1939

PROCEEDINGS

OF THE

TWENTY-SECOND ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

QUEBEC, P.Q.

AUGUST 10TH, 11TH, 12TH, 14TH AND 15TH, 1939

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

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Quebec.....Hon. Ed. Fabre Surveyer, Judges' Chambers, Superior Court, Montreal.

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Attorney-General of New Brunswick: Hon. J. B. McNair, K.C.

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PREFACE

The National Conference of Commissioners on Uniform State Laws 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.
1938. August 11-13, 15-16, Vancouver.
1939. August 10-12, 14-15, Quebec City.

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 table and index of model uniform statutes suggested, proposed, reported on, drafted or approved see Conference Proceedings, 1939, pp. 10.

The following table shows the model statutes drawn by the Conference, and to what extent, if any, these have been adopted by the provinces :

1920. Bulk Sales Act (amended, 1925 and 1939) : 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), Saskatchewan (1922), and Prince Edward Island (1938).

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 as revised in Alberta (1937), Prince Edward Island (1938).

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).

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W. E. McL.

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Amendments suggested as proof of foreign documents: 1934, p. 19.
Discussion of: 1935, pp. 14, 16, 18; 1936, pp. 17, 18; 1938, pp. 15, 17, 18; 1939, pp. 31, 32.
1936 Draft Sections for:
Discussion of: 1936, pp. 17, 18; 1937, p. 18; 1939, pp. 31, 32.
Report as to: 1936, p. 52.

Resolution respecting: 1936, p. 16; 1937, p. 18; 1939, p. 32.
Revised draft of: 1936, p. 54.
Preliminary Draft Act, text of: 1934, p. 27; 1935, p. 58.
1938 Redrafted Sections:
Discussions re: 1939, pp. 31, 32.
Resolutions re: 1939, p. 32.
Text of: 1938, p. 56.
Report on: 1935, p. 47; 1936, p. 52.
Report, text of: 1934, p. 23.
Resolution as to: 1934, p. 19; 1936, p. 16, p. 18; 1938; 1939, pp. 31, 32.

INTERPRETATION OF STATUTES :

Committee appointed: 1918, p. 11.
Report (*See Report on Legislative Drafting, under "Uniform Acts."*):
Adoption of: 1919, p. 9.
Text of: 1919, p. 24 (at p. 27).

INTESTATE SUCCESSION : (*See also Devolution of Real Property.*)

Amendments of Uniform Act:
Approved: 1926, p. 17.
Considered: 1927, p. 13.
Suggested: 1926, pp. 13, 45; 1927, p. 13.
Committees appointed: 1922, p. 19; 1923, p. 14; 1924, p. 12; 1926, p. 13.

Draft Act:
Adoption of: 1925, pp. 13, 14.
Discussion of: 1923, pp. 14, 18; 1924, p. 12; 1925, p. 11.
Text of: 1922, p. 83; 1923, p. 59; 1924, p. 52; 1925, p. 26.

Reports of committees:
Presentation of: 1922, p. 18; 1923, p. 9; 1924, p. 11; 1926, p. 17.
Text of: 1922, p. 82; 1924, p. 47.
Separate Act proposed: 1923, p. 18.

JUDGMENTS, RECIPROCAL ENFORCEMENT OF : (*See Reciprocal Enforcement of Judgments Act.*)

LANDLORD AND TENANT ACT :

Discussion as to: 1934, pp. 17, 18, 20; 1935, pp. 14, 16, 18; 1936, pp. 14, 15; 1937, pp. 15, 16; 1939, p. 40.
Draft Act, text of: 1935, p. 58; 1937, p. 72.
Explanatory notes presented: 1934, p. 17.
Report as to: 1932, p. 20; 1933, p. 14.

Report, text of: 1933, p. 42; 1934, p. 61; 1935, p. 47.
Resolution adopting draft: 1937, p. 16.
Resolution regarding: 1933, p. 20; 1936, p. 15.

LEGISLATIVE DRAFTING : (*See Uniform Acts.*)

LEGITIMATION ACT :
Amendments:
Recommendation as to: 1932, p. 19.
Recommendation, adoption of: 1932, p. 20.
Reference to: 1932, p. 25.
Report:
Adoption of: 1933, p. 14.
Text of: 1933, p. 35.

LEGITIMATION BY SUBSEQUENT MARRIAGE :
Committee appointed: 1918, p. 10; 1919, p. 10.
Draft Act:
Adoption of: 1919, p. 16; 1920, p. 7.
Discussion of: 1919, pp. 9, 10, 14; 1920, p. 7.
Text of: 1919, pp. 50, 53; 1920, p. 18.
Report of committee:
Presentation of: 1919, pp. 9, 14; 1920, p. 7.
Text of: 1919, p. 50; 1920, p. 18.

LIBEL AND SLANDER ACT :
Discussions respecting: 1939, pp. 39, 40.
Report as to: 1936, p. 64; 1939, p. 104.
Report, text of: 1936, p. 64.
Resolution as to: 1935, p. 18; 1936, p. 17; 1937, p. 17; 1938, p. 19; 1939, p. 40.

LIFE INSURANCE :
Amendments of Uniform Act:
Discussed: 1913, p. 13; 1926, p. 13.
Suggested: 1923, p. 13; 1926, pp. 12, 40.
Committees appointed: 1921, p. 14; 1922, pp. 9, 16; 1923, p. 11.
Draft Act:
Adoption of: 1922, p. 16; 1923, p. 11.
Discussion of: 1921, pp. 13, 14; 1922, pp. 9, 14, 15, 16; 1923, pp. 10, 11.
Preparation of: 1921, p. 13.
Text of: 1921, p. 54; 1922, p. 22; 1923, p. 26.

Reports of committees:
Consideration of: 1923, p. 9.
Presentation of: 1922, p. 9; 1923, p. 9; 1932, p. 13.
Text of: 1922, p. 20; 1923, p. 24; 1931, p. 32; 1932, p. 33.
Subject introduced by Superintendent of Insurance for Ontario: 1921, p. 13.

LIMITATION OF ACTIONS :
Amendments as approved, text of: 1932, p. 29.
Committees appointed: 1926, p. 19; 1927, p. 14; 1928, p. 16; 1929, p. 20.
Communications regarding, text of: 1934, p. 45.
Discussion of: 1930, pp. 12, 13, 15; 1931, pp. 13, 16; 1935, pp. 13, 14.
Draft Act:
Adopted: 1931, p. 17.
Discussion of: 1927, p. 13; 1929, p. 15.
Referred to Commissioners for Alberta and Ontario: 1930, p. 15.
Text of: 1927, p. 53; 1928, p. 66; 1929, p. 20.
With annotations: 1930, p. 24.
Questions as to, discussed: 1934, p. 16.
Questions referred: 1934, p. 16.
Report on Act: 1931, p. 34.
Reports of committees:
Consideration of: 1927, p. 14.
Discussed: 1932, pp. 13, 16, 17.
Presentation of: 1927, p. 13; 1928, p. 16; 1932, p. 12.
Text of: 1927, p. 28; 1932, p. 26; 1935, p. 27.
Revised Act, text of: 1931, p. 38.
Revised text of: 1930, p. 68.

LIMITED PARTNERSHIPS :
Committee, appointment of: 1919, p. 11.
Reference to: 1932, p. 25.
Report, adoption of: 1932, p. 20.
Report of committee: 1920, p. 22; 1932, p. 19.
Subject proposed: 1919, p. 63.

MAINTENANCE ORDERS, RECIPROCAL ENFORCEMENT OF : (*See Reciprocal Enforcement of Maintenance Orders.*)

MARRIED WOMEN'S PROTECTION AND PROPERTY RIGHTS :
Committee appointed: 1920, p. 12.
Memorandum of provincial laws relating to: 1921, p. 90.
Reference to: 1932, p. 25.

Report of committee:
Consideration of, postponed: 1921, p. 17.
Presentation of: 1921, p. 17.
Text of: 1921, p. 88.
Resolution as to: 1932, p. 20.
Subject postponed: 1922, p. 19; 1923, p. 15; 1924, p. 15.

MARRIED WOMEN'S PROPERTY ACT :
Referred to Manitoba Commissioners: 1939, p. 39.
Report as to: 1936, p. 19.
Report, text of: 1936, p. 19.
Resolution as to: 1935, p. 18; 1936, p. 14; 1937, p. 14; 1938, p. 19.

MECHANICS' LIENS :
Committees appointed: 1921, p. 19; 1922, p. 19.
No further action to be taken: 1929, p. 14.
Reports of committees:
Presentation of: 1922, p. 18; 1923, p. 9.
Text of: 1923, p. 79.
Resolution offering services of Conference: 1921, p. 14.
Subject postponed: 1923, p. 15; 1924, p. 15; 1926, p. 18.

MODEL ACTS : (*See Uniform Acts.*)

MOTOR VEHICLES : (*See Automobile.*)

PARTNERSHIP : (*See also Limited Partnerships, and Registration of Partnership.*)
Committees appointed: 1918, p. 9; 1919, p. 11.
Reports of committees:
Consideration and adoption of: 1919, p. 11.
Presentation of: 1919, p. 11; 1920, pp. 7, 8.
Text of: 1919, p. 60; 1920, p. 20.

PRINTING AND DISTRIBUTION OF DRAFT MODEL ACTS : (*See Uniform Acts.*)

PRIVILEGED INFORMATION :
Correspondence respecting: 1939, p. 104.
Discussion as to: 1939, p. 39.
Report on: 1938, p. 15.
Resolution as to: 1938, p. 15.

PROOF OF STATUTES : (*See Statutes as Evidence.*)

PROTECTION AND PROPERTY RIGHTS OF MARRIED WOMEN : (*See Married Women's Protection and Property Rights.*

RECIPROCAL ENFORCEMENT OF JUDGMENTS : (*See also: Defences on Foreign Judgments; Foreign Judgments; and Reciprocal Enforcement of Maintenance Orders.*)

Administration of Justice Act, 1920 (Imp.), Report *re* Part II of: 1922, p. 18.

Amendment of Uniform Act approved: 1925, p. 13.

Committees appointed: 1919, p. 16; 1920, p. 12; 1921, p. 18; 1922, p. 19; 1923, pp. 13, 14.

Communication as to: 1935, p. 14.

Discussion as to: 1935, p. 14; 1937, p. 14.

Draft Act:

Adoption of: 1924, p. 14.

Discussion of: 1921, p. 11; 1923, p. 13; 1924, p. 14

Text of: 1921, p. 46; 1922, p. 78; 1924, p. 60.

Empire, throughout: 1921, pp. 12, 17; 1922, p. 18; 1924, p. 15; 1925, p. 11.

Reports as to: 1937, p. 32; 1938, p. 19; 1939, p. 42.

Reports of committees:

Consideration of: 1922, p. 18.

Presentation of: 1921, p. 10; 1922, p. 18.

Text of: 1922, p. 78.

Resolution as to: 1935, p. 14; 1936, p. 14; 1937, p. 14; 1938, p. 19; 1939, p. 40.

Resolutions, drafting of: 1937, p. 17.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS : (*See also Reciprocal Enforcement of Judgments.*)

Committee, appointment of authorized: 1928, p. 17.

No further action to be taken at present: 1929, p. 14.

Subject proposed: 1921, p. 18; 1928, p. 17.

REGISTRATION IN CASE OF A PURCHASER WHICH IS A CORPORATION:

Discussion as to: 1938, p. 17.

New Uniform Act, preparation of: 1938, p. 17.

Report on: 1938, p. 53.

Resolution as to: 1938, p. 17.

REGISTRATION OF PARTNERSHIP :

Act as further revised, text of: 1933, p. 105.

Committee, appointment of: 1919, p. 11; 1929, p. 19; 1931, p. 18.

Discussion as to: 1931, pp. 17, 18; 1932, p. 17; 1933, p. 18; 1934, p. 15; 1937, p. 15; 1938, p. 14.

Draft presented: 1932, p. 16.

Foreign judgments defences to actions on, report as to: 1930, p. 19.

Report of committee: 1920, p. 23; 1930, p. 19; 1934, p. 14; 1937, p. 64.
Report, text of: 1934, p. 39.
Resolution as to: 1930, p. 19; 1932, pp. 17, 18; 1933, p. 21; 1934, p. 15; 1935, p. 17; 1936, p. 15; 1937, p. 18.
Revised draft, text of 1937, p. 65.
Revision of: 1932, p. 18.
Subject proposed: 1919, p. 63; 1929, p. 19.
Text of, approved: 1930, p. 100.
Uniform Act adopted: 1938, p. 14.
Uniform Act, text of: 1938, p. 21.

REPORTING AGENCIES : (*See Privileged Information.*)

SALE OF GOODS :
Committees appointed: 1918, p. 9; 1919, p. 11.
Reports of committees:
Consideration and adoption of: 1919, p. 11.
Presentation of: 1919, p. 11; 1920, p. 7.
Text of: 1919, p. 60; 1920, p. 20.

SALES ON CONSIGNMENT :
Committee, appointment of authorized: 1928, p. 12.
No further action to be taken at present: 1929, p. 12.
Registration of agreements of:
Report respecting: 1939, p. 36.
Resolution as to: 1938, p. 17.
Subject proposed: 1928, p. 12.

SECURITIES ACT : (*See Corporate Securities Registration Act.*)

STANDING RULES AS TO DRAFT MODEL ACTS : (*See Uniform Acts.*)

STATE DOCUMENTS, PROOF OF : (*See Statutes, Judicial Notice of and Proof of State Documents.*

STATUTES, CUMULATIVE INDEX OF : (*See Index of Statutes, Cumulative.*)

STATUTES, JUDICIAL NOTICE OF AND PROOF OF STATE DOCUMENTS:
Committees appointed: 1925, p. 16; 1926, p. 19; 1927, p. 15; 1928, p. 17; 1929, p. 19.
Draft sections referred to committee: 1930, p. 18.
Reports of committees:
Presentation of: 1926, p. 19; 1927, p. 15; 1928, p. 16; 1929, p. 15.

Text of: 1926, p. 81; 1928, p. 89; 1929, p. 51; 1930, p. 96; 1931, p. 66.
Resolution as to: 1930, p. 19.
Sections approved in 1931 revised: 1931, p. 17.

SUBROGATION, DOCTRINE OF :
Discussion as to: 1939, p. 39.
Resolution respecting: 1939, p. 39.

SUCCESSION DUTIES :
Committees appointed: 1920, p. 12; 1921, p. 18; 1922, p. 19.
Reports of committees:
Presentation of: 1922, p. 18; 1923, p. 9.
Text of: 1923, p. 93.
Subject postponed: 1923, p. 15; 1924, p. 15; 1925, p. 11; 1926, p. 18.
Subject proposed: 1918, p. 11.

TRUSTEES :
Committees appointed: 1925, p. 16; 1926, p. 18; 1927, p. 16; 1928, p. 16.
Report of committee:
Presentation of: 1928, p. 16.
Text of: 1928, p. 64.
Reports of committee of Canadian Bar Association: 1924, p. 16; 1925, p. 16; 1926, p. 18; 1929, p. 20.
Subject postponed: 1929, p. 20.
Subject proposed: 1924, p. 16.

UNIFORM ACTS :
Amendment of, procedure as to: 1929, p. 13.
Changes made in by provinces adopting, discussion respecting: 1939, p. 30.
Drafting, rules for:
Beginning of draft, form of: 1919, p. 14.
Committees appointed: 1918, p. 11; 1919, p. 9.
Explanatory Notes: 1919, p. 14.
Footnotes as to existing legislation to be included in draft: 1937, p. 17; 1938, p. 19.
Notes as to changes made when revising draft: 1937, p. 17; 1938, p. 19; 1939, p. 38.
Reports of committees:
Adoption of: 1919, p. 9.
Presentation of: 1919, p. 9; 1920, p. 7.
Text of: 1919, p. 24.
Printing and distribution of drafts: 1919, p. 12.
Resolution as to: 1933, p. 15.

WAGERING CONTRACTS :
Reference to: 1932, p. 25.
Report as to: 1932, p. 19.
Report, adoption of: 1932, p. 20.

WAREHOUSE RECEIPTS ACT :
Reports as to: 1938, p. 14; 1939, p. 36.
Resolution respecting: 1938, p. 20.

WAREHOUSEMEN'S LIENS :
Amendment suggested: 1934, p. 16.
Committees appointed: 1920, p. 8; 1921, p. 15.
Draft Act:
Adoption of: 1921, p. 15.
British Columbia Act presented as basis of: 1920, pp. 8, 24; 1921, p. 9.
Discussion of: 1920, p. 8; 1921, pp. 12, 14, 15.
Text of: 1921, p. 49.
Resolution as to: 1934, p. 16.
Suggested action of Conference: 1919, p. 13.

WILLS :
Committees appointed: 1918, p. 10; 1919, p. 10; 1920, p. 11; 1921, p. 18; 1922, p. 19; 1923, p. 14; 1924, p. 15; 1925, p. 15; 1926, p. 18; 1927, p. 17; 1928, p. 15; 1929, p. 16.
Draft Act:
Discussion of: 1925, p. 14; 1926, pp. 12, 13, 14, 18; 1929, pp. 14, 15, 16.
Text of: 1922, p. 62; 1923, p. 45; 1926, p. 31; 1929, p. 37.
Memoranda of Alberta Commissioner: 1924, pp. 15, 64; 1926, pp. 26, 30; 1928, pp. 15, 59; 1929, p. 31.
Memorandum as to conflict of laws: 1929, p. 35.
Reports of committees:
Consideration of: 1925, p. 14; 1927, p. 17; 1929, p. 14.
Presentation of: 1922, p. 18; 1923, p. 9; 1925, p. 14; 1926, p. 12; 1927, p. 16; 1928, p. 15; 1929, p. 14.
Text of: 1925, p. 53; 1926, p. 24; 1927, p. 70; 1928, p. 55; 1929, p. 26.
Resolution to proceed with completion of Uniform Act: 1938, p. 15.
Resolution staying action on Uniform Act: 1926, p. 18.

WORKMEN'S COMPENSATION :
Committee appointed: 1921, p. 19.
Report of committee:
Presentation of: 1922, p. 17.
Text of: 1922, p. 59.
Subject postponed: 1922, p. 19.

PROCEEDINGS

PROCEEDINGS OF THE TWENTY-SECOND ANNUAL MEETING OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

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

Alberta :

MESSRS. SMITH and HENWOOD.

British Columbia :

MESSRS. MAITLAND and LAWSON.

Manitoba :

HON. MR. MAJOR, MESSRS. FISHER, FILLMORE and MCLEAN.

New Brunswick :

MESSRS. HUGHES, PORTER and DICKSON.

Nova Scotia :

MR. C. L. BEAZLEY.

Ontario :

MESSRS. BARLOW and SILK.

Prince Edward Island :

MR. W. E. BENTLEY.

Saskatchewan :

MR. D. J. THOM.

Canada :

MESSRS. READ, PLAXTON and O'MEARA.

SUMMARY OF PROCEEDINGS

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

"Perhaps the matter of the widest interest now before the Conference is the Evidence Act. We have found many difficulties in drafting this Act when attempting to meet local conditions in the several provinces, but we have now brought the Act to a point where we feel we shall be able to complete it next year.

"In our consideration of the Evidence Act this year, we have taken under advisement the recent alterations made in England, especially with regard to the hearsay rule, and Lord Chancellor Maugham graciously attended one of our meetings and gave us some very interesting and valuable information concerning the amendment made in England in that respect.

"We have also made very substantial progress in a draft Reciprocal Enforcement of Judgments Act. The wide experience of the Commissioners representing the Dominion with respect to the many matters which must arise under such an Act has been a most valuable help in connection with drafting this Act if it is to be workable. This also illustrates the wisdom of having the representatives of the Dominion on the Conference.

"I think it also supports the view so often expressed that it would be an advantage to the Conference if representatives of the Province of Quebec could find it possible to assist us with their presence. I think this could be done without endangering their rights under the Civil Code.

"The many fatal accidents in which several persons belonging to the same family have been killed at the same time in recent years, resulting from the general use of motor cars, have brought the subject of Commorientes or death in a common disaster into greater importance than formerly. A draft Act dealing with this subject has been completed at this year's Conference and has been recommended to the Legislatures of the several provinces for enactment.

"Further progress has also been made in the preparation of an Interpretation Act. We expect to have this completed at an early date.

"The Conference has also had under consideration the question of a central registration in each province of encumbrances or liens on motor vehicles. The different systems now used in the several provinces make it difficult to reach common ground. A draft of the necessary provisions will be prepared for consideration by the Conference at the next meeting.

"The difficulties arising with respect to the rights of the owner of a chattel after it has been affixed to land and the rights of the land owner have also received careful consideration. The principle which may be followed in a model Act dealing with this has been agreed upon by the Conference and a draft Act in accordance with this principle is to be prepared.

"Amendments to the Bulk Sales Act, Registration of Assignment of Book Debts, Subrogation in respect to insurance claims and with respect to the Libel and Slander Act have been under the careful consideration of the Conference.

"The request of The Canadian Bar Association that the Conference should consider a Uniform Coroners Act is receiving the attention of the Conference."

MINUTES OF MEETING

NOTE :—The Conference held the following sessions :

August	10th.	10.15 a.m.—12.45 p.m.
"		2.30 p.m.— 4.00 p.m.
"		8.00 p.m.—11.00 p.m.
"	11th.	10.00 a.m.—12.30 p.m.
"		2.30 p.m.— 4.00 p.m.
"		8.30 p.m.—10.30 p.m.
"	12th.	9.30 a.m.—12.15 p.m.
"		1.15 p.m.— 2.45 p.m.
"	14th.	10.00 a.m.—12.30 p.m.
"		2.45 p.m.— 4.15 p.m.
"		8.00 p.m.—10.30 p.m.
"	15th.	10.00 a.m.—11.45 a.m.

FIRST DAY

Thursday, August 10th, 1939.

The Conference assembled at 10.15 a.m., at the Chateau Frontenac, Quebec City. At the opening of the Conference, Mr. V. A. deBilly, K.C., the Batonnier of the Bar of Quebec district, gave an address of welcome to the Commissioners. Mr. Fisher thanked Mr. deBilly for his address. The Conference then proceeded to take up the matters on the agenda.

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

The President, Mr. Fisher, then addressed the Conference shortly, welcoming the new members and mentioning the fact that the Conference had gone some distance in establishing relationship with the Province of Quebec. He stated that he hoped some unofficial representative of the Quebec Attorney-General's Department would be present. He also stated that an exchange of Proceedings had been carried out with the National Conference of Commissioners on Uniform State Laws.

Mr. Fisher made mention of the matter of a cumulative index of all statutes drafted and adopted to date. A reference was made to the work done by Mr. Pineo in this connection in 1924. Mr. R. Andrew Smith volunteered to bring this index up to date and his offer was accepted by the Conference.

Mr. Read suggested that this be put in following the Preface. There was also a suggestion that extra copies of this cumulative index be run off so that these might be separately bound.

Mr. Fisher pointed out that from time to time various Acts drafted by the Conference and recommended for adoption have been enacted by certain provinces. It would appear that provinces adopting uniform Acts have made various changes therein. It was thought that a notation should be made of the changes and of any subsequent amendments. Mr. Fillmore thought that these changes and amendments should be considered and, as it might be necessary to review the original Act, it was decided that the check should be made and that the secretary for each province should be responsible for checking the uniform Acts enforced in his province and sending to the secretary a notation of any changes or amendments which have been made.

The *Treasurer's Report* was received and referred to Messrs. O'Meara and Maitland for audit and report.

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

Messrs. Lawson, Henwood, Read and Barlow were appointed a *Nomination Committee* to submit recommendations as to the election of officers of the Conference.

It was decided that the *hours of sitting* would be, for the morning sessions — 10.00 to 12.30; for the afternoon sessions —2.30 to 4.00; and for the evening sessions—8.30 to 10.30; with no sitting on Saturday afternoon. These were to be subject to change if necessary.

The President raised the question of the matters to be dealt with by the Conference at the present meeting. It was decided that the report on Commorientes, matters arising out of the draft Interpretation sections, the report on the draft Evidence Act and any questions referred to the Conference should be dealt with first and, if any time remained, other matters were to be taken up.

A report was submitted by the Dominion Commissioners with respect to the matter of the *Reciprocal Enforcement of Judgments.*

(*Appendix A.*)

Mr. Read drew attention to a letter which he had written to the Secretary of the Conference under date of thirty-first July with respect to the *Foreign Affidavits Act.*

(*Appendix B.*)

The report of the Ontario Commissioners with respect to *Commorientes,* as presented by Mr. Silk, was received and discussed in detail by the Conference. (1938 Proc., pp. 15 and 16.)

(*Appendix C.*)

The following resolution was then adopted :

RESOLVED that the *Commorientes Act* prepared by the Ontario Commissioners and set out in Appendix D, be adopted by the Conference and recommended to the Legislatures of the several provinces for enactment.

(*Appendix D.*)

The matter of *sections 18 and 23 of the 1936 draft of the Interpretation sections,* referred to the Dominion Commissioners for further consideration, was then discussed. (1938 Proc., p. 18.) It was decided that the first part of section 18 and section 23 should be dropped and not further considered. The second portion of section 18 was reserved for further consideration at this meeting of the Conference.

Mr. Silk also raised the question as to the wording of *paragraph (j) of section 16 of the 1938 draft Interpretation sections,* dealing with the matter of other parts of speech and tenses. Consideration of this was postponed in order that the matter might be given attention.

Mr. R. Andrew Smith then presented a *memorandum* which he had received *from* the Honourable S. E. Low, *Provincial Treasurer of the Province of Alberta.*

(*Appendix E.*)

This memorandum was discussed by the Conference and Mr. Smith requested to prepare a resolution for submission to the Conference.

The Conference resumed discussion of *section 18 of the draft Interpretation sections* as set out in the 1936 Proceedings on page 59.

The following resolution was then adopted :

RESOLVED that *section 18 of the uniform sections respecting an Interpretation Act* submitted by the Dominion Commissioners at the 1936 Conference (1936 Proc., p. 59) be redrafted by the Dominion Commissioners in accordance with the instructions of the Conference and that the section, as so redrafted, be recommended to the Legislatures of the several provinces for enactment; this is to be considered as an amendment to the draft uniform Interpretation sections adopted at the 1938 Conference.

(SECRETARY'S NOTE: *Due to the outbreak of war it was not possible for the Dominion Commissioners to comply with the terms of the resolution so as to enable the material to be included in this year's Proceedings.*)

It also appeared from the discussion that there was some inconsistency in the wording of the *1938 draft of the uniform sections respecting an Interpretation Act.* The matter of dealing with these inconsistencies was referred to Mr. O'Meara, who undertook to check the sections and draft the necessary corrections. The sections referred to are sections 10, 13, 14, 16, 17, 19 and 20 of the sections respecting an Interpretation Act adopted at the 1938 Conference.

The following resolution was then adopted :

RESOLVED that draft uniform *sections respecting an Interpretation Act* be amended in the manner set out in the memorandum of the Dominion Commissioners.

(SECRETARY'S NOTE : *Due to the outbreak of war it was not possible for the Dominion Commissioners to comply with the terms of the resolution so as to enable the material to be included in this year's Proceedings.*)

The matter of the paragraphing in *section 19 of the draft Interpretation sections,* as it appears in the 1938 Proceedings, was mentioned. It was pointed out that the practice has been to indicate the paragraphs by letters and not by numbers. It was thought that this practice should be adhered to and that instead of showing the paragraphs by numbers, these should be shown by letters.

The matter of *paragraph (j) of section 16 of the draft Interpretation sections,* as it appears in the 1938 Proceedings, was further considered.

After some discussion, the following resolution was adopted:

RESOLVED that paragraph (j) of section 16 be eliminated from the *1938 draft uniform sections respecting an Interpretation Act.*

The *Report of the Treasurer*, as approved by the auditors, Messrs. O'Meara and Maitland, was received and adopted.

(*Appendix F.*)

A verbal report was submitted by Mr. Silk on behalf of the Ontario Commissioners with respect to the matter of drafting a *Form of Statutes Act.*

After some discussion, the following resolution was adopted:

RESOLVED that the matter of drafting a uniform *Form of Statutes Act* be not further considered by the Conference.

Mr. Lawson, on behalf of the British Columbia Commissioners, made a verbal report with respect to the matter of the drafting of a uniform *Evidence Act.* He explained that a full redraft of the Act had not been prepared in view of the fact that this had been done in 1936 and included in the 1936 Proceedings (see pages 28 et seq.). He also presented a report covering certain additional matters to be given attention.

(*Appendix G.*)

SECOND DAY

Friday, August 11th, 1939.

Discussion of the uniform draft *Evidence Act* was continued. In the course of the discussion of section 36 and the following sections as they appear in the 1936 draft of the uniform Evidence Act, attention was drawn to the *submission of the Canadian Bankers Association with respect to proof of bank records by photographic reproductions.*

(*Appendix H.*)

THIRD DAY

Saturday, August 12th, 1939.

Discussion of the uniform draft *Evidence Act* was continued and it was decided that the suggestion of the Canadian Bankers Association be referred to the Commissioners redrafting the

Evidence Act, with instructions to incorporate therein a section along the lines suggested in the memorandum (the section to be widened to cover government records as well) and to make a change in the wording so that all photographic reproductions will be covered. There was a discussion of the extension of the principle to other types of business records but this was left in abeyance for the time being.

It was decided that the *Foreign Affidavits Act* as promulgated in 1938 (1938 Proc., pp. 50-51), be incorporated in the draft uniform Evidence Act by the Commissioners redrafting the Evidence Act.

The matter of the inclusion of *provisions similar to those in the English Evidence Act of 1938* and in the Manitoba amendments of 1939 was discussed and the Commissioners were instructed to draft provisions incorporating these in the draft uniform Evidence Act.

The matter of *provisions dealing with expert testimony*, referred to in the Report of the British Columbia Commissioners submitted this year, was also discussed, and the Commissioners instructed to include a section or sections dealing with this matter.

FOURTH DAY

Monday, August 14th, 1939.

Discussion of the draft uniform *Evidence Act* was continued. The matter of the uniform Business Records as Evidence Act, prepared by the American Uniformity Commissioners, was considered and the Commissioners redrafting the uniform Evidence Act were instructed to give consideration to the inclusion of similar provisions, in so far as the American Act is not covered by the English Evidence Act of 1938.

The *matter of the proof of foreign law* was also discussed and instructions given to include in the redraft of the Evidence Act a section permitting this to be proved in a simpler way than at present.

The *matter of the definitions in the various sections dealing particularly with state documents* was discussed in considerable detail.

The following resolution was then adopted :

RESOLVED that the 1936 draft uniform *Evidence Act* be referred to the Dominion Commissioners for the preparation of a new draft in accordance with the instructions of the Conference.

Mr. Silk raised the *question of printing a consolidation of all the uniform Acts prepared and recommended by the Conference to date.* Discussion of the point followed and the following resolution was then adopted :

RESOLVED that *all Acts adopted and recommended by the Conference to date,* with the exception of the uniform Fire Insurance Act and the uniform Life Insurance Act, be considered by the Ontario Commissioners with the object, if feasible, of including these in next year's annual Proceedings.

Mr. Beaulieu, K.C., President of The Canadian Bar Association, joined the Commissioners at this point for some little time. He spoke a few words to the members as to the work being done by the Commissioners.

The report of the Ontario Commissioners respecting *the matter of the central registration of encumbrances affecting motor vehicles* was presented by Mr. Silk.

(*Appendix I.*)

Discussion of the report followed and it was decided that the matter of drafting legislation whereby title to motor vehicles would be guaranteed was not feasible. It was also decided that the matter of some central registration with respect to encumbrances upon motor vehicles must be worked out.

The following resolution was then adopted :

RESOLVED that the matter of the preparation of draft sections providing for the *central registration of encumbrances affecting motor vehicles,* with or without local registration of encumbrances, be referred to the Nova Scotia Commissioners.

The Nova Scotia Commissioners were also instructed to consider the form of the legislation, that is, as to whether it should be by a separate Act or by amendments to existing statutes, such as the Bills of Sale Act or the Conditional Sales Act.

The report of the Alberta Commissioners with respect to the *matter of chattels affixed to land* was presented by Mr. Smith.

(*Appendix J.*)

The above report was discussed, and the following resolution was then adopted :

RESOLVED that the report of the Alberta Commissioners with respect to *conditional sales of chattels affixed to land* be referred back to the Alberta Commissioners to draft sections to provide for the conditions upon which such fixtures may be removed and also providing for the registration of such conditional sale agreements in Land Titles Offices or Registry Offices as the case may be.

At this point Mr. Vincent MacDonald, K.C., came into the meeting unofficially and was welcomed by the Commissioners.

A verbal report by the British Columbia Commissioners on the *matter of the registration of agreements where goods are sold on consignment* was presented. It was decided that a written report should be submitted by those Commissioners next year.

A verbal report was presented by the British Columbia Commissioners on the matter of the preparation of a uniform *Warehouse Receipts Act* and it was decided that a written report should be submitted next year.

Mr. Bentley, a representative of Prince Edward Island, presented a report on the matter of the *Bulk Sales Act* amendment (1938 Proc., pp. 18 and 66-71).

(*Appendix K.*)

The report was discussed and the following resolution was then adopted :

RESOLVED that section 8 of the uniform *Bulk Sales Act* be amended by adding thereto a subsection numbered as subsection (2), as set out in the Appendix.

(*Appendix L.*)

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

Hon. President ...Hon. Gordon D. Conant, K.C., Toronto, Ont.
President ....R. Murray Fisher, K.C., Winnipeg, Man.
Vice-President....R. Andrew Smith, K.C., Edmonton, Alta.
Treasurer. . . .Eric H. Silk, K.C., Toronto, Ont.
Secretary..... .Wilson E. McLean, K.C., Winnipeg, Man.

The report of the New Brunswick Commissioners with respect to the matter of drafting a uniform *Coroners Act* was presented by Mr. Porter.

(*Appendix M.*)

After some discussion of the report, the following resolution was adopted :

RESOLVED that the report be received and the matter of the preparation of a uniform *Coroners Act* be referred to the Ontario Commissioners for report next year.

At this point the Right Honourable Lord Maugham, Lord High Chancellor of Great Britain, was presented to the Conference by Mr. T. W. Laidlaw, K.C., Secretary of The Canadian Bar Association. Mr. Fisher introduced Lord Maugham to the Commissioners and Lord Maugham discussed at some length the English Evidence Act of 1938, which he was responsible for drafting and introducing into Parliament.

The following resolution prepared by Mr. Smith, arising out of the memorandum from the Honourable S. E. Low (*Appendix E*) was then adopted :

WHEREAS it appears by communication from the Provincial Treasurer of Alberta, on behalf of the Government of Alberta, that it is proposed to hold a conference of representatives of the provinces with a view to achieving such uniformity as may be possible in the legislation of provinces imposing taxation on incomes;

AND WHEREAS the Province of Alberta has requested the co-operation of this Conference in effecting such uniformity as may be agreed upon at the proposed conference;

THEREFORE BE IT RESOLVED that in case three or more provinces arrive at any agreement as to *uniform income tax legislation*, and upon the request of at least three provinces, a committee of this Conference consisting of the Commissioners for the Provinces of British Columbia, Alberta, Saskatchewan and Manitoba, undertake the drafting of such uniform provisions as to which agreement has been reached as aforesaid and to report thereon at the next meeting of this Conference.

The following resolutions were then adopted :

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 or near the same place.

RESOLVED that the Secretary be authorized to employ such *secretarial assistance* as he may require to be paid 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 expense of the publication of the addendum to be paid by the Conference; and

(2) to prepare a report of the proceedings of the Conference and to have the same printed in pamphlet form and to send copies thereof to the other Commissioners.

It was also decided that this year fifty copies of the annual Proceedings should be interleaved. The Secretary was instructed to send one copy of the interleaved Proceedings after publication to each Commissioner and to retain one copy for each Commissioner to be taken to the Conference by the Secretary.

The matter of footnoting of drafts of uniform Acts was discussed, and the following Resolution adopted :

RESOLVED that *all drafts of uniform Acts be footnoted* (See 1938 Proc., p. 19) instead of annotating only the first draft, as was decided in 1938.

Attention was also called to the resolution appearing at page 17 of the 1937 Proceedings, which was as follows :

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

The following resolution was then adopted :

RESOLVED that the Treasurer 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 fifty dollars ($50.00) for the necessary support of the Conference.

The Conference expressed its appreciation of the courtesy extended to the Conference by the visit of the Lord Chancellor.

The Conference expressed its deepest appreciation of the hospitality and courtesy extended to it by Mr. V. A. deBilly, K.C., Batonnier of the Bar of the district of Quebec; Mr. L. S. St. Laurent, K.C., Past President of The Canadian Bar Association; and Mr. L. E. Beaulieu, K.C., President of The Canadian Bar Association; the Association of Notaries of the Province of Quebec; and by various members of the Quebec Bench and Bar.

The matter of the preparation of a uniform *Married Women's Property Act* was again referred to the Manitoba Commissioners for a report next year.

The matter of the uniform *Assignment of Book Debts Act* raised by the letter of Mr. Silk to the Secretary, dated 16th June, 1939, was brought before the Conference by Mr. Silk.

(*Appendix N.*)

A discussion followed as to the necessity of amending the Act to require the registration of renewal statements. It was pointed out that when this Act was prepared by the 1928 Conference, special mention was made of the fact that no provision was being inserted for renewal statements. (1928 Proc., pp. 44-46).

The following resolution was then adopted :

RESOLVED that the matter of drafting a section to provide for registration of renewals under *Assignment of Book Debts Act* be referred to the New Brunswick Commissioners.

The Secretary was instructed to send to each local secretary notice of the various matters referred to the Commissioners of the province for next year's meeting.

The matter of the resolution of the insurance section of The Canadian Bar Association with respect to the doctrine of *Subrogation* was discussed and the following resolution adopted :

RESOLVED that the matter of *Subrogation* be referred to the Manitoba Commissioners for consideration and report at next year's meeting.

A verbal report with respect to the *Libel and Slander Act* was submitted by Mr. Thom on behalf of the Saskatchewan Commissioners. He referred to a notation in the 1938 Proceedings at page 15, with respect to the matter of *"Privileged Information"*. He submitted by way of a report a letter written by himself to Mr. Runciman.

(*Appendix O.*)

A discussion of the report followed, particularly as to the necessity of covering the matter, and it was decided that the same should stand over to permit the various members to get material on the situation in their respective provinces. It was decided that the Saskatchewan Commissioners should communi-

cate with each local secretary for this information and that the Saskatchewan Commissioners report the result of these enquiries at the next meeting of the Conference.

Mr. Thom also mentioned the matter of the letter from the Secretary with respect to the *right of privacy* and the possibility of protecting the same. The Saskatchewan Commissioners were directed to report upon this at the next meeting of the Conference.

Further discussion followed with respect to certain problems in the drafting of the *Libel Act*, particularly with respect to the wording of the various sections appearing in the 1936 draft.

The following resolution was then adopted :

RESOLVED that the matter of the draft uniform *Libel Act* be referred back to the Saskatchewan Commissioners for further consideration and report at next year's meeting.

FIFTH DAY

Tuesday, August 15th, 1939.

Mr. A. C. Campbell, K.C., of Winnipeg, the Commissioner for Manitoba who retired this year, attended this meeting and was welcomed by the various members of the Conference.

It was announced that a luncheon by the notaries of the Province of Quebec was being held at noon and that the members of the Conference were invited.

The matter of the inclusion of a section in the uniform *Landlord and Tenant Act* was raised by Mr. Porter of New Brunswick. This was a section which was contained in the New Brunswick Act and which was not in the draft Act. It was decided that Mr. Porter was to make a special report at the next meeting with respect thereto.

The report submitted by the Dominion Commissioners with respect to reciprocal enforcement of judgments (*App. A.*) was summarized by Mr. Read and shortly discussed by the Conference.

The following resolution was then adopted :

RESOLVED that the matter of the *Reciprocal Enforcement of Judgments Act* should be referred to the Commissioners for Alberta for consideration and report at the next Conference.

APPENDICES

A. Report on Reciprocal Enforcement of Judgments Act.

B. Letter dated 31st July, 1939, with respect to Foreign Affidavits Act.

C. Report on Commorientes Act.

D. Draft of Commorientes Act.

E. Memorandum from Honourable S. E. Low, Provincial Treasurer of Alberta.

F. Treasurer's Report.

G. Report on draft Evidence Act.

H. Memorandum respecting evidence of Bank Records.

I. Report respecting Central Registration of Encumbrances affecting Motor Vehicles.

J. Report respecting Conditional Sales of Chattels affixed to Land.

K. Report respecting the amendment of the uniform Bulk Sales Act.

L. New subsection to section 8 of the uniform Bulk Sales Act.

M. Report respecting uniform Coroners Act.

N. Letter from Mr. Silk respecting uniform Assignment of Book Debts Act.

O. Letter of Mr. Thom respecting uniform Libel and Slander Act.

APPENDIX A

REPORT ON RECIPROCAL ENFORCEMENT OF JUDGMENTS

CHAPTER I. INTRODUCTION

The question of reciprocal enforcement of judgments was surveyed in a draft report entitled Reciprocal Enforcement of Judgments, dated July 24, 1936. It is unnecessary to repeat the earlier history which is summarized therein.

The position, as it was in 1936, is indicated in the following summary :

(a) A Model Act, dealing with inter-provincial reciprocal enforcement of judgments was adopted by the Conference in 1924, and amended in 1925.

It was adopted by :

Saskatchewan (1924); Alberta (1925); British Columbia (1925); New Brunswick (1925); Ontario (1929);

(b) Reciprocal Enforcement of Judgments within the British Empire. The general position, as indicated by the action of the Conference (1921, pp. 17, 18) and by communications from the provincial governments to the Canadian Government, was that the governments were unwilling to participate in a scheme extending beyond Canada until an inter-provincial scheme had been tried and had met with general approval (draft report pp. 6–9).

Saskatchewan and Alberta had proceeded independently and made provision for extending the principle of enforcement of judgments to other parts of His Majesty's dominions. This example had not been followed by the other provinces.

(c) A Model Foreign Judgments Act, dealing with defences to foreign judgments, was adopted by the Conference in 1933. Saskatchewan alone has adopted it (1934).

(d) The question of international action was brought to the attention of the interested Canadian governments as a result of the report of the Greer Committee (Cmd. 4213) and the conclusion of Conventions with France and Belgium. These conventions were open to accession by Canada. They have both been ratified since the date of the draft report, but Canada has not acceded.

The whole question was brought to the attention of the Conference in 1936 and the following resolution was adopted :

"Resolved that the draft Report on the Reciprocal Enforcement of Judgments be referred to the Commissioners for Ontario in co-operation with the Dominion representative with instructions to submit to the next session of the Conference :

(a) A report on the desirability of adopting the policy of international reciprocal enforcement of judgments; and

(b) A report on the nature and scope of the legislation required to enable the adoption of such a policy; and

(c) A report on the present position under the Model Acts, 1924 and 1933."

A report was submitted to the Conference in 1937 (1937 Proceedings, pp. 32, 33) and, after discussion, 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."

In 1938, the report had not been prepared, and, by resolution, the matter was laid over until 1939. (1938 Proceedings, p. 19).

Accordingly, it is necessary to consider the following points:

First : Nature and Scope; and

Second : Draft Bill.

CHAPTER II. NATURE AND SCOPE OF LEGISLATION

Generally, it is assumed that separate Conventions will be negotiated with France and Belgium, in the event that the policy proves to be acceptable to the Dominion and Provincial Governments. It is also assumed that draft legislation should follow as closely as possible the United Kingdom Act. In that manner, intra-Commonwealth action would be made possible and international negotiations would be facilitated. It is also assumed that the Model Act will supplant the Model Act of 1924.

CHAPTER III. DRAFT UNIFORM ACT

An Act to facilitate the Reciprocal Enforcement of Judgments.
(Appropriate enacting clause)

PART I.—GENERAL

1. This Act may be cited as the Reciprocal Enforcement of Judgments Act.

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

"Appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution ;

"Country of the original court" means the country in which the original court is situated;

"Judgment" means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

"Judgment creditor" means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

"Judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;

"Judgments given in the superior courts of
" means judgments given in the

and includes judgments given in any courts on appeals against judgments so given;

"Original court" in relation to any judgment means the court by which the judgment was given;

"Prescribed" means prescribed by rules of court;

"Registration" means registration under Part II of this Act, and the expressions "register" and "registered" shall be construed accordingly;

"Registering court" in relation to any judgment means the court to which an application to register the judgment is made.

(2) For the purposes of this Act, the expression "action in personam" shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants.

PART II.—REGISTRATION OF FOREIGN JUDGMENTS

3. (1) The Governor (Lieutenant-Governor) in Council, if he is satisfied that, under the terms of an agreement concluded with any foreign country, substantial reciprocity of treatment as respects the enforcement of judgments of superior courts is provided for, may, by order or regulation, make provision for giving effect to such agreement and may direct—

(a) that this Part shall extend to that foreign country; and

(b) that such courts of that foreign country as are specified in the order or regulation, or as may have been specified in the agreement, shall be deemed to be superior courts for the purposes of this Part.

(2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if—

(a) it is final and conclusive as between the parties thereto; and

(b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

(c) it is given after the coming into operation of the order or regulation directing that this Part of this Act shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) The Governor (Lieutenant-Governor) in Council may vary or revoke any order or regulation made under this Section.

NOTE: This draft is based upon S. 1 of the United Kingdom enactment. It contemplates the conclusion of an agreement. Then, if the Lieutenant-Governor is satisfied that the agreement makes provision for substantial reciprocity, the Part is brought into operation vis-a-vis the country in question by an order-in-council.

The wording of subsection (1) is simplified and adapted to our peculiar position in treaty-making. In practice, if past experience in cognate matters is a safe guide, one would expect the question of policy to be settled by the A. G.'s before the conclusion of the agreement. The "satisfaction" of the mind of the Lieutenant-Governor-in-Council would, in such a case, be a confirmation of a preceding decision.

The slight variation in clause (b) is unimportant. It may well prove to be convenient to list the courts in the agreement.

4. (1) A person, being a judgment creditor under a judgment to which this part of this Act applies, may apply to the Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the Court, and on any such application the Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered :

Provided that a judgment shall not be registered if at the date of the application—

(a) it has been wholly satisfied; or

(b) it could not be enforced by execution in the country of of the original court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration—

(a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and

(b) proceedings may be taken on a registered judgment; and

(c) the sum for which a judgment is registered shall carry interest; and

(d) the registering court shall have the same control over the execution of a registered judgment;

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part and the rules of court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Canada, the judgment shall be registered as if it were a judgment for such sum in the currency of Canada as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

NOTES: *Subsection (1).* This follows the United Kingdom enactment S. 2 (1). The limitations in the proviso are not to be found in the Model Act (1924). The first limitation (a) is included by implication. In the second case, (b), there is a difference between the United Kingdom treatment of the problem and that which is to be found in the Model Act. Incapability of being enforced in the country of origin would be a ground for a stay of execution under the Model Act S. 5 (b) and not a ground for refusal or setting aside of registration.

Subsection (2). This covers the points dealt with in M. A. 1924, S. 5 (a) (b). It should be noted that the requirement of notice in certain cases (M. A. 1924 S. 3 (2))

is not included. The problem is dealt with by preventing execution until after the judgment debtor has had an opportunity to be heard.

Subsections (3) (4) *and* (5). These points were not specifically dealt with in the M. A. 1924, but could be covered by Rule under S. 8, or regarded as having been included by implication.

Subsection (6). Covered by M. A. 1924, S. 5 (c).

5. (1) Rules of court may be made for regulating the practice and procedure (including costs) in respect of proceedings of any kind under this Part.

(2) Such rules shall be expressed to have, and shall have effect subject to the provisions contained in orders and regulations made under section 3.

NOTE: This first subsection follows S. 8 of M.A. 1924. It is more comprehensive than and preferable to S. 3 of the United Kingdom enactment.

The second subsection is taken from S. 3 of the United Kingdom enactment. It is necessary because, in any particular instance, it may be necessary to modify a rule by order-in-council, to make it conform to the agreement, vis-a-vis the country in question.

For a Dominion enactment the section would have inserted preceding the first word of the section—"Subject to the approval of the Governor in Council."

6. (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(a) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the foregoing provisions of this Act; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or

(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or

(iv) that the judgment was obtained by fraud; or

(v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the ntry of the original court shall, subject to the provisions subsection (3) of this section, be deemed to have had sdiction—

(a) in the case of a judgment given in an action in personam—

(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court; or

(ii) if the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court; or

(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business

in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;

(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—

(a) if the subject matter of the proceedings was immovable property outside the country of the original court; or

(b) except in the cases mentioned in sub-paragraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (2) of this section, if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or

(c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court. (Based upon U. K. Act s. 4),

NOTES: S. 6 (1) (a) (i). These provisions are implicit in the M. A. 1924.

S. 6 (1) (a) (ii). This provision corresponds to M.A. 1924, S. 4 (a). It is assumed that in that provision the words "without jurisdiction" relate to "jurisdiction" as determined by the law of the registering country, *i.e.*, the rules of Private International Law. In this provision the word "jurisdiction" is governed by the statutory definition in the following subsection.

S. 6 (1) (a) (iii). This point is covered by M.A. 1924, S. 4. (c).

S. 6 (1) (a) (iv) and (v) cover the points dealt with in M.A. 1924, S. 4 (d) and (f).

S. 6 (1) (a) (vi) is probably unnecessary, and its provisions are implicit in M.A. 1924, *e.g.* v. S. 4 (g).

S. 6 (1) (b). This provision has no counterpart in M.A. 1924. Possibly the court might be able to stay proceedings under S. 5 (b).

In the case of the Model Act, 1924, the grounds set forth in S. 4 are gounds for refusal to register. In this draft the grounds enumerated in S. 6 (1) (a) are grounds for setting aside registration. The difference, while fundamental, in theory, is unimportant. Practically, under the procedure prescribed by the M.A. 1924, the points covered by S. 4 could not be raised in *ex parte* proceedings except in a motion under S. 7 to set aside the registration. Contested proceedings are, of course, different. Substantially, however, the contested proceedings under the M.A. 1924 do not involve any difference in principle. They merely serve to combine registration and motion to set aside in a single procedure.

S. 6 (2) (a). The conditions governing recognition of the jurisdiction of the original court, in the case of actions *in personam*, differ from those prescribed by the Model Acts 1924 and 1933 in one important respect. Ordinary residence is the test in the Model Acts. "Residence" is the test in the present draft, based upon the United Kingdom enactment. Further, a more limited effect is given to carrying on business and to the position of corporate debtors.

A more important difference in principle is to be found in the position of default judgments. The M.A. 1924 protected the debtor, in case of default judgment. The present draft, and the M.A. 1933 hand over the individual buyer of goods to the tender mercies of the instalment racketeers.

Both the present draft and the M.A. 1933 eliminate "allegiance" as a ground for jurisdiction, and thus get rid of an obscure and unsatisfactory doctrine.

S. 6 (2) (b). The rules with regard to actions *in rem* do not involve any change from the position under M.A. 1924. Read with S. 6 (3) (a), they give statutory form to the doctrine with regard to personal actions the subject matter of which is immovable property. Read in conjunction with S. 6 (1) (a) (iii) a minor change in the law is effected (*e.g.*, judgment in an action for trespass to lands in which defendant had been served by substituted service, but in which the writ had not actually reached him in time to enable him to appear).

S. 6 (2) (c). This provision sends us back to the law of the registering court and involves no change.

S. 6 (3). Clause (a) has already been referred to. Clause (b), with appropriate qualifications, preserves the position under contracts providing for arbitration or for adjudication by the courts of a named country. It involves a formal rather than a substantial departure from the present law. Clause (c) preserves special immunities, *e.g.*, diplomatic officials and sovereigns. This provision involves a departure from the existing law in exceptional cases.

7. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration

until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under the last foregoing subsection, or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date. (Based on U. K. Act s. 5).

NOTES: S. 7 (1) and (2). The provisions may be compared with M.A. 1924, S. 4 (e) and M.A. 1933 S. 7.

Clause (3) protects the position of a judgment creditor holding a partially satisfied judgment.

8. No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in

—(Based on U. K. Act s. 6).

NOTE: This may be contrasted with M.A. 1924, S. 10.

9. (1) The Governor (Lieutenant-Governor) in Council may by order or regulation direct that this Part shall apply to any part of His Majesty's dominions outside Canada, or to any province or territory of Canada, and to judgments obtained in the courts of the said part, province or territory, as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in that event, this Part shall have effect accordingly.

(2) References in this section to His Majesty's dominions shall be construed as including references to any territories which are under His Majesty's protection and to any territories

in respect of which a mandate under the League of Nations has been accepted by His Majesty. (Adapted from U. K. Act s. 7).

PART III.—MISCELLANEOUS

10. (1) Subject to the provisions of this section, a judgment to which Part II applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in
as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment—

(a) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

(b) where the judgment has not been registered, and it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in from recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act. (Based on U. K. Act s. 8).

NOTE: This section, extends the principles underlying Part II to recognition of judgments. It is an obvious consequence of the enactment of Part II and has no counterparts in the Model Acts.

Subsection (3) preserves the common law rule for cases not covered by the preceding Subsections. It may be questioned whether its inclusion is desirable.

11. (1) If it appears to him that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the superior courts of is substantially less favourable than that accorded by the courts of to judgments of the superior courts of that country, the Governor (Lieutenant-Governor) in Council may, by order or regulation, apply this section to that country.

(2) Except in so far as the Governor (Lieutenant-Governor) in Council may by order or regulation under this section otherwise direct, no proceedings shall be entertained in any court in for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) The Governor (Lieutenant-Governor) in Council may by a subsequent order or regulation vary or revoke any order or regulation made under this section. (Based on U. K. Act s. 9).

NOTE: This provision has no counterpart in the Model Acts. The writer would strongly urge its omission.

SPECIAL NOTE: No section based upon S. 10 of the United Kingdom enactment is included. It is unnecessary, and in any event it is covered by S. 5 (Power to make rules).

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

13. This Act shall come into force on the day of A.D., 19 .

J. E. READ,
for
Dominion Representatives

Ottawa, July 24, 1939.

APPENDIX B

Ottawa, July 31, 1939.

The Secretary,
Conference of Commissioners
on Uniformity of Legislation in Canada.

Sir,—

I have the honour to bring to your attention two matters concerning the Foreign Affidavits Act, a draft uniform statute appearing in the 1938 Proceedings at pp. 50 and 51.

Two matters have arisen since the approval of this draft last year.

The first matter concerns the possible need for clarification of the language of the draft sections. During the session of Parliament recently concluded there was a discussion of the question of the organization of a consular service for Canada. In view of this discussion, there seems to be a definite possibility that a beginning may be made in the establishment of a Canadian consular service in the not too distant future. Accordingly, it might be considered desirable to re-word sub-paragraph (b) of the second draft section, so as to make it certain that Canadian consular officers would have the powers conferred by the Act.

The second point has been raised by a communication from the office of the High Commissioner for the United Kingdom. A copy of this letter, dated 10th May is annexed. It is suggested that the points dealt with in the first three paragraphs would not require any action by way of revision of the draft sections. The point dealt with in the fourth paragraph is, however, of substance and might involve a change in the wording of sub-paragraph (a) of the second section.

A suggested revision of the second section is submitted for consideration :—

2. The provisions of this Act shall extend to the following classes of persons :

(a) Officers of any of His Majesty's diplomatic or consular services exercising their functions in any foreign country, including ambassadors, envoys, ministers, chargés d'Affaires, counsellors, secretaries, com-

mercial attachés, consuls-general, consuls, vice-consuls, pro-consuls, consular agents, acting consuls-general, acting consuls, acting vice-consuls and acting consular agents;

(b) Officers of the Canadian diplomatic, consular and representative services exercising their functions in any foreign country, or in any part of His Majesty's dominions outside of Canada, including, in addition to the diplomatic and consular officers mentioned in paragraph (a), high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries;

(c) Canadian Government Trade Commissioners and Acting Canadian Government Trade Commissioners exercising their functions in any foreign country or in any part of His Majesty's dominions outside of Canada.

Yours sincerely,

J. E. READ.

(High Commissioner)
(for the)
(United Kingdom)

OFFICE OF THE HIGH COMMISSIONER
FOR THE UNITED KINGDOM,
Earnscliffe,
OTTAWA.

771/6

10th May, 1939.

Dear Dr. Skelton,—

In your letter of the 16th September you were good enough to send to Mr. Mason a copy of a report submitted last year to the Conference of Commissioners on the Uniformity of Legislation in Canada on the subject of the authentication by consular officers of notarial acts. Subsequently the High Commissioner was furnished by your Department with a copy of the final report of the Conference which contains at page 50 a draft of a proposed uniform enactment entitled "An Act respecting the Taking of Affidavits Abroad".

The High Commissioner has asked me to let you know that the United Kingdom authorities, to whose notice these documents were brought, have now requested that certain observations be brought to the notice of the competent Canadian authorities. These observations are as follows.

In Clause 2 (a) of the draft enactment the term "Commercial Attaché" is used. As regards this two considerations would appear to be relevant. In the first place, the term Commercial Attaché is no longer in use in the United Kingdom services. It has been replaced by the term commercial Diplomatic Officer which comprises in the highest grade Commercial Counsellors, and in the lower grades Commercial Secretaries. (It is, of course, appreciated that the term Commercial Attaché may be in use in Canadian services abroad or in the services of other Dominions which are to be covered by the legislation in question). The second consideration is more important. It is that Commercial Diplomatic Officers are not in the ordinary way authorized by the Department of Overseas Trade to authenticate documents. In bringing this to the notice of the Canadian authorities the United Kingdom authorities are anxious only to obviate possible inconvenience to Canadian citizens abroad, and they appreciate that the proposed uniform enactment is in a sense only permissive and could not be regarded as compelling a Commercial Diplomatic Officer to legalize documents for Canadian citizens. It would, however, seem to be the case, that inconvenience and possible annoyance might be caused to Canadian citizens who, relying upon the wording of the proposed legislation, might approach a Commercial Diplomatic Officer in order to have a document authenticated only to be informed by that officer that he could not undertake this duty and that the applicant should go elsewhere for the purpose.

There is a further point to which the United Kingdom authorities (again in the interests of Canadian citizens) desire to invite attention and to which a somewhat greater importance is attached. This arises out of what would appear to have been a slight misunderstanding of the general position under the United Kingdom Oaths Acts. On page 47 of the printed Proceedings of the Conference of Commissioners on Uniformity of Legislation, 1938, a quotation is given from the Commissioners for Oaths Act, 1889, and it would appear that Clause 2 (a) of the draft uniform enactment on page 50 was drawn up with a view to securing uniformity with this United Kingdom Act. It may, however, have been overlooked that the Oaths Act,

1889, was amended by an Act in 1891 (54 and 55 Vict., C. 50) so as to include amongst those officers qualified to authenticate documents Acting Consuls-General, Acting Vice-Consuls and Acting Consular Agents. Apart from periods of leave of absence a consular officer may often serve at a post for a considerable period before his substantive appointment can be effected, and during this period all his duties are carried out as an Acting Consul-General, Acting Consul and so forth. It would thus appear to be to the advantage of Canadian citizens if it were possible for the proposed uniform enactment to include these acting ranks and to conform in this respect to the wording of the United Kingdom Oaths Act as amended in 1891.

It is appreciated that the draft uniform enactment has now been under consideration by Provincial Governments for some time and that even if legislation has not yet been passed it might prove difficult to secure amendments at this stage. The United Kingdom authorities, however, while not wishing in the circumstances to delay the enactment of the proposed legislation in its present form, suggest that it would be desirable that the point set out in the preceding paragraph of this letter should be met, if not at once, then as soon as possible after the enactment of the legislation in question.

Yours sincerely,

STEPHEN L. HOLMES.

Dr. O. D. Skelton,
Under-Secretary of State for
External Affairs,
Ottawa.

APPENDIX C

COMMORIENTES

(Further Report of Ontario Commissioners)

At the 1938 meeting of the Conference the Ontario Commissioners presented a draft Act and it was—

"RESOLVED that the section relating to *"Commorientes"* prepared by the Ontario Commissioners, as amended by the Conference, be referred back to the Ontario Commissioners to be redrafted in accordance with the instructions of the Conference and as redrafted be adopted by the Conference and recommended to the Legislatures of the several Provinces for enactment, the section to comprise a separate Act having for its long title "An Act respecting Survivorship in a Common Disaster" and for its short title *"The Commorientes Act"*. (1938 Proceedings, page 16).

For convenience please refer to page 33 of the 1938 Proceedings of the Conference where the Act as adopted and redrafted by the Ontario Commissioners is set out.

The portions of subsection 3 of section 2 of the Act which are underlined are provisions which were not authorized at the last meeting of the Conference but the Ontario Commissioners, upon redrafting the section after the conclusion of the last meeting, were of opinion that such provisions are necessary in order that the proposed Act may fully take care of all situations which may arise, and accordingly the Act was printed in the 1938 Proceedings at page 33 in the above form but the following note appears at page 16 of the Proceedings :

> (SECRETARY'S NOTE: When the Ontario Commissioners came to consider the draft sections relating to *"Commorientes"* they found that insertions were necessary in subsection (3) of section 2 of the draft Act, which insertions are indicated by underlining, and, in view of the fact that these were not passed upon by the Conference it was thought advisable to defer approval of this draft Act until the next Conference when the matter may be fully discussed. The above mentioned Resolution (page 1 of this memorandum), therefore, should not be acted upon.)

The reason for the insertion of the additional words is obvious and although the Ontario Commissioners were of opinion

they should be retained in the form in which they appear above, they consulted with Mr. Andrew Smith who was of considerable assistance in redrafting the other provisions of the Act at the last meeting, and in a letter dated September 8th, 1938, Mr. Smith wrote in part—

> "With regard to subsection (3) I cannot understand why there is any necessity to deal by legislation with cases where the will makes express provision for the disposition of property in case the beneficiary dies at the same time as the testator or in case the beneficiary dies in circumstances rendering it uncertain whether or not he survived the testator. This subsection is designed for the purpose of furnishing an evidential rule for determining which of several persons who perish in a common disaster predeceased the others, in cases where one of such persons is a testator and the other or others would have been beneficiaries under the will if he or they had survived the testator; it is certainly not the object of the subsection to interfere with the expressed intentions of the testator, and I can see no reason why a testator should not provide expressly for the further disposition of the property in case the beneficiary should die at the same time as the testator or in circumstances rendering it uncertain which survived the other.
>
> "Accordingly I do not think that the words that you have added should be retained."

With this view the Ontario Commissioners respectfully disagree. Subsection 1 of section 2 of the Act provides very definitely the order in which death shall be presumed to have taken place where two or more persons die in circumstances rendering it uncertain which survived the other, or others, and because the Ontario Commissioners are not satisfied that such a presumption created by a statute can be rebutted by a provision in a will, it is considered advisable to provide in the statute that the presumption shall not apply where certain provisions appear in the will and this has been done by inserting the underlined words.

It has also been suggested that the situation might be taken care of by inserting at the commencement of subsection 3 the words *"subject to any express provision contained in the will dealing with the case of the testator or beneficiary named in the will dying at the same time or in circumstances rendering it uncertain which survived the other"*.

The Ontario Commissioners are of opinion that the form above set out is preferable as it groups the three situations, namely, where the beneficiary predeceases the testator; dies at the same time as the testator; or dies in circumstances rendering it uncertain whether or not he survived the testator, and also are of the opinion that in this form the intention of the subsection is manifestly clear.

Mr. Smith also suggests that this subsection might be improved by substituting for the word "predeceased" in the sixth line the words "not survived" rendering the wording consistent with the other portions of the subsection where the word "survived" is used, and we are accordingly suggesting that this change should be made.

Mr. Smith has also drawn to our attention the provisions of section 36 of The Wills Act, Revised Statutes of Ontario, 1937, chapter 164, which reads as follows :

> 36.—(1) Where any person, being a child or other issue or the brother or sister of the testator to whom any real estate or personal estate is devised or bequeathed, for any estate or interest not determinable at or before the death of such person, dies in the life-time of the testator either before or after the making of the will, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will.
>
> (2) The provisions of this section shall apply to a devise or a bequest to children or other issue or to brothers or sisters as a class.

Accordingly we are of opinion that subsection 2 of section 2 of the draft Commorientes Act should be amended by adding the words "and of section 36 of *The Wills Act* (Ontario)". It is already indicated in the draft Act that the subsection should be altered appropriately in the other Provinces to render it consistent with the various provincial Insurance Acts and appropriate alteration will also be necessary in the Provinces where a corresponding provision to section 36 of the Ontario Wills Act is in force.

It might also be pointed out that to render the wording of subsection 1 of section 36 of The Wills Act (Ontario) consistent with the provisions of the draft Commorientes Act, that

subsection should be amended by inserting after the word "testator" in the fifth line the words "or at the same time as the testator or in circumstances rendering it uncertain which survived the other".

Section 2 of the draft Commorientes Act with the changes recommended in this memorandum, will now read as follows :

2.—(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) The provisions of this section shall be read and construed subject to the provisions of section 175 of The Insurance Act (Ontario) *and of section 36 of The Wills Act (Ontario)*.

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had *not survived* the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be.

Respectfully submitted,

E. H. SILK
for Ontario Commissioners.

Toronto, May 30th, 1939.

APPENDIX D

BILL

An Act Respecting Survivorship in Common Disasters

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 Commorientes Act". Short title.

2. (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. Order of death presumed.

(2) The provisions of this section shall be read and construed subject to the provisions of section 175 of The Insurance Act (Ontario) and of section 36 of The Wills Act (Ontario). Exceptions presumptio —as to certain statutes,

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be. as to provisions in will.

3. 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. Uniform interpretati

4. This Act shall come into force on the day of , 19 . Coming in force.

APPENDIX E

GOVERNMENT OF THE PROVINCE OF ALBERTA

MEMORANDUM

FROM Hon. Solon E. Low,
Provincial Treasurer.

TO R. Andrew Smith, K.C.,
Legislative Counsel.

August 4, 1939.

Will you be good enough to bring before the Conference of Commissioners on Uniformity of Legislation in Canada at the meeting to be held this month the question of achieving such uniformity as is possible in The Income Tax Acts of the various Provinces?

It is our opinion that The Income Tax Act of British Columbia might be taken as a basis of a Uniform Income Tax Act, and it is the intention of this Government to arrange, if possible, for a Conference to be held next month between representatives of any Provinces which are interested in this proposal with a view to coming to an agreement as to any matters of policy which would be involved in effecting uniformity.

S. E. Low,
Provincial Treasurer.

APPENDIX F

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

The Honorary Treasurer's Account for the Period commencing with the 31st July, 1938, and ending with the 2nd August, 1939.

DEBITS

Cash in Bank as at the 31st July, 1938		$416.72
Receipts :		
Province of Manitoba	$50.00	
Province of Saskatchewan	50.00	
Province of Nova Scotia	50.00	
Prince Edward Island	50.00	
Province of Ontario	50.00	
Province of New Brunswick	50.00	
Government of Canada	50.00	
	350.00	
Bank Interest	7.09	
Total Debits	$773.81	

CREDITS

Disbursements :		
Secretary's Expenses	$ 5.48	
" "	75.16	
	80.64	
Exchange on Cheques	1.00	
National Printers Ltd. Account	207.52	
Cash in hands of Secretary	4.84	
Total Credits		294.00
Balance, Cash in Bank		479.81
		$773.81

Edmonton, Alberta,
2nd August, 1939.

Audited and Found Correct :

Sgd.) "R. ANDREW SMITH" (Sgd.) "R. L. MAITLAND"
Honorary Treasurer. "W. P. J. O'MEARA"
Auditors.

APPENDIX G

TO THE CONFERENCE OF COMMISSIONERS ON
UNIFORMITY OF LEGISLATION IN CANADA :

Gentlemen :

The Conference at its annual meeting in 1936 discussed the draft Evidence Act and passed a resolution that it be referred to the British Columbia Commissioners to prepare a re-draft in the light of the discussion at that Conference.

The British Columbia Commissioners in pursuance of the resolution revised the Act and the re-draft is printed in the 1936 Proceedings at page 28.

At the same Conference the Dominion representatives submitted a report on draft sections for inclusion in the Interpretation Act, which report is printed at page 52 of the Proceedings of that year. They recommended that the definition of "statutory declaration" and "solemn declaration" be left for the draft Evidence Act. This definition is set out below.

The Dominion Commissioners also submitted a report for the taking of evidence by officers of the Public Service of Canada abroad. Part III of their report contained draft sections for inclusion in a proposed uniform enactment. The Conference directed that section 48 of the draft Evidence Act should be revised so as to include the draft sections proposed by the Dominion Commissioners. The British Columbia Commissioners have accordingly drafted a clause to be added to section 48 and have set it out below.

The British Columbia Commissioners' attention has been directed to the 'Evidence Act 1938', being chapter 28 of the Imperial Statutes of that year, dealing with the admission of hearsay evidence when comprised in statements contained in documents, and also to an article in the Canadian Bar Review of May 1939 by Mr. S. J. Helman, K.C., suggesting that that Act should be adopted by the Provinces of Canada and that its scope should be widened so as to include oral statements as well.

The British Columbia Commissioners are of opinion that the Evidence Act of 1938 referred to should be included in the draft Uniform Act and have set out its provisions below and are of opinion that the Conference should discuss the question of extending the Act to oral statements.

Mr. McLean has drawn the Commissioners' attention also to a uniform 'Composite Reports as Evidence Act' and to a uniform 'Business Records as Evidence Act' adopted by the Commissioners on Uniform State Laws in the United States in 1936, together with explanatory notes regarding them extracted from the "Handbook of the National Conference of Commissioners on Uniform States Laws and Proceedings, 1936" and has suggested that some consideration might be given to these Acts. Your Commissioners have set out below the sections of these two Acts and the explanatory notes in case the Conference cares to consider them, but are of opinion also that they should receive instructions from their Attorney-Generals before adopting them.

The following sections should be considered by the Conference for inclusion in the uniform Evidence Act :

1. Add as clause (n) to section 2, the following definitions:—
"Document" includes books, maps, plans, drawings and photographs : (N.B.—This definition is in the Imperial Evidence Act before referred to).

"Statement" includes any representation of fact, whether made in words or otherwise; (N.B.—This definition is in the Imperial Evidence Act before referred to).

"Statutory declaration" or "solemn declaration" means a solemn declaration in the form and manner provided in the "Canada Evidence Act" of the Dominion.

2. Re-letter the definitions in section 2 accordingly.

3. Insert the following clause as clause (f) of section 48 :

(f) In any foreign country or in any part of His Majesty's Dominions outside of Canada before,

(i) Officers of any of His Majesty's diplomatic or consular services exercising their functions in the foreign country or part of His Majesty's Dominions outside of Canada, including ambassadors, envoys, ministers, charges d'affaires, counsellors, secretaries, commercial attaches, consuls general, consuls, acting-consuls, vice-consuls, pro-consuls and consular agents,

(ii) Officers of the Canadian diplomatic and representative services exercising their functions in the foreign country or part of His Majesty's Dominions outside of Canada, including, in addition to the diplomatic and consular officers mentioned in subclause (i), high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries,

(iii) Officers of the Canadian trade commissioner service exercising their functions in the foreign country or part of His Majesty's Dominions outside of Canada.

4. Re-letter clause (f) of section 48 as (g) and strike out sub-clause (iii) thereof which is unnecessary if clause (f) is passed.

5. Insert as sections 43 to 48 the following which is a copy of the English Evidence Act of 1938, with the necessary changes.

HEARSAY EVIDENCE CONTAINED IN DOCUMENTS

43. (1) In any action where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

(i) if the maker of the statement either—

(a) had personal knowledge of the matters dealt with by the statement; or

(b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(ii) if the maker of the statement is called as a witness in the action :

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to

attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any action, the court may at any stage of the action, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (i) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the action is with a jury, the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

44. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 43, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or mis-represent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by section 44 shall not be treated as corroboration of evidence given by the maker of the statement.

45. Subject as hereinafter provided, in any action an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive :

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

46. In any action there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

47. It is hereby declared that section of the (Supreme Court) Act, and section of the (County Court) Act, (which relate to the making of rules of court) authorize the making of rules of court providing for orders being made at any stage of any proceedings directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

48. Nothing in section 43 shall—

(a) prejudice the admissibility of any evidence which would apart from the provisions of said section be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if that section had not passed.

6. Re-number sections 44 to the end.

UNIFORM COMPOSITE REPORTS AS EVIDENCE ACT

EXPLANATORY NOTE

In many jurisdictions modern statutes have provided that the testimony of an expert witness may be presented by him first reading his report of his investigation, then being subject to cross-examination upon it. This is because the carefully worded written report of the expert is what the most honest and competent experts always prefer to offer, instead of the disjointed series of question and answer, and the report serves as a satisfactory basis for cross-examination.

Moreover, several kinds of expert reports are based on occasional details which they did not or could not actually see for themselves (*e.g.*, auditors, engineers, physicians) and this is liable to become a technical objection to their whole testimony. Hence, provision has to be made for that situation.

Statutes of this sort are growing in number in different states, hence need standardization.

(1) A few states have statutes for *expert reports in general:*

ENGLAND.—Rules of Court 1932, Ord. 38. A. Rule 8 ("The Judge may order that any question involving expert knowledge shall be referred to a special referee for inquiry and report," and this report after notice to the parties is received at the trial).

RHODE ISLAND.—Gen. L. 1923, C. 342, pp. 18, 19 (on any issue the Court may appoint an expert to examine and report, and his report is read by him at the trial and "shall form part of the record of the cause.")

WISCONSIN.—St. 1921, C. 126, now Stats., Sec. 357, 12 (similar, for criminal cases); held constitutional, in *Jessner* v. *State*, 202 Wis. 184.

LOUISIANA.—C.C.P. 1900, pp. 443-458.

(2) Several other states have done it for the reports of a physician examining a *claimant for industrial accidents* : Maine, Massachusetts, etc.

(3) Several others have done it for the report of a physician examining the *accused on an issue of insanity.*

LOUISIANA.—C. Cr. P. 1928, St. 1932, No. 136.

MASSACHUSETTS.—Stats. 1920, 1925, 1927, now Gen. L. Ch. 123, Par. 100A.

WISCONSIN.—St. 1921, C. 126, now Stats. 357, 12.

SECTIONS

Section 1.—A written report or finding of facts prepared by an expert not being a party to the cause, nor an employee of a party, except for the purpose of making such report or finding, nor financially interested in the result of the controversy, and containing the conclusions resulting wholly or partly from written information furnished by the cooperation of several persons acting for a common purpose, shall, in so far as the same may be relevant, be admissible when testified to by the person, or one of the persons, making such report or finding without calling as witnesses the persons furnishing the information, and without producing the books or other writings on which the report or finding is based, if, in the opinion of the court, no substantial injustice will be done the opposite party.

Section 2.—Any person who has furnished information on which such report or finding is based may be cross-examined by the adverse party, but the fact that his testimony is not obtainable shall not render the report or finding inadmissible, unless the trial court finds that substantial injustice would be done to the adverse party by its admission.

Section 3.—Such report or finding shall not be admissible unless the party offering it shall have given notice to the adverse party a reasonable time before trial of his intention to offer it, together with a copy of the report or finding, or so much thereof as may relate to the controversy, and shall also have afforded him a reasonable opportunity to inspect and copy any records or other documents in the offering party's possession or control, on which the report or finding was based, and also the names of all persons furnishing facts upon which the report or finding was based, except that it may be admitted if the trial court finds that no substantial injustice would result from the failure to give such notice.

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

1.—EXPLANATORY NOTE

This subject of Business Records has been controlled hitherto by an old common law principle full of technicalities. Its hair-splitting refinements have proved so unpractical in modern business conditions that it has aroused the ridicule of many business men and the dissatisfaction of many judges. So unpractical are its details that the Courts of the different states vary noticeably in their application, and the attorney for an inter-state industry has to study the complications of each state anew. Whole monographs have been written on it, in some states. Judge Cardozo, as long as sixteen years ago, when addressing the New York City Bar Association in "Progress in the Law", referred to this rule specially as involving great hardship, and added "The dead hand of the common law rule should no longer be applied to such cases."

Accordingly, in 1925, a Committee of Fifteen was appointed by the Commonwealth Fund of New York, to examine and report on this and other rules of Evidence needing liberalization. This Committee included several judges, Federal and State, several active practitioners, and several professors of the law of Evidence. They corresponded two years with some one thousand judges and lawyers in many states. Their report was published in 1927. One chapter of their report recommended a simple and lucid statute on this subject, to replace the hundreds of decisions that now have to be studied.

The Act proposed by the Commonwealth Fund Committee has been adopted already in New York, Maryland, Rhode Island, and perhaps elsewhere, but with occasional verbal alterations. The Conference in the present Act has attempted to devise a standard wording, which will serve to uniformize its provisions as it gets adopted from time to time in other states.

2.—SECTIONS

Section 1.—The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

Section 2.—A record of an act, condition or event, shall, in so far as relevant, be competent evidence if the custodian

or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

Respectfully submitted,

H. G. LAWSON
on behalf of the British Columbia
Commissioners.

Victoria, B.C.
19th July, 1939.

APPENDIX H

EVIDENCE OF BANK RECORDS

Section 92(2) of The Bank Act reads as follows :

> "The liability of the bank, under any law, custom or agreement to repay moneys heretofore or hereafter deposited with it and interest, if any, shall continue, notwithstanding any statute of limitations, or any enactment or law relating to prescription."

In consequence of this provision Canadian banks have had to keep many of their records for an indefinite period of time. In the United States and in England the ordinary periods of limitation apply so that there is not the same necessity for keeping various bank records for indeterminate periods of time and banks in those countries only keep such records for what seems to them to be a reasonable time having regard to the probable needs of their customers.

In Canada where each of the long established banks has a multitude of branches the problem of finding space which will permit the safe storage and comparatively ready accessibility to records from various branches has already become a serious one and some of the banks are faced with the necessity of erecting special buildings for this purpose. A much less expensive and equally convenient alternative has, however, arisen with the development of microphotography by means of which there can be recorded on one photographic film of 200 feet 2,600 sheets of letter size, reproduced at a cost of $7 each. The process is so speedy that 20–25 sheets can be photographed on both sides in a minute. The photographic record can readily be examined by use of a projecting machine which throws upon a screen an enlarged picture of the item photographed. When the record of some particular document is required for evidence, it is a comparatively simple matter to obtain an enlarged print from the film. The reduction of many bank records to the form of microphotographs would result in a tremendous saving in space but naturally the banks cannot adopt this new method of recording documents unless some means can be found of permitting the use of prints taken from these films as evidence before the courts.

It is therefore desirable that in order to make this possible, amendments be added to the Bankers' Books Evidence sections

of The Canada Evidence Act and of the Evidence Act of each of the various provinces. The attached section has been prepared for insertion in The Canada Evidence Act and would be adaptable for similar use without change except for section and subsection number in the Evidence Acts of the provinces.

It will be noted that reference is made to the use of a print whether enlarged or not. If microphotographic film only were used enlargements would in all cases be necessary but it is conceivable that some records might be kept of which photographs would be taken of the exact size of the thing photographed and that ordinary prints would be made therefrom.

Clause (a) relates to book entries and is similar in phraseology to the corresponding provision in the Bankers' Books Evidence section except that there is no requirement of proof that the book on record was one of the ordinary books of record of the bank when the entry was made or that the entry was made in the ordinary course of business, because in view of frequent transfers of bank employees it would probably be difficult to find the individuals who could give specific evidence with regard to particular entries. The photographic record in such case would be *prima facie* evidence only, however, and could be rebutted by positive evidence to the contrary.

In the United States some banks are already sending original monthly ledger sheets to their customers, keeping only microphotographs as their own records. Canadian banks may in time adopt this method. The proposed legislation would materially assist them to do so, by enabling the photograph to be used if the original is destroyed by the bank or delivered to a customer who might lose or destroy it.

Clause (b) relates to original instruments of various kinds and it would naturally need to be provided that the print be receivable in evidence for all purposes as the original would have been. Many of these, instead of being destroyed by the bank, would be delivered to the customer, and eventually lost or destroyed by him.

Immediately after each lot of documents is photographed and destroyed it would be necessary for the person or persons taking the photographs and destroying or attending the destruction of the records and instruments to take affidavits before a notary public identifying the film with the things photographed and proving their destruction. These affidavits would identify the film to which they relate. If proof should subsequently

have to be given of anything so photographed or destroyed it could then be made orally by the individual who had the necessary knowledge, if he were readily available, or could be proven by a special affidavit sworn by him before a notary public. The same individual would probably have knowledge of the photography and the destruction and another would probably know about the subsequent preparation of prints from the film, but as time runs on these individuals may be moved elsewhere, may be retired or leave the bank and in the long run will die so that in such cases it is provided that a notarial copy of the original affidavit would suffice to make proof of the original photography and destruction. There would have to be a separate affidavit proving that the print was taken from the same film.

Submitted on behalf of the Canadian Bankers Association by A. W. Rogers, K. C., Secretary of the Association.

THE CANADA EVIDENCE ACT

R.S.C. 1927, C. 59

29. (7) A print, whether enlarged or not, from any photographic film of,

(a) any entry in any book or record kept by any bank and destroyed, lost or delivered to a customer after such film was taken shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded,

(b) any bill of exchange, promissory note, cheque, receipt or original instrument or document held by a bank and destroyed, lost or delivered to a customer after such film was taken shall in all legal proceedings be received in evidence for all purposes for which the original would have been received,

upon proof that while such book, record, bill of exchange, promissory note, cheque, receipt, original instrument or document was in the custody or control of the bank the photographic film was taken thereof in order to keep a permanent record thereof and that the object photographed was subsequently destroyed by or in the presence of one or more of the employees of the bank or was lost or was delivered to a customer; and all

required proof may be given by any one or more of the employees of the bank having knowledge of the taking of the photographic film, of such destruction, loss, or delivery to a customer, or of the making of the print as the case may be, and may be given orally or by affidavit sworn in any part of Canada before any notary public; provided that where any person having knowledge of such destruction, loss or delivery, or of the taking of such film is not resident in the city, town or place in which the court before which such proof is offered is sitting, or is no longer in the employ of the bank or is too ill to attend court or is dead, proof of such film having been taken and of such destruction, loss or delivery may be made by a notarial copy of an affidavit by such person sworn as above required.

APPENDIX I

CENTRAL REGISTRATION OF ENCUMBRANCES AFFECTING MOTOR VEHICLES (REPORT OF ONTARIO COMMISSIONERS)

At the 1938 Conference of Commissioners on Uniformity of Legislation in Canada the following Resolution was adopted:

> RESOLVED that the matter of uniform central registration for conditional sale agreements on automobiles be referred to the Ontario Commissioners to prepare draft Act.

Although the resolution calls for the preparation of a draft Act, the generality of its terms requires certain principles to be settled before drafting is commenced.

Having regard to the mobile nature of motor vehicles the desirability of a provision centralising the registration of incumbrances affecting them needs no elaboration nor does the resolution question the need for such legislation. However, the value of a central registration system depends to a great extent upon the registration requirements extending to all incumbrances affecting the title to motor vehicles. While it is appreciated that the great majority of instruments affecting the title to motor vehicles are conditional sale agreements, the value of facilities permitting a search to be made at one central location depends upon the completeness of the information resulting from such a search. Accordingly in considering the type of provisions most desirable, it will be assumed that such provisions would extend to bills of sale and chattel mortgages as well as to conditional sale agreements. Having then determined that such legislation should apply to these classes of incumbrances it is necessary to ascertain the pleasure of the Conference in regard to two important matters before the drafting of an Act can be proceeded with:

1. Is the legislation to be in the nature of,—
   (a) a guaranteed title system similar to some extent, to the Torrence system, also known as "the land titles system", used in some jurisdictions in connection with real property; or
   (b) simply a system of central registration of instruments affecting motor vehicles; or
   (c) something in between these two systems; and

2. Is the legislation to be in the form of,—

(a) amendments to The Conditional Sales Act and The Bills of Sale and Chattel Mortgage Act; or

(b) a separate Act applicable only to motor vehicles, which Act would presumably exclude motor vehicles from the operation of The Conditional Sales Act and The Bills of Sale and Chattel Mortgage Act?

The answer to the second question probably depends to some extent at least upon the answer to the first question. If a guaranteed title system is to be adopted it would appear to necessitate the passing of a separate Act while a simple system of central registration might easily be effected by way of amendments to existing Acts.

Little assistance is to be obtained from the Statutes of the Provinces of Canada. No Province has a guaranteed title system and the only Province which has made any effort to effect central registration is British Columbia. Section 13 of The Bills of Sale Act, R.S.B.C. 1936, chapter 23, reads as follows :

13.—(1) In this section:—

"Motor-vehicle" means any automobile, locomobile, motor-cycle or other vehicle propelled by any power other than muscular power, except aircraft, tractors, vehicles designed primarily for use in fire-fighting, and such vehicles as run only upon rails or tracks; and includes all tools and accessories belonging to and kept in, on, or attached to a motor-vehicle within the meaning of the foregoing :

"Tractors" includes any vehicle designed primarily as a travelling power plant for independent operation or for operating other machines or appliances, or designed primarily for drawing other vehicles or machines, and not designed for carrying any load of property or passengers wholly or in part on its own structure.

(2) Where the bill of sale comprises a motor-vehicle, the registration of the bill of sale shall be governed by the following provisions:—

(a) The bill of sale, or a true copy thereof, shall within the period of ten days in case the motor vehicle comprised therein is within the limits of the County of Victoria, the County of Nanaimo, the County

of Vancouver, or the County of New Westminster, and in all other cases within the period of twenty-one days after the making thereof next ensuing, be registered by the filing of the bill of sale or copy thereof, as the case may be, together with such affidavits and documents as are by this Act required in respect of registration generally, in the office of the Commissioner of Provincial Police at Victoria instead of a County Court registry; but where the bill of sale comprises more than one motor-vehicle, and the period limited for registration under this clause in respect of one or more of the motor vehicles is longer than the period so limited in respect of the other motor-vehicle or motor-vehicles, the period for registration of that bill of sale under this clause shall be the longer period so limited:

(b) In case the bill of sale also comprises personal chattels other than motor-vehicles, it shall in addition to the registration required by clause (a) be registered within the period, in the manner, and in the office or offices in which it would except for this section be required to be registered under this Act in respect of the other personal chattels so comprised therein.

(3) Where a bill of sale within the scope of clause (b) of subsection 2 is duly registered as provided in clause (a) of that subsection in respect of the motor-vehicle or motor vehicles comprised therein, but is not duly registered as provided in said clause (b), it shall nevertheless be deemed for all purposes of this Act to be sufficiently registered in respect of all the personal chattels comprised therein other than motor vehicles.

(4) Where a bill of sale comprises a motor-vehicle, the description given therein of the motor-vehicle shall include a statement of the engine number and the serial number of the motor-vehicle; and the Registrar may refuse to register any bill of sale comprising a motor-vehicle which does not comply with the provisions of this subsection.

(5) In the case of a bill of sale within the scope of this section made by any person to the Canadian Farm Loan Board established under the "Canadian Farm Loan

Act" of the Dominion as grantee, the period within which the bill of sale or copy thereof shall be filed for purposes of registration pursuant to this section shall in all cases be thirty days after the making of the bill of sale next ensuing, instead of the period of ten days or twenty-one days prescribed by subsection 2.

Although the British Columbia sections are lengthy they are set out in full in this memorandum as they are the only helpful sections in Canada. Apparently "bill of sale" includes "chattel mortgage" under The Bills of Sale Act by virtue of section 3, although the definition of "bill of sale" in section 4 of the Act is rather involved and does not actually mention chattel mortgages.

Subsection 8 of section 3 of The Conditional Sales Act, R.S.B.C. 1936, chapter 48, reads as follows :

(8) In this subsection "motor-vehicle" means any automobile, locomobile, motor-cycle, or other vehicle propelled by any power other than muscular power, except aircraft, tractors, vehicles designed primarily for use in fire-fighting, and such vehicles as run only upon rails or tracks; and includes all tools and accessories belonging to and kept in, on, or attached to a motor-vehicle within the meaning of the foregoing; and "tractors" includes any vehicle designed primarily as a travelling power plant for independent operation or for operating other machines or appliances, or designed primarily for drawing other vehicles or machines and not designed for carrying any load of property or passengers wholly or in part on its own structure. In case the conditional sale comprises a motor-vehicle, the foregoing provisions of this section as to the filling of an original or a true copy of such writing shall apply with the following variations:—

(a) The original or a true copy shall be filed with the Commissioner of Provincial Police at Victoria, irrespective of the residence of the buyer or the place at which the goods were delivered or to which they are removed:

(b) In case the conditional sale also comprises goods other than motor-vehicles, an original or a true copy of such writing shall, in addition to the filing with the Commissioner of Provincial Police at Victoria, under clause (a), be filed with the proper

officer of each registration district in which it would except for this subsection be required to be filed under the other provisions of this section in respect of the other goods so comprised therein:

(c) Subsection 4 shall not apply in respect of a motor vehicle;

but where the original or a true copy of the writing evidencing a conditional sale within the scope of clause (b) is duly filed as provided in clause (a) in respect of the motor-vehicle or motor vehicles comprised therein, but is not duly filed as provided in clause (b), it shall nevertheless be deemed for all purposes of this Act to be sufficiently filed in respect of every motor-vehicle comprised therein; and where the original or a true copy is duly filed as provided in clause (b) in respect of the other goods comprised therein, but is not duly filed as provided in clause (a), it shall nevertheless be deemed for all purposes of this Act to be sufficiently filed in respect of all the goods comprised therein other than motor vehicles.

Legislation of many types is found in the various States of the Union. (See article Automobiles — Registration of Title and Transfer — Effect on Ownership, 37 Michigan Law Review (1939) page 758). A cursory examination of the United States legislation as well as a consideration of the situation in the Provinces of Canada leads to the conclusion that any guaranteed title system would involve not only interference with the provincial Acts relating to conditional sales agreements, bills of sale and chattel mortgages but also with the Acts governing government registration of motor vehicles. Such a system would also involve a guarantee of title being given by the provincial government and would seem likely to necessitate an increase in the staff of the department administering such an Act.

These facts are mentioned because, in the opinion of your Commissioners, in order that the time of this Conference will not be wasted it is important that Acts prepared by the Conference should be of such a nature that their adoption by a number of the Provinces may reasonably be anticipated. Having regard, therefore, to the fact that no Province has a guaranteed title system (which goes one step further than central registration); to the undertaking and additional staff which such a system would involve on the part of provincial

governments; to the number of Acts which would be affected by such a system; and to the desirability of preparing legislation which may be adopted by the Provinces without interfering to too great an extent with existing conditions, your Commissioners recommend that the Act providing for the central registration of motor vehicles should be,—

1. simply a system of central registration of instruments affecting motor vehicles; and
2. in the form of amendments to the uniform Conditional Sales Act and the uniform Bills of Sale and Chattel Mortgage Act.

Your Commissioners desire to recommend further that the preparation of a draft Act or draft Acts be referred to Commissioners representing a Province in which both uniform Acts affected are in force which is consistent with a recommendation previously made appearing at page thirty-five of the proceedings for 1937.

Respectfully submitted,

(E. H. SILK,)
for Ontario Commissioners.

Toronto, July 5th, 1939.

APPENDIX J

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

REPORT OF THE ALBERTA COMMISSIONERS AS TO THE UNIFORM CONDITIONAL SALES ACT, SECTION 12, CHATTELS AFFIXED TO LAND.

At the last meeting of the Conference by a resolution passed on the seventeenth of August, 1938, it was resolved that the matter of the relative rights of parties where chattels sold under conditional sale agreements are affixed to real estate is to be referred to the Alberta Commissioners (1938 proceedings, page 17).

The question was raised by a report of the New Brunswick Commissioners on the question of the Uniform Conditional Sales Act, 1938 proceedings, pages 53 and 54. Clause 3 of that report reads as follows :

> "The question of the relative rights of parties when chattels sold under Conditional Sale Agreement are affixed to the real estate is still in a rather unsatisfactory condition. The law provides that the owner of the real estate has the right to take over the chattels on paying the lien, which is all right as far as that phase is concerned, but what if the owner will not pay? The right of the vendor to repossess when the real estate is adversely affected by the removal is not so distinct. There is also the question whether when the goods are affixed to realty, registration in the Land Titles Office also is necessary. Some Courts say it is. The suggestion of the Province of British Columbia as approved in 1930 meets with the approval of your Committee, but there may still be something to be said on this subject."

The Uniform Conditional Sales Act adopted by the Conference in 1922 contained the following provision :

> "If the goods have been affixed to realty they shall remain subject to the rights of the seller as fully as they were before being so affixed, but the owner of such realty, or any purchaser, lessee, mortgagee, or tenant, or other encumbrancer thereof, shall have the right as against the seller to redeem the goods upon payment of the amount owing on them."

The table in the preface to the proceedings for 1938 sets out that the Uniform Act was enacted by British Columbia in 1922, New Brunswick in 1927, Nova Scotia in 1930, and Prince Edward Island in 1934.

It is to be observed that Prince Edward Island did not enact section 12 of the Uniform Act.

The common law Provinces which have not enacted the Uniform Act have made provision for the case of goods subject to a conditional sale agreement affixed to realty. The Ontario provision is to be found in section 8 of The Conditional Sales Act, R.S.O. 1937, chapter 182; the Manitoba provision in section 10 of The Lien Notes Act, R.S.M., 1913, chapter 115, as amended by 1915, chapter 38, section 1, and 1927, chapter 30; the Saskatchewan provision in section 12 of The Conditional Sales Act, R.S.S., 1930, chapter 243; and the Alberta provision in section 8 of The Conditional Sales Act, R.S.A., 1922, chapter 150. The provisions made by the Ontario, Saskatchewan and Alberta Acts are substantially similar, but the Ontario provision deals in addition, specifically with mining machinery.

Neither the Uniform Act nor any of the Acts above noted make any specific provision as to the right of a vendor under a conditional sale agreement to remove goods subject to such agreement which have been affixed to land in case the owner of the land refuses to redeem it.

It is a principle of the common law that whatever becomes affixed to land becomes part of the land, and any right to a chattel which has become a part of the land in any person other than the owner of the land must be created by statute.

The effect of section 12 of the Uniform Act and the comparable sections of the statutes of other Provinces is to give the conditional vendor of goods a right to those goods notwithstanding they have been affixed to land.

Both the Uniform Act as well as the other Acts contain an express provision that the owner of the land is entitled to retain them on paying the conditional vendor the amount which is owing to him, but make no further provision.

If the conditional vendor has any right to resume possesion of goods affixed to realty those rights depend upon the common law.

The common law in England with regard to fixtures has been developed by a long series of judicial decisions dealing with the right of landlords and tenants respectively to fixtures, and

more recently that development has been made along distinct lines with reference to what are known as trade fixtures. The English common law recognizes the right of a tenant to remove a trade fixture so long as that can be done without doing irreparable damage to the premises to which the same is affixed, and it is said on the authority of *Spyer* v. *Phillipson,* 1931, 2 Ch. 183,209, that so long as a chattel can be removed without doing irreparable damage to the demised premises, the quantum of damage that would be done either to the chattel itself or the demised premises by the removal has no bearing on the right of a tenant to remove it. (Halsbury, Volume 20, page 105).

It further appears to be the general practice in England that the tenant is liable to repair the damage done by the removal. (*Spyer* v. *Phillipson, Supra,* page 201; *Foley* v. *Addenbrooke,* 1844, 13M and W, 174, 196.

The leading Canadian authority seems to be *Stack* v. *Eaton,* 1902, 4 O.L.R. 335, and the law is stated by Williams "Landlord and Tenant", page 521 as follows :

> "Fixtures of a chattel nature erected or placed by a tenant upon the leased premises for the purpose of carrying on a trade or for ornament or domestic convenience, become part of the freehold but may be severed (whereupon they cease to be "fixtures" and become chattels again), and removed by the tenant or his assigns, provided that that can be done without serious injury to the freehold; they must be removed before the expiration of the tenancy but by agreement the time for removal may be extended."

A review of the Canadian authorities cited in the last mentioned treatise suggests that the Canadian courts have not up to date gone as far as the English courts have done in recent years.

Whilst the English courts were relaxing the rule in favour of the tenant with regard to trade fixtures they refused to relax the rule with regard to agricultural fixtures with the result that Parliament intervened by a statutory enactment in 1908, The Agricultural Holdings Act, 1908, section 21. That Act was repealed by The Agricultural Holdings Act 1923, and section 22 of that Act reads as follows :

> "Any engine, machinery, fencing, or other fixture affixed to a holding by a tenant, and any building erected by him thereon for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or

erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removeable by the tenant before or within a reasonable time after the termination of the tenancy :

Provided that—

(i) before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all his other obligations to the landlord in respect of the holding;

(ii) in the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the building;

(iii) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal;

(iv) the tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it;

(v) at any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to the incoming tenant of the holding."

It seems desirable in the interests both of the owner of land and fixtures under conditional sale agreements that their respective rights should be defined by statute and it is further suggested that those rights might be set out in substantially the same manner as they are set out in the section of The Agricultural Holdings Act 1923.

Submitted by the Alberta Commissioners.

R. ANDREW SMITH.

APPENDIX K

RE : BULK SALES ACT

Appended to this Report is a copy of an inquiry sent to eight firms or organizations in Ontario, New Brunswick and Nova Scotia, supposed to have experience as trustee under the Bulk Sales Act. A copy of some of the replies is also annexed.

Reference may also be made to the Resolution of the Winnipeg Board of Trade and the correspondence published in the 1938 Proceedings, pp. 66 - 71.

The Resolution of the Board of Trade deals more particularly with the procedure of the trustee in the distribution of the sale price where a trustee is named or appointed under Section 7 of the Model Bulk Sales Act. The Resolution asks that the trustee publish a notice of the Bulk Sale in the Provincial Gazette and withhold distribution for 14 days after publication.

In Mr. Wilson McLean's letter, set out on page 71 of last year's proceedings, it is suggested that fraudulent omissions of the names of creditors from the list supplied by the Vendor under Section 5 might also be made in the event of no trustee being appointed, that is, where the creditors on the list are paid in full or sign a waiver of the provisions of the Act. It was suggested that this possibility be also considered.

It will be observed that Section 8 of the Model Act, which deals with the procedure where a trustee is appointed, declares that "distribution shall be made in like manner as moneys are distributed by a trustee under the Bankruptcy Act".

When objection was being made to the Act in 1925 on account of the possible omission of creditors from the Vendor's list, the reply was made that the provision of the Bankruptcy Act "properly applies", (1925 Proc. pp. 33, 42) the idea apparently being entertained that the like precautions would be taken to prevent such omission as are ordinarily taken in Bankruptcy cases.

It may be pointed out that the medium of publicity under the Bankruptcy Act is the Canadian Gazette and a local newspaper (Sec. 28 and other sections). In bankruptcy cases, notice of the bankruptcy is published and a notice calling a meeting of creditors; notices are given to creditors to prove claims, and a notice of the final dividend is sent to creditors

before its payment. Notwithstanding this publicity, one trustee reports, (1938 Proc. p. 67), "On not a few occasions" the assets have been distributed without the knowledge of certain creditors who have not been included in the debtor's list.

Although Section 8 of the Bulk Sales Act incorporates the provisions of the Bankruptcy Act regarding distribution, the correspondence referred to might suggest that the provision for publication in the Canadian Gazette and in a local newspaper is either not observed or is ineffective.

Comparison may be made with the Ontario Act (R.S.O. 1937, Cap. 184, Section 4), which incorporates the provisions of the provincial Assignment and Preferences Act (R.S.O. 1937, Cap. 179) and gives creditors the same rights as they have under that Act. The Ontario Acts also incorporate the provisions of Section 51 of the Trustee Act (R.S.O. 1937, Cap. 165). The protection of the trustee under the Ontario Bulk Sales Act would seem to be clearer in its requirement that publicity be given by advertisement before distribution is made. In any event the Provincial Gazette is substituted for the Canada Gazette.

The request of the Winnipeg Board of Trade and the correspondence referred to would seem to indicate that the Model Act should contain a clearer and more specific statement of the duty of the trustee regarding advertisement or publicity rather than what is stated or implied by the reference to the provisions of the Bankruptcy Act. Whatever criticism may be made of the Provincial Gazette as a medium of publicity it is at least as effective as the Canada Gazette.

The suggestion of the Board of Trade would appear to have merit. For the sake of clarity the trustee should be specifically required to give notice by advertisement in a local newspaper and perhaps in the Provincial Gazette before making distribution. A delay of fourteen days would also seem to be indicated.

Regarding the suggestion that creditors may be overlooked, intentionally or otherwise, in making payment in full, or where a waiver of the provisions of the Act is obtained, and that consideration be given to such contingency, it may be pointed out that to require publicity by advertisement prior to the effecting of any such sale would appear to be an undue interference with liberty of contract.

The Act has been enacted in the interest of creditors. It interferes with pre-existing rights and is an Act which is to

be construed strictly. It was pointed out in previous discussions of this Conference that in the beginning the retail trade strenuously objected and it was only after revision of proposed Bills that the Provincial Legislatures were able to enact at all (1925 Proc. p. 35).

In the case where a trustee is appointed the contract of sale has been validly made by having the consent to the contract of the proper proportion of creditors as shown on the list. The money is then paid to a trustee and any provision as to publicity relates to procedure in carrying out a contract which up to that time is valid.

If the question of the validity of a contract of sale of goods in bulk, in a case where it was intended payment should be made to the creditors in full, or a waiver obtained, was to remain undetermined until advertisements of the proposed sale and requests for presentation of creditors' claims were made, the objection to such legislation would, it is believed, prevent its enactment.

The provisions of the Act require that the declaration authenticating the list of creditors be signed by some one having personal knowledge of the facts. No one can prevent a fraudulent vendor or his agent from falsifying the list delivered to the purchaser, but the provisions of the law which provide punishment for such an offence may well be relied on rather than an attempt to impose conditions which would, it is believed, be regarded as an unreasonable interference with the vendor's right of effecting a sale of his property.

A draft of a proposed amendment is also appended.

(Sgd.) "W. E. BENTLEY"

PROPOSED AMENDMENT

Amend Section 8 of the Bulk Sales Act by adding as Subsection 2 :

(2) Before making distribution the trustee shall cause an advertisement or notice to creditors to be published in the Provincial Gazette for one insertion, and in a local newspaper published in the province and having a circulation in the country in which the vendor resides or carries on business, for six insertions. A period of fourteen days shall elapse after the last of such publications before distribution is made.

Publication of any advertisement or notice in the Canada Gazette shall not be necessary.

FORM OF INQUIRY MADE RE: BULK SALES ACT

May 29th, 1939.

Dear Sirs;

RE: BULK SALES ACT

The Conference of Commissioners on Uniform Legislation in Canada has asked that a report be made to it regarding the advisability of amending the Uniform Bulk Sales Act, so as to require that every trustee appointed under the Bulk Sales Act shall publish the Bulk Sale in the Provincial Gazette and hold the proceeds for fourteen days after the publication before making distribution.

The suggestion is made that as the Trustee in such cases gets his information about creditors from the debtor or Vendor, it may happen that some creditors may be omitted, inadvertently or otherwise, from the debtor's list or from his books, and such creditors may fail to receive a share in the distribution.

If your company has acted as trustee under the Bulk Sales Act, will you please inform me whether in your experience it has happened that any of the debtor's creditors have been overlooked, and whether this has happened so often as to suggest the situation be remedied by an amendment to the Act requiring publication before distribution.

You might also please mention whether you think publication in the Provincial Gazette would be sufficient or whether it should also be published in some other newspaper.

I may mention that the Uniform Bulk Sales Act has been adopted by five provinces, namely, Alberta, British Columbia, Manitoba, New Brunswick and Prince Edward Island.

I may also mention that under the Act three conditions are referred to:—

(1) All creditors' claims as shown by the Vendor's written statement must be paid in full; or

(2) A written waiver be given by not less than 60 per cent in number and amount of claims exceeding $50.00 as shown by the written statement; or

(3) A written consent of the Vendor's creditors, representing 60 per cent in number and amount of claims over $50.00 as shown by the written statement, must be delivered to the purchaser.

It is in this last case only that a trustee is appointed. Do you happen to know if in the event of conditions 1 or 2 being complied with (so that no trustee is appointed) it frequently happens that some creditors are overlooked?

Do you think any of these situations calls for publication in a Gazette or other paper, and would you suggest that something be done by way of amendment to the Act with a view to preventing the possibility of any creditors being overlooked?

Any suggestions you care to make regarding the wisdom or otherwise of amending this Act along the lines indicated will be appreciated.

Yours truly,

(Sgd.) W. E. BENTLEY.

THE ROYAL TRUST COMPANY
EXECUTORS AND TRUSTEES
56 Prince William Street,
St. John, N.B., May 31st, 1939.

W. E. Bentley, Esq., K.C.,
C/o Messrs. McLeod & Bentley,
Charlottetown, P.E.I.

Dear Sir;

RE: BULK SALES ACT

Thank you for your letter of 29th May.

While we are an authorized Trustee under the Bankruptcy Act we have never yet acted in that capacity nor as a Trustee under the Bulk Sales Act. Consequently we have no experience as a basis on which to answer the questions raised in your letter.

Notwithstanding the above it seems to us that any advertisement which requires good coverage would be best placed in a daily newspaper rather than in the New Brunswick Royal Gazette.

Yours truly,

(Sgd.) E. B. HARLEY,
Manager.

THE ROYAL TRUST COMPANY
EXECUTORS AND TRUSTEES
66 King Street West, Toronto 2,
1st June, 1939.

Messrs. McLeod & Bentley,
Barristers, Solicitors, etc.,
Charlottetown, Prince Edward Island.
Dear Sirs;

RE: BULK SALES ACT.

We acknowledge receipt of your letter of 29th May, referring to the proposed amendment to the above Act. We regret that we cannot be of any real assistance to you in this matter as we have never acted as trustee in the Bulk Sales Act. We may say, however, that we have found in our practice of acting as trustee that advertisements in the Provincial Gazette have little real practical value as very few ordinary people ever have occasion to refer to it. We might also add that we have found that when acting as executor of estates very few claims have ever been filed with us as a direct result of the necessary newspaper advertisement. From the practical viewpoint, therefore, we do not think there is any great advantage in advertising for creditors.

However, as we above stated, we have never acted in this particular capacity and we are hardly qualified to state any opinion. We would suggest that you communicate with Messrs. Clarkson, Gordon & Company of 15 Wellington Street West, Toronto. This firm of accountants have a great deal of trustee work in connection with liquidation of businesses and we are sure they would be able to give you some practical assistance.

Yours faithfully,

(Sgd.) McGREGOR YOUNG,
Estates Officer.

THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LIMITED

147 Prince William Street,
Saint John, New Brunswick
June 6th, 1939.

Mr. W. E. Bentley,
McLeod & Bentley,
Barristers,
Charlottetown, P.E.I.
Dear Sir :

RE : THE BULK SALES ACT

I may say that throughout our different offices it has been the experience that the list of creditors secured from the debtor is often incomplete.

In most Provinces we advertise in the Provincial Gazette and also in a local paper.

The only object we can see in advertising in the Gazette is to provide protection for the trustee against claims of creditors arising after he has made distribution. Creditors seldom look at the Provincial Gazette but if the Trustee has advertised in the official publication this provides reasonable protection.

No amount of advertising will ensure that all creditors file their claims if their names do not appear on the debtors' books or on the list provided by the debtor but our experience is that an advertisement in the local paper will be seen by a good many creditors and sometimes results in the filing of claims.

We are of the opinion that the Uniform Act should provide for a very brief notice in the Provincial Gazette and a notice also in a local paper, daily, if possible, published in the locality of the debtor.

Trusting that this communication will be of service to you, we remain,

Yours truly,

THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LTD.

(Sgd.) C. C. SULLIVAN,
Manager.

E. R. C. CLARKSON & SONS
TRUSTEES, RECEIVERS, LIQUIDATORS

15 Wellington St. West,
Toronto 2, Canada,
June 8th, 1939.

W. E. Bentley, Esq., K.C.,
Messrs. McLeod & Bentley,
Barristers, etc.,
Charlottetown, P.E.I.

Dear Sir:

RE : THE BULK SALES ACT

I have your letter of the 5th instant respecting the Uniform Bulk Sales Act. I am not familiar with this Act as it is not used in Ontario. Your letter, however, indicates that it contains certain provisions similar to provisions of the (Ontario) Bulk Sales Act of which I enclose a copy.

You will notice the provisions of the Ontario Act do not apply to a bulk sale made in this Province when 60% in number and value of the Vendor's creditors, with claims over $50.00 each, give written waivers. In such cases the proceeds of the sale are often distributed by the Vendor and there is, therefore, no means of telling how frequently some of the Vendor's creditors fail to receive proper notice of the sale or to receive their share of the proceeds when the proceeds are distributed by the Vendor. I have not heard of many cases in this Province where creditors have suffered through failure to receive proper notice. I have, however, heard of the odd case where some creditors were unable to collect their shares from an insolvent Vendor and could not recover from the purchaser as he had settled with the Vendor after the creditors had waived the provisions of the Act.

The Ontario Act requires the proceeds of a bulk sale to be distributed in the same manner as moneys are distributed under the Ontario Assignments and Preferences Act. In view of this, it is our practice to insert a notice of the bulk sale, combined with a notice to creditors to prove their claims with the Trustee, once in the Ontario Gazette and twice in a newspaper published in the County in which the Vendor resides and to send copies of such notice by registered mail to all creditors shown on the Vendor's sworn list of creditors. Claims

filed, pursuant to such notice, are thereafter reviewed and any disputed claims contested or compromised as may be expedient. When the claims entitled to participate have been settled in this manner, the proceeds of the bulk sale, less the expenses, are distributed on account of the proven claims, in accordance with their legal priorities.

As most bulk sales are made by Vendors whose assets—exclusive of the proceeds of the bulk sale—are insufficient to satisfy their liabilities, it is our view that a notice of the bulk sale should be published and mailed to the creditors in the manner mentioned even when the required majority of creditors waive the provisions of the Act. Such procedure lessens the chance of any creditor being overlooked and does not involve much expense.

Yours truly,

(Sgd.) E. G. CLARKSON.

THE TORONTO GENERAL TRUSTS CORPORATION

Bay and Melinda Streets,
Toronto, Canada,
June 6th, 1939.

McLeod & Bentley,
Barristers, etc.,
Charlottetown,
Prince Edward Island.

Dear Sirs :

RE : BULK SALES ACT

We acknowledge receipt of your letter of the 29th ultimo, regarding the advisability of amending the Uniform Bulk Sales Act to require every Trustee appointed thereunder to publish the Bulk Sale in the Provincial Gazette and to hold the proceeds for fourteen days after the publication before making distribution.

We regret that we cannot be of any assistance in giving the information requested as we have never undertaken any of this business. We believe the Trusts & Guarantee Company, Limited, 302 Bay Street, has had some experience in this work.

This business is carried on here largely by chartered accountants and the Canadian Credit Men's Trust Association Limited, 137 Wellington Street West. We believe this latter organization handles a very large proportion of this work and if you have not already done so we would suggest that you communicate with them.

Yours very truly,

(Sgd.) A. R. COURTICE,
Trust Officer.

THE EASTERN TRUST COMPANY

Halifax Nova Scotia,
June 13, 1939.

McLeod & Bentley,
Charlottetown, P.E.I.

Dear Sirs :

RE : BULK SALES ACT

Further to our letter of the 7th instant, while we act as Trustee for a considerable number of bankruptcies, our experience as a Company acting under the Bulk Sales Act is quite limited. The local practice appears to be that in the majority of cases creditors are either paid in full or a written waiver is obtained from not less than 60% of the amount of claims exceeding $50.00 as shown by the written statement of the Vendor, in both of which cases no Trustee need be appointed.

The writer recalls that it is seldom, if ever, that any creditors are overlooked. The Vendor naturally wishes to clear up all liabilities and it is not in his interest that any creditors should be overlooked, while the purchaser or his legal representative is sufficiently concerned to see that as far as possible all liabilities of the old business are discharged.

It is quite true that even with the utmost care some creditors might be overlooked, particularly if scanty or incomplete records have been kept by the Vendor. We can see no objection therefore to the suggested amendment requiring publication before distribution of the Assets.

We do think that publication in the Royal Gazette serves a useful purpose as matter of record only, as practically no one reads it carefully and certainly business people as a class seldom do so.

Would it not be better to have the publication appear in a local paper as well and in one outstanding daily circulating within the field where the majority of the known creditors carry on their business? In most cases in the Maritime Provinces, this would be Montreal, Toronto, Halifax or Saint John for the usual commercial bulk sale. The insertion in the Royal Gazette can only be relied upon as a matter of record and we see no reason why a notarial copy of the ad. in a daily paper would not do as well and in addition, it might be read by creditors.

The usual course of procedure in Nova Scotia is similar to that outlined in (1) and (2) on the second page of your letter.

It has been our experience that all creditors are invariably satisfied for the reasons previously adverted to.

We are always in favour of uniform legislation and your efforts in this connection are to be commended.

Very truly yours,

(Sgd.) F. B. A. CHIPMAN,
Trust Officer.

APPENDIX L

BULK SALES ACT

Amendment to section 8, by adding as subsection (2) :

"(2) Before making distribution the trustee shall cause a notice thereof to be published once in the Provincial Gazette and in not fewer than two issues in a newspaper published in the province and having a circulation in the locality in which the subject matter of the sale in bulk was situated. A period of fourteen days shall elapse after the last of such publications before distribution is made. It shall not be necessary to publish any other advertisement or notice of such distribution."

APPENDIX M

TO THE COMMISSIONERS ON UNIFORMITY OF LAWS IN CANADA

The Commissioners from New Brunswick to whom was referred the question of the advisability of a uniform Coroner's Act, beg to report as follows :—

That they have carefully considered the question and are of the opinion that this is not a matter upon which uniformity is of such importance as would justify the time necessary to be taken to agree upon a uniform Act. They therefore recommend that this matter be left in abeyance until other matters upon which uniformity is more important have been dealt with.

Respectfully submitted,

HORACE A. PORTER,
PETER J. HUGHES,
J. B. DICKSON,

Fredericton, N.B., July 11, 1939.

APPENDIX N

ONTARIO

OFFICE OF
THE LEGISLATIVE COUNSEL

Toronto, 16th June, 1939.

Wilson E. McLean, Esq., K.C.,
Legislative Counsel,
Parliament Buildings,
Winnipeg, Man.

Dear Mr. McLean :

RE : UNIFORM ASSIGNMENT OF BOOK DEBTS ACT

I am writing to you as Secretary of the Conference of Commissioners on Uniformity of Legislation in Canada.

I am in receipt of the following letter from Messrs. Strathy, Cowan and Setterington, Barristers, of this City :

RE : ASSIGNMENT OF BOOK DEBTS ACT
R.S.O. 1937, CHAP. 183.

In our practice we are frequently called upon to register general assignment of book debts on behalf of a chartered bank and to make a search for prior registered assignments back to the 1st of June, 1923, on which date this Act came into effect in Ontario.

The great majority of such assignments are in favour of chartered banks, and are given either by limited companies or by persons carrying on business in partnership, or under a partnership name. When the Act first came into force assignments made by limited companies and partnerships were all indexed under the heading of "Companies", and in the books kept by the Clerk of the County of York there are some 41 pages containing 35 to 40 entries per page under this heading, covering the first two years during which the Act was in force. You will appreciate that a search through 1600 names is a long and tedious process, and unless a great deal of time is given to it it is almost impossible to make an accurate check.

Commencing in the year 1925 the indexes are kept alphabetically for all names, including companies, partnerships, as well as individuals. We feel we would be safe in estimating that fully 50 per cent of the companies and partnerships which registered general assignment of book debts ten years or more ago have been wound up or gone out of business.

> We believe that The Uniform Act prepared by the Commissioners on Uniformity of Legislation was adopted in 1931 by this Province. It has occurred to us that it might be desirable to have an amendment to this Act requiring the registration of a renewal statement or certificate from time to time. Last year The Conditional Sales Act was amended to require registration of renewal statements every three years. We believe that in Alberta The Assignment of Book Debts Act requires registration of a renewal statement every two years. Under The Bank Act a notice of intention to borrow under section 88 is renewable every three years, and as banks are most largely interested in general assignment of book debts as collateral security we would think the registration of a renewal statement or certificate every three years would not be an onerous requirement, and might also be beneficial for unsecured creditors of the assignor.
>
> We shall be glad to know if such an amendment has been considered, or if it is a departure from The Uniform Act which the Commissioners who prepared it deemed undesirable.
>
> We are asked to search back to 1923 once a month, or oftener, and the futility of making an accurate search through 1600 names in the first volume of the index suggests to us the desirability of some such amendment.

I have discussed the situation with Mr. Arthur Winchester, Clerk of the County Court of the County of York, in which county the City of Toronto is situated. Mr. Winchester advises me that owing to the very large number of registrations under this Act in the County of York it is highly desirable that some provision for renewal be made.

For some years the filing of annual renewal statements of chattel mortgages has been required in Ontario (R.S.O. 1937, c. 181, s. 24) and in 1938 The Conditional Sales Act was amended to require the filing of renewal statements at three

year intervals (1938, c. 5, s. 3). The draft uniform Conditional Sales Act, various aspects of which have been reconsidered by the Conference since its adoption in 1922, has no provision for the filing of renewal statements, but the draft uniform Bills of Sale and Chattel Mortgages Act (1928, pp. 27-41) contains a provision (section 11) for the filing of renewal statements at three year intervals and prescribes a form of renewal statement in the schedule to the Act.

Although the situation in York County is unique in Ontario and perhaps in the other common law Provinces of Canada so far as the volume of work under the three Acts above referred to is concerned, the matter of requiring renewal statements to be filed under The Assignment of Book Debts Act would appear to warrant consideration by the Conference. So also, I think, does the matter of renewal provisions in The Conditional Sales Act although so far as Ontario is concerned, that matter is not vital as the uniform Act is not in force in this Province.

Yours truly,

(E. H. SILK)
Legislative Counsel.

S/M.

APPENDIX O

COPY OF LETTER FROM D. J. THOM, K.C. TO J. P. RUNCIMAN

Regina, June 19th, 1939.

J. P. Runciman, Esq.,
Legislative Counsel,
Legislative Bldgs.,
Regina, Sask.

Dear Mr. Runciman :

I have yours of recent date enclosing correspondence from Mr. Wilson E. McLean, the Secretary of our Conference, respecting a suggestion of establishing privilege in connection with mercantile reports. I have read with interest also the report of the special committee to the President of the Association of Insurance Superintendents with respect to the same matter.

In the first place I think that this is essentially a matter of the law of libel and slander on which the Conference in making up a uniform Act is entitled to make some pronouncement. I do not think we would be at all going beyond the proper scope of our duties in so doing.

Secondly, the question of what decision should we come to.

The report to the Insurance Superintendents above referred to comes to the conclusion that the rule established by Macintosh and Dun, 1908 A.C. 390, firstly is binding upon Canadian courts; secondly, is inconvenient and is a detriment to the carrying on of legitimate business and, thirdly, is in conflict with the law in England and Scotland on the same matter.

On the first statement I agree. The third statement I am inclined to think is open to question. In the House of Lords case *The London Association for Protection of Trade vs Greenlands Limited,* 1916 2 A.C. 15, the Macintosh and Dun case was carefully distinguished. The London Association in the House of Lords case was a co-operative association not operating for profit. I would not care to say that in England the law specifically is that statements by a mercantile agency operating on a purely commercial basis are privileged.

On the second heading, as to whether credit reports should be privileged, I am not at all sure that I agree with the statement made to the Insurance Superintendents Conference. Undoubtedly from the point of view of the mercantile agency it is inconvenient to them that they should be subject to the ordinary law of libel. They could undoubtedly work with a good deal more freedom if they had some relief from it. That, of course, is not the determining factor. The question is what is desirable "for the common convenience and welfare of society". That part of society interested in the present case is the mercantile or commercial community. Is it a fact that the reports which credit agencies are issuing and have been issuing for a great number of years (the Macintosh and Dun case is thirty years old now) have been unduly hampered and restricted by the necessity of having to be kept within the restrictions of the law of libel? If there has been complaint on this score it has been kept fairly well under ground. I have certainly never heard of it. I can quite understand that a business man asking for a credit report, with the natural curiosity of all mankind, would be glad to get every scrap of rumour about the party enquired about that he possibly could. On the other hand if it were drawn to the attention of that same enquirer that he himself might be the subject of an enquiry by somebody else I think perhaps that enquirer would derive considerable comfort from the fact that he had some protection against the circulation of mere rumours with regard to himself.

I must say that, in the absence of knowledge of any widespread complaint to the contrary, it appears to me that the law of libel to which we are all subject would exercise a very wholesome and desirable check on the activities of a purely mercantile agency. To allow an agency of that sort to repeat any rumour that it had heard with complete freedom unless actual malice were proved, which in the ordinary case would be practically impossible, would I think be a menace to the commercial community which would not be counteracted by the restriction it now suffers in mercantile reports by reason of this law of libel.

If, however, I am wrong in my diagnosis and the cramping result of the law of libel on mercantile reports is a disadvantage more than offsetting the beneficial restraint that the law puts on these mercantile agencies I would suggest that there might be a middle course rather than at once placing mercantile reports in the position of privileged communications. We have

at the present time placed newspapers in what you might call a middle category. Not exactly the same rules of course could be applied to mercantile reports but something could be done to give the mercantile agency some leeway without at the same time giving them a completely free hand. Some means might be suggested, as in the case of newspapers, whereby they could plead in certain circumstances mitigation of damages and so on.

I am not going to attempt at this stage to make suggestions. To my mind the first question should be is there a requirement for the establishment of privilege in the case of mercantile agencies. If the rest of the members of the Commission feel as I do about it before they attempted to pass on the subject at this next meeting they would want a year to make enquiries among the mercantile community in their different provinces and come back later with an opinion based on some real foundation as to whether the legislation were necessary. At the same time we might be prepared with ideas as to whether if we decided legislation were necessary we would go the whole distance or would strive to find some middle course such as I have suggested.

Yours truly,

(Sgd.) D. J. THOM.

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