

1941

PROCEEDINGS

OF THE

TWENTY-THIRD ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

**UNIFORMITY OF LEGISLATION
IN CANADA**

HELD AT

TORONTO

SEPTEMBER 5TH, 6TH, 8TH, 9TH AND 10TH, 1941

CONFERENCE OF COMMISSIONERS ON UNIFORMITY
OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE

- Honorary President* Hon. Frederick F. Mathers, K.C.,
Halifax.
- President* F. H. Barlow, K.C., Toronto.
- Vice-President* Peter J. Hughes, K.C., Fredericton.
- Treasurer* W. P. J. O'Meara, K.C., Ottawa.
- Secretary* Eric H. Silk, K.C., Toronto.

Local Secretaries

*(For the purpose of communication between the Commissioners
of the different Provinces)*

- Alberta* G. B. Henwood, K.C., Deputy Attorney-
General, Edmonton.
- British Columbia* Henry G. Lawson, K.C., 918 Govern-
ment Street, Victoria.
- Manitoba* R. Murray Fisher, K. C., Parliament
Buildings, Winnipeg.
- New Brunswick* J. Bacon Dickson, Deputy Attorney-
General, Fredericton.
- Nova Scotia* C. L. Beazley, K.C., Legislative Counsel,
Halifax.
- Ontario* Eric. H. Silk, K.C., Legislative Counsel,
Parliament Buildings, Toronto 5.
- Prince Edward Island* W. E. Bentley, K. C., Charlottetown.
- Quebec* Hon. Ed. Fabre Surveyer, Judges'
Chambers, Superior Court, Montreal.
- Saskatchewan* J. P. Runciman, Legislative Counsel,
Parliament Buildings, Regina.
- Canada* W. P. J. O'Meara, K. C., Assistant
Under-Secretary of State, Ottawa.

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

Alberta:

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

G. B. HENWOOD, K.C., Deputy Attorney-General, Edmonton.

(Commissioners appointed under the authority of the
 statutes of Alberta, 1919, c. 31).

British Columbia:

HENRY G. LAWSON, K.C., 918 Government Street, Victoria.

R. L. MAITLAND, K.C., 626 West Pender Street, Vancouver.

J. PITCAIRN HOGG, K.C., Legislative Counsel, Parliament
 Buildings, Victoria.

(Commissioners appointed under the authority of the
 statutes of British Columbia, 1918, c. 92).

Manitoba:

R. MURRAY FISHER, K.C., Deputy Municipal Commissioner,
 Legislative Building, Winnipeg.

W. P. FILLMORE, K.C., 303 National Trust Building,
 Winnipeg.

R. K. FINLAYSON, Electric Railway Chambers, Winnipeg.

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

New Brunswick:

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

J. EDWARD HUGHES, Solicitor, Dep't. of Attorney-General,
 Fredericton.

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

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

(Commissioners appointed under the authority of the
 statutes of New Brunswick, 1918, c. 5).

Nova Scotia:

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

C. L. BEAZLEY, K.C., Legislative Counsel, Halifax.

Ontario:

F. H. BARLOW, K.C., Master, Supreme Court, Osgoode Hall, Toronto.

ERIC H. SILK, K.C., Legislative Counsel, Parliament Buildings, Toronto.

(Commissioners appointed under the authority of the statutes of Ontario, 1918, c. 20).

Prince Edward Island:

W. E. BENTLEY, K.C., Charlottetown.

SYLVERE DESROCHES, Charlottetown.

DONALD O. STEWART, Summerside.

GEORGE J. TWEEDY, K.C., Charlottetown.

N. W. LOWTHER, Charlottetown.

K. M. MARTIN, K.C., Charlottetown.

Quebec:

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

Saskatchewan:

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

J. P. RUNCIMAN, Legislative Counsel, Parliament Buildings, Regina.

Canada:

J. F. MACNEILL, K.C., Counsel, Dept. of Justice, Ottawa.

W. P. J. O'MEARA, K.C., Assistant Under-Secretary of State, Ottawa.

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

MEMBERS EX OFFICIO OF THE CONFERENCE

Attorney-General of Alberta: Hon. Wm. Aberhart.

Attorney-General of British Columbia: Hon. Gordon S. Wismer,
K.C.

Attorney-General of Manitoba: Hon. J. O. McLenaghan, K.C.

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

Attorney-General of Nova Scotia: Hon. J. H. MacQuarrie, K.C.

Attorney-General of Ontario: Hon. Gordon D. Conant, K.C.

Attorney-General of Prince Edward Island: Hon. Thane A.
Campbell, K.C.

Attorney-General of Quebec: Hon. H. Wilfrid Girouard, K.C.

Attorney-General of Saskatchewan: Hon. J. W. Estey, K.C.

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.
- 1941. September 5-6, 8-10, Toronto.

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

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

The Conference is composed of the Commissioners and representatives appointed from time to time by the different provinces of Canada or under the statutory or executive authority of such provinces for the purpose of promoting uniformity of legislation in the provinces. Since 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. 10-25.

TABLE OF

The following table shows the model statutes prepared and
been adopted by the Parliament of Canada

TITLE OF ACT	ADOPTED BY			
	Confer- ence	Alberta	B. C.	Man.
Assignment of Book Debts	1928	1929	....	1929
Bills of Sale.....	1928	1929	....	1929
Bulk Sales.	1920	1922	1921	1921
Commorientes... ..	1939	...	1939	....
Conditional Sales.. ..	1922	...	1922	...
Contributory Negligence	1924	1937*	1925	....
Corporation Securities Registration...	1931	..	....	....
Devolution of Real Property	1927	1928	....	....
Evidence.....	1941	...	....	....
Fire Insurance Policy	1924	1926	1925	1925
Foreign Affidavits	1938	..	....	..
Foreign Judgments	1933	.	....	....
Interpretation.	1938	...	....	1939†
Intestate Succession	1925	1928	1925	1927‡
Judicial Notice of Statutes and Proof of State Documents	1930	...	1932	1933
Landlord and Tenant	1937	..	....	....
Legitimation	1920	1928	1922	1920
Life Insurance	1923	1924	1923	1924
Limitation of Actions	1931	1935	..	1932
Partnership Registration	1938	..	....	..
Reciprocal Enforcement of Judgments.	1924	1925, am. 1935	1925	....
Warehousemen's Lien	1921	1922	1922	1923
Wills	1929	.	....	1936

* Adopted as revised. † In part. ‡ With slight modifications.

MODEL STATUTES

adopted by the Conference and to what extent, if any, these have
and the Legislatures of the Provinces.

ADOPTED BY							REMARKS
N. B.	N. S.	Ont.	P.E.I.	Que.	Sask.	Canada	
1931	1931	1931	1931	....	1929	....	Amended 1931
...	1930	...	...	....	1929	....	Amended 1931 and 1932
1927	....	....	1933	....	...	....	Amended 1925 and 1939
1940	1941	1940	1940	....	....	....	.....
1927	1930	...	1934	....	....	....	Amended 1927 29, -30 & 33.
1925	1926	....	1930*	...	....	....	Revised 1934 and 1935
...	1933	1932	....	....	1932	....	.....
1934†	....	....	....	....	1928	....	.....
...
1931	1930	1924	1933	....	1925	....	Statutory con- dition 17 not adopted.
...
...	....	....	....	....	1934	....	.....
...	....	....	1939	....	....	....	Amended 1939 and 1941
926	....	...	....	....	1928	....	Amended 1926
931, 1934	...	..	1939x	....	....	....	Amended 1931
938	....	...	1939	....	....	....	.....
920	§	1921	1920	§	1920	....	.....
924	1925	1924	1933	....	1924	....	.....
...	....	...	1939†	....	1932	....	Amended 1932
...
925	....	1929	..	....	1924	...	Amended 1925
923	....	1924	1938	....	1922	....	.....
...	....	....	....	....	1931	....	.....

Provisions similar in effect are in force.

x As part of Evidence Act.

PROCEEDINGS

PROCEEDINGS OF THE TWENTY-THIRD 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 :

British Columbia :

MR. LAWSON

Manitoba :

HONOURABLE MR. MCLENAGHEN, MESSRS. FILLMORE,
FINLAYSON and FISHER

New Brunswick :

MESSRS. J. E. HUGHES, P. J. HUGHES and PORTER

Nova Scotia :

MR. BEAZLEY

Ontario :

MESSRS. BARLOW AND SILK

Prince Edward Island :

MESSRS. BENTLEY, LOWTHER and MARTIN

Saskatchewan :

MESSRS. RUNCIMAN and THOM

Canada :

MESSRS. MACNEILL 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. Fillmore on behalf of the Conference and is here quoted as containing a very useful summary of the work done this year.

"In conformity with the usual practice and as directed by the Conference of the Commissioners on Uniformity of Legislation in Canada, I beg to present this statement as to the matters dealt with by them in the conference recently held, which closed Wednesday.

"The draft statutes presented at this meeting were :

The Interpretation Act
The Evidence Act
The Libel Act
The Warehouse Receipts Act
The Married Women's Property Act

"The Dominion Commissioners presented draft uniform sections for the Dominion and Provincial Interpretation Acts, which were approved and recommended to be passed as uniform sections.

"The Dominion representatives also presented a draft uniform Evidence Act, which, after consideration, was passed by the Conference and recommended to both the Dominion and Provincial authorities as suitable to be placed on the statute books. While the proposed Evidence Act is mainly a revision of enactments existing in the various provinces and that of the Dominion, the proposed Act contains certain matters not found in any of our Evidence Acts. Provision has been made for presenting to the Court, by its leave, a written report or finding of facts prepared by an expert not being a party to the cause or an employee of a party after notice thereof has been given to the opposite party and subject to the right of the opposite party to cross-examine the expert who made the report and other persons who furnish the information to the expert. It is thought that these new provisions may effect a saving of time and be of some assistance in cases where scientific and other complicated problems are involved.

"Provisions were also made in the new draft Evidence Act for the admission of business records under certain circumstances. There has also been included in the Act provisions similar to

the English Evidence Act, 1938, whereby signed statements are made admissible in evidence even if the maker of the statement cannot be produced at the trial.

“The Conference also considered and recommended for adoption provisions whereby a print from any photographic film, of bank books or records or bills of exchange, etc., which have been destroyed, lost or delivered to a customer, may be received in evidence. This also includes records, documents, books or papers belonging to or deposited with Departments of the Government of Canada. Provision was also made for proving the death of a person who was a member of His Majesty's Forces by means of a certificate signed by certain officials of the Department of Militia in charge of records or by certain officers of His Majesty's Naval, Military or Air Forces.

“A draft Libel Act was presented by the Commissioners for Saskatchewan. While the same was considered by the Conference, time did not permit the Commissioners to complete the revision of this draft Act. Certain subjects were discussed, such as defamatory statements over the radio, and the right of private property in photographs. These topics will be reported on and dealt with at the next session. Consideration of the Warehousemen's Lien Act and the Married Women's Property Act was also deferred.”

MINUTES OF MEETING

NOTE :— The Conference held the following sessions :

September 5th.	10.15 a.m. — 12.30 p.m.
“	2.30 p.m. — 4.00 p.m.
“	8.30 p.m. — 10.30 p.m.
“ 6th.	9.30 a.m. — 12.15 p.m.
“	1.15 p.m. — 2.45 p.m.
“ 8th.	10.00 a.m. — 12.30 p.m.
“	2.30 p.m. — 4.15 p.m.
“	8.30 p.m. — 10.30 p.m.
“ 9th.	9.30 a.m. — 12.30 p.m.
“	2.00 p.m. — 4.00 p.m.
“	8.00 p.m. — 10.00 p.m.
“ 10th.	9.30 a.m. — 12.15 p.m.
“	2.45 p.m. — 3.45 p.m.

FIRST DAY

Friday, September 5th, 1941.

Opening.

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

Chairman.

As Mr. Fisher, the President and the other Manitoba Commissioners were not expected to arrive for some hours because of a delay in train service, and as the Vice-President, Mr. R. Andrew Smith, had passed away since the last meeting of the Conference, Mr. D. J. Thom, a Past President, called the meeting to order. The following resolution was then passed :

RESOLVED that Mr. Thom act as Chairman pending the arrival of Mr. Fisher.

Secretary.

It having been pointed out that since the last meeting of the Conference Mr. Wilson McLean has ceased to be Legislative Counsel for Manitoba and is no longer a member of the Conference and that the office of Secretary was vacant, the following resolution was adopted :

RESOLVED that Mr. Silk act as Secretary *pro tem* of the Conference.

Minutes of Last Meeting.

The Minutes of the 1939 meeting, as printed, were taken as read and confirmed.

Treasurer's Report.

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

Statement to Association.

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

Nomination Committee.

Messrs. Bentley, Fisher, Silk and Thom were appointed a Nomination Committee to submit recommendations as to the election of officers of the Conference.

(NOTE : Subsequently Messrs. Beazley, Hughes, P. J., Lawson and O'Meara were appointed to the Nomination Committee.)

Hours of Sittings.

It was decided that the hours of sittings 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 session on Saturday afternoon. These were to be subject to change.

(NOTE : Subsequently it was decided to hold a short session Saturday afternoon instead of having a Saturday evening session; to commence the afternoon and evening sessions on the fourth day at 2.00 and 8.00 respectively and to hold a session on the afternoon of the fifth day.)

Agenda.

The meeting then considered the agenda. It was decided to dispose of certain matters which were not of a lengthy nature and then to proceed with the draft Interpretation and Evidence Acts with a view to reporting both Acts this year if possible.

Coroners Act.

The report of the Ontario Commissioners with respect to the Coroners Act was presented by Mr. Silk and discussed.

(Appendix A)

The following resolution was adopted :

RESOLVED that the report of the Ontario Commissioners on the Coroners Act be adopted and that the preparation of a uniform Coroners Act be not further considered.

Landlord and Tenant Act

The report at the New Brunswick Commissioners relating to the inclusion in the uniform Landlord and Tenant Act of a provision permitting the adoption by a mortgagee of the mortgagor as his tenant, was presented by Mr. H. A. Porter.

(Appendix B)

The following resolution was adopted :

RESOLVED that the report of the New Brunswick Commissioners with respect to a proposed amendment to the uniform Landlord and Tenant Act be received and tabled but that no specific recommendation with regard there to be made by the Conference.

Subrogation.

The report of the Manitoba Commissioners on the matter of Subrogation was, in the absence of the Manitoba Commissioners, presented by Mr. Thom and discussed.

(Appendix C)

The following resolution was adopted :

RESOLVED that the report of the Manitoba Commissioners on the matter of Subrogation be adopted and that no further action be taken by the Conference.

Consolidation of Uniform Acts.

The report of the Ontario Commissioners on the proposal to print a consolidation of all uniform Acts prepared and recommended by the Conference to date was received and discussed.

(Appendix D)

The following resolution was adopted :

RESOLVED that the report of the Ontario Commissioners on the proposal to print a consolidation of all uniform Acts prepared and recommended by the Conference to date be adopted and that the preparation and printing be proceeded with at the conclusion of the present war.

(NOTE : In this connection see also minutes of proceedings of the afternoon session of the fifth day.)

Sale of Goods Act.

Mr. Barlow and Mr. Silk presented a memorandum submitted by Mr. H. W. Macdonnell, Legal Secretary of the Canadian Manufacturers' Association, advocating an amendment to the uniform Sale of Goods Act to provide for a right of resumption of possession of goods by an unpaid vendor in the event of the bankruptcy of the purchaser.

(Appendix E)

The memorandum was discussed and the following resolution was then adopted.

RESOLVED that the memorandum relating to the uniform Sale of Goods Act submitted by the Canadian Manufacturers' Association be referred to a committee for study and a report, and that if the committee's report is favourable to the proposal contained in the memorandum, the committee prepare a draft section or sections accordingly.

(NOTE : The memorandum was subsequently referred to the Manitoba Commissioners in accordance with the resolution.)

(Conclusion of morning session)

Interpretation Act Sections.

Mr. O'Meara, on behalf of the Dominion Representatives, presented a report on the further draft of the Uniform Interpretation Act Sections prepared by the Dominion Representatives.

(Appendix F)

Mr. O'Meara and Mr. MacNeill then presented the draft of the uniform Interpretation Act Sections prepared by the

Dominion Representatives. The Conference proceeded to consider and discuss each section in detail.

(Conclusion of afternoon session)

Manitoba Commissioners.

The Honourable Mr. McLenaghan, Attorney - General of Manitoba, and the three other Manitoba Commissioners were present at the opening of the evening session. At Mr. Fisher's request Mr. Thom continued in the Chair.

Interpretation Act Sections.

Consideration of the draft uniform Interpretation Act Sections was continued.

(Conclusion of evening session)

SECOND DAY

Saturday, September 6th, 1941.

Interpretation Act Sections.

Mr. Fisher took the Chair and the Conference continued consideration and discussion of the draft uniform Interpretation Act Sections.

Uniform Act Section.

The Ontario Commissioners presented a memorandum relating to the "Uniform Act Section" which appears as one of the final sections of each uniform Act adopted by the Conference.

(Appendix H)

The memorandum and the advisability of discontinuing the practice of including such a section in draft uniform Acts was discussed and the following resolution was unanimously adopted:

RESOLVED that the practice of including the following section—

"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."

in each uniform Act adopted and recommended by the Conference be continued.

Interpretation Act Sections.

The following resolution was then adopted :

RESOLVED that the Interpretation Act Sections the final draft of which was prepared by the Dominion Representatives, and which is set out in Appendix G, be adopted by the Conference and recommended to the Parliament of Canada and to the Legislatures of the several provinces for enactment.

(Appendix G)

(Conclusion of morning session)

Evidence Act.

Mr. O'Meara, on behalf of the Dominion Representatives presented a report and the further draft of the uniform Evidence Act prepared by them.

(Appendix I)

Mr. O'Meara and Mr. MacNeill then presented the draft of the uniform Evidence Act prepared by the Dominion Representatives and the Conference proceeded to consider the draft Act in detail.

(Conclusion of afternoon session)

THIRD DAY

Monday, September 8th, 1941.

Evidence Act.

The Conference continued its consideration and discussion of the uniform Evidence Act during all three sessions.

FOURTH DAY

Tuesday, September 9th, 1941.

Honourable Mr. McNair; K.C.

The Honourable J. B. McNair, K.C., Prime Minister and Attorney-General of New Brunswick, attended and met the members of the Conference.

Evidence Act.

Consideration of the uniform Evidence Act was continued.

Honourable Mr. Conant, K.C.

The Honourable G. D. Conant, K.C., Attorney-General of Ontario, attended the Conference and took part in its deliberations.

(Conclusion of morning session).

Nomination Committee Report:

The report of the Nomination Committee, which was presented by Mr. Lawson, was received and adopted. The report recommended the following officers :

Hon. President. .Hon. Frederick F. Mathers, K.C., Halifax, N.S.
 PresidentF. H. Barlow, K.C., Toronto, Ont.
 Vice-President . . .Peter J. Hughes, K.C., Fredericton, N.B.
 TreasurerW. P. J. O'Meara, K.C., Ottawa, Ont.
 SecretaryEric H. Silk, K.C., Toronto, Ont.

Retiring President.

Mr. Fisher spoke briefly to the Conference stressing the desirability of having each Commissioner or Representative attend promptly to all work assigned to him. He referred to the importance, in the interest of successful meetings, of having every member of the Conference not only complete the work assigned to him but also study all reports and draft Acts submitted by other members. Mr. Fisher expressed his appreciation of the co-operation and assistance given to him by the members of the Conference during his term of office and, in conclusion, expressed his welcome to Mr. Barlow, the new president.

Incoming President.

In accepting the office of President, Mr. Barlow thanked the members of the Conference for the honour bestowed upon him and the confidence reposed in him. He commented upon the importance of every member of the Conference being prepared to accept the full responsibility of all work assigned to him and complimented the members upon the splendid co-operation and *esprit de corps* which has prevailed at the current sessions.

At Mr. Barlow's request, Mr. Fisher remained in the chair.

The following resolutions were then adopted :

Mr. R. Andrew Smith, K.C.

RESOLVED that the Conference expresses its sincere regret in the death of its esteemed member, Mr. R. Andrew Smith, K.C., and also its appreciation of the excellence of the work prepared by him for the Conference.

Mr. I. A. Humphries, K.C.

RESOLVED that the Conference expresses its sincere regret in the death of Mr. I. A. Humphries, K.C., a former esteemed member of the Conference.

Honourable Mr. Justice Major.

RESOLVED that the Conference extend to the Honourable Mr. Justice Major its congratulations upon his appointment as a Justice of the Court of King's Bench for Manitoba.

Honourable Mr. Justice Plaxton.

RESOLVED that the Conference extend to the Honourable Mr. Justice Plaxton its congratulations upon his appointment as a Justice of the Supreme Court of Ontario.

Evidence Act.

The Conference then proceeded to further consider and discuss the draft uniform Evidence Act. At the conclusion of a study of the entire Act the Dominion Representatives were requested to re-draft certain sections and to have copies available for study at the morning session of the fifth day.

The Conference decided not to include in the uniform Evidence Act a section empowering commissioned officers of the armed forces to take affidavits as this was considered a matter which should be dealt with by way of recommendation or otherwise by the military authorities.

Foot Note References.

The Conference then discussed the desirability of retaining in all drafts of uniform Acts, including the final draft, the references to the various provincial and other statutes which usually appear at the foot of each section in the first draft. The following resolution was adopted :

RESOLVED that all drafts, including the final draft, of every uniform Act shall include at the end of each section reference to the corresponding or similar sections of provincial and where feasible, Dominion, Imperial and other Statutes.

(Conclusion of afternoon session).

Treasurer's Report.

The report of the Treasurer as approved by the auditors, Messrs. O'Meara and Bentley, was received and adopted.

Libel and Slander Act.

The report of the Saskatchewan Commissioners on the uniform Libel and Slander Act was presented by Mr. Runciman and each part of the report was separately considered and discussed.

(Appendix K)

The report "with respect to the matter of Privilege attaching to Information contained in Reports made to Insurers by reporting Agencies" made to the Association of Superintendents of Insurance by Messrs. R. Andrew Smith, K.C., and Wilson E. McLean, K.C., acting as a Special Committee, was also read and considered.

(Appendix L)

The following resolutions were adopted :

RESOLVED that Part I entitled "Reporting Agencies" of the report of the Saskatchewan Commissioners on the uniform Libel and Slander Act be adopted.

RESOLVED that the Saskatchewan Commissioners be instructed to incorporate in the draft uniform Libel and Slander Act (1936 Proceedings, pp. 66-75) a provision prohibiting the use of a portrait or picture of a living person in any advertisement unless the consent of such person has been obtained.

RESOLVED that the Saskatchewan Commissioners be requested to study and report upon the following matters—

- (a) Whether defamatory statements made in radio broadcasts should be treated as libel or slander;
- (b) whether radio broadcasting stations should be permitted to enjoy privileges with regard to defamatory statements comparable to those now enjoyed by newspapers; and
- (c) whether the Canadian Broadcasting Corporation and other similar bodies corporate are, in law, emanations of the Crown and, if such is the case, whether it is desirable that such bodies should be the subject of any special legislation with regard to the law pertaining to libel and slander.

(Conclusion of evening session)

FIFTH DAY

Wednesday, September 10th, 1941.

Evidence Act.

The Dominion Representatives presented copies of certain sections of the draft uniform Evidence Act which they had been requested to re-draft and the sections were discussed.

Mr. Arthur W. Rogers, K.C., Secretary of the Canadian Bankers' Association and a former member of the Conference, who had been invited to attend and assist in the consideration of the sections relating to microphotographic records, arrived at the meeting and after being welcomed, discussed the provisions in question.

The following resolution was adopted :

RESOLVED that the draft uniform Evidence Act be referred back to the Dominion Representatives for incorporation therein of the amendments made at this meeting of the Conference and that the draft as so revised be included in this year's Proceedings; that copies thereof be sent to all members of the Conference and that if the revised draft is not disapproved of by two or more provinces by the 31st day of January, 1942, it be recommended to the Parliament of Canada and the Legislatures of the several provinces for enactment.

(Appendix J)

SECRETARY'S NOTE — Copies of the revised draft of the Uniform Evidence Act were duly sent to all members of the Conference. As no messages of disapproval were received by the Secretary by the 31st day of January, 1942; the draft Act is accordingly recommended for enactment by the above resolution.

Marginal Notes.

The matter of furnishing all draft uniform Acts with marginal notes was brought before the meeting and discussed and the following resolution was adopted :

RESOLVED that marginal notes be included in all drafts of uniform Acts being considered or adopted by the Conference.

(Conclusion of morning session)

The following resolutions were adopted :

Next Meeting.

RESOLVED that the next meeting of the Conference be held five days, exclusive of Sunday, before the next meeting of The Canadian Bar Association, and at or near the same place.

(NOTE.—See also resolution on afternoon of fifth day).

Secretarial Assistance.

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.

Report of Proceedings.

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 decided to discontinue the practice of having interleaved copies of the Proceedings prepared.

Appreciation of Hospitality.

The Conference expressed its deep appreciation of the hospitality and courtesy extended to it by the Honourable G. D. Conant, K.C., Attorney-General of Ontario, by Mr. D. L. McCarthy, K.C., President of The Canadian Bar Association, the Benchers of the Law Society of Upper Canada and by various members of the Ontario Bench and Bar.

Annual Grants.

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.

Libel and Slander.

The draft uniform Libel and Slander Act was further considered and discussed and the following resolution was adopted :

RESOLVED that the draft uniform Libel and Slander Act be referred back to the Saskatchewan Commissioners for further study with the request that the Saskatchewan Commissioners report back next year in accordance with the resolution respecting the draft Libel and Slander Act already passed.

Comparison of Uniform Acts.

The matter of preparing a memorandum in tabular or other form indicating the variations from the draft uniform Act in the uniform Acts as adopted by the various provinces was considered and the following resolution was adopted:

RESOLVED that when the Ontario Commissioners prepare a consolidation of the various Acts adopted by the Provinces and the Dominion; that they prepare also a statement, to be inserted at the conclusion of each Act, indicating the various jurisdictions which have enacted the draft uniform Act and the variations, if any, in the Act as adopted and amended by such jurisdictions, and that the Ontario Commissioners be empowered to employ the necessary legal and other assistance for such purpose.

Income Tax Act.

Uniform Income Tax legislation was discussed and the following resolution was adopted:

RESOLVED that as no request has been made that the Conference undertake the drafting of uniform Income Tax legislation in accordance with the resolution appearing on page 37 of the 1939 Conference Proceedings, no further action be taken with regard to the drafting of Income Tax legislation.

Sale of Goods Act.

It was decided to refer the memorandum of the Canadian Manufacturers' Association relating to the Sale of Goods Act to the Manitoba Commissioners in accordance with the resolution already adopted.

The following resolutions were also adopted:

Warehouse Receipts Act.

RESOLVED that the draft Warehouse Receipts Act be referred back to the British Columbia Commissioners for consideration at the next meeting of the Conference.

Married Women's Property Act.

RESOLVED that the uniform Married Women's Property Act be referred back to the Manitoba Commissioners for consideration next year.

Rules of Drafting.

Consideration was then given to revising the memorandum relating to the rules of drafting appearing in the Proceedings of the 1919 meeting of the Conference, and the following resolution was adopted.

RESOLVED that Mr. Runciman and Mr. Silk be appointed a committee of two to prepare a revision of the rules of drafting appearing in the 1919 Conference Proceedings, and to report thereon at the next meeting of the Conference.

The following resolutions were then passed:

Conditional Sales of Certain Chattles.

RESOLVED that the matter of conditional sales of chattels affixed to land which was referred back to the Alberta Commissioners at the 1939 Conference 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, be now referred to the New Brunswick Commissioners to draft such sections.

Reciprocal Enforcement of Judgments.

RESOLVED that the matter of the Reciprocal Enforcement of Judgments Act which was referred to the Alberta Commissioners at the 1939 Conference for consideration and report, be now referred to the Dominion Representatives for consideration and report at the next meeting of the Conference.

Motor Vehicle Encumbrances.

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

Assignment of Book Debts Act.

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

Goods Sold on Consignment.

RESOLVED that the matter of the registration of agreements where goods are sold on consignment be referred back to the British Columbia Commissioners for a report next year.

Mr. Hughes Takes Chair.

Mr. Fisher then retired from the Chair and in the absence of Mr. Barlow the Vice-President, Mr. Hughes, took the chair.

On behalf of the Conference Mr. Lawson and Mr. Porter expressed gratitude and appreciation to Mr. Fisher for the capable manner in which he had carried out his duties as president during his term of office.

Next Meeting.

The holding of a meeting next year in the event of a meeting of The Canadian Bar Association not being held, was discussed and the following resolution was adopted:

RESOLVED that if a meeting of The Canadian Bar Association is not held next year, a meeting of the Conference should nevertheless be held if that course is at all practicable, and that in that event the time and place of the meeting shall be in the discretion of the officers.

Ontario Commissioners.

Messrs. Lawson and Fisher expressed the appreciation of the members of the Conference for the arrangements made by the Ontario Commissioners. Mr. Silk replied.

(Conclusion of afternoon session).

APPENDICES

- A. Report respecting Coroners Act.
- B. Report respecting inclusion in uniform Landlord and Tenant Act of provision permitting adoption by mortgagee of mortgagor as his tenant.
- C. Report respecting Subrogation.
- D. Report respecting proposal to print a consolidation of all uniform Acts prepared and recommended by the Conference to date.
- E. Memorandum submitted by Secretary of the Canadian Manufacturers' Association advocating amendment to the uniform Sale of Goods Act.
- F. Report respecting certain sections of uniform Interpretation Act Sections.
- G. Draft uniform Interpretation Act Sections.
- H. Memorandum respecting "Uniform Act Section."
- I. Report respecting uniform Evidence Act.
- J. Draft uniform Evidence Act.
- K. Report respecting uniform Libel and Slander Act.
- L. Report made to Superintendents of Insurance respecting privilege of reporting agencies.

APPENDIX A

MEMORANDUM RE : PROPOSED UNIFORM
CORONERS ACT :

EXPLANATION

At the 1938 session of the Conference the matter of the advisability of preparing a model Coroners Act was referred to the New Brunswick Commissioners. At the 1939 meeting, the New Brunswick Commissioners presented a brief report indicating that in their opinion there was no necessity for the preparation of such an Act.

The matter was referred to the Ontario Commissioners for re-consideration, perhaps because at the 1939 session of the Ontario Legislature important amendments to The Coroners Act were made.

We have reviewed the Coroners Acts of the various provinces, the provisions of the Northwest Territories Act (Canada) relating to coroners, as well as the English Acts and in particular the English Act of 1926. While of opinion that there would be little advantage in preparing a model Coroners Act, that Act not being one which would be frequently of concern to lawyers and other persons outside the jurisdiction where it is in force, we are of opinion that there are features in some of the Acts reviewed which are worthy of study in jurisdictions where such features have not yet been adopted and accordingly we will confine ourselves to drawing attention to provisions which are not yet of general application in Canada.

WHERE BODY NOT AVAILABLE

One of the most important amendments recently effected in Ontario (section 10a, enacted by 1939, c. 9, s. 3) permits an inquest to be held upon the direction of the Attorney-General where the body has been destroyed or removed from Ontario. As to the right to hold an inquest in the absence of the body under the Ontario Act prior to the amendment of 1939 see *re Sidley* [1938] O.R. 649; [1938] O.W.N. 414. This section is similar to section 18 of the Coroners (Amendment) Act, 1926 (Imperial), although the form of the two sections is not identical. Section 10 of the Saskatchewan Act permits an inquest where the body cannot be found as does section 28 of the Manitoba Act.

REDUCTION IN NUMBER OF INQUESTS

A reduction in the number of inquests held in Ontario will likely result from the repeal of section 12 (1940, c. 28, s. 10, (1)) and the enactment of section 10c (1939, c. 9, s. 4). Section 12 required an inquest to be held in all cases "where the death of any person appears to have been caused in the construction or operation of any railway, street railway or electric railway", and the effect of its repeal is that the ordinary rules governing the holding of inquests will apply in such circumstances. Section 10c provides that no inquest shall be held without the approval of the Attorney-General, the local Crown Attorney or the supervising coroner. There is one supervising coroner in the province whose office is located at Toronto.

In Quebec unnecessary inquests are avoided by requiring a declaration of the coroner indicating that an inquest ought to be held, to be filed with the Attorney-General (sections 24 and 53). In the same province similar steps have been taken to avoid unnecessary examinations (sections 17, 30, 31 and 50). The New Brunswick Act contains a similar requirement as to the holding of inquests (section 7 and Form B). Some of the other provincial Acts have somewhat similar requirements.

NO INQUEST WHERE CHARGE LAID

Duplication of inquiries in Ontario will be, to a large extent, eliminated by section 10a (enacted 1939, c. 9, s. 4 part) which provides that "no inquest shall be held or continued touching a death in which any person has been charged with murder, manslaughter, infanticide or any criminal offence arising out of such death, except upon the direction of the Attorney-General". A somewhat similar provision appears as section 20 of the English Act of 1926. The view that an inquest is not only unnecessary but undesirable where a preliminary hearing of a criminal charge is to be held requires no explanation or elaboration.

PROTECTION TO WITNESSES

The same protection is now given by the Ontario Act to every witness at a coroner's inquest whether or not he is sufficiently versed in legal procedure to ask for the protection of the court. Section 21a (enacted 1939, c. 9, s. 6) provides that—

A witness shall be deemed to have objected to answer any question upon the ground that his answer may tend to criminate him or may tend to establish his liability to a

civil proceeding at the instance of the Crown, or of any person, and the answer so given shall not be used or receivable in evidence against him in any trial or other proceeding against him thereafter taking place, other than a prosecution for perjury in giving such evidence.

CORONERS' JURIES

Much might be said on the subject of coroners' juries including observations on the mode of selection of jurors, the number of jurors required and the desirability of conducting an inquest with the aid of a jury.

A — SELECTION OF JURORS

Perhaps the reason that the English Acts as well as most of the Acts relating to coroners' inquests in Canada are not more specific in prescribing the manner of selecting jurors is that advanced by Hawkins J. in *Re Dutton* [1892] 1 Q.B. 486. He suggests that as coroners juries have to be called together in haste, the ordinary rules for summoning juries do not apply to them. At any rate very little direction is given in any of the Acts as to how jurors shall be selected and the selection of the persons who shall serve as jurors may be left to a peace officer, constable or other functionary under the various Acts above referred to. In most cases the jurors are required to be "good and lawful men". In Quebec they must be chosen from "the leading persons of the place where the inquest must be held". In New Brunswick and Alberta they must be qualified to act as "petit jurors" and "common jurors" under the respective Jury Acts. The Manitoba Act is somewhat more specific than most of the others in prescribing the qualifications of jurors but the actual selection is in the hands of a peace officer who may write in the summons the names of the persons served as and when he effects service. A recent amendment to the Ontario Act (1939, c. 9, s. 8) is calculated to prevent any possibility of what might be termed "professional jurymen" occurring. It forbids any person who has acted as a juror at a coroner's inquest from acting in a similar capacity within a year.

B — NUMBER OF JURYMEN

The number of jurymen on a coroner's jury was recently reduced in Ontario from "not less than seven nor more than twelve" to five (section 22 (1) re-enacted by 1939, c. 9, s. 7).

So far as I have been able to ascertain the five-man juries in Ontario are the smallest authorized by provincial legislation although in the Northwest Territories where a jury of six jurors is required, provision is made for holding an inquest with a lesser number of jurors or with no jury at all where circumstances render compliance with the section requiring a six-man jury impracticable. (R.S.C., c. 142, s. 68 and s. 69).

C — INQUESTS WITHOUT JURIES

Outside of the municipalities of Halifax and Dartmouth in Nova Scotia, Ontario appears to be the only Province where an inquest may be held without a jury but this procedure, which requires the consent of the local Crown Attorney, is limited to provisional judicial districts in the northern part of the Province (section 23). In Halifax and Dartmouth the Coroners Act (Nova Scotia) does not apply and inquests are held by stipendary magistrates without juries under The Medical Examiner (Halifax and Dartmouth) Act, (Nova Scotia). In England a coroner may in certain cases hold an inquest without a jury (1926, c. 59, s. 13). Where, however, there is reason to suspect "that the deceased came by his death by murder, manslaughter or infanticide" or in certain other circumstances a jury must be summoned.

Although a casual glance at section 7 of the British Columbia Act would suggest that an inquest might in some cases be held without a jury, more careful study of the section indicates that the inquiry which may be held without a jury is an informal inquiry by the coroner and not the formal hearing to which the term "inquest" is usually applied.

QUALIFICATIONS OF CORONERS

The opening section of the English Act of 1926 requires every county and borough coroner and every deputy and assistant deputy to a county or borough coroner to be "a barrister, solicitor or legally qualified medical practitioner, of not less than five years standing in his profession". Of the thirteen full time coroners in England and Wales, nine are qualified in both law and medicine. (Medico-Legal and Criminological Review, 1936, Vol. 4, page 141). Holders of municipal office are by the same section disqualified from being coroners. The requirement of the Act of 1887 which required coroners to have land in fee, is rendered ineffective by the same section.

In passing it is interesting to note that whereas according to Blackstone, coroners were originally of such substance and station that they would not "condescend to be paid for serving their country", in accordance, presumably, with the common law "that none having any office concerning the administration of justice should take any fee or reward of any subject for the doing of his office", the 1926 Act has provisions occupying almost three pages relating to salaries and pensions of coroners.

CORONER'S POWER TO COMMIT

Except in Prince Edward Island, the English practice which permits a coroner to commit for trial any person charged with murder, manslaughter or infanticide by a coroner's inquisition (1926, c. 59, s. 25) appears to have no counterpart in the laws of this country. Section 16 of the Prince Edward Island Act requires a coroner to issue his warrant for arresting or detaining a person charged by a coroner's inquisition with murder or manslaughter. Seemingly in such cases no preliminary inquiry is held for the section requires any such person "to appear at the next Term of the Supreme Court for the County at which the trial is to be". Whether such a provision in a provincial statute is constitutional would appear doubtful in view of section 940 of the Criminal Code. Section 667 of the Criminal Code does not eliminate a preliminary hearing in the cases where it applies.

Whether a provision such as that contained in the English statute is a desirable feature is doubtful for a charge as serious as one of those indicated would appear to warrant the holding of a preliminary hearing in fairness to the accused. In our view it is difficult to support the desirability of the practice when it is recalled that no charge lies against the accused person until the inquest is completed.

MISCELLANEOUS

The Manitoba Act contains two provisions which appear to be unique so far as England and Canada are concerned. Section 7 provides that "if any person is injured by any accident and death is likely to ensue, a coroner may immediately proceed to investigate the matter and obtain such statements from witnesses and the injured person himself, if possible, as may be necessary. Such statements shall be reduced to writing and may be taken under oath". Section 39 of the same Act provides for the

administration of estates under \$300 by a coroner in cases where he has investigated the death, whether or not any inquest was held.

Part III of the Ontario Act provides for the appointment of "provincial coroners" for the purpose of "(a) holding fire inquests; (b) holding investigations in cases of maiming or suspected poisoning of horses, cattle and other domestic animals; and (c) holding an investigation in any case in which there is in his opinion reason to believe that property has been destroyed or damaged by the wilful or malicious use of explosives". The Part has not been used for many years which is no doubt accounted for by the establishment of the Fire Marshal's office in 1916.

It is perhaps a consolation to know that in other parts of the Empire difficulties have been encountered in connection with the administration of Acts relating to coroners. I quote from an address by Sir William Willcox, delivered at the annual dinner of the Medico-Legal Society, held in London on Friday, December 13th, 1935—,

"In Australia there was great excitement because a well known gambling man who was well tattooed all over had disappeared. Shortly afterwards a shark was caught on an Australian shore, seemingly a little indisposed. The shark was put into a museum and there it became very ill and vomited up a human arm which was found to have belonged to the tattooed man! The question was raised whether one could hold an inquest on an arm and it was at first decided in the negative. The matter was taken to the Court of Appeal where it was decided that an inquest could be held on it. In the meantime a witness in the case had been shot".

E. H. SILK,
for Ontario Commissioners.

Toronto, May 1st, 1940.

APPENDIX B
REPORT OF MR. HORACE A. PORTER, K.C.,
RESPECTING THE LANDLORD
AND TENANT ACT.

At the last meeting of the Conference a discussion took place regarding a section in the old New Brunswick Act respecting Landlord and Tenant which had not been carried into the Uniform Act. (See 1939 proceedings page 40).

The section in question was section 26 of Chapter 169 of The Revised Statutes of New Brunswick, 1927, and was as follows :—

ADOPTION OF TENANCY TO MORTGAGOR BY MORTGAGEE

26. "A mortgagee may, by notice in writing, make the tenant, under a demise by the mortgagor subsequent to the mortgage, his tenant, and thereby adopt the same."

This section is a very old one; it appears as section 20 of Chapter 126 of the Consolidation of 1854 and has been re-enacted at each consolidation since. It was re-enacted by New Brunswick in 1940 as an amendment to the Uniform Act of 1939.

At the 1939 conference it was felt that a similar provision might be found in other provinces in acts other than The Landlord and Tenant, *e.g.* an act respecting mortgages. I have therefore written to the local secretary in each province and am advised that in the cases of Prince Edward Island, Nova Scotia, Alberta and British Columbia there is absolutely no legislation on this point. Quebec is not interested, as its law differs. Ontario, in its act, has a section (sec. 60) which is word for word the same as section 46 (1) of the uniform act—

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

- (a) pursuant to and in consequence of a judgment or order of a Court; or
- (b) with the privity and consent of the landlord."

but with these words added: "or to any mortgagee after the mortgage has become forfeited."

Saskatchewan in its Land Titles Act, by section 125 gives a mortgagee a limited power to lease the mortgaged premises, but neither of these provinces deal expressly with the point at issue in the New Brunswick Legislation.

This point is as follows:—It is limited, you will notice, to the position where a mortgagor, subsequent to the mortgage, leases the mortgaged premises. While the relation of landlord and tenant exists between those two contracting parties, there is in the mortgagee an overriding title which can make the demise of no effect. At common law, a request or notice by the mortgagee in such a case might require the tenant to pay the rent to the mortgagee; the mortgagee would be entitled to receive from the tenant the rents actually due at the time of the notice, as well as those which accrue due afterwards; nevertheless such a notice does not make the lessee the tenant of the mortgagee or entitle the mortgagee to distrain for rent subsequently accruing due under the terms of the lease. The money is paid to the mortgagee because the mortgagee's title is superior, and it is his right and part of his security to go into possession and into receipt of the rents and profits of the mortgaged premises. Should the tenant not pay, the remedy of the mortgagee is not by distress but by ejectment plus the recovery of the rent or its equivalent as mesne profits. If the demand be acquiesced in, that does not constitute an adopting of the lease by the mortgagee or an attornment by the tenant; it may create a new tenancy from year to year at the existing rent. The purpose of the New Brunswick legislation was not to take away the common law right of the mortgagee but to grant to him an additional right, namely by a formal notice under the Statute to adopt the lease and thereby definitely settle the status of the tenant. At common law, the mortgagee might order all rents paid to him, and later countermand his order and re-establish the position of the mortgagor; but if he act under this statute, the tenant becomes his tenant, the term of the lease is no longer open to question, and the right of distress for rent arises in favour of the mortgagee, and there can be no countermand.

The Province of Manitoba in its Landlord and Tenant Act enacted in 1931 included as Section 38 the following:—

- "38. (1) The right of a mortgagee of land or of a vendor of land, with or without chattels, under an agreement

of sale, or the assigns of either, to distrain under this Act or otherwise for an amount payable under the mortgage or agreement of sale, shall, notwithstanding anything to the contrary in the mortgage or agreement of sale or in any other agreement relating thereto, be limited (except as in this section otherwise provided) to the goods and chattels of the mortgagor or purchaser, and shall also be limited to such goods and chattels as are not exempt from seizure under execution, but no grain shall be exempt by reason of being grown on exempt land.

(2) In addition to or concurrently with the exercise of any other remedy a mortgagee or vendor by a notice in writing served upon the tenant or other person occupying the land may require the tenant or occupant to pay him, in the case of a tenant, the rent, or in the case of an occupant not a tenant, the rental value of the land or so much thereof in either case as has not already been paid and to continue to pay the same from time to time as it fall due to the extent and to be applied on account of

- (a) the interest due, and all taxes or levies and premiums of insurance payable by the mortgagor or purchaser under the mortgage or agreement of sale; and
- (b) all moneys which the mortgagee or vendor has paid upon or in respect of a prior mortgage or charge upon the land and for the payment of which the mortgagor or purchaser is liable,

and subject to the exemptions from seizure provided in this section, the rent or rental value may be recovered by the mortgagee or vendor serving the notice, from the tenant or occupant, in the same manner and with the same rights as if the relation of landlord and tenant existed between the mortgagee or vendor and the tenant or occupant.

(3) A mortgagee or vendor may exercise the rights conferred by the preceding subsection only with the previous consent in writing of all prior mortgagees and vendors or in the absence of that consent only while no such prior mortgagee or vendor is exercising his rights to recover the rent or rental value.

(4) The amount and periods for payment of the rental value claimed by such a mortgagee or vendor and the time of payment thereof shall be specified in the notice served on the occupant, and the amount shall be the fair rental value of the premises, and the periods for payment, in default of an agreement to the contrary in pursuance of which the occupant has possession of the premises, shall be in accordance with the usual practice relating to premises of a similar nature, and in case the occupant disputes the amount claimed or the period for or time of payment thereof, he may apply and whether disputed or not the mortgagee or vendor may apply to a County Court Judge under Part II of this Act, and that Part shall apply, *mutatis mutandis*, to the settlement of disputes or to the determination of any question relating to rental value between mortgagees or vendors and occupants of land.

(5) No mortgagee or vendor shall, when acting under this section, be held accountable for any rent or money claimed as rental value not actually received by him, but all moneys received by him shall be *pro tanto* satisfaction of the rent or other sums owing by the tenant or occupant.

(6) The provisions of this section shall apply to the personal representatives, successors and assigns of a mortgagee or vendor, and shall apply in the case of any mortgage or agreement of sale heretofore or hereafter made, but nothing in this section shall affect any pending litigation."

This litigation apparently has the same object as the New Brunswick legislation but differs from the New Brunswick law inasmuch as the lease is not adopted in toto but a new quasi lease is apparently created for such time and for such time only as may be specified in the notice served.

In February, 1940, W. E. Bentley of Prince Edward Island, wrote to the Secretary of the Conference enumerating certain matters which he felt should be given consideration in dealing with this subject. I am not undertaking to deal with these individual remarks as I feel they are more properly a subject for the conference, but I do refer to the letter so that it be not overlooked.

Respectfully submitted,

H. A. PORTER.

APPENDIX C

REPORT OF MANITOBA COMMISSIONERS WITH
REFERENCE TO THE MATTER OF SUBROGATION

On the agenda for the 1939 meeting of the Conference of Commissioners on Uniformity of Legislation there was a resolution of the Committee on Insurance of the Canadian Bar Association, which resolution had been passed at Vancouver on the 18th of August, 1938. The resolution reads as follows :

“THAT this Section recommends that the information and material gathered by this Committee on the question of subrogation as affecting insurance (including the addresses of Mr. M. M. Porter, K.C., of Calgary, and Mr. F. P. Brais, K.C., of Montreal, and paragraphs 1 to 5 of the Report of this Committee for the year 1938) be passed on to the Conference of Provincial Superintendents of Insurance, with the suggestion that the questions therein raised might receive the consideration of that Conference and with the offer of this Committee to co-operate with the Conference in further study of the subject, if it so desires, and in any way it may indicate.

THAT this Committee recommends that the matters dealt with in paragraph 5 of the draft legislation as found in the Appendix to the 1938 Report of this Committee be referred to the Commissioners on Uniformity of Legislation for the Provinces”.

It will be observed that the resolution, by its terms, recommended that this matter of subrogation should be referred to Commissioners on Uniformity of Legislation. This was in addition to the reference of the matter of subrogation to the Superintendents of Insurance. Certain of the material referred to in the resolution may be found in the printed proceedings of the Superintendents' Conference for 1938 at pages 50 to 70.

Due to the pressure of work at our 1939 meeting, there was no time available for any discussion of this problem, with the result that the following resolution was adopted :

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

In accordance with the instructions contained in that resolution, the Manitoba Commissioners have given consideration to the matter.

At the outset, we think attention should be called to the resolution adopted by this Conference in 1933 (see 1933 proceedings, pages 12 and 13). That resolution was as follows :

“WHEREAS the Conference has not undertaken the consideration of legislation respecting insurance since 1924 when uniform legislation respecting fire insurance contracts was recommended by the Conference;

AND WHEREAS, during the period since 1924, the Association of Superintendents of Insurance of the Provinces of Canada has met in annual conferences and, as a result of its work, much has been accomplished to promote and maintain uniformity in insurance legislation and regulation throughout the provinces of Canada;

AND WHEREAS, proposed amendments to the uniform *Life Insurance Act* and the uniform *Fire Insurance Policy Act* have been under consideration for three years by the Association of Superintendents of Insurance of the Provinces of Canada with general satisfaction;

AND WHEREAS, it is undesirable to duplicate the splendid work already undertaken by a special agency such as the Association of Superintendents of Insurance of the Provinces of Canada;

NOW BE IT RESOLVED that the Conference should not hereafter consider legislation respecting *insurance* unless specially requested to do so by at least three of the Attorneys-General of the provinces of Canada, or by the Canadian Bar Association, or by the Association of Superintendents of Insurance of the provinces of Canada. The Conference also desires to express the confident hope that the Association of Superintendents of Insurance of the provinces of Canada will meet with continual success in carrying on the work of promoting uniformity in insurance legislation in the several provinces of Canada”.

The above-quoted resolution states that the Conference will not consider legislation respecting insurance unless requested to do so by *inter alia* The Canadian Bar Association. While no doubt this resolution of the Insurance Committee of the Bar

Association may constitute a reference to our Conference by the Canadian Bar Association, it does seem that if this matter is being considered by the Superintendents' Conference, there will be unnecessary duplication if our Conference also undertakes an examination of the subject. No doubt this Conference might afford some valuable assistance in respect to the matter of drafting if this is required, but before any drafting can be undertaken it will be necessary to determine the principles to be followed. While the doctrine of subrogation applies to other fields than insurance, it is in that field it has its main operation. If the Uniform Insurance Acts are examined it will be found that certain of the uniform Parts contain sections dealing with subrogation. Thus, the Superintendents' Conference has already drafted legislation with respect to this matter, and if this Conference were to undertake the problem it would be, in effect, recommending modifications in the Insurance Act, a course which we have not followed for a number of years.

It is therefore the view of the Manitoba Commissioners that for the time being at least, this Conference should not take any action. If desired, however, we might undertake at a later date the consideration of assistance in connection with drafting when the principles to be followed have been settled. We feel that these principles can be more readily settled in a body where counsel experienced in insurance matters and practical insurance men are in attendance than in our own Conference, where we have not the benefit of this outside assistance.

Respectfully submitted,

R. M. FISHER,
WILSON E. MCLEAN
W. P. FILLMORE,
Manitoba Commissioners.

APPENDIX D

REPORT OF ONTARIO COMMISSIONERS ON PRO-
POSAL TO PRINT A CONSOLIDATION
OF ALL UNIFORM ACTS.

At the meeting of the Conference held in 1939 it was "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".

The desirability of having all uniform draft Acts, with all alterations subsequently made, available in one volume cannot be questioned. It would not only prove a matter of convenience to the members of the Conference but would render the drafts more readily available to the members of the profession, legal draftsmen, legislators and other interested persons. It may be observed that in the case of some of the earlier model Acts adopted by the Conference, and of which alterations have subsequently been considered or adopted, some trouble or delay is sometimes encountered in ascertaining the exact text of the Act as finally adopted by the Conference.

However, much has occurred since the last meeting of the Conference. Because of the war no meeting was held in 1940. For the same reason it was for some time doubtful whether a meeting would be held in 1941. In view of the necessity for utilizing all available time of this meeting of the Conference with the advancing of draft Acts now before the Conference, of reducing printing and other costs to a minimum, and of the general war situation, the Commissioners for Ontario make the following submission to the Conference,—

That the printing of all Acts adopted by the Conference (with all alterations subsequently adopted by the Conference) be proceeded with after the conclusion of the present war. The Commissioners suggest that such a consolidation should be printed with Conference proceedings for purposes of record and that an ample supply should also be prepared as a separate booklet for distribution to law libraries and interested persons.

F. H. BARLOW

E. H. SILK

Commissioners for Ontario.

APPENDIX E

LETTER FROM CANADIAN MANUFACTURERS
ASSOCIATION, INC. REGARDING THE
SALE OF GOODS ACT.

1404 Montreal Trust Bldg.,
67 Yonge St.,
Toronto, 2, Sept. 4th, 1941.

THE CONFERENCE OF COMMISSIONERS ON
UNIFORMITY OF LEGISLATION:

Gentlemen,

RE : PROPOSED AMENDMENT TO THE SALE OF GOODS ACT
TO PROVIDE FOR A RIGHT OF RESUMPTION OF
POSSESSION OF GOODS BY AN UNPAID VENDOR IN
EVENT OF BANKRUPTCY OF PURCHASER.

The Sale of Goods Act, which is uniform in all the common-law provinces, contains, (Section 42 of the Ontario Act), the right of the unpaid seller to stop the goods in transitu when the buyer of goods becomes insolvent. Under Quebec law, there is no right of stoppage in transitu, but in the case of an insolvent buyer, the unpaid seller has the right of revendication within thirty days from delivery, provided that (a) the sale was not made on credit; (b) the goods are entire, and in the same condition; and (c) the goods must not have passed into the hands of a third party who has paid for them. This right is part of the rights given by Articles 1998 and 1999 of the Quebec Civil Code. Also there is a limited right of dissolution of a sale contract under Art. 1543 of the Quebec Code exercisable within 30 days from delivery.

It was held in re Hudson Fashion Shoppe, Limited, Ex p. Royal Dress Co., [1926], 1 D.L.R. 199, by the Ontario Appeal Court that this Quebec right was not lost when the goods were brought into Ontario, because the sale was deemed to have been made according to Quebec law. This case also confirms that this Quebec right is not lost under the provisions of the Dominion Bankruptcy Act.

Without getting too involved in a discussion of such Civil Code rights, the fact that a Quebec supplier has these rights of revendication and dissolution in case of an insolvency gives him

an advantage over the supplier of goods in a common-law province. It is, therefore, considered that the common-law provinces should have a similar right so as not to be at a disadvantage. Further, as only thirty days is given for the unpaid seller to revendicate or resume possession, it is a fair presumption that the buyer knew of his impending insolvency at the time of the sale, and most likely had recourse to some subterfuge by directly or indirectly hiding the circumstances in order to procure the goods. The creditors of such buyer would not have a legitimate complaint, because it is not likely that they would advance further credit within such short period, especially to a person, who is insolvent or about to become insolvent. In fact, if the creditors were allowed to claim on the new goods, they would be getting something in the nature of a windfall, something to which they were really not entitled.

There is judicial and other authoritative opinion to the effect that such a right is more equitable and fair than a mere right of stoppage in transitu. Mr. Justice Riddell, of the Ontario Court of Appeal, in the above Hudson Fashion Shoppe Limited case quotes Lord Chief Justice Kenyon who said concerning a similar right in Russian law, "The Law of Russia in this respect is a very equitable law, and I have often lamented that our own Code was defective in the same particular. For every man contracting to supply another with goods acts on the presumption that that other is in a condition to pay for them; and therefore when the condition of the consignee is altered at the time of the delivery, and he is insolvent, and no longer capable of performing his part of the contract, honesty and good faith require that the contract should be rescinded."

Dean Falconbridge, K.C., of Osgoode Hall, in the *Annotation-Contract and Conveyance in the Conflict of Laws—[1934]* 2 D.L.R. at page 30 states, "The effect of the general rule was of course to give a Quebec seller in certain circumstances a privilege which would be unavailable to an Ontario seller in like circumstances, and the true remedy might be to amend the local law of Ontario as to an unpaid seller's rights and to adopt what even some common lawyers have considered the more just provisions of the civil law."

It is suggested that this right should be incorporated in the Sale of Goods Act, and we suggest it be added to the main Section dealing with stoppage in transitu, being Section 42 of the Ontario Act. Such Section, with the added right, might read as follows :—

“Subject to the provisions of this Act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with possession of the goods has

- (1) the right of stopping them in transitu, that is to say he may resume possession of the goods so long as they are in course of transit, and may retain them until payment or tender of the price, and
- (2) the right and privilege of resuming possession of them as security for the payment of the unpaid purchase price within 30 days of termination of transit provided that

(or — a lien on the goods for the unpaid purchase price for 30 days from termination of transit provided that)

- (a) the sale must not have been made on credit.
- (b) the goods must be entire and in the same condition.
- (c) the goods must not have passed into the hands of a third party who has paid for them.

It is absolutely necessary that this new right (or lien) revert the title in the seller or at least constitute him a secured creditor, otherwise the right is of little use.

It will be seen that this additional right might not have quite the same effect as the Quebec privilege in that the thirty days is to run from the termination of transit whereas the thirty days of the Quebec privilege runs from the date of delivery. However, the date of delivery is a difficult point to determine, and transit is quite fully defined in the Sale of Goods Act, for which see Section 43 of the Ontario Act. Also there are slight differences from the Quebec privileges under Articles 1543, 1998 and 1999.

It would probably be necessary to amend, supplementary to the above change, other Sections of the Sale of Goods Act, being in Ontario, Sections 45 and 46, and possibly Section 44. Section 45, it is suggested should then read somewhat as follows (the added words being *in italics*):

“Subject to the provisions of this Act, the unpaid seller’s right of lien or retention or stoppage in transitu, is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto, *and the unpaid seller’s right and privilege of resump-*

tion of possession is not affected by any sale or other disposition of the goods which the buyer may have made, where the goods have not passed into the hands of a third party who has paid for them, unless the seller has assented thereto; provided that where a document or title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith, and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transitu or right and privilege of resumption of possession is defeated, and if such last-mentioned transfer was by way of pledge, or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transitu or right and privilege of resumption of possession can only be exercised, subject to the rights of the transferee."

Section 46, Subsections 1 and 2 might be changed to read as follows, (the added words being underlined) :

46. (1) Subject to the provisions of this Section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien, or retention or stoppage in transitu, *or right and privilege of resumption of possession.*
- (2) Where an unpaid seller who has exercised his right of lien or retention or stoppage in transitu *or right and privilege of resumption of possession*, resells the goods, the buyer acquires a good title thereto as against the original buyer.

It is submitted that this amendment does not come under the scope of the Conditional Sales Act, or the equivalent Act in the various common law provinces, the reason being that the new right could be said to be a thirty-day extension of the right of stoppage in transitu, and the right does not apply when the goods have passed into the hands of a third party, who has paid for them.

In Ontario, Saskatchewan, and Nova Scotia, the Legislatures have dealt with the Quebec privilege by requiring registration of a caution under the Conditional Sales Act, (Sec. 10 of Ontario Act), as a further step to be taken by the seller in order to exercise such privilege. See *In re Meredith* (Ontario) 11 C.B.R. 405 and Dean Falconbridge's remark above quoted. Also see

In re Satisfaction Stores (N.S.) 11 C.B.R. 141. It is submitted that registration under the Conditional Sales Act or similar Acts should not be required in order to exercise the right of resumption of possession as above set out or the Quebec privilege in respect of the bankruptcy of the purchaser. Therefore such sections of the various Conditional Sales Acts should be so amended, if the Sale of Goods Act is amended as herein suggested.

The Legislation Committee of our Association strongly favours the adoption of the above principle of revendication by the common-law provinces. We therefore respectfully submit the above suggestions for your earnest consideration.

Yours very truly,

H. W. MACDONNELL,
Legal Secretary.

APPENDIX F

REPORT OF DOMINION REPRESENTATIVES ON
CERTAIN SECTIONS OF INTERPRETATION ACT.

As instructed, the Dominion Representatives have reviewed the draft uniform sections for inclusion in Interpretation Acts which they have revised in accordance with the instructions of the 1939 Conference.

The definitions of "Statutory Declaration" and "Solemn Declaration" have been omitted, these being dealt with instead in the Draft Evidence Act prepared also by the Dominion Representatives.

As instructed, paragraph (j) of section 16 of the draft uniform sections, as printed in the Report of the 1938 Proceedings, has been omitted.

Consideration was given, as directed, to sections 18 and 23 of the Draft as printed in the 1936 Proceedings. We recommend that section 18 be omitted. This recommendation is in accordance with the consensus when the sections were last considered by the Conference.

With respect to section 23 of the last mentioned Draft, the Dominion Representatives have hesitated to make a positive recommendation. We have borne in mind that the Conference, when this section was last considered, expressed the opinion that section 23 might be omitted. We observe, however, that a provision in precisely the same language has appeared in the Interpretation Act (Canada) since 1890 when it was enacted by section 7 of the Statute of Canada of that year. Accordingly, we entertained grave doubts as to the advisability of dropping, at this time, the section which has been so long familiar to the profession.

Respectfully submitted,

for the Dominion Commissioners,

(Sgd.) J. F. MACNEILL.

(Sgd.) W. P. J. O'MEARA.

Ottawa, September 2nd, 1941.

APPENDIX G

DRAFT OF UNIFORM INTERPRETATION
ACT SECTIONS

PART II

INTERPRETATION

Definition
of
"Public
officer"

1. In this Part the expression

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

"Regulation"

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

APPLICATION OF PART

Application
to all sta-
tutes.

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

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

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

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

Interpreta-
tion clauses
subject to
certain
exceptions.

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

This part
applies to
itself.

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

OPERATION OF STATUTES.

Date of
operation
of statutes.

3. (1) Where an Act or regulation or any provision thereof is to come into force on a particular day, or on a day

fixed by proclamation or otherwise, it shall be construed as coming into force immediately on the expiration of the previous day.

(2) Where an Act or any provision thereof is not to come into force immediately on its being passed and confers power

Powers exercisable under Acts not coming into force on assent.

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

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

RULES OF CONSTRUCTION

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

Persona designata rule.

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

5. (1) The law shall be considered as always speaking, and whenever a provision in an Act is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to each Act and every part thereof according to its true spirit, intent and meaning.

Statute law always speaking.

(2) The expressions "now", "next", "heretofore" and "hereafter" shall be interpreted with reference to the day upon which the Act or the part or provision thereof to which the expressions or any of them apply comes into force.

"Now,"
"next,"
"heretofore"
"hereafter."

Interpreta-
tion of
"may" and
"shall".
"Herein"

6. (1) The expression "shall" shall be construed as imperative, and the expression "may" as permissive and empowering.

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

Provision
affecting
Crown.

7. No provision in an Act shall affect the rights of His Majesty unless it is expressly stated therein that His Majesty is bound thereby.

Contained
in Private
Acts.

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

Preamble
part of Act.

9. The preamble of an Act shall be deemed a part thereof intended to assist in explaining the purport and object of the Act,

Marginal
notes and
headings

10. The marginal notes and headings in the body of an Act and the references to former enactments shall form no part of the Act but shall be deemed to be inserted for convenience of reference only.

Statutes to
be liberally
interpreted.

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

Words in
regulations
interpreted
with Act.

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

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

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

Powers
vested in
corporations.

14. In an Act words making a number of persons a corporation shall

- (a) vest in the corporation power to sue and be sued, to contract and to be contracted with by its corporate name, to have a common seal, and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or moveables for the pur-

- poses for which the corporation is constituted, and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
 - (c) exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the Act incorporating them.

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

Officials appointed during pleasure.

16. (1) Words authorizing the appointment of a public officer include the power

Implied power to remove officials and fix remuneration

- (a) of removing or suspending him;
- (b) of re-appointing or reinstating him;
- (c) of appointing another in his stead or to act in his stead, and
- (d) of fixing his remuneration and varying or terminating it, in the discretion of the authority in whom the power of appointment is vested.

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

Implied power of successors in office.

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

Implied power of deputy or successor to Minister.

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

Power of official to be exercised by holder of office.

17. In an Act or regulation,

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

Implied powers.
Officer to act within jurisdiction

- Additional powers.** (b) where power is given to the (Lieutenant-)Governor-in-Council or a public officer to do or enforce the doing of an act or thing, all such powers are also given as are necessary to enable him to do or enforce the doing of the act or thing;
- Power conditionally conferred.** (c) where the doing of an act which is expressly authorized is dependent upon the doing of any other act by the (Lieutenant-) Governor-in-Council or by a public officer, the (Lieutenant-) Governor-in-Council or public officer as the case may be has the power to do that other act;
- Majority may do an act.** (d) where an act or thing is required to be done by more than two persons, a majority may do it;
- Continuance of powers.** (e) where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires;
- Revocation and alteration.** (f) where a power is conferred to make regulations, the power shall be construed as including a power, exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others;
- Deviation in forms.** (g) where a form is prescribed, deviations therefrom not affecting the substance nor calculated to mislead, shall not invalidate the form used;
- Gender.** (h) words importing the masculine gender include the feminine and any corporation to which the context may extend;
- Number.** (i) words in the singular include the plural, and words in the plural include the singular;
- Parts of speech and tenses.** (j) where a word is defined in an Act or regulation, other parts of speech and tenses of the same word shall have corresponding meanings;
- Holidays.** (k) where the time limited for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and the thing may be done, on the day first following which is not a holiday;
- Reckoning time.** (l) where a period of time dating from a given day, act, or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusively of such day or of the day of such act or event;

- (m) a reference to time is to be deemed a reference to the Time.
 (each jurisdiction to provide its own definition, Eastern
 Standard time, etc.)

REFERENCES

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

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

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

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

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

WORDS AND PHRASES

- 20.** In an Act or regulation, the expression Definitions
- (a) "Assembly" means the Legislative Assembly of the "Assembly"
 province;
- (b) "Bank" or "Chartered Bank" means a bank to which "Bank"
 the *Bank Act* (Canada) applies, and includes a branch,
 agency, and office of a bank;

- "Gazette".
- (c) "Gazette" means the (Royal or official) gazette published by the King's Printer (of the province);
- "His Majesty"
"Her Majesty"
"The King"
"The Queen"
or "Crown".
- (d) "His Majesty", "Her Majesty", "The King", "The Queen" or "the Crown" means the Sovereign of Great Britain, Northern Ireland and the British dominions beyond the seas;
- "Holiday".
- (e) "Holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Victoria Day, Labour Day, Remembrance Day, and any day appointed by any Statute in force in the Province or by Proclamation of the Governor-General or of the Lieutenant-Governor as a general holiday, and whenever a holiday other than Remembrance Day falls on a Sunday, the expression "holiday" includes the following day;

NOTE: Holiday definition to be adapted by each province as occasion requires.

- "Legislature".
- (f) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly of the province;
- "Lieutenant-Governor".
- (g) "Lieutenant-Governor" means the Lieutenant-Governor of the province or the chief executive officer or administrator carrying on the Government of the province on behalf and in the name of the Sovereign by whatever title he is designated;
- "Lieutenant-Governor-in-Council".
- (h) "Lieutenant-Governor-in-Council" means the Lieutenant-Governor of the province or person administering the Government of the province, acting by and with the advice of the Executive Council of the province;
- "Governor".
- (i) "Governor", "Governor of Canada" or "Governor-General" means the Governor-General of Canada, or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;
- "Governor-in-Council".
- (j) "Governor-in-Council" or "Governor-General-in-Council" means the Governor-General of Canada, or person administering the Government of Canada, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the King's Privy Council for Canada;

- (k) "Month" means calendar month; "Month".
- (l) "Oath" or "affidavit" in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and the word "swear" in the like case includes "affirm" and "declare"; "Oath" or "affidavit".
"Swear"
- (m) "Person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person; "Person"
- (n) "Proclamation" means a proclamation under the Great Seal (of the province); "Proclamation".
- (o) "Province" means the province of.; "Province".
- (p) "Surety" means a sufficient surety; "Surety".
- (q) "Security" means sufficient security; "Security".
- (r) "Will" includes codicil; "Will".
- (s) "Writing", "written", or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form; and "Writing"
- (t) "Year" means calendar year. "Year".

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

REPEAL AND AMENDMENT

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

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

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

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

- (a) revive any Act, enactment, regulation or thing not in force or existing at the time at which the repeal or revocation takes place;
- (b) affect the previous operation of any Act, enactment or regulation so repealed or revoked or anything duly done or suffered thereunder;

- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked;
- (d) affect any offence committed against, or any violation of the provisions of the Act, enactment or regulation so repealed or revoked, or any penalty, forfeiture or punishment incurred in respect thereof; nor
- (e) affect any investigation, legal proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment;

and the investigation, legal proceeding or remedy may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the Act, enactment or regulation had not been repealed or revoked.

Effect of
repeal and
substitution

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

- (a) every person acting under the Act, enactment or regulation so repealed or revoked shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;
- (b) every bond and security given by any person appointed under the Act, enactment or regulation so repealed or revoked shall remain in force, and all offices, books, papers and things made or used under the repealed or revoked Act, enactment or regulation shall continue as before the repeal so far as consistent with the substituted provisions.
- (c) every proceeding taken under the Act, enactment or regulation so repealed or revoked may be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be;
- (d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the Act, enactment or regulation so repealed or revoked, or in any proceedings in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adapted; and

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

23. Where an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, Repeal and substitution affecting.

- (a) all regulations made under the repealed Act, or enactment, shall remain in force in so far as they are not inconsistent with the substituted Act or enactment until they are annulled and others made in their stead; and Regulations.
- (b) a reference, in an unrepealed Act or enactment or in a regulation made thereunder, to the repealed Act or enactment, shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject-matter as the repealed Act or enactment; and if there be no provisions in the substituted Act or enactment relating to the same subject-matter, the repealed Act or enactment shall stand good and be read and construed as unrepealed, but only so far as is necessary to maintain or give effect to the unrepealed Act, enactment or regulation. Reference.

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

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

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

(4) The Legislature by re-enacting an Act or enactment, or by revising, consolidating or amending the same, shall not be deemed to have adopted the construction which has by Does not adopt judicial construction.

judicial decision or otherwise been placed upon the language used in such Act or enactment or upon similar language.

UNIFORM CONSTRUCTION

Uniform
interpre-
tation

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

NOTE: (1) In the opinion of the Conference of Commissioners on uniformity of legislation the matter of including a section, providing that the interpretation section of the Supreme Court or Judicature Act should extend to all Acts relating to legal matters and that the interpretation section of The Municipal Act should extend to all Acts relating to municipal matters, should be left to each province to deal with in the light of its own particular circumstances.

(2) The provinces may treat each section as an independent enactment if so desired.

(3) This Act should be made to come into force either before the commencement or after the conclusion of a session in order that all Acts passed at that session shall be subject to uniform rules of interpretation.

APPENDIX H

MEMORANDUM RE: "UNIFORM ACT SECTION"
 Comprising copy of a letter written by Mr. Silk to Mr. McLean
 and extract from an address made by Sir James Aikins, K.C.

February 7th, 1940

" Wilson McLean, Esq., K.C.,
 Legislative Counsel,
 237 Legislative Building,
 Winnipeg, Man.

Dear Mr. McLean : *Re Commorientes*

The Commorientes Act as drafted by the Conference has been adopted by the Ontario Legislature at the present session. The section relating to uniformity of construction which appears as section 3 of the Commission's Act, however, was struck out in Committee of the Whole House. The section to which I refer reads as follows :

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.

The suggestion that this section be struck out was made during the second reading of the Bill by the Leader of the Opposition and a discussion then took place during which it appeared to be the general opinion of the lawyer members of the House that the section did not mean anything.

As you know, I communicated with you before the Committee stage of the Bill was reached and you directed me to the address of the President of the Conference (Sir James Aikins) made in 1921. This portion of Sir James' address was furnished to several of the lawyer members of the House who had made reference to the section on the second reading of the Bill but notwithstanding those remarks the section was struck from the Bill in the Committee stage and I think it would be fair to say that the reasons for striking it from the Bill were,—

- i. that the meaning and force of the section is doubtful; and
- ii. with a common right of appeal from all the Provinces to the Supreme Court of Canada, such a section is unnecessary.

I draw this matter to your attention as Secretary of the Conference in order that it may be considered at the next meeting of the Conference.

You also referred me to two cases and for convenience I refer to them here with extracts from the headnotes which appear to be accurate :

"In Re Winnipeg Saddlery Co. (1934) 42 Man. L.R. 448 :

Where a statutory provision has been in force in another province before its enactment in this Province it will be presumed to have been adopted with the construction placed upon it by the Courts of that Province.

Dengan v. Kramer [1938] 3 W.W.R. 269.

(Appellate Division—S. C. Saskatchewan)

The rule that when a provision of a statute of another jurisdiction is enacted in this province the courts of this province should adopt the interpretation placed on it by the courts of that jurisdiction does not apply where it was not interpreted therein until after its enactment here.

Yours very truly,

E. H. SILK
Legislative Counsel."

EXTRACT FROM PRESIDENT'S ADDRESS

(Sir James Aikins) delivered at the meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, held at Ottawa, September 2nd, 1921.

"Uniformity of provincial law contemplates local legislative control of those subjects mentioned in section 92 of the British North America Act. But legislation alone will not secure uniformity. It will be necessary for the courts to construe the provisions of a uniform Act in the light of the decisions of other provincial courts on similar enactments. We can well afford to learn from the experience of the American Bar Association and their Conference of Commissioners. They insert in every uniform Act which they recommend this clause :

' This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those provinces which enact it.'

"With such an expression of intention by the Legislatures the courts of the several provinces would undoubtedly co-operate.

"The Honourable Mr. Justice Hughes, now Secretary of the United States, when on the Supreme Court, said in respect of a uniform Act :

' It is apparent that if these uniform Acts are construed in the several States adopting them according to the former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It is to prevent this result that the Uniform Warehouse Receipts Act expressly provides (section 57), "This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it." This rule of construction requires that in order to accomplish the beneficent object of unifying as far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform Act, that it should not be regarded merely as an offshoot of local law.' "

APPENDIX I

REPORT OF DOMINION REPRESENTATIVES
RESPECTING UNIFORM EVIDENCE ACT

In accordance with the direction of the 1939 Conference, the Dominion Representatives have prepared the new Draft Uniform Evidence Act submitted herewith.

In the preparation of the Draft, attention has been given to the following matters specifically referred by the 1939 Conference :—

1. Proof of bank records by photographic reproduction, v. section 38;
2. Foreign affidavits, v. section 60;
3. Hearsay evidence provisions of English Evidence Act, 1938, v. sections 49 et seq.;
4. Expert testimony by reading Report previously prepared, v. section 9;
5. Business records as evidence, v. section 37;
6. Proof of foreign law—no change recommended from previous Draft;
7. Definitions in sections dealing particularly with state documents—no change recommended from form of previous Draft.

In addition to sections dealing with the above matters which were the subject of resolutions of the 1939 Conference, provision has been made in the Revised Draft with respect to the following matters :—

1. Solemn declaration in lieu of oath or affidavit, v. section 19;
2. Provision for certification of oath, v. section 16, subsection (2);
3. Definitions of —
 - (a) "Document", v. section 2 (e);
 - (b) "Statement", v. section 2 (n);
 - (c) "Statutory declaration" or "solemn declaration", v. section 2 (o);

(d) Presumption of death of members of H.M. Forces officially reported dead or presumed to be dead, v. section 64.

By letter dated the 27th August, the President of the Conference drew the writer's attention to a suggestion from one of the New Brunswick Commissioners that provision be made to authorize Commissioned Officers in H.M. Forces to take affidavits to be read in Provincial Courts.

This suggestion was received too late for insertion in the Draft Act presented herewith. The following draft section, however, is submitted for insertion in the Draft Act should the Conference so desire :—

SECTION . . .

(1) Oaths, affidavits, affirmations or declarations, sworn, affirmed or administered, in Canada or elsewhere, before any Officer or non-commissioned Officer of His Majesty's Armed Forces, not below the rank of petty Officer or sergeant shall be as valid and effectual and shall be of the like force and effect to all intents and purposes as if the oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in Canada before a Commissioner for taking affidavits or other competent authority of the like nature.

(2) Oaths, affidavits, affirmations or declarations sworn, affirmed or administered, in Canada or elsewhere, before any commissioned Officer of the armed forces of any of the allied or associate powers in the present war shall be as valid and effectual and shall be of the like force and effect to all intents and purposes as if the oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in Canada before a Commissioner for taking affidavits or other competent authority of the like nature.

(3) Any document purporting to have subscribed thereto the signature of any person in testimony of any oath, affidavit, affirmation or declaration administered or taken before him, under the authority of this section and containing in the jurat or attestation a statement of the facts by this section required to be stated therein, shall be admitted in evidence without proof of the signature being the signature of that person or of the facts so stated.

(4) The jurat or attestation accompanying any oath, affidavit, affirmation or declaration administered under this section shall contain the name and office or rank of the person who administered such oath, affidavit, affirmation or declaration.

(5) In any legal proceedings, civil or criminal, whether instituted before or after the coming into force of this section

- (a) A certificate certifying that any document or documents, annexed to or otherwise identified by the certificate, constituted or formed part of a postal packet which was examined by a person duly authorized on a date therein specified to examine postal letters or parcels; or
- (b) a certificate certifying that any photographic copy so annexed or identified is a true copy, made by a photographer duly authorized, of any document or documents which constituted or formed part of such postal letters or parcels as aforesaid,

shall, if purporting to be signed by such authorized examiner or photographer, be admissible as evidence of the matters so certified, without proof of the signature being the signature of that person or of his official capacity, and shall be *prima facie* evidence of the despatch of the document by the sender, the circumstances attending its interception, and its destination.

(6) A Power of Attorney executed,

- (a) by any person serving in His Majesty's Armed Forces or by a person engaged in any auxiliary service of those forces; or
- (b) by a Canadian national in territory which is under the sovereignty of, or in the occupation of, a Power with which Canada is at war,

may be attested or authenticated by any of the persons who may, by virtue of the preceding rules take or administer oaths, affidavits, affirmations or declarations.

Respectfully submitted on behalf of the Dominion Commissioners,

W. P. J. O'MEARA.

Ottawa, September 2nd, 1941.

APPENDIX J

DRAFT UNIFORM EVIDENCE ACT

An Act to make uniform the Law respecting Evidence

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

SHORT TITLE

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

INTERPRETATION

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

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

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

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

(B.C. Sec. 36: Sask. Sec. 26).
(See 42 Vic. c. 11 s. 9: Man. Sec. 2 (a): Ont. Sec. 29 (1)).

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

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

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

(Alta. Sec. 2(b) (altered): Ont. Sec. 1(b) (altered)).
(See Man. Sec. 2(c): N.B. Sec. 2(b): N.S. Sec. 2(c): Sask. Sec. 26).

- "Document" (e) "Document" includes books, maps, plans, drawings and photographs.
(Evidence Act, 1938—Imperial).
- "Dominion" (f) "Dominion" includes kingdom, empire, republic, commonwealth, state, province, territory, colony, possession, and protectorate heretofore or now existing or hereafter constituted; and, where parts of a dominion are under both a central and a local legislature, includes both all parts under the central legislature and each part under a local legislature.
(1931 Proceedings, p. 66 (altered): B.C. Sec. 28 (altered): N.B. Sec. 59 (1) (b) (2) (altered)).
- "Federal" (g) "Federal" as applied to state documents, means of or pertaining to Canada.
(1931 Proceedings, p. 66: B.C. Sec. 28: Man. Sec. 31 (1) (a): N.B. Sec. 59 (1) (e)).
- "Foreign State" (h) "Foreign State" includes every dominion heretofore or now existing or hereafter constituted other than the United Kingdom of Great Britain and Northern Ireland, Canada, and a British possession.
(1931 Proceedings, p. 66 (altered): B.C. Sec. 28 (altered): N.B. Sec. 59 (1) (d) (2) (altered)).
- "Imperial" (i) "Imperial" as applied to state documents, means of or pertaining to the United Kingdom of Great Britain and Northern Ireland, as at present constituted, and any former kingdom which included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise.
(1931 Proceedings, p. 66: B.C. Sec. 28: N.B. Sec. 59 (1) (e)).
(See Man. Sec. 2(d)).
- "Imperial Parliament" (j) "Imperial Parliament" means the Parliament of the United Kingdom of Great Britain and Northern Ireland, as at present constituted, and that of any former Kingdom which included England, whether known as the United Kingdom of Great Britain and Ireland or otherwise.
(1931 Proceedings, p. 66: B.C. Sec. 27: N.B. Sec. 58 (2)).
- "King's Printer" (k) "King's Printer" includes government printer or other official printer.
(1931 Proceedings, p. 66: B.C. Sec. 28: N.B. Sec. 59 (1) (f)).

- (l) "Legislature" includes any legislative body or authority competent to make laws for a dominion. "Legislature"
(1981 Proceedings, p. 66; B.C. Sec. 28; N.B. Sec. 59 (1) (g)).
- (m) "Provincial" as applied to state documents, means of or pertaining to any province, colony or territory which, or some portion of which, forms part of Canada: and "Province" when used in respect of federal or provincial state documents, shall have a corresponding meaning. "Provincial"
(1981 Proceedings, p. 66; B.C. Sec. 28; Man. Sec. 31 (1) (b); N.B. Sec. 59 (1) (h)).
- (n) "State document" includes : "State document"
(i) any Act or ordinance enacted or made or purporting to have been enacted or made by a legislature;
(ii) any order, regulation, notice, appointment, warrant, licence, certificate, letters patent, official record, rule of court, or other instrument issued or made or purporting to have been issued or made under the authority of any Act or ordinance so enacted or made or purporting to have been enacted or made; and,
(iii) any official gazette, journal, proclamation, treaty, or other public document or act of state issued or made or purporting to have been issued or made.
(1981 Proceedings, p. 66; B.C. Sec. 28; Man. Sec. 31 (1) (c); N.B. Sec. 59 (1) (i)).
- (o) "Statement" includes any representation of fact, whether made in words or otherwise. "Statement"
(Evidence Act, 1938—Imperial).
(Man. Sec. 54 (1) (b)).
- (p) "Statutory declaration" or "solemn declaration" means a solemn declaration in the form and manner provided in the Canada Evidence Act. "Statutory declaration"
(Evidence Act, 1938—Imperial).

NOTE: To be adapted to the requirements of such provinces as adopt Section 19 hereof.

COMPETENCY OF WITNESSES AND PRIVILEGES

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

(See 6 and 7 Vic. c. 85; Alta. Sec. 4; B.C. Sec. 4; Can. Sec. 3; Man. Sec. 4; N.B. Sec. 3; N.S. Sec. 86; Ont. Secs. 3 and 4; P.E.I. Sec. 3; Sask. Sec. 29).

Parties to
action and
their hus-
bands or
wives com-
petent and
compellable

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

(See 16 and 17 Vic. c. 88 (1): Alta. Sec. 6: B.C. Sec. 8 (part): Can. Sec. 4 (1): Man. Sec. 5: N.B. Sec. 4 (1) and 10: N.S. Sec. 37 (part): Ont. Sec. 5: P.E.I. Secs. 5 and 10: Sask. Sec. 30 (1)).

Witness
defined

5. (1) In this section "witness" includes a person who, in the course of an action is examined viva voce on discovery or who is cross-examined upon an affidavit made by him, or who answers any interrogatories or makes an affidavit as to documents.

(Man. Sec. 6 (1) (3) (altered)).

Incriminating
questions

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

Answer not
receivable
against
witness

(3) If, with respect to any question, or the production of any document, a witness objects to answer or to produce upon any of the grounds mentioned in subsection 2, and if, but for this section or any Act of the Parliament of Canada, he would have been excused from answering the question, or from producing the document then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer or produce, the answer so given or the document so produced shall not be used or receivable in evidence against him in any proceeding to enforce any Act of the Province by the imposition of punishment by fine, imprisonment or other penalty or in any criminal trial or other criminal proceeding against him thereafter taking place other than a prosecution for perjury in the giving of such evidence.

(Ont. Sec. 6 (altered)).

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

Evidence in
proceedings
in conse-
quence of
adultery

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

she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery.

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

(See Alta. Sec. 8 (altered): Man. Secs. 7 and 8: N.B. Secs. 4 (2), 5 and 9: N.S. Sec. 38: Ont. Sec. 7: P.E.I. Sec. 8: 16 and 17 Vic. c. 83 and 82 and 88 Vic. c. 68, s. 2).

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

Communica-
tions made
during
marriage

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

(See 16 and 17 Vic. c. 83 (2): B.C. Sec. 9: Can. Sec. 4 (8): Man. Sec. 9: N.B. Secs. 6 and 11: N.S. Sec. 40: P.E.I. Sec. 9: Sask. Sec. 81).

EXPERT EVIDENCE

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

Number of
witnesses
limited

(Ont. Sec. 9 (altered)).

(See Alta. Sec. 10: Can. Sec. 7: Man. Sec. 24: Sask. Sec. 43).

9. A written report or finding of facts prepared by an expert not being a party to the action nor an employee or 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 co-operation 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.

When written
report of
expert
admissible

(Standardization of Statutes enacted by several of the United States of America vide B.C. Commissioners' Reports 1989 Proceedings, pages 71 and 72).

10. 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

Expert
furnishing
information
may be cross-
examined

shall not render the report or finding inadmissible unless the court finds that substantial injustice would be done to the adverse party by its admission.

(Standardization of Statutes enacted by several of the United States of America vide B.C. Commissioners' Reports 1989 Proceedings, pages 71 and 72).

Party offering report shall give notice to adverse party.

11. 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 court finds that no substantial injustice would result from the failure to give such notice.

(Standardization of Statutes enacted by several of the United States of America vide B.C. Commissioners' Reports 1989 Proceedings, pages 71 and 72).

CORROBORATIVE EVIDENCE

Breach of promise of marriage

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

(Alta. Sec. 11; Man. Sec. 22; Ont. Sec. 10; P.E.I. Sec. 7).
(See 32 and 33 Vic. c. 68 (2); B.C. Sec. 8 proviso; P.E.I. Sec. 7 proviso; Sask. Sec. 38).

Actions by or against representatives of a deceased person

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

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

Actions by or against lunatics

14. In an action by or against a lunatic so found or an inmate of a lunatic asylum, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested

party shall not obtain a verdict, judgment, or decision on his own evidence, unless such evidence is corroborated by some other material evidence.

(Alta. Sec. 18: B.C. Sec. 10: Ont. Sec. 12: P.E.I. Sec. 12).

15. No action shall be decided upon the evidence of a child of tender years given under the authority of Section 22 unless such evidence is corroborated by some other material evidence.

(See Alta. Sec. 19 (2): B.C. Sec. 6 (part): Can. Sec. 16 (2): Man. Sec. 23 (2): Sask. Sec. 37 (2)).

OATHS AND AFFIRMATION

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

(Man. Sec. 11 (1) (altered): Ont. Interpretation Act. Sec. 23 (1)).
(See 14 and 15 Vic. c. 99 s. 16: B.C. Sec. 26: Can. Sec. 13: N.B. Sec. 13: N.S. Sec. 51: P.E.I. Sec. 14: Sask. Sec. 40).

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

(Section held over from draft uniform sections of Interpretation Act—vide 1984 Proceedings page 25).
(Man. Sec. 12: Ont. Interpretation Act Sec. 23 (4)).

17. An oath may be administered to any person —

(a) while such person holds in his hand a copy of the Old or New Testament, without requiring him to kiss the same;

(Man. Sec. 13: Ont. Sec. 13 (part): Ont. Commissioners for Taking Affidavits Act Sec. 11).
(See 9 Ed. 7, c. 39, s. 2: Alta. Sec. 15 (part): B.C. Sec. 25 (part)).

or

(b) in such manner and form and with such ceremonies as he declares to be binding on his conscience.

(Man. Sec. 14 (2) (altered)).
(See 9 Ed. 7 c. 39: Alta. Sec. 15: Ont. Sec. 13 (part): Sask. Sec. 41).

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

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

(Man. Sec. 14 (altered)).

Idem

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

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

(Man. Sec. 58 (2) (part) (altered)).

Solemn
declaration

19. Any person authorized by this Act to administer oaths or to take affidavits in any matter, may receive the solemn declaration of any person making the same before him, in the form following, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing :—

I, A.B., solemnly declare that (state the fact or facts declared to), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me

at this day of A.D. 19 .

(Canada Evidence Act, Section 36.)

(Man. Sec. 55).

Affirmation
instead of
oath

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

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

Effect

(2) Where a person makes such an affirmation, his evidence shall be taken and have the same effect as if taken under oath.

(Can. Sec. 14).

(See 51 and 52 Vic. c. 46: Alta. Sec. 18: B.C. Sec. 24 and 58: Man. Sec. 15 (1): N.B. Sec. 14: N.S. Sec. 50: Ont. Sec. 14: P.E.I. Sec. 13: Sask. Sec. 41).

Affirmation
by deponent

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

solemnly affirm . . ."; which affirmation shall be of the same force and effect as if the person had taken an oath in the usual form.

(Can. Sec. 15).
(See Man. Sec. 58 (2); Ont. Sec. 14 (2)).

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

Effect of
disbelief
in oath

(51 and 52 Vic. c. 46, sec. 3 (altered): Man. Sec. 17 (altered)).

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

Evidence
of child

(See Alta. Sec. 19 (part): B.C. Sec. 6 (part): Can. Sec. 16 (1):
Man. Sec. 23 (1): Sask. Sec. 37 (part)).

EXAMINATION AND EVIDENCE OF WITNESSES

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

Evidence
of mute

(Alta. Sec. 20: B.C. Sec. 22: Can. Sec. 6: Man. Sec. 25: Sask.
Sec. 89).

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

Cross-
examination
as to previous
statements
in writing

(See Alta. Sec. 22: B.C. Sec. 16: Can. Sec. 10: Man. Sec. 19:
N.B. Sec. 17: N.S. Sec. 47: Ont. Sec. 16: P.E.I. Sec. 17: Sask.
Sec. 35).

Cross-examination as to previous oral statements

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

(See Alta. Sec. 23; B.C. Sec. 17; Can. Sec. 11; Man. Sec. 20; N.B. Sec. 16; N.S. Sec. 46; Ont. Sec. 17; P.E.I. Sec. 16; Sask. Sec. 84).

Examination as to previous conviction

26. (1) A witness may be asked whether he has been convicted of any offence, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved.

How conviction proved

(2) A certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the Court in which the offender was convicted, or by the deputy of the officer, shall, upon proof of the identity of the witness as the offender, be sufficient evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

(Alta. Sec. 24 (altered); B.C. Sec. 18 (altered); Man. Sec. 21 (1) (altered); Ont. Sec. 18 (altered)).
(See Can. Sec. 12; N.B. Sec. 18; N.S. Sec. 48; P.E.I. Sec. 18; Sask. Sec. 86).

Adverse witnesses may be contradicted

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

(Alta. Sec. 25; B.C. Sec. 19; Can. Sec. 9; Man. Sec. 18; N.B. Sec. 15; N.S. Sec. 45; P.E.I. Sec. 15; Ont. Sec. 19; Sask. Sec. 83).

Judicial notice

JUDICIAL NOTICE AND PROOF OF STATE DOCUMENTS

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

(a) All Acts of the Imperial Parliament :

- (b) All Acts of the Parliament of Canada:
- (c) All ordinances made by the Governor in Council of Canada:
- (d) All ordinances made by the Governor in Council, Lieutenant-Governor in Council, or Commissioner in Council of any Province, colony, or territory which, or some portion of which, forms part of Canada, and all Acts and ordinances of the Legislature of or other legislative body or authority competent to make laws for any such Province, colony, or territory:
- (e) All Acts and ordinances of the Legislature of or other legislative body or authority competent to make laws for any of His Majesty's dominions.

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

Application
in respect
of His
Majesty's
dominions

(Proceedings 1981, page 66 (altered): B.C. Sec. 27 (2) (3) (altered)).
(See Man. Secs. 26 and 27; N.B. Sec. 58; N.S. Sec. 9A).

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

Proof of
Imperial
state
documents

- (a) In the same manner as the same may from time to time be provable in any court in England;
- (b) By the production of a copy of the *Canada Gazette* or a volume of the Acts of the Parliament of Canada purporting to contain a copy of or an extract from the same or a notice thereof;
- (c) By the production of a copy thereof or an extract therefrom purporting to be printed by or for or by authority of the King's Printer for Canada or for any Province of Canada;
- (d) By the production of a copy thereof or an extract therefrom purporting to be certified as a true copy or extract by the minister or head or by the deputy minister or deputy head of any department of the Imperial Government;

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

(Man. Sec. 31 (2)).

Federal or
provincial
state docu-
ments

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

- (a) By the production of a copy of the *Canada Gazette* or of the official gazette of any Province or of a volume of the Acts of the Parliament of Canada or of the Legislature of any Province purporting to contain a copy of the state document or an extract therefrom or a notice thereof;
- (b) By the production of a copy thereof or an extract therefrom purporting to be printed by or for or by authority of the King's Printer for Canada or for any Province;
- (c) By the production of a copy thereof or an extract therefrom, whether printed or not, purporting to be certified as a true copy or extract by the minister or head, or the deputy minister or deputy head, of any department of government of Canada or of any Province, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the Great Seal of Canada or of any Province.

(Man. Sec. 31 (3)).

state docu-
ments of
British
possession or
foreign state

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

- (a) By the production of a copy thereof or an extract therefrom, purporting to be printed by or for or by the authority of the legislature, government, King's Printer, government printer, or other official printer of the British possession or of the foreign state;
- (b) By the production of a copy thereof or an extract therefrom, whether printed or not, purporting to be

certified as a true copy or extract by the minister or head, or the deputy minister or deputy head, of any department of government of the British possession or of the foreign state, or by the custodian of the original document or the public records from which the copy or extract purports to be made, or purporting to be an exemplification of the state document under the Great Seal or other state seal of the British possession or of the foreign state.

(Man. Sec. 31 (4)).

(4) It shall not be necessary to prove the signature or official position of the person by whom any copy or extract which is tendered in evidence under this section purports to be certified, or to prove that the original document or the public records from which the copy or extract purports to be made were deposited or kept in the custody of the person so certifying; and where a copy or extract which is tendered in evidence under this section purports to be printed by or for or under the authority of a legislature or government, or of a King's Printer, government printer, or other official printer, it shall not be necessary to prove the authority, status, or official position of the legislature or government or of the King's Printer, government printer, or other official printer.

Proof of
copy or
extract

(Proceedings 1931, page 66 (altered): B.C. Sec. 28 (2) to (6) (altered): Man. Sec. 31 (5) (altered): N.B. Sec. 59 (2) to (6) (altered)).

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

EVIDENCE OF OTHER PUBLIC AND CORPORATION DOCUMENTS

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

Books and
documents

(See 14 and 15 Vic. c. 99 s. 14; Alta. Sec. 34; B.C. Sec. 31 (1); Can. Sec. 25; Man. Sec. 34 (1); N.S. Sec. 14; Ont. Sec. 28; P.E.I. Sec. 27; Sask. Sec. 17).

Official
documents

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

(Ont. Sec. 25 (altered)).
(See 8 and 9 Vic. c. 113: Alta. Sec. 31: B.C. Sec. 30: Can. Sec. 24:
Man. Secs. 34 (1) and 36: N.B. Secs. 28, 40, 72 and 73: N.S.
Sec. 11: P.E.I. Sec. 31: Sask. Sec. 11).

Order signed
by Secretary
of State

32. An order in writing signed by the Secretary of State of Canada, and purporting to be written by command of the Governor General shall be admissible in evidence as the order of the Governor General, without any proof that the person signing the same is the Secretary of State of Canada or of the signature of such person, and without further proof thereof.

(B.C. Sec. 33: Can. Sec. 30 (1): N.S. Sec. 7: Ont. Sec. 23 (part):
P.E.I. Sec. 22: Sask. Sec. 8).

Order signed
by Provincial
Secretary

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

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

Copies
printed in
Canada or
Official
Gazette

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

(B.C. Sec. 34: Can. Sec. 30 (2): N.B. Sec. 55: N.S. Sec. 10: Ont.
Sec. 24: P.E.I. Sec. 22: Sask. Sec. 10).

Notices in
books kept
in public
offices

35. A copy of an entry, or a statement of the absence thereof, in any record, document, plan, book or paper belonging to or deposited or kept in any office or department of the Government of Canada or of the Province or of any other

Province of Canada or in the office of any commission, board or other branch of the public service of Canada or of the Province or of any other Province of Canada shall be admissible as evidence of the entry, and of the matters, transactions and accounts therein recorded, or of the absence thereof respectively, if it is proved by the oath or affidavit of an officer of the office or department or of the commission, board or other branch of any such public service that

- (a) the record, document, plan, book or paper was at the time of the making of the entry, or during the time covered by the statement, one of the ordinary records, documents, plans, books or papers kept in such office or department, commission, board or other branch of any such public service;
- (b) the entry was made, or in the case of its absence would have been made in the usual and ordinary course of business of such office or department, commission, board or branch; and
- (c) such copy is a true copy thereof or such statement of absence a true statement.

(Can. Sec. 26 (altered)).

(See Alta. Sec. 33; B.C. Sec. 85; Man. Sec. 33; N.B. Sec. 57; N.S. Sec. 13; Ont. Sec. 27; P.E.I. Sec. 22; Sask. Sec. 12 (1)).

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

Privilege
in case of
official
documents

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

37. (1) In this section "business" includes every kind of business, profession, occupation, calling or operation of an institution, whether carried on for profit or not.

Business
defined

Business records as evidence

(2) A record in any business of an act, condition or event, shall, in so far as relevant, be admissible in evidence if the custodian of the record or other qualified person testifies to its identity and the mode of its preparation, and to its having been made in the usual and ordinary 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.

(1939 Proceedings pages 73 and 74).

Bank defined
Photographic film defined

38. (1) In this section

(a) "bank" includes The Bank of Canada;

(b) "photographic film" includes any photographic plate, microphotographic film and photostatic negative.

Conditions under which print from photographic film is admissible in evidence

(2) A print, whether enlarged or not, from any photographic film of,

(a) an entry in any book or record kept by any bank and destroyed, lost or delivered to a customer after such film was taken,

(b) any bill of exchange, promissory note, cheque, receipt, original instrument or document held by a bank and destroyed, lost or delivered to a customer after such film was taken,

(c) any record, document, plan, book or paper belonging to or deposited with any department, commission, board or branch of the Government of Canada or of any Province of Canada,

shall be admissible in evidence in all cases in which and for all purposes for which the object photographed would have been received, upon proof that

(i) while such book, record, bill of exchange, promissory note, cheque, receipt, original instrument or document, plan, book or paper was in the custody or control of the bank, department, commission, board or branch, the photographic film was taken thereof in order to keep a permanent record thereof, and

(ii) the object photographed was subsequently destroyed by or in the presence of one or more of the employees of the bank, department, commission, board or branch or was lost or was delivered to a customer.

(3) Proof of compliance with the conditions prescribed by this section may be given by any one or more of the employees of the bank, department, commission, board or branch 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, either orally or by affidavit sworn in any part of Canada before any notary public.

Proof of compliance with conditions

(4) Unless the Court otherwise orders a notarial copy of any such affidavit shall be admissible in evidence in lieu of the original affidavit.

Proof by notarial copy

(1939 Proceedings pages 77 and 78 Revised).

EVIDENCE OF JUDICIAL PROCEEDINGS

39. (1) In this section "justice" means justice of the peace and includes two or more justices if two or more justices act or have jurisdiction, and also a magistrate, a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace.

Justice deferred

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

Exemplification or certified copy as evidence

(B.C. Sec. 29 (altered): N.S. Secs. 16 and 17 (altered)):

(See Alta. Secs. 35 and 37: Can. Sec. 23: Man. Secs. 27, 33 and 35: N.B. Sec. 61: Ont. Secs. 30, 31 and 32: Sask. Secs. 19 and 20).

NOTARIAL DOCUMENTS OF QUEBEC

40. (1) A copy of a notarial act or instrument in writing made in the Province of Quebec, before a notary and filed, enrolled or enregistered by the notary, certified by a

Notarial act in Quebec

notary or prothonotary to be a true copy of the original thereby certified to be in his possession as such notary or prothonotary, shall be admissible in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved.

(Alta. Sec. 38: Man. Sec. 37: Ont. Sec. 33).

(See B.C. Sec. 37 (part): Can. Sec. 27: N.B. Sec. 49: N.S. Sec. 28 (1): Sask. Sec. 18 (part)).

Proof may
be rebutted

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

(Alta. Sec. 39: Man. Sec. 38: Ont. Sec. 34).

(See B.C. Sec. 37 (part): Sask. Sec. 18 (part)).

Notice to
adverse
party

(3) No copy of a notarial act or instrument, as provided in this section shall be received in evidence upon any trial unless the party intending to produce the same has, before the trial, given to the party against whom it is intended to be produced reasonable notice of such intention and the reasonableness of the notice shall be determined by the Court, but the notice shall not in any case be less than ten days.

(B.C. Sec. 37 (2)).

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

BANK BOOKS

Copies of
entires

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

Reception
in evidence

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

(3) A bank or officer of a bank shall not, in any action to which the bank is not a party, be compellable to produce any book or record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transaction, and accounts therein recorded, unless by order of the Court made for special cause.

Compulsio
to produce
or appear

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

Order to
inspect
and copy

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

Costs

(Alta. Sec. 34A: B.C. Sec. 36: Man. Sec. 45: N.S. Sec. 17A: Sask. Sec. 26).

(See 42 Vic. c. 11: Can. Sec. 29: N.B. Sec. 37: Ont. Sec. 29: P.E.I. Sec. 30).

WILLS

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

Proof of
letters
probate
or letters
administra
tion

(Man. Sec. 46 (1) (altered): N.S. Sec. 23 (1) altered): Sask. Sec. 25 (2) (altered)).
 (See Alta. Secs. 46 and 47: B.C. Secs. 38 and 39: N.B. Sec. 65: Ont. Secs. 42, 43 and 44: P.E.I. Secs. 24 and 25).

Notice

(2) Letters probate * of a will or letters of administration with a will annexed, or a copy thereof certified as aforesaid, shall not be received in evidence upon any trial, without the leave of the Court, unless the party intending to produce the same has, at least ten days before the trial, given to the party against whom it is intended to be produced notice of such intention.

(See Alta. Sec. 42: B.C. Sec. 38: N.B. Sec. 65: N.S. Sec. 24: Ont. Sec. 43).

Where will
 proved else-
 where than
 in province

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

(Man. Sec. 46 (2): N.S. Sec. 23 (2) (altered): Sask. Sec. 25 (altered)).

(See Alta. Secs. 46, 47, 48: B.C. Secs. 38 and 39: N.B. Sec. 65: Ont. Secs. 42, 43 and 44).

* To be adapted to the practice in each Province.

REGISTERED INSTRUMENTS

Notice to
 be given

43. (1) In any action where it would be necessary to produce and prove an original instrument, deed, document, register or plan which has been deposited, filed, kept or registered in any Land Registry Office, Registry of the Supreme Court, or Registry of the County Court or in any public office or Court in the Province, in order to establish the instrument, deed, document, register or plan and the contents thereof, the party intending to prove the original instrument, deed, document, register or plan may give notice to the opposite party, ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence, as proof of the original instrument, deed, document, register or plan, a copy thereof certified by the registrar of the office where the same is so deposited, filed, kept or registered, under his hand and seal of office.

(2) A copy certified pursuant to this section shall be sufficient evidence of the original instrument, deed, document, register or plan, and of its validity and contents, without proof of the signature or seal of office of the Registrar, and without proof that the instrument, deed, document, register or plan was so deposited, filed, kept or registered, unless the party receiving the notice, within four days after its receipt, gives notice that he disputes the validity or contents of the original instrument, deed, document, register or plan.

Where
validity
disputed

(3) The cost attending any production or proof of the original instrument, deed, document, register or plan shall be in the discretion of the Court.

Cost

(See Alta. Sec. 49: B.C. Secs. 40 and 42: N.B. Secs. 28, 32, 62, 63, 70 and 71: N.S. Secs. 20, 21, 22, 24 and 25: Ont. Secs. 46, 47 and 48: P.E.I. Secs. 42, 43 and 44: Sask. Sec. 21 (1)).

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

When certi-
fied copies
admissible

(N.S. Sec. 23 (1)).

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

When original
to be retained

(Alta. Sec. 50: Ont. Sec. 49).
(See B.C. Sec. 50).

MERCANTILE DOCUMENTS AND TELEGRAMS

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

Notice be
be given

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

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

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

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

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

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

- (i) by virtue of any execution against the tenant;
- (ii) by virtue of any purchase, gift, transfer or assignment from the tenant, whether absolute or in trust or by way of mortgage or otherwise;
- (iii) being the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative of the tenant who lives upon the premises in respect of which the rent distrained for is payable as a member of the household of the tenant;

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

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

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

IMPOUNDING, APPRAISEMENT AND SALE.

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

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

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

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

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

- (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.

Exception

(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.

When statement admissible

(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.

Discretion of Court

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, 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.

(Man. Sec. 52).

Weight to be given statement

52. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 51, 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 51 shall not be treated as corroboration of evidence given by the maker of the statement.

Corroboration

(Man. Sec. 53).

53. 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.

Manner of proof

54. 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.

Presumption in an action

55. 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 action 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.

Rules of Court

NOTE: It may be found more convenient to insert this section in the Acts of the province referred to in the body of the section.

56. Nothing in section 51 shall—

Application of section

- (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.

(Man. Sec. 54 (2)).

AFFIDAVITS AND DECLARATIONS

57. An oath, affidavit, affirmation or statutory declaration for use in the Province may be administered, sworn, affirmed or made within the Province before :

By who adminir in the provinc

- (a) a judge of any Supreme Court or County Court in the Province;
- (b) a justice of the peace, stipendiary magistrate, or police magistrate in the Province within his jurisdiction;
- (c) the registrar of the Supreme Court or of any County Court within the Province;
- (d) a commissioner for taking affidavits within the Province;
- (e) a notary public appointed for the Province;

and every such officer shall designate his office below his signature to the jurat on an affidavit, affirmation or statutory declaration administered, sworn, affirmed or made before him.

(See B.C. Sec. 55; Man. Sec. 56; Ont. Interpretation Act Sec. 28; Ont. Commissioners for Taking Affidavits Act Secs. 8 and 9).

NOTE: Each province may make such variations or additions in Section 57 as may be required by local conditions.

whom
administered
outside the
Province

58. Oaths, affidavits, affirmations or statutory declarations administered, sworn, affirmed or made in any (other) Province or in any other part of His Majesty's dominions or in any foreign country, before :

- (a) a judge, a magistrate or an officer of a Court of Justice or a commissioner authorized to administer oaths in the Courts of Justice of such part of His Majesty's dominions or of such country;
- (b) the mayor or chief magistrate of any city, borough, or town corporate certified under the seal of such city, borough or town corporate;
- (c) Officers of any of His Majesty's diplomatic or consular services exercising their functions in any foreign country, including ambassadors, envoys, ministers, charges d'affaires, counsellors, secretaries, attaches, consuls-general, consuls, vice-consuls, pro-consuls, consular agents, acting consuls-general, acting consuls, acting vice-consuls and acting consular agents;
- (d) 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 (c), high commissioners, permanent delegates, acting high commissioners, acting permanent delegates, counsellors and secretaries;

- (e) Canadian Government Trade Commissioners and Assistant Canadian Government Trade Commissioners exercising their functions in any foreign country or in any part of His Majesty's dominions outside of Canada;
- (f) a notary public and certified under his hand and official seal; or
- (g) a commissioner authorized by the laws of the Province to take such affidavits,

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

(Ont. Sec. 38: Man. Sec. 57: Sask. Sec. 45).

59. Any document purporting to be signed by a person referred to in section 58, and

Proof of
oath

- (a) in the case of a person referred to in clause (b) or (f) of that section, purporting to have impressed thereon or attached thereto the seal required by the said clause (b) or (f);
- (b) in the case of a person referred to in clause (c), (d) or (e) of that section, purporting to have impressed thereon or attached thereto his seal of office if any,

in testimony of the oath, affidavit, affirmation or statutory declaration having been administered, sworn, affirmed or made by or before him, shall be admitted in evidence without proof of the signature, or seal and signature, or of his official character.

(Alta. Sec. 43 (re-drawn)).
(See B.C. Sec. 57: Sask. Sec. 45 (2): N.S. Sec. 52 (2): Ont. Sec. 39).

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

Irregularity
in form

(B.C. Sec. 59).
(See Alta. Sec. 44: Man. Sec. 60: Ont. Sec. 40).

Administra-
tion of oaths

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

(Man. Sec. 12 (altered): B.C. R.S. 1936, c. 1 s. 31 (altered)).
(Ont. Interpretation Act Sec. 28: N.S. R.S. c. 1, Sec. 28 (30)).

Military
records

62. The production of a certificate in writing signed or purporting to be signed,—

- (a) by the Adjutant-General, Deputy Adjutant-General, or officer in charge of records, Militia Service, Department of National Defence, in the case of a member of His Majesty's Military Forces; or
- (b) by the Naval Secretary, Naval Service, Department of National Defence, in the case of a member of His Majesty's Naval Forces; or
- (c) by the officer in charge of records, Air Service, Department of National Defence, in the case of a member of His Majesty's Air Forces; or
- (d) by an officer of His Majesty's Naval, Military or Air Forces, authorized so to sign, in the case of a member of any of His Majesty's Forces,—

stating that the person named in the certificate was a member of any of His Majesty's Forces, and that he has been officially reported as dead or presumed to be dead, if it appears on the face of the certificate that the person signing is qualified as prescribed in paragraph (a), (b), (c) or (d), as the case may be, shall be sufficient proof of the death of such person and of all facts stated in the certificate for any purpose to which the authority of the Legislature of _____ extends, and also of the office, authority and signature of the person giving or making the certificate, without any proof of his appointment, authority or signature.

(Amendment to Sec. 58 Alberta Evidence Act adapted in pursuance of correspondence with Department of Justice, Ottawa).

(Man. Sec. 47: Ont. Sec. 45).

POWERS UNDER FOREIGN COMMISSIONS

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

Jurisdiction
of Courts

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

Expenses
of witness

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

When witness
compellable

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

Authority to
administer
oath

(B.C. Sec. 49 (altered)).

(See 6 and 7 Vic. c. 82: Alta. Sec. 52: Can. Sec. 41 et seq: Man. Sec. 79: N.B. Secs. 28 and 24: N.S. Secs. 55 to 60: Ont. Sec. 55: Sask. Sec. 46).

UNIFORM CONSTRUCTION

Uniform interpretation

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

REPEAL

Repeal

65. The following Acts are hereby repealed, viz :—

.....

COMING INTO FORCE

Coming into force

66. This Act shall come into force in whole or in part upon dates to be fixed by one or more proclamations of the Lieutenant-Governor-in-Council.

APPENDIX K

REPORT OF SASKATCHEWAN COMMISSIONERS
RESPECTING UNIFORM LIBEL
AND SLANDER ACT

I. PRIVILEGE — REPORTING AGENCIES

At the 1938 meeting of the Conference a verbal Report was given by the Alberta Commissioners with respect to the matter of "Privilege existing in connection with Reports of Reporting Agencies to Insurance Companies, Merchants, &c." (1938 Proceedings, page 15); and the following resolution was adopted:

"RESOLVED that the memorandum to be submitted by Mr. Smith be referred to the Saskatchewan Commissioners who are dealing with the draft Libel and Slander Act, for consideration, and that they report on the same and forward to the members of the Conference a copy of the memorandum and their report at least thirty days before the next annual meeting."

At the 1939 meeting Mr. Thom submitted by way of a Report a letter written by him to Mr. Runciman [1939] Proceedings, p. 39, and appendix O), and after discussion, particularly as to the necessity of covering the matter, "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 also decided "that the Saskatchewan Commissioners should communicate 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". (1939 Proceedings, pp. 39 and 40).

Your Commissioners forwarded to the Local Secretaries for the provinces a copy of Mr. Smith's memorandum, referred to in the Resolution passed at the 1938 meeting and, for convenience, a copy of Mr. Thom's letter, which appears as Appendix O in the 1938 Proceedings, and at the same time requested a report regarding the situation in their respective provinces. At the time of writing this report one reply has been received. Mr. Smith's memorandum has not been printed in the Proceedings of the Conference and a copy is therefore attached to this Report.

The question under consideration arises from the judgment of the Privy Council in *Macintosh v. Dun*, [1908] A.C. 390. It was there held that where an association, conducted for profit by persons wholly unconnected with trade, carried on the business of communicating information about traders to inquirers, for reward, such communications were not published on a privileged occasion.

Your Commissioners are of the opinion that the law of libel should not be amended by extending the doctrine of privilege to reports issued by an association operating on a purely commercial basis, such as the defendant in *Macintosh v. Dun*.

Since that case was decided thirty-three years have run, and it would appear that no great hardship has resulted therefrom, in so far as the mercantile agency is concerned. Your Commissioners have never heard of any complaint by such agencies or request by them for a change in the law.

In the absence of knowledge of any widespread complaint, it appears to your Commissioners that the law of libel, to which we are all subject, exercises a very wholesome and desirable check on the activities of a purely mercantile agency. To allow such an agency to repeat any rumour with complete freedom, unless actual malice were proved, would, in the opinion of your Commissioners, be a dangerous course.

Your Commissioners therefore recommend that no further action be taken by the Conference.

II. RIGHT OF PRIVACY

At the 1939 meeting the Saskatchewan Commissioners were directed to report to the Conference with respect to the "right of privacy" and the possibility of protecting the same. (1939 Proceedings, p. 40).

(a) *Photographs, &c.*

It appears that the unauthorized use of a person's name or portrait for advertising purposes is not of itself a libel, though the fact of defamation may be proved from the circumstances of publication. Though *prima facie* innocent the advertisement may become capable of a defamatory meaning by reason of the circumstances surrounding its publication.

There appears to be no remedy unless the matter can be brought within the bounds of defamation. A man has not got such "property" in his features that he can prevent their reproduction. *Tolley v. Fry* [1931] A.C. 333.

As this is not a matter which by itself comes directly within the law of defamation, your Commissioners recommend that no amendment to the law of libel and slander should be adopted by the Conference.

In the opinion of your Commissioners any change should be by way of provision for an application to the court for an injunction and for damages.

(b) *Radio*

Gatley (3rd Ed.) at p. 109 says "a broadcasting corporation are liable as joint publishers of any defamatory matter broadcast on their radio" and cites "*Sorensen v. Wood* and K.F.A.B. (1932) 243 N.W. Rep. 82. But a reviewer of that book takes the view that this statement is perhaps open to argument when stated in absolute form, and continues as follows:

"Since the publication of the present volume, the American Law Institute has published the third volume of the Restatement of Torts, which includes the division dealing with defamation, and it is interesting to note that in a caveat to section 577, 'the Institute expresses no opinion as to whether the proprietors of a radio broadcasting station are relieved from liability for a defamatory broadcast by a person not in their employ if they could not have prevented the publication by the exercise of reasonable care, or whether, as an original publisher, they are liable irrespective of the precautions taken to prevent the defamatory publication.'" Canadian Bar Review (1938) Vol. 16, p. 819-820.

The following is the closing paragraph of an exhaustive and interesting article entitled "Defamation by Radio" which appears in a recent issue of the Canadian Bar Review (Vol. 19, p. 353):

"Indeed, as it has been the effort of this article to demonstrate, the radio is, so far as concerns the law of defamation, nothing more nor less than a form of the press. Accordingly, it has been submitted, with deference, that actionable calumny broadcast should constitute libel rather than slander, whether delivered extemporaneously or from a written script; that the broadcaster should be liable as a primary publisher; and that the defences of privilege and fair comment should be available to the station. And as the confinement of the journal to these last-mentioned supports has in no way stultified the activities of the press,

so it may safely be augured that the introduction of like safeguards in the field of wireless will in no way impede the meteoric advance of radio".

Your Commissioners are inclined to argee in the main with the views expressed by the writer of that article but recommend further study of this subject before any decision is reached by the Conference on the question of the adoption of new provisions governing the matter.

III. DRAFT UNIFORM LIBEL AND SLANDER ACT

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

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

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

A revised draft was accordingly presented at the 1937 meeting, but consideration thereof was deferred until the following year.

At the 1938 meeting it was resolved "that the Report of the Saskatchewan Commissioners re Libel and Slander Act appearing in the 1936 Proceedings be laid over for discussion at the meeting next year, and in the meantime the matter be given further consideration by the Commissioners". NOTE.—The figures "1936" should be "1937".

At the 1939 meeting a verbal report with respect to The Libel and Slander Act was submitted by Mr. Thom on behalf of the Saskatchewan Commissioners (Proceedings p. 39) and the draft uniform Act was referred back to the Saskatchewan Commissioners for further consideration and report at the next meeting (1939 Proceedings, p. 40).

Your Commissioners have further considered the draft Act (1937 Proceedings, p. 104) and may propose some minor changes when the draft is being considered section by section. Otherwise the draft Act, as a restatement of the existing law in the various provinces, appears to your Commissioners to be in satisfactory form for discussion.

When the draft Act was printed in the 1937 Proceedings, the various Acts governing the matter were as follows:

Alberta	R.S.A., 1922, c. 101, as amended by 1935, c. 23.
British Columbia . . .	R.S.B.C., 1924, c. 140.
Manitoba	R.S.M., 1913, c. 113, as amended by 1934, c. 23.
New Brunswick... . .	R.S.N.B., 1927, c. 142.
Nova Scotia	R.S.N.S., 1928, c. 230.
Ontario.....	R.S.O., 1927, c. 101.
Prince Edward Island. .	28 Vict., c. 25, ss. 1 and 2; 21 Geo. III, c. 17, s. 6; 12 Geo. V., c. 7, s. 4.
Saskatchewan	R.S.S., 1930, c. 69, as amended by 1931, c. 31.

The Acts governing the matter are now as follows:

Alberta	Same as above.
British Columbia . . .	R.S.B.C., 1936, c. 153, as amended by 1939, c. 29.
Manitoba	R.S.M., 1940, c. 119.
New Brunswick.	Same as above.
Nova Scotia	Same as above.
Ontario	R.S.O., 1937, c. 113.
Prince Edward Island	Same as above.
Saskatchewan	R.S.S., 1940, c. 90.

IV. AMENDMENT OF THE LAW IN ENGLAND

In February, 1939, an amending Bill, introduced by a private member and containing some important changes in the law, was withdrawn on second reading after a statement of the intentions of the Government had been made by the Attorney General, who intimated that a committee would be set up to consider the whole subject. (Hansard, February 3, 1939). No amending legislation has yet reached the statute book, so far as your Commissioners are aware. The situation in England should be kept in mind by the Conference before finally disposing of the draft uniform Act.

Respectfully submitted,

(Sgd.) D. J. THOM,
(Sgd.) J. P. RUNCIMAN.

Regina, August 28, 1941.

APPENDIX L

ASSOCIATION OF SUPERINTENDENTS OF INSURANCE
OF THE PROVINCES OF CANADA*Report No. 11 — 1938*

Report of Special Committee Appointed by the President of the Association of Superintendents of Insurance of the Provinces of Canada with respect to the matter of Privilege attaching to Information contained in Reports made to Insurers by reporting Agencies.

The undersigned have the honour to report as follows :

The general law as to the qualified privilege of certain defamatory communications is set out in Halsbury Law of England (Hailsham Ed.) as follows :

“A defamatory statement is a statement which if published of and concerning a person is calculated to expose him to hatred, contempt or ridicule or to convey an imputation on him disparaging or injurious to him in his trade business profession calling or office.” (XX p. 384)

A libel for which an action will lie is a false defamatory statement as above defined expressed or conveyed by written or printed words or in some permanent form published of and concerning the plaintiff to a person other than the plaintiff without lawful justification or excuse (*ut supra*).

If a defamatory statement is published of the plaintiff on an occasion which is privileged not in an absolute but in a qualified sense, the defendant may set up a defence of qualified privilege. (XX 468)

An occasion is privileged where the person who makes the communication has an interest or a duty legal social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. The privilege extends only to a communication upon the subject to which privilege exists, and does not extend to anything which is not pertinent and relevant to the discharge of the duty or the exercise of the right or the safeguarding of the interest which creates the privilege.

An ordinary example of the general rule is the case where a master gives a character of his late servant to a person who who contemplates engaging the servant.

Another occurrence or instance is the case where inquiries, reports and references are made with regard to the commercial credit of a person with whom a trader proposes to transact business. (470-473)

The law in most of the United States of America is substantially the same. (36 Corpus Juris, p. 1267, par. 253)

It is arguable that the case of *Macintosh v. Dun* (1908, A.C. 390) being a Privy Council case, is binding upon Canadian courts: in that case it was held that where an association conducted for profit by people wholly unconnected with trade acquired from all sources, information about traders and carried on the business of disseminating such information for reward, communications made by such an agency to its subscribers were not made in discharge of a public or private duty, were not warranted by any reasonable occasion or exigency, and were not published on a privileged occasion.

The law as set out in the last mentioned case seems to be in conflict with the law in England and Scotland, and, with a few exceptions, the United States which seems to regard similar communications as privileged. (*The London Association for The Protection of Trade v. Greenlands Ltd.* [1916] 2 A.C. 15).

The law as fixed by *Macintosh v. Dun* is applicable to reports made by any agency incorporated for the purpose of furnishing reports as to credit or otherwise, to its subscribers and is not confined to reports of reporting agencies to Insurance Companies.

It would appear that the rule in *Macintosh v. Dun* is inconvenient and is a detriment to the carrying on of legitimate business: and that legislative action is required to bring the law in Canada into harmony with the law in England and in the United States. A more complete outline of the law on this subject will be annexed to this Report when it is printed in the Proceedings.

Defamation is a subject dealt with by each province in special Acts; and the appropriate legislative action would be an amendment to those Acts. With this thought in mind the matter was raised at the recent meeting in Vancouver of the Commissioners on Uniformity of Legislation in Canada, because it was known that they planned to review the Libel and Slander Acts of the various provinces, with a view to promoting

uniformity therein. No decision was reached on the question of policy involved in an amendment to get rid of the rule in *Macintosh v. Dun*, but the discussion did indicate that at least two or three years must elapse before there is any possibility of the Commissioners recommending any uniform Bill respecting Libel and Slander, and that there may be a difference of opinion at that time as to the desirability of any change in the general law, or as to touching the subject in such a Bill. Under the circumstances, and because the insurance aspect of the question may justify legislative intervention which does not exist in other fields of business, it is recommended that the Conference consider the desirability of amending the Insurance Acts of the several provinces by inserting therein a section along the following lines :

Any statement made by any person at the request of an insurer to an insurer in respect of a person who is an agent of the insurer or who proposes to become an agent of the insurer or who is a policy holder with the insurer or who is an applicant for any policy of insurance with the insurer shall be a privileged communication unless it is proved that such communication was made with actual or express malice and the onus of proving that any such communication was so made shall be upon the person who alleges it was so made.

All of which is respectfully submitted,

(Signed) R. ANDREW SMITH.

(Signed) WILSON E. MCLEAN.

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