of members.

(3) Every member of the firm shall severally sign the certificate, but the signature of a member who is absent from the Province may be made on his behalf by another member under his written authority, which authority shall be annexed to the certificate and registered therewith.

Duty of members to register certificates of change in partnership.

5. (1) Whenever any change takes place in the membership or name of a firm which is registered under this Act the members of the firm shall cause a certificate of the change (Form B) to be registered within three months after the time the change takes place.

Contents of certificate.

(2) The said certificate, in case of a change in the firm name, shall set forth the change; and, in the case of a change in the membership, shall set forth the full name, address, and occupation of each retiring member and of each incoming member.

Signatures of members.

(3) Every continuing member of the firm and every incoming member, if any, shall sign the said certificate, but the

signature of a member who is absent from the Province may be made on his behalf by another member under his written authority, which authority shall be annexed to the certificate and be registered therewith.

Form and verification of certificates.

6. Any certificate (Form A or Form B) may be in one document, or it may consist of two or more counterparts, each of which may be signed by one or more of the members. In every case the statements contained in a certificate shall be verified by the statutory declaration of one of the members, which declaration shall be annexed to the certificate and be deemed to be a part thereof.

Manner of registration of certificate (Form A or Form B).

7. Registration of the certificate (Form A or Form B) shall be effected by filing it in the office of the proper officer of the registration district in which is situate the principal place of business of the firm in the Province, accompanied by a true copy thereof and payment of the fees prescribed under this Act.

Certificate of dissolution.

8. (1) Upon the dissolution of a partnership registered under this Act any or all of the persons who composed the firm may sign a certificate of dissolution (Form C) setting forth the dissolution of the partnership.

Manner of registration of certificate (Form C).

(2) Registration of the said certificate (Form C) shall be effected by filing it in the office in which the certificate of partnership was registered, accompanied by a true copy thereof and payment of the fees prescribed under this Act.

Binding effect of certificates.

9. The statements made in any certificate in Form A or Form B registered in respect of any partnership shall not be controvertible by any person who signed it; and, except as against the other members of the partnership, shall not be controvertible by any person who was a member of the partnership at the time the certificate was registered and did not sign it.

Liability of persons registered as members of partnership.

10. Where a person has signed a certificate (Form A or Form B) stating that he is a member of a firm, and the certificate has been registered, that person shall for all purposes, except as between him and any person who knows he is not in fact a member of the firm, be deemed to be and to continue to be a member of the firm, until (a) a certificate (Form B) is registered showing that he has ceased to be a member of the firm or (b) a certificate (Form C) is registered showing that the partnership has been dissolved or (c) a certificate signed by him stating that he is not a member of the firm is registered by being filed in the office in which the certificate (Form A or Form B) so signed by him was registered.

Duty of person carrying on business under a name other than his own to register certificate.

11. (1) Every person who carries on in the Province any business otherwise than as a member of a firm and who in that business uses as his business name some designation other than his own name, or uses as his business name his own name with the addition of the words "and company" or any word or abbreviation indicating a plurality of persons, shall sign and register a certificate of his business name (Form D) within three months after the time when he commences to carry on business in the Province, or, in the case of a person carrying on business in the Province at the time of the coming into force of this Act, within three months after that time.

Contents of certificate.

(2) The certificate shall set forth the full name, address, and occupation of the person so carrying on business, his business name, his principal place of business in the Province, the time during which his business has subsisted; and shall state that he is engaged in business solely by himself under that business name.

Manner of registration of certificate (Form D).

(3) Registration of the Certificate (Form D) shall be effected by filing it in the office of the proper officer of the registration district in which is situate the principal place of business in the Province of the person by whom it is signed accompanied by a true copy thereof and payment of the fees prescribed under this Act.

Copy of certificates for Provincial Secretary.

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

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

Penalty for contravention of Act.

13. (1) Every person who, in contravention of any provision of this Act, fails to sign or to register any certificate required by this Act in the manner and within the time prescribed for the registration thereof shall be liable, on summary conviction, to a fine not exceeding five hundred dollars.

Penalty for making false statements.

(2) Every person who knowingly and wilfully makes any false or deceptive statement in any certificate signed or filed by him under this Act shall be liable, on summary conviction, to a fine not exceeding five hundred dollars.

14. (1) Subject to the provisions of sections 15 and 16 where any firm or person by this Act required to file a certificate shall make default in so doing then the rights of that defaulter

under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which the certificate was required to be filed while in default shall not be enforceable by action or other legal proceedings either in the firm or business name or otherwise.

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

Extension of time for filing a certificate by a person required to file one.

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

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

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

(c) correcting any omission or misstatement in any certificate filed arising from accident, inadvertence or other sufficient cause, and any order so made, or a copy thereof, shall be annexed to the certificate filed or tendered for filing, and appropriate entries shall be made in the register;

(d) granting relief against any of the disabilities mentioned in section 14 hereof but such relief shall not be granted except on such service and such publication of notice of the application as the Court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the Court that if this Act had been complied with he would not have entered into the contract.

Extension of time for filing a certificate by a person claiming through or under a person required to file one.

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

or other proceeding in any court for the promotion of any purpose relating to his business by a person within the scope of section 11.

Duties of officers.

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

Searches.

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

Registration Districts and Officers.

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

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

Fees.

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

Repeal.

21. "The Registration of Partnerships Act" being chapter of the Revised Statutes of is hereby repealed.

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

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

23. This Act shall come into force on the day of 19 . Coming into Force.

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

FORM E.

The Partnerships Registration Act.

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

.....of.....

.....of.....

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

..... of .....

.....of .....

.....

Deputy Provincial Secretary.

APPENDIX G

THE LANDLORD AND TENANT ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in August, 1937.

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

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

1. This Act may be cited as The Landlord and Tenant Act.

PRELIMINARY.

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

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

(b) "Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way), also a rent charged upon or payable in respect of any land, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land;

(c) "Landlord" includes every lessor, every owner, every person giving or permitting the occupation of land and their respective successors in title;

(d) "Mines and minerals" includes any strata or seam of minerals or substances in or under any land and powers of working and getting the same, but not an undivided share thereof.

PART I.

COVENANTS AND CONDITIONS.

COVENANTS RUNNING WITH THE LAND AND THE REVERSION.

3. (1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, relating to the leased premises and on the tenant's part to be observed or performed,

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

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

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

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

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

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

effected before the commencement of this Act.

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

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

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

APPORTIONMENT OF CONDITION OF RE-ENTRY.

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

MERGER, ETC., OF REVERSIONS.

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

WASTE BY TENANTS.

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

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

(*b*) every tenant at will shall be liable to his landlord and every other person having a reversionary interest in the leased premises for voluntary waste in respect of the premises to the extent by which the interest of the landlord and other persons (if any) having a reversionary interest in the premises is detrimentally affected thereby.

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

DEFECTS IN LEASE MADE UNDER POWERS OF LEASING.

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

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

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

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

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

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

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

thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof.

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

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

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

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

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

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

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

RIGHT OF RE-ENTRY.

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

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

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

LICENSES TO TENANTS.

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

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

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

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

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

(2) Notwithstanding any such license,—

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

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

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

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

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

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

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

LICENSES TO ASSIGN, SUBLET, ETC.

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

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

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

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

NOTICE BY TENANT TO LANDLORD OF PROCEEDINGS.

13. Every tenant to whom there is delivered any process of any Court for the recovery of premises demised to or held by him, or to whose knowledge any such process comes, shall forthwith give notice thereof to his landlord or his agent, and

if he fails so to do, he shall be answerable for all damages sustained by the landlord by reason of the failure to give the notice.

FORFEITURE OF LEASES.

14. In sections 14, 15 and 16, unless the context otherwise requires, the expression,—

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

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

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

(*d*) "Subtenant" includes any person deriving title under a sublease;

(*e*) "Tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives.

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

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

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

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

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

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

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

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

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

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

(9) This section shall not extend,—

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

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

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

(i) a lease of agricultural or pastoral land;

(ii) a mining lease;

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

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

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

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

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

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

COVENANT TO PAY TAXES.

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

NOTICES TO TERMINATE TENANCIES.

20. (1) Subject to any express agreement to the contrary, sufficient notice to quit shall be deemed to have been given if there is given:

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

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

(*c*) in the case of a tenancy from year to year, three months' notice ending, in the case of a tenancy originally from year to year, with an anniversary of the last day of the first year thereof, and in the case of all other tenancies from year to year, with an anniversary of the last day of the original tenancy:

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

(2) In case a tenant, upon the determination of his lease, whether created by writing or by parol, remains in possession with the consent, express or implied, of the landlord, he shall be

deemed to be holding subject to the terms of the lease, so far as they are applicable.

(3) In case the tenancy created by the lease was neither a weekly nor monthly tenancy nor a tenancy from year to year, the overholding tenant shall be deemed to be holding as a tenant from year to year.

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

DISTRESS FOR RENT.

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

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

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

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

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

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

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

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

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

PROPERTY LIABLE TO DISTRESS.

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

27. The landlord may take under a distress for rent any horses, cattle, sheep, swine, poultry, fowl, livestock, and other domestic animals which are grazing, pasturing or feeding upon any highway or road allowance or upon any way belonging or appertaining to the premises in respect of which the rent distrained for is payable.

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

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

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

(2) In case any person encounters any resistance in doing any of the acts and things which he is authorized by subsection (1) to do, he may call upon any peace officer to assist him in overcoming that resistance, and such person in the presence of a peace officer and the peace officer are each empowered to use such force as is reasonably necesssary for the purpose of overcoming that resistance.

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

31. A landlord may take under a distress for rent any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent.

32. A landlord may take growing crops as a distress for rent.

33. (1) A landlord who takes growing crops as a distress for rent, may cut, gather, make, cure, thresh, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises, then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charge of such distress and sale in the same manner as other goods and chattels may be seized, distrained and disposed of; and the appraisement thereof shall be taken when cut, gathered, made, cured or threshed, as the case may be, and not before.

(2) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

(3) If, after a distress of growing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured, threshed or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the growing crops so distrained shall be delivered up to the tenant.

34. (1) Notwithstanding the provisions of the preceding section, where growing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or market the same.

(2) Any person purchasing growing crops at such sale shall be liable for the rent of the land upon which the same are growing at the time of the sale, from such time until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it.

35. No goods and chattels shall be liable to be taken under a distress for rent excepting the goods and chattels of the tenant and :

(a) goods and chattels which are claimed by a person other than the tenant:

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

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

(iii) being the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative of the tenant who lives upon the premises in respect of which the rent distrained for is payable as a member of the household of the tenant;

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

(c) goods and chattels which have been exchanged between the tenant and another person, or which have been borrowed by the one from the other, for the purpose of defeating the claim of or the right of distress by the landlord.

NOTE.—A provision for exemption from seizure may be inserted here.

IMPOUNDING, APPRAISEMENT AND SALE.

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

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

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

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

38. After the appraisement has been made the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the costs of such distress, appraisement and sale, and shall hold

the overplus, if any, for use of the person lawfully entitled thereto and pay the same over to him on demand.

SET-OFF AGAINST RENT.

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

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

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

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

DISTRAINABLE GOODS TAKEN IN EXECUTION.

40. (1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the (insert title of Court) or out of a County or District Court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

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

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

41. Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other

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

WRONGFUL OR IRREGULAR DISTRESSES.

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

43. (1) Subject to the provisions of section 24, a distrainor who makes an excessive distress, or makes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

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

RIGHTS OF LANDLORD ON TENANT'S BANKRUPTCY.

44. (1) In case of an assignment for the general benefit of creditors, or in case an order is made for the winding up of an incorporated company, or in case a receiving order in bankruptcy or authorized assignment is made against or by a tenant, in any such case the right of the landlord to distrain or realize his rent by distress shall cease from and after the date of the assignment or order and the assignee, trustee or liquidator shall be entitled to immediate possession of the property of the tenant; but in the distribution of the property of the tenant the assignee, trustee or liquidator shall pay to the landlord, in priority to all

other debts, an amount not exceeding the value of the distrainable assets and restricted to the arrears of rent due during the period of three months next preceding and the costs of distress, if any, and the rent for the three months following the date of the assignment or order, and from thence so long as the assignee, trustee or liquidator retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, trustee or liquidator for the period of his occupation.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, in case of an assignment for the general benefit of creditors, or in case an order is made for the winding up of an incorporated company, or in case a receiving order in bankruptcy or authorized assignment has been made against or by a tenant, in any such case the assignee, trustee or liquidator may at any time within three months thereafter for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by such lease or agreement, and he may upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who shall on application of the assignee, trustee or liquidator be approved by a Judge of the (insert title of Court) as a person fit and proper to be put in possession of the leased premises.

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

(2) Where the assignor, or person or firm against whom a receiving order has been made in bankruptcy, or a winding-up order has been made, being a lessee, has, before the making of the assignment or such order demised by way of under-lease,

approved or consented to in writing by the landlord, any premises and the assignee, trustee or liquidator surrenders, disclaims or elects to assign the lease the under-lessee shall, if he so elects in writing within three months of such assignment or order, stand in the same position with the landlord as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the said landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

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

ATTORNMENT.

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

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

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

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

47. (1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

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

RENEWALS OF LEASES.

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

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

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

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

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

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant, or agreement, unless the

sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

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

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

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

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

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

(*b*) the person succeeding to the interest of the landlord shall be entitled to recover from the tenant in the same manner as his predecessor could have done if his interest in the land had not been determined, a fair proportion of the rent for the period between the day upon which the interest of the predecessor ceased and the time of quitting; and

(*c*) the person so succeeding and the tenant respectively, as between themselves and as against each other,

shall be entitled to all the same benefits and advantages and be subject to the same liabilities as the predecessor and the tenant would have been entitled or subject to in case the tenancy had been determined by effluxion of time or other lawful means at the expiration of the current year and during the continuance of the predecessor's interest in the land.

PART II.

OVERHOLDING TENANTS.

LIABILITY OF TENANTS OVERHOLDING.

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

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

PROCEEDINGS AGAINST OVERHOLDING TENANTS.

53. In sections 54 to 61 the expression "tenant" includes every lessee, occupant, subtenant and their assigns and legal representatives.

54. (1) When a tenant, upon the determination of his lease or right of occupation, whether created by writing or by parol, wrongfully refuses or neglects upon demand made in

writing to go out of possession of the land demised to him or which he has been permitted to occupy, the landlord may apply, upon affidavit, to a Judge, whether in term or in vacation and wherever such Judge may be, to make the inquiry hereinafter provided for.

(2) The landlord shall,—

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

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

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

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

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

(3) The Judge shall, in writing, appoint a time and place at which he will inquire and determine whether the tenant holds possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

(4) A copy of the Judge's appointment and of the affidavit on which it was obtained, and copies of the documents to be used upon the application other than of the instrument creating or containing the lease or right of occupation, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition to every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles.

55. The application in the preceding section mentioned shall be made to:—(each Province will make its own provision).

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

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

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

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

59. (1) If, at the time and place appointed the tenant fails to appear, the Judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession in Form B in the Schedule to this Act, directed to the sheriff of (insert title of Court) in which the land lies, commanding him forthwith to place the landlord in possession of the land.

(2) If the tenant appears the Judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter and may take evidence orally or by affidavit as he thinks fit, and if it appears to the Judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ.

(3) Upon any such application the Judge may by order award costs according to the tariff of costs from time to time in force under (insert titles of appropriate statutes), or may order payment of a lump sum by way of costs.

(4) An order for the payment of costs by the Judge may be filed in the office of the of (insert title of Court) in which the demised premises are in whole or in part situated and shall thereupon become a judgment of the said Court.

(5) No such order shall be made if it appears to the Judge that, in the circumstances of the case, the right to possession should not be determined by proceedings under this Part, and in such case the taking of proceedings under this Part shall not affect or detract from any other remedy which a landlord may have against his tenant.

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

61. (1) An appeal shall lie from the order of the Judge granting or refusing a writ of possession to (insert title of

Appellate Court) and the provisions of (insert titles of appropriate statutes) as to appeals shall apply, respectively, to such an appeal.

(2) If by the order possession has been given to the landlord under a writ of possession and that order is discharged, the Court may direct that possession be restored to the tenant.

62. Nothing in this Part shall require a landlord to proceed under this Part instead of by bringing an action.

PART III.

SUMMARY PROCEEDINGS FOR NON-PAYMENT OF RENT.

63. (1) If a tenant fails to pay his rent within seven days of the time agreed on, and wrongfully refuses or neglects, upon demand made in writing, to pay the rent or to deliver up the premises demised, which demand shall be served upon the tenant or upon some grown-up person upon the premises, or if the premises be vacant, be affixed to the dwelling or other building or otherwise posted up upon the premises, the landlord or his agent may file with the clerk of the County Court of the judicial division in which said premises are in whole or in part situated, an affidavit setting forth the terms of the lease or occupancy, the amount of rent in arrear and the time for which it is so in arrear, producing the demand made for the payment of rent or delivery of the possession, and stating the refusal of the tenant to pay the rent or to deliver up possession, and the answer of said tenant, if any answer were made, and that the tenant has no right of set-off or reason for withholding possession.

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

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

(4) In case the order be made for the tenant to deliver up possession and he refuse, then the sheriff of the (insert title of

proper Court) or any of his officers shall, with such assistance as he may require, forthwith proceed under said order to eject and remove the said tenant together with all goods and chattels that he may have on or about the premises, and make the rent in arrears and place the landlord in possession of the premises.

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

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

64. (1) The Judge may by order award costs according to the tariff of costs from time to time in force under (insert title of appropriate statute), or may order payment of a lump sum by way of costs.

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

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

65. An appeal shall lie from the order of the Judge made under section 63 to (insert title of Appellate Court) and the provisions of (insert titles of appropriate statutes) as to appeals shall apply, respectively, to such an appeal.

PART IV.

MISCELLANEOUS.

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

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

68. This Act shall come into force on .

SCHEDULE

The Landlord and Tenant Act.

FORM A.

(Section 39).

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

Dated this day of , 19 .

C.D. (tenant).

FORM B.

(Section 59).

Writ of Possession.

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

(L.S.)

To the sheriff (or bailiff) of Greeting.

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

Therefore, we command you that without delay you cause the said to have possession of the said lands and premises, with the appurtenances; and we also command you

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

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

Witness, etc.

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

FORM C.
(Section 63).

Summons for Eviction.

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

To the above named

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

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

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

By the Court.

Clerk.

FORM D.

(Section 63)

Order for Possession.

In the matter of

landlord,

and

tenant,

and The Landlord and Tenant Act.

Upon reading the notice of demand in this case, the affidavit of service thereof, the affidavit of proof of the terms of the demise, of the summons issued herein from this Court and the affidavit of service thereof on the said tenant, and no cause being shown by said tenant upon the return of said summons (*or*, and the said tenant appearing, but failing to disprove the allegations of said landlord, *as the case may be*), I do order that the said tenant do, upon the production to him of this order, forthwith deliver up possession of the premises in question, namely (describe as in notice and summons), to the said landlord, or his proper agent or attorney, of whose authority the possession of this warrant shall be sufficient proof; and in case of refusal by said tenant so to deliver up possession, or of said tenant being absent or said premises vacant, I do hereby, in accordance with the provisions of the statutes in that behalf, authorize a bailiff of the County Court (*or* a bailiff of this Court), with such assistance as he may require, forthwith to proceed to eject and remove the said tenant, together with his goods and chattels, if any, from and out of the said premises, and, whether said tenant be found in possession or said premises be vacant, put the landlord in possession thereof, that the said landlord take and hold possession thereof freed from said demise; and I do further order that the said bailiff do make the rent in arrear for said premises, amounting to the sum of together with the costs of the levy therefor, and of all necessary proceedings in respect thereof, subject to the provisions of the said Act.

I further award the sum of dollars to the said landlord, as his costs of this proceeding, to be paid by said tenant or, in default of payment, to be proceeded for and recovered as allowed by law.

Dated at this day of A.D. 19 .

(Signed)

Judge.

(NOTE—The order to be entitled in the Court out of which the summons issued).

APPENDIX H

TREASURER'S REPORT.

1936			
Balance on hand according to auditor's report 1936 Conference			$497.00
Aug. 21—Contribution from Province of New Brunswick			100 00
Oct. 31—Interest			3.77
1937			
April 22—Paid Vincent C. MacDonald, secretarial expenses and proof reading	$ 65 00		
April 22—Paid National Printers, Ltd., for printing 1936 proceedings	$211.87		
April 30—Interest			4.23
Balance on hand	328.13		
	$605.00		$605.00

R. M. FISHER,
Treasurer.

Audited and found correct,

A. W. LANG,

A. C. CAMPBELL,
Auditors.

APPENDIX I

To the Conference of Commissioners on Uniformity of Legislation in Canada :

LIBEL AND SLANDER.

Gentleman :

At its meeting in 1935 the Conference passed a resolution that the Saskatchewan Commissioners submit in 1936 a draft uniform Libel and Slander Act based on the legislation of the various provinces on that subject in its civil aspects.

At the 1936 meeting the Commissioners submitted a draft Act containing, without revision, all the statutory provisions on the subject to be found in the various provinces.

This was received and ordered printed and the Saskatchewan Commissioners were requested to prepare a revision thereof for the 1937 meeting.

A revised draft is accordingly presented herewith.

The 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 Is.	28 Vict., c. 25, ss. 1 and 2; 21 Geo. III, c. 17, s. 6; 12 Geo. V., c. 7, s. 4.
Saskatchewan	R.S.S., 1930, c. 69, as amended by 1931, c. 31.

Respectfully submitted,

D. J. THOM,
J. P. RUNCIMAN.

July 21, 1937.

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.

Short title.

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

INTERPRETATION.

Interpretation.

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

"Newspaper"

(a) "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 dispersed and made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only or principally advertisements.

44 & 45 Vict. c. 60, s. 1.

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

"Public meeting"

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

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

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

ACTIONS FOR LIBEL AND SLANDER.

Averments by plaintiff.

3. 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.

15 & 16 Vict. c. 76, s. 61.

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

Apology in mitigation of damages.

4. 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. 6 & 7 Vict. c. 96, s. 1

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

ACTIONS FOR LIBEL.

5. 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; B.C. s. 11; Man. s. 13; N.B. s. 9; Ont. s. 4; Sask. s. 5.

6.—(1) 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, the Court may make an order for the consolidation of such actions so that they shall be tried together; and after an order has been made, and before the trial of the 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 by the new defendants and the defendants in the actions already consolidated. Consolidation of actions for same libel. 51 & 52 Vict. c. 64, s. 5.

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

(2) For the purposes of this section "article" includes 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).

7. In a consolidated action under section 6 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 Assessment of damages and apportionment of damages and costs.

in the same way as if the actions consolidated had been tried separately. 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 the last mentioned defendants; and, if the plaintiff is awarded the costs of the action, the judge shall make such order as he deems just for the apportionment of the costs between and against such defendants.

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

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

ACTIONS FOR SLANDER OF FEMALES.

Proof of special damage not required in certain cases.

8. In an action for slander for defamatory words spoken of a woman or girl 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 the 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. s. 5 (in part); Man. s. 12 (1); P.E.I. 12, Geo. V., c. 7, s. 4; Ont. s. 18 (1); Sask. s. 25.

Security for costs.

9.—(1) 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 costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of (name of Province). 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).

(2) For the purposes of subsection (1) the plaintiff or the defendant may be examined upon oath at any time after delivery of the statement of claim.

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

NEWSPAPERS.

PRIVILEGED PUBLICATIONS.

Certain reports and other publication privileged.

10.—(1) A fair and accurate report published in a newspaper of 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 the provisions of any public Act of the Legislature 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, shall be privileged, unless it is proved that the publication was made maliciously. 51 & 52 Vict. c. 64, s. 4.

(2) 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 a Government office, bureau or department, or by a board of health or medical health officer, or the publication, at the request of a Government or municipal official, commissioner of police or chief constable, of a notice or report issued by him for the information of the public, shall be privileged, unless it is proved that the publication was made maliciously.

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

(3) Nothing in this section shall authorize the publication of blasphemous or indecent matter.

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

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

Alta. s. 9 (3); 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).

(5) 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).

Reports of proceedings in Court privileged.

11.—(1) A report published in a newspaper of proceedings publicly heard before any Court shall be absolutely privileged if:

(a) the report is a fair and accurate report of those proceedings;

(b) the report contains no comment;

51 & 52 Vict. c. 64, s. 3.

(c) the report is published contemporaneously with the proceedings which are the subject matter of the report, or within thirty days thereafter; and

(d) the report contains nothing of a blasphemous or indecent nature;

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.

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

(2) For the purposes of this section, every headline or caption in a newspaper which relates to any report therein shall be deemed to be a report.

Alta. s. 10 (2).

Actions for Newspaper Libel.

Limitation of actions.

12. 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.

Alta. s. 13 (1); Ont. s. 13; Sask. s. 14.

Notice of action.

13. No action shall lie unless the plaintiff has, within six weeks after the publication of the libel has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, five, and in the case of a weekly newspaper, fourteen clear days' notice in writing of his intention to bring the same, specifying the language complained of.

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

Place of trial.

14. The action shall be tried in the county (*or* judicial district) where the chief office of the newspaper is, or in the county (*or* judicial district) 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 (*or* judicial district) 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; Man. s. 11; N.B. s. 8; Ont. s. 12; Sask. s. 13.

Services of notices and of writ.

15. Service of any notice 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 the address of publication stated in the newspaper, who is apparently an employee of the proprietor or publisher.

Ont. s. 15; Sask. s. 16 (3).

Pleas in mitigation of damages.

16. The defendant may plead in mitigation of damages that the libel was inserted in the newspaper without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper a full apology for the libel; or, if the newspaper 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.

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

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

Evidence in mitigation of damages

17. The defendant may prove in mitigation of damages that the plaintiff has already brought action 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 action is brought.

51 & 52 Vict. c. 64, s. 6.

B.C. s. 9; Ont. s. 16; Sask. s. 17.

When plaintiff to recover actual damages only.

18.—(1) The plaintiff shall recover only actual damages if it appears on the trial :

(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 in the newspaper before the commencement of the action, and was so published in as conspicuous a place and type as was the alleged libel.

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

(2) Subsection (1) shall not apply to the case of a libel against any candidate for public office in (name of Province) unless the retraction of the charge is made editorially in a conspicuous manner, at least five days before the election.

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

Reference in pleading to obscene matter.

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

19. It shall not be necessary to set out in any pleading or process any obscene passages, but it shall be sufficient to deposit in the proper office the newspaper containing the alleged libel, together with particulars showing precisely by reference to pages, columns and lines where the alleged libel is to be found. 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.

B.C. s. 14.

Payment into Court by way of amends.

20. 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 the libel 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.

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

Security for costs.

21.—(1) The defendant may, at any time after 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 in the belief of the deponent the plaintiff is not possessed of property sufficient to answer the costs of the action in case 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 (name of Province). The order shall be a stay of proceedings until the security is given.

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

(2) Where the alleged libel involves a criminal charge the defendant shall not be entitled to security for costs unless he satisfies the Court that the action is trivial or frivolous, or that

the circumstances which under subsection (1) of section 18 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the cirsumstance that the article complained of involves a criminal charge.

B.C. s. 16 (1) (in part); Ont. s. 11 (2); 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 delivery of the statement of claim.

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

Publication of name of publisher and address of publication

22.—(1) No defendant shall be entitled to the benefit of sections 12, 13 and 18 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.

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

(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).

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

Application of certain provisions.

23. Sections 12 and 13 shall only apply to newspapers printed and published in (name of Province).

Ont. s. 16.

Libel of Race or Creed.

Injunction.

24.—(1) 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).

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

Man. s. 13A (2).

(3) In this section "publication" means 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 shown or circulated or delivered with a view to its being seen by any person.

Man. s. 13A (3).

MISCELLANEOUS.

Construction.

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

Repeal.

26. The following enactments are hereby repealed :

Coming into force.

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

APPENDIX J

DRAFT PARTNERSHIPS REGISTRATION ACT.

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

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

Short title.

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

Intrepretation.

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

"Carry on business" and words of like import, in respect of a partnership, mean the doing of any act for the promotion or execution of any purpose for which the partnership is formed; and, in respect of a person within the scope of section 10, mean the doing of any act for the promotion or execution of any purpose of his business;

"Firm" means the persons who have entered into partnership with one another;

"Partnership" means the relation which subsists between persons carrying on business in common with a view to profit;

"Proper officer" means the officer in whose office certificates of partnership are required to be registered in any registration district;

"Registered" means filed in accordance with the provisions of this Act, and "register" has a corresponding meaning;

"Registration district" means a district established under this Act for the registration of certificates of partnership.

Application of Act.

3. (1) This Act shall apply only to businesses carried on for trading, manufacturing or mining purposes.

Exemptions from application.

(2) This Act, shall not apply to :

(a) A partnership formed out of the Province which has no warehouse, office or place of business in the Province or no agent resident therein;

(b) The business of a person otherwise within the scope of section 10 who has no warehouse, office or place of business in the Province or no agent resident therein;

(c) A limited partnership formed under the provisions of (Part III of "The Partnership Act") and subsisting at or after the commencement of this Act;

(d) A limited liability partnership duly constituted as such under the provisions of (section 103 of the "Mineral Act" or section 76 of the "Placermining Act") and subsisting at or after the commencement of this Act. (Consider local exceptions for the various Provinces).

Application in respect of Partnerships and persons registered under former Act.

(3) Every firm within the scope of this Act and every person within the scope of section 10 which is carrying on business in the Province at the time of the coming into force of this Act and was immediately before that time duly registered in the manner prescribed therefor in the Act repealed (in part) by this Act, shall be deemed to be duly registered under this Act; and all certificates, declarations, or other documents filed by the said firm or partners thereof or persons under that Act shall be deemed to be certificates duly filed under this Act to the like extent and effect as if they were in the form of certificate prescribed by this Act corresponding thereto, and the provisions of this Act shall apply in respect of that firm or person accordingly.

Duty of members to register certificate of partnership.

4. (1) The members of every firm which carries on in the Province any of the businesses mentioned in section 3 (1) shall cause a certificate of partnership (Form A) to be registered within two months after the time the firm commences to carry on business in the Province, or, in the case of a firm carrying on business in the Province at the time of the coming into force of this Act, within two months after that time.

Contents of certificate.

(2) The said certificate shall set forth the full name, address, and occupation of each partner, the firm name, the principal place of business of the firm in the Province, and the time during which the partnership has subsisted; and shall state that the persons named therein are the only members of the firm.

Signature of members.

(3) Every member of the firm shall personally sign the certificate, but the signature of a member who is absent from the Province may be made on his behalf by another member under his written authority, which authority shall be annexed to the certificate and registered therewith.

Duty of members to register certificates of change in partnership.

5. (1) Whenever any change takes place in the membership or name of a firm which is registered under this Act the members of the firm shall cause a certificate of the change (Form B) to be registered within two months after the time the change takes place.

(2) The certificate, in case of a change in the firm name, shall set forth the change; and, in the case of a change in the membership, shall set forth the full name, address, and occupation of each retiring member and of each incoming member. Contents of certificate.

(3) Every continuing member of the firm and every incoming member, if any, shall sign the certificate, but the signature of a member who is absent from the Province may be made on his behalf by another member under his written authority, which authority shall be annexed to the certificate and be registered therewith. Signatures of members.

(4) For the purposes of this Act "change" means a change in membership of the firm.

(5) Upon the dissolution of a partnership registered under this Act any or all of the persons who composed the firm may sign a certificate of dissolution (Form C) setting forth the dissolution of the partnership. Certificate of dissolution.

6. Any certificate may be in one document, or it may consist of two or more counterparts, each of which may be signed by one or more of the members. In every case the statements contained in a certificate shall be verified by the statutory declaration of one of the members, which declaration shall be annexed to the certificate and be deemed to be a part thereof or the execution thereof may be acknowledged in the same manner as the execution of a deed of conveyance of land may be acknowledged before registration thereof. Form and verification of certificates

7. (1) Registration of the certificate (Form A or Form B) shall be effected by filing it in the office of the proper officer of the registration district in which is situate the principal place of business of the firm in the Province, accompanied by a copy thereof and payment of the fees prescribed under this Act. Manner of registration of certificates (Form A and Form B).

(2) Registration of the certificate (Form C) shall be effected by filing it in the office in which the certificate of partnership was registered, accompanied by a copy thereof and payment of the fees prescribed under this Act. Manner of registration of certificate (Form C).

8. The statements made in any certificate in Form A or Form B registered in respect of any partnership shall not be controvertible by any person who signed it. Binding effect of certificates.

9. Where a person has signed a certificate (Form A or Form B) stating that he is a member of a firm, and the certificate has been registered that person shall for all purposes be deemed to be and to continue to be a member of the firm until

(a) a certificate (Form B) is registered showing that he has ceased to be a member of the firm; or

(b) a certificate (Form C) is registered showing that the partnership has been dissolved; or

(c) a certificate signed by him stating that he is not a member of the firm is registered by being filed in the office in which the certificate (Form A or Form B) so signed by him was registered; or

(d) he has given to any person or persons notice in writing that he is not a member of the firm in which case he shall be permitted to establish in a proceeding in Court that he is not a member of said firm as against the said person or persons to whom said notice was given with respect to transactions had after the said notice was given.

Duty of person carrying on business under a name other than his own to register certificate.

10. (1) Every person who carries on in the Province any business otherwise than as a member of a firm and who in that business uses as his business name some designation other than his own name, or uses as his business name his own name with the addition of the words "and company" or any word or abbreviation indicating a plurality of persons, shall sign and register a certificate of his business name (Form D) within two months after the time when he commences to carry on business in the Province, or, in the case of a person carrying on business in the Province at the time of the coming into force of this Act, within two months after that time.

Contents of certificate.

(2) The certificate shall set forth the full name, address, and occupation of the person so carrying on business, his business name, his principal place of business in the Province, the time during which his business has subsisted; and shall state that he is engaged in business by himself under that business name.

Manner of registration of certificate (Form D).

(3) Registration of the certificate (Form D) shall be effected by filing it in the office of the proper officer of the registration district in which is situate the principal place of business in the Province of the person by whom it is signed accompanied by a copy thereof and payment of the fees prescribed under this Act.

Copy of certificates for Provincial Secretary.

11. (1) Whenever a certificate is filed under this Act the copy thereof shall be forthwith transmitted by the proper officer to the Provincial Secretary.

(2) Upon receipt by the Provincial Secretary of said copy he shall publish same without the statutory declaration or acknowledgment in the Royal Gazette.

12. Every person shall be guilty of an offence who, in contravention of any provision of this Act, Penalty for contravention of Act.

(a) fails to sign or to register any certificate in the manner and within the time prescribed by this Act; or

(b) knowingly and wilfully makes any false or deceptive statement in any certificate signed or filed by him under this Act;

and shall be liable on summary conviction to a fine not exceeding five hundred dollars.

13. (1) Subject to the provisions of sections 14 and 15 while any firm or person is in default in filing any certificate required to be filed by this Act the rights of the defaulter under or arising out of any contract made or entered into by or on behalf of the defaulter in relation to the business in respect of which the certificate was required to be filed shall not be enforceable by action or other legal proceedings either in the firm or business name or otherwise. Stay of leg proceeding

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

14. (1) In the case of a person required to file any certificate under this Act, a Judge of the Court, in his discretion either *ex parte* or otherwise and upon such terms and conditions, if any, as he may direct, and whether or not the time limited for compliance with the provisions of this Act has expired, may, from time to time by order provide for any or all the following, namely: Extension time for filing a certificate by a person required to file one.

(a) extending the time for filing a certificate;

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

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

(2) Any order so made, or a certified copy thereof shall be annexed to the certificate filed or tendered for filing, and appropriate entries with respect thereof shall be made in the register.

15. Said Judge may by said order grant relief against any of the disabilities mentioned in section 13 hereof, but such relief shall not be granted except on such service or such publication of notice of the application as the Judge may order, nor shall

relief be given in respect of any contract if any party to the contract proves to the satisfaction of the Judge that, if this Act had been complied with he would not have entered into the contract.

Duties of Officers.

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

Searches.

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

Registration Districts and Officers.

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

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

Fees.

19. The Lieutenant-Governor in Council from time to time may prescribe fees payable under this Act.

Repeal.

20. "The Registration of Partnerships Act" being chapter of the Revised Statutes of is hereby repealed.

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

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

22. This Act shall come into force on the day of , 19 . Coming into Force.

FORM A.

CERTIFICATE OF PARTNERSHIP.

Province of

Registration District.

We, of

in the County of and Province of
(occupation), and of
in the County of and Province of
(occupation), hereby certify :

(NOTE.—Include all the members of the partnership, even if one or more partners sign counterparts).

1. That we have carried on (or intend to carry on) trade and business as at
in the County of , (or at the following places in the Province, naming them), in partnership, under the firm name of .

2. That the principal place of business in the Province is (or will be) at in the County of .

3. That the said partnership has subsisted since the day of , 19 .

4. That we are and have been, since the said day, the only members of the firm.

Witness our hands at this day of , 19 .

A.B.
C.D.

Statutory Declaration.

I, , of
in the County of and Province of
(occupation), hereby declare :

1. That I am one of the partners signing the foregoing certificate.

2. That all of the statements contained in the foregoing certificate are true.

Declared before me at

in the of
this day of
19 .

A Commissioner, etc.

FORM B.

CERTIFICATE OF CHANGE IN FIRM NAME OR MEMBERSHIP OF PARTNERSHIP.

Province of

Registration District.

We, of
in the County of and Province of
(occupation), and of
in the County of and Province of
(occupation), hereby certify :

(NOTE.—Include all the members of the partnership here, even if one or more partners sign counterparts.)

1. That our partnership has been registered under the firm name of .

2. That the firm name has now been changed to

.

3. That the membership of our partnership has been changed in the following manner :

Retiring Partners (if any).

Name.	Address.	Occupation.

Incoming Partners.

Name.	Address,	Occupation.

Witness our hands at this
day of 19 .
A.B.
C.D.

(NOTE.—Use statutory declaration provided in Form A with this form).

(NOTE.—This form must be signed by all continuing and incoming partners.)

(NOTE.—If there is no change in the partnership name, omit paragraph 2.)

FORM C.

Province of

Registration District.

I, of
in the County of and Province of
(occupation), do hereby certify :

1. That I was formerly a member of a partnership registered under the firm name of .

2. That the following were the names of the partners :
Names of Partners.

3. That the partnership was dissolved on the
day of , 19 .
Witness my hand at , the
day of 19 .
A.B.

FORM D.

Province of

Registration District.

I, of
in the County of and Province of
(occupation), hereby certify :

1. That I have carried on trade and business as
, at
in the County of , (or at the following places in the Province, naming them).

2. That the business is carried on under the business name and style of .

3. That the principal place of business in the Province is at in the County of .

4. That the said business has subsisted since the day of 19 .

5. That I am engaged in business by myself, under the business name and style set out above.

Witness my hand at this day of 19 .

FORM E.

THE PARTNERSHIPS REGISTRATION ACT.

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

of

of

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

of

of

Deputy Provincial Secretary.

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