1942

PROCEEDINGS

OF THE

TWENTY-FOURTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

WINDSOR

AUGUST 18TH, 19TH, 20TH, 21ST AND 22ND, 1942

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE

Honorary President .... Hon. Frederick 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 Government Street, Victoria.

Manitoba.....G. S. Rutherford, Legislative Counsel, 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.....Charles Coderre, K.C., 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

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.

G. S. RUTHERFORD, Legislative Counsel, Legislative Building, Winnipeg.

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

New Brunswick:

J. BACON DICKSON, Deputy 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:

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

THOMAS D. MACDONALD, Deputy Attorney-General, Halifax.

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

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

Ontario:

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 DESROCHERS, Charlottetown.
DONALD O. STEWART, Summerside.
GEORGE J. TWEEDY, K.C., Charlottetown.
N. W. LOWTHER, Charlottetown.
K. M. MARTIN, K.C., Charlottetown.

Quebec:

HON. VALMORE BIENVENUE, K.C., Parliament Buildings, Quebec.
ARISTE BROSSARD, 60 St. James Street West, Montreal.
W. F. CHIPMAN, K.C., 360 St. James Street West, Montreal.

Saskatchewan:

DOUGLAS J. THOM, K.C., Regina.
J. P. RUNCIMAN, Legislative Counsel, Parliament Buildings, Regina.

Canada:

W. R. JACKETT, 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. R. L. Maitland, K.C.,
Attorney-General of Manitoba: Hon. J. O. McLenaghen, 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 has 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.
1942. August 18-22, Windsor.

Owing to war conditions the meeting of the Canadian Bar Association which was scheduled to be held in Ottawa in 1940 was cancelled and no meeting of the Conference was held that year. While the meeting of the Bar Association which was to be held at Windsor in 1942 was cancelled, the meeting of the Conference was proceeded with pursuant to a resolution passed at the 1941 meeting (1941 Proceedings, p. 26) after the views of the Commissioners and Representatives had been ascertained through the local secretaries.

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.

Although the Province of Quebec was represented at the organization meeting in 1918, no one from that province attended the meeting of the Conference again until 1942 when Quebec was represented by the Bâtonnier Général for the Province, the Bâtonnier of the Quebec section of the Bar who is also the

Speaker of the Legislature, and a representative of the General Council of the Bar.

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. For a table shewing the uniform statutes adopted in the various legislative jurisdictions of Canada, see pp. 10–11 of these Proceedings.

E. H. S.

TABLE O

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

TITLE OF ACT	ADOPTED BY			
	Conference	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	1942
Conditional Sales	1922		1922	
Contributory Negligence	1924	1937*	1925	
Corporation Securities Registration	1931			
Devolution of Real Property	1927	1928		
Evidence	1941		1941-42Y, YY	1942Y,
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 xx		1899	1894	1897
Partnership Registration	1938			
Reciprocal Enforcement of Judgments	1924	1925, am. 1935	1925	
Sale of Goods xx		1898	1897	1896
Warehousemen's Lien	1921	1922	1922	1923
Wills	1929			1936

* Adopted as revised.

xx Included in table pursuant to 1942 Resolution (1942 Proceedings, p. and passed in substantially the same form as the Imperial statute.

by the Conference and to what extent, if any, these have been 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	. . .	1942	..	... .
1927	1930	..	1934	. . .	...	..	Amended 1927, 29, 30 & 33.
1925	1926	.	1930*	....	....	. . .	Revised 1934 and 1935
....	1933	1932	....	..	1932	....	. ..
1934†	. . .	...	. .	....	1928	. . .	. . . . ..
1942Y	....	1942Y, YY	...	....	1942YY	1942Y	. . .
1931	1930	1924	1933	...	1925	...	Statutory condition 17 not adopted.
.. .	....	...	. ..	....	...	..	. . . .
. ..	....	....	..	. . .	1934		. ...
....	. . .	...	1939	. . .	....	.	Amended 1939 and 1941
1926	....	....	. ..	....	1928	....	Amended 1926
1931, am. 1934	....	...	1939x	....	...	. . .	Amended 1931
1938	....	...	1939	....	....	....	... .
1920	§	1921	1920	§	1920	. . .	. . . . .
1924	1925	1924	1933	....	1924	. .	... .
...	....	....	1939‡	....	1932	....	Amended 1932
1921	1911	1920	1920	....	1898	....	....
....	....	..	...	....	.. .	....	....
1925	....	1929	....	....	1924	. . .	Amended 1925
1919	1910	1920	1919	....	1896	....	.....
1923	....	1924	1938	....	1922	....	.....
....	....	....	. ..	...	1931	....	....

† In part. ‡ With slight modifications.

§ Provisions similar in effect are in force. x As part of Evidence Act.

Y As to section 38 only. YY As to section 62 only.

PROCEEDINGS

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

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

Alberta :

MESSRS. GRAY and HENWOOD.

British Columbia :

HONOURABLE MR. MAITLAND and MR. HOGG.

Manitoba :

HONOURABLE MR. MCLENAGHEN, MESSRS. FISHER and RUTHERFORD.

New Brunswick :

MESSRS. DICKSON, HUGHES and PORTER.

Ontario :

MESSRS. BARLOW and SILK.

Quebec :

HONOURABLE MR. BIENVENUE, MESSRS. BROSSARD and CHIPMAN.

Saskatchewan :

MESSRS. RUNCIMAN and THOM.

Canada :

MESSRS. JACKETT and O'MEARA.

SUMMARY OF PROCEEDINGS

The annual statement to the Canadian Bar Association respecting the work of the Conference was made by Mr. Hughes. As no general meeting of the Association was held, the statement was presented to the Council.

"Under instructions from the Conference of Commissioners on Uniformity of Legislation in Canada, I beg to make the following report with respect to the conference which closed on the 22nd instant.

"During the conference we have given careful consideration to a Libel and Slander Act. We have tried to remove the technical difficulties so often found in suits arising from the publication of defamatory matter. We have approved of the proposition that defamation, whether written or spoken, should be dealt with as a wrong of one kind. This should remove some of the difficulties arising from defamation over the radio. A committee has been given the task of preparing a draft Act in the light of these recommendations.

"We have discussed and considered The Married Women's Property Act. We have tried to simplify some of its provisions. It will be further considered next year.

"We have also considered certain proposed amendments to The Sale of Goods Act with respect to revendication in case the purchaser fails to pay. After careful consideration, the matter was referred to a committee for further study and report.

"It will, perhaps, be pleasing to know that the amendments to the law which we included in the Evidence Act, which we submitted at the last year's Conference by which the records of banks and other papers held by banks and by departments of the Government may be photographed by microphotographic film for purposes of preservation and copies thereof used in evidence on a trial, have been widely approved, and applications have been made to the Conference this year asking us to recommend the extension of the principle so as to include the records of large corporations, insurance companies and trust companies.

"The Conference has had under consideration questions arising from the large number of Orders-in-Council and orders of officials having power to make binding orders and the difficulties arising from the fact that many of these are not sufficiently published, and there is no definite place where they may be found. The matter is to be studied by a Committee of the Conference and dealt with further next year.

"The law respecting the Reciprocal Enforcement of Judgments was further considered and referred to the Quebec and Dominion Commissioners for further consideration.

"A provision respecting the right of an unpaid vendor to retake possession of goods, although they have been affixed to land, has been approved.

"The Conference has adopted a set of rules to be followed in preparing draft Acts. It is hoped that these rules will enable a shorter and clearer expression of the law to be made.

"At the request of the Attorney General of Manitoba, we have examined the proposed protocol on Uniformity of Powers of Attorney between the United States of America and other American Republics with respect to the power of Attorney required to carry on business in South American countries. We have approved in principle of the proposed protocol, and will recommend to the several Attorneys-General that they approve, and request that Canada join as a party.

"During the sessions of the Conference just closed we have had in attendance three representatives of the Province of Quebec. This has been most pleasing and satisfactory. We have long been desirous of having representatives of the Province of Quebec share in our deliberations. We felt it would be useful to the work of the Conference to have men trained in The Civil Code confer with those trained in the Common Law. We have found during the last conference that that was true. We hope that we, on our part, may be of some assistance to the representatives from Quebec."

MINUTES OF MEETING

NOTE : — The Conference held the following sessions :

August	18th.	10.00 a.m. — 12.30 p.m.
"		2.30 p.m. — 4.00 p.m.
"		8.00 p.m. — 10.30 p.m.
"	19th.	10.00 a.m. — 12.30 p.m.
"		2.00 p.m. — 4.00 p.m.
"		9.00 p.m. — 11.00 p.m.
"	20th.	9.00 a.m. — 12.00 p.m.
"		2.00 p.m. — 5.30 p.m. (With National Conference on Uniform State Laws in Detroit, Mich.)
"	21st	10.00 a.m. — 12.00 p.m.
"		2.00 p.m. — 4.00 p.m.
"	22nd	10.00 a.m. — 12.30 p.m.

FIRST DAY

Tuesday, August 18th, 1942.

Opening.

The Conference assembled at 10.00 a.m. at the Prince Edward Hotel in Windsor.

Minutes of Last Meeting.

The Minutes of the 1941 meeting, as printed, were taken as read and confirmed.

Address of Welcome.

Mr. S. L. Springsteen, K.C., Vice President of the Essex County Bar Association, welcomed the Conference to Windsor for its annual meeting.

President's Address.

Mr. F. H. Barlow, K.C., the President, then addressed the Conference.

(*Appendix A*)

Treasurer's Report.

The Treasurer's Report was received and referred to Messrs. Hughes and Thom for audit and report.

Statement to Association.

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

Nomination Committee.

Messrs. Chipman, Fisher, Porter and Runciman were appointed a Nomination Committee to submit recommendations as to the election of officers of the Conference.

Hours of Sittings.

It was decided that the hours of sittings would be, for the morning sessions—10.00 to 2.30; for the afternoon sessions—2.30 to 4.00; and for the evening sessions—8.30 to 10.30. These were to be subject to change.

(NOTE: Subsequently it was decided that the Thursday afternoon session should be held in Detroit as a joint session with the Conference of Commissioners on Uniform State Laws; that the evening sessions on Thursday and Friday should not be held, that the hours of certain of the remaining sessions should be extended, and that the Conference should hold three sessions on Saturday, the final day, if necessary. The actual hours of the various sessions are indicated on the preceding page.)

Secretarial Assistance.

The following resolution was adopted:

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 requested:

(1) to prepare a report of the proceedings of the Conference and to have it printed in pamphlet form and to send copies thereof to the other Commissioners; and

(2) to arrange with The Canadian Bar Association to have the report of the proceedings of the Conference printed as an addendum to any report of proceedings of the Association that may be published, the expense of the publication of the addendum to be paid by the Conference.

Reciprocal Enforcement of Judgments.

The Report of the Dominion Representatives upon Reciprocal Enforcement of Judgments was presented by Mr. O'Meara and discussed.

(*Appendix B*)

The following resolution was adopted:

RESOLVED that the report of the Dominion Representatives on the Reciprocal Enforcement of Judgments be adopted and that the matter be referred to the Dominion and Quebec Representatives for a joint report next year.

Sale of Goods Act.

The report of the Manitoba Commissioners on a suggested amendment to The Sale of Goods Act was presented by Mr. Fisher and discussed.

(*Appendix C*)

(Conclusion of morning session.)

The report of the Manitoba Commissioners on The Sale of Goods Act was further discussed and the following resolution was adopted:

RESOLVED that the report of the Manitoba Commissioners on a suggested amendment to The Sale of Goods Act be referred to the Manitoba Commissioners and the Quebec Representatives jointly to prepare and present at the next meeting draft sections which will produce in the common law provinces, as nearly as practicable, the same results as now flow from the Civil Code of Lower Canada and the Code of Civil Procedure of the Province of Quebec.

Libel and Slander Act.

The report of the Saskatchewan Commissioners on The Libel and Slander Act was presented by Mr. Runciman.

(*Appendix D*)

(Conclusion of afternoon session)

The report on The Libel and Slander Act was discussed and the following resolutions were then adopted:

RESOLVED that the draft provision providing for the imposition of penalties for publishing the portrait or picture of a living person without having first obtained his consent be not included

in the Uniform Libel and Slander Act and be not further considered by the Conference; and

RESOLVED that the Uniform Libel and Slander Act be referred back to the Saskatchewan Commissioners to be redrafted on the following bases:

(1) by abolishing the distinction between libel and slander and the consequences thereof arising under past authorities;

(2) by restating the law in terms of defamation so that proof of damages and the consequences will be identical in all cases, and that in every case where defamation is established damages shall be presumed but that the court shall have discretion to refuse costs in a proper case; and

(3) by providing in relation to defamation by radio that liability shall be imposed on the radio station in every case where the station either employed the speaker to say what he said or was negligent in permitting the words to be spoken.

Unfair Newspaper Reports.

The report of the Saskatchewan Commissioners upon unfair newspaper reports respecting certain persons was presented by Mr. Runciman and discussed.

(*Appendix E*)

The following resolution was adopted:

RESOLVED that the report of the Saskatchewan Commissioners entitled "Unfair Newspaper Reports respecting Certain Persons" be adopted and the matter be not further proceeded with by the Conference.

Sale of Goods and Partnership Acts.

The following resolution was adopted:

RESOLVED that having regard to the observations in the report of the Manitoba Commissioners on a suggested amendment to the Sale of Goods Act (Appendix C) and the report of the Committee on Sale of Goods and Partnership appearing at pages 20-23 of the Report of the Proceedings of this Conference for 1920 the Secretary be instructed to include in the table of model statutes The Sale of Goods Act and The Partnership Act with appropriate explanations.

Commorientes.

A letter from Mr. R. M. Fisher, K.C., to the Secretary of the Conference was presented and discussed.

(*Appendix F*)

The following resolution was adopted.

RESOLVED that no action be taken by the Conference pursuant to the suggestions with regard to the Commorientes Act contained in Mr. Fisher's letter.

Interpretation Act.

A memorandum of various suggestions received by the Secretary with regard to the Uniform Interpretation Act was presented by him and each item was discussed.

(*Appendix G*)

The following resolution was adopted:

RESOLVED that no action be taken by the Conference in connection with any of the suggestions in the memorandum of suggestions regarding the draft Uniform Interpretation Act prepared by the Secretary.

(Conclusion of the afternoon session)

SECOND DAY

Wednesday, August 19th, 1942.

Evidence Act—(General).

A memorandum of various suggestions received by the Secretary with regard to the Uniform Evidence Act was presented by him and each item was discussed.

(*Appendix H*)

The following resolution was adopted:

RESOLVED that with the exception of item 4 of the memorandum re draft Uniform Evidence Act prepared by the Secretary, no action be taken by the Conference in connection with any of the suggestions contained therein, and that subsection 3 of section 38 of the draft Uniform Evidence Act be altered in accordance with the suggestion contained in item 5 of the memorandum.

Evidence Act—(Section 38)

A memorandum prepared by The Canadian Life Insurance Officers Association advocating revision and extension of section 38 of the Uniform Evidence Act with a view to rendering it in line with the revised form in which it was adopted by the Parliament of Canada, as well as letters to the same effect from G. A. Walker, K.C., General Solicitor, Canadian Pacific Railway Company; R. H. M. Temple, K.C., General Counsel, Canadian National Railways; A. W. Rogers, K.C., Secretary of the Canadian Bankers Association; Pierre Beullac, K.C., General Counsel to the Bell Telephone Company of Canada; Norman A. White, Assistant Secretary of the Dominion Mortgage and Investments Association, and C. S. Hamilton, President of the Trust Companies Association of Ontario, were presented to the Conference by the Secretary and discussed.

(*Appendix I*)

The following resolution was adopted.

RESOLVED that this Conference approves the principle of extending the scope of section 38 of the Uniform Evidence Act and refers the matter to the Ontario Commissioners for study and report next year.

Rules of Drafting.

The report of Messrs. Runciman and Silk on rules of drafting and the draft rules, observations and suggestions were presented by Messrs. Runciman and Silk and discussed.

(*Appendix J*)

(Conclusion of morning session)

Consideration and discussion of the rules of drafting was continued.

(Conclusion of afternoon session)

The following resolution was adopted:

RESOLVED that—

(1) the report of Messrs. Runciman and silk on rules of drafting, including the appendices, as revised by the Conference, be adopted by the Conference;

(2) the rules and the observations and suggestions comprising appendices I and II to the report be observed in the preparation of uniform Acts by the Conferences; and

(3) in addition to printing the report and all appendices thereto in the annual volume of Conference proceedings,

the Secretary be instructed to have 200 additional copies published in pamphlet form for distribution to law libraries and persons engaged in the drafting of legislation and regulations.

Central Filing and Publication of Regulations.

A letter from Mr. Silk written to Mr. Barlow as President of the Conference, dated July 24th, 1942, was, at the request of Mr. Barlow, presented to the Conference by Mr. Silk and discussed.

(*Appendix K*)

The following resolution was adopted:

RESOLVED that the preparation of a draft uniform Act to provide for the central filing and the publication of regulations and other forms of delegated legislation be referred to the Dominion representatives and the Ontario Commissioners to prepare a draft Act jointly for presentation next year and that in the preparation of the draft Act the suggestions contained in the letter (Appendix K) be followed with the following deviations:

(1) that regulations not filed in accordance with the requirements of the Act be inoperative;

(2) that regulations not published in accordance with the requirements of the Act be covered by a section similar in effect to section 7 of The Federal Register Act of The United States of America; and

(3) that the Act require the keeping of a cumulative index showing all regulations filed up to date.

(Conclusion of evening session)

THIRD DAY

Thursday, August 20th, 1942.

Assignment of Book Debts Act.

Referring to a letter from Mr. Silk to Mr. Wilson E. McLean (1939 Proceedings, Appendix N, p. 101) on the uniform Assignment of Book Debts Act, Mr.Dickson, for the New Brunswick Commissioners, presented a verbal report. Mr. Dickson stated that the difficulty indicated in the letter was apparently limited to the County of York in the Province of Ontario. He explained that the insertion of renewal provisions in The Assignment of

Book Debts Act would require substantial alterations in the form of the present Act. It was also pointed out that while there are renewal provisions in the uniform Bills of Sale Act, no such provisions are contained in the uniform Conditional Sales Act.

The matter was discussed and the following resolution was adopted:

RESOLVED that the report on the proposed amendment to the Assignment of Book Debts Act, as presented verbally by Mr. Dickson for the New Brunswick Commissioners, be adopted and that the matter be dropped from the agenda.

Limitation of Actions.

A letter from John D. Falconbridge, K C., to Mr. Silk, dated June 26th, 1942, and a letter from F. J. Turner, K.C., to Mr. Fisher, dated August 13th, 1942, were presented to the Conference and discussed.

(*Appendix L*)

The following resolution was adopted:

RESOLVED that the letters from Dean Falconbridge and Mr. Turner be referred to the Alberta Commissioners for study and report next year.

Powers of Attorney.

Mr. Fisher presented to the Conference a protocol on uniformity of powers of attorney which was adopted by the Pan-American Union on February 17th, 1940, together with relevant correspondence and other material and the matter was discussed.

(*Appendix M*)

It was decided by the Conference to defer further consideration of the matter until tomorrow when the procotol should receive study in detail.

Goods Sold on Consignment.

The following resolution was adopted:

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.

Warehouse Receipts Act.

The following resolution was adopted:

RESOLVED that the report of the British Columbia Commissioners on the uniform Warehouse Receipts Act and the draft

Act be referred back to the British Columbia Commissioners for consideration at the next meeting of the Conference.

(*Appendix N*)

Motor Vehicle Encumbrances.

The following resolution was adopted:

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 to the New Brunswick Commissioners for the preparation of draft sections and a report next year.

Married Women's Property Act.

The report of the Manitoba Commissioners on the Married Women's Property Act and the draft Act were presented to the Conference by Mr. Fisher and discussed.

(*Appendix O*)

(Conclusion of morning session)

The Conference joined the National Conference of Commissioners on Uniform State Laws in their afternoon session at the Statler Hotel in Detroit. The members of the Canadian Conference were welcomed by Mr. Wm. A. Schnader, President of the American Conference. Mr. Barlow replied.

Sections of the draft Uniform Sales Act and the draft Uniform Veterans' Guardianship Act were studied.

Members of the Conference were the guests of the National Conference of Commissioners on Uniform State Laws at their annual dinner in the evening.

FOURTH DAY

Friday, August 21st, 1942.

Married Women's Property Act.

The study by sections of the draft Uniform Married Women's Property Act was continued. Instructions were given and suggestions made with regard to reconsideration and redrafting of certain sections, and the following resolution was adopted:

RESOLVED that the draft Uniform Married Women's Property Act be referred back to the Manitoba Commissioners for redrafting in accordance with instructions and a report next year.

(Conclusion of the morning session)

Partnership Registration Act.

Mr. Dickson addressed the Conference with regard to the lack of supervision of names adopted by persons and unincorporated organizations in New Brunswick. He drew the attention of the Conference to the possibility of the adoption of a name so closely resembling an existing trade name or the name of an existing company or organization as to lead to confusion. Mr. Chipman spoke of the dangers and difficulties of the situation and the inadequacy of court remedies. Mr. O'Meara and Mr. Rutherford also expressed their approval of study being given to the situation by the Conference, and the following resolution was adopted:

RESOLVED that the question of amending the uniform Partnership Registration Act by the inclusion of sections controlling the assumption of partnership and trade names, and providing for the prohibition of the use of any names found to be objectionable be referred to the New Brunswick Commissioners for report next year.

Conditional Sales of Certain Chattels.

A report of the New Brunswick Commissioners on Conditional Sales of Chattels affixed to land was presented by Mr. Porter and after discussion Mr. Porter was requested to prepare a further draft of the proposed sections and report further tomorrow.

(*Appendix P*)

Companies Act.

The Honourable Mr. Maitland addressed the Conference regarding the advisability of providing for representation upon boards of directors of substantial minority groups of stockholders. He referred to a memorandum prepared by H. A. Garrett, Registrar of Companies for British Columbia.

(*Appendix Q*)

The matter was discussed and the following resolution was adopted:

RESOLVED that Mr. O'Meara be requested to place before the Dominion-Provincial Committee on Uniformity of Company Law in Canada the matter of providing for representation upon boards of directors of substantial minority groups of stockholders.

Service of Process by Mail.

Mr. Hogg addressed the Conference upon the advisability of making provision for effecting service of processs by mail in the small debt courts and avoiding the personal service requirements now prevailing in most of these courts, and the following resolution was adopted:

RESOLVED that the matter of making provision for effecting service of process by mail in the small debt courts be referred to the Dominion Representatives for study and report next year.

(Conclusion of afternoon session)

FIFTH DAY

Saturday, August 22nd, 1942.

Conditional Sales of Certain Chattels.

Mr. Porter presented the proposed sections relating to the conditional sales of chattels affixed to land to the Conference and the following resolution was adopted:

RESOLVED that the report of the New Brunswick Commissioners upon the conditional sales of certain chattels affixed to land and the draft section, as revised, (Appendix P) be adopted, and that the said section be recommended to the Legislatures of the several provinces for enactment.

Appreciation of Hospitality.

The Conference expressed its deep appreciation of the courtesy and hospitality extended to it by the Honourable James H. Clark, K.C., Mr. S. L. Springsteen, K.C., The National Conference of Commissioners on Uniform State Laws, The Essex County Law Association and the Detroit Bar Association, and instructed the Secretary to express the appreciation and thanks of the Conference accordingly.

Nomination Committee Report.

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

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

President's Remarks.

Mr. Barlow addressed the Conference briefly. In expressing the appreciation of the members of the executive in their re-election he warned of the danger of keeping an executive in office for too long a period. He stressed the importance of regular attendance at the meetings which he said, was excellent this year. It was suggested that members not prepared to discharge duties assigned to them should not accept assignments and that copies of reports should be in the hands of the Secretary for distribution at least two months before the annual meeting. Mr. Barlow also expressed the view that Acts adopted by the Conference should have printed with them explanatory notes based upon discussions taking place at Conference meetings and suitable for the use of those responsible for the explanation and support of the uniform Act before a legislative body.

Explanatory Notes.

Mr. Barlow's suggestion with regard to explanatory notes was discussed and the following resolutions were adopted:

RESOLVED that the Commissioners responsible for the preparation of the final draft of each uniform Act as adopted by the Conference should prepare a general statement and explanatory notes suitable for the use of persons responsible for the explanation of the Act before a legislative body, and that such statement and explanatory notes shall be printed with the proceedings following the Act without the necessity of their being placed before the Conference.

RESOLVED that when an Act is referred to Commissioners for drafting or redrafting, they include with the draft or redraft, whether it is intended as an interim draft or a final draft, explanatory notes for the use of the other Commissioners, which should include, as far as practicable, an historical summary of each section and a resume of the discussion relating to each section when the Act or proposal was last before the Conference.

Stenographic Services.

Mr. Barlow referred to the practice of the National Conference on Uniform State Laws in having stenographic services furnished to its members during the period of its meeting and, after discussion, the Secretary was requested to investigate the situation and report next year.

Annual Grants.

The following resolution was 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.

Power of Attorney.

Consideration of the protocol on uniformity of powers of attorney was continued and the following resolution was adopted

RESOLVED that—

(1) this Conference has examined the protocol on uniformity of powers of attorney to be utilized abroad, adopted by the Pan-American Union February 17th, 1940, and referred to the Conference by the Honourable J. O. McLenaghen, K.C., Attorney-General of Manitoba, and recommends,—

(a) the sanction by the Provinces to the signing by Dominion of an agreement with the other American States along the lines of the protocol; and

(b) that the respective Provinces take the requisite steps to implement such sanction; and

(2) that a copy of this resolution be sent to the Attorneys-General of the various Provinces.

(NOTE: Copies of the Resolution were sent to the Attorneys-General of the various provinces by the Secretary on August 28th, 1942.)

Treasurer's Report.

The report of the Treasurer as approved by the auditors, Messrs. Hughes and Thom, was received and adopted.

((*Appendix R*)

(NOTE: As the Treasurer's report presented at the 1941 meeting was not included as an appendix to the Report of the 1941 Proceedings, it is printed with the report presented at the 1942 meeting.)

Presentation by The Honourable Valmore Bienvenue, K.C.

The Honourable Valmore Bienvenue, .C., the Speaker of the Quebec Legislature, presented to the Conference a set of the Revised Statutes of Quebec, 1941, on behalf of the Province of Quebec, and expressed the pleasure and satisfaction of himself

and the other representatives from Quebec at being privileged to take part in the deliberations of the Conference this year. The Honourable Mr. Maitland expressed the thanks of the Conference and paid tribute to the contribution which the Quebec representatives have made to the meeting of the Conference. Mr. Chipman on behalf of the Quebec representatives, replied to Mr. Maitland and promised to report upon the important work of the Conference to his principals, the General Counsel of the Bar of the Province of Quebec.

The Secretary was instructed to express the appreciation of the Conference to the Prime Minister of Quebec.

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 at or near the same place, and 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, in which event the time and place for the meeting shall be in the discretion of the President.

New Work.

The President reminded the Conference of the importance of always having sufficient new work before it and suggested that in order to permit ample consideration of new matters a memorandum of any suggestion for new work should be sent to the Secretary at any time during the year for distribution to the members of the Conference.

The Conference approved the President's suggestion.

(Conclusion of meeting.)

APPENDICES

APPENDIX A

ADDRESS OF THE PRESIDENT, MR. F. H. BARLOW, K.C., DELIVERED AT THE OPENING OF THE 24th ANNUAL MEETING ON AUGUST 18th, 1942, AT THE PRINCE EDWARD HOTEL, WINDSOR.

This is the twenty-fourth Annual Meeting of the Conference of Commissioners on Uniformity in Canada. Since the Conference was formed in 1918 it has met regularly each year with the exception of the year 1940 when a meeting of the Canadian Bar Association was not held.

When the President of the Canadian Bar Association announced that the meeting of the Bar Association was to be cancelled it seemed to me necessary to obtain the opinion of the Commissioners for the Dominion and for the various Provinces as to whether our conference should proceed with its meetings. The Dominion Commissioners and the Commissioners for all the Provinces with the exception of British Columbia and Nova Scotia were in favour of proceeding. All our efforts must be exerted in furthering the cause of the Allies, and it seems to me that this can best be done in these difficult times by making the Administration of Justice function in the most efficient manner. This is one of the main purposes of this conference to which I will refer later.

If I were to attempt a survey of the work of the Conference during the twenty-three meetings which have been held I would take up altogether too much time. It is of interest, however, to consider for a few minutes the purpose for which the Conference was formed, namely, to promote the administration of justice and uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the various provinces. It is well to keep the objects of the Conference so concisely expressed clearly in our minds. It must be noted that it is the object of this Conference to interfere in no way with the form of jurisprudence peculiar to any province and more particularly with the civil code of the province of Quebec. This makes it very clear that there is no intention or thought of interfering with the local laws or the system of jurisprudence peculiar to any one of the Provinces. Subject to this qualifica-

tion our objects as set forth in the constitution adopted by the Conference in 1919 are as follows:

> "The object of the Conference shall be to promote uniformity of law throughout Canada or in such provinces as uniformity may be found practical by such means as may appear suitable to that end and facilitating (1) the meeting of the Commissioners of the different provinces in conference at least once a year (2) the consideration by the Commissioners of those branches of the law with regard to which it is desirable and practical to secure uniformity of provincial legislation, and (3) the preparation by the Commissioners of model statutes to be recommended for adoption by the various provincial legislatures."

Uniformity in all provincial laws is not practical because different conditions in the different provinces call for different local laws, but uniformity in laws of general concern implies generality and uniformity. If Canada is to be a United nation such unity can best be obtained by uniform laws Canada is becoming more and more an industrial country with the result that the people engaged in business and commercial pursuits, many of which are dominion wide, find that uniformity in commercial laws is most helpful. It has often seemed to me that the work of the Conference is not sufficiently appreciated perhaps because we are not good advertisers. Just what can be done to remedy this I do not know. Perhaps if a copy of the Conference proceedings found its way into the hands of every member of the Dominion Parliament and of the Provincial Legislatures, it might serve a useful purpose. Criticism of our work we may expect—constructive criticism we welcome. Anyone who has ever had any experience in drafting statutes knows that the most excellent effort may be most disappointing when the Bill runs the gamet of criticism in the Legislature and the Courts. As Lord Thring once said:—

> "It may be well to warn the draftsman that in his case virtue will, for the most part, be its own reward, and that after all the pains that have been bestowed on the preparation of a bill, every Lycurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity. Moreover, when the Bill has become law, it will have to run the gauntlet of the judicial bench, whose ermined dignitaries delight in pointing out the shortcomings of the legislature in approving such an imperfect performance."

Lawyers as a body are most reactionary. The history of law and of legal institutions shows how gradual has been the growth and how slow any changes have come about. You are probably all familiar with the attempt in England to set up the present County Court system. Prior to 1846 all cases large or small originated in London and most of them were tried there with the result that the members of the legal profession almost without exception resided in London. This was a great inconvenience and expense to litigants. Lord Brougham saw the necessity for remedying this situation by the establishing of a system of local courts for the trial of small civil disputes and in 1828 in his famous Law Reform speech directed a passage to this. In 1830 as Chancellor he introduced in the House of Lords a bill for the establishment of local district courts with a jurisdiction of £100 for debt and £50 in actions for personal injuries. The bill was lost in its third reading through the skillful opposition of Lord Lyndhurst based on two contentions

1. That barristers would be required to leave London and live in the various county towns; and
2. That the appointment of some sixty county court Judges was a matter that should not be left in the hands of the Lord Chancellor.

This was a most reactionary attitude with no thought of the litigants or their welfare. Thus the establishment of the English County Court system was deferred for 16 years until 1846 when Lord Lyndhurst, who was again Lord Chancellor, became a convert to the need of such a measure and introduced a bill closely following Lord Brougham's bill, which eventually became law as the County Courts Act 1846. We, therefore, should not be disappointed if the uniform acts over which the Conference spends so much thought and discussion are not at once adopted by the various legislatures.

At the last meeting of this Conference a model Evidence Act and a model Interpretation Act were completed after several years of study. It is gratifying to know that the Evidence Acts of the Dominion and of six of the Provinces were amended at their recent sessions to permit photographic copies of bank records and documents which have been destroyed, lost or delivered to a customer as well as government records, to be admitted as evidences—thus adopting section 38 of the model Evidence Act. To our Dominion Commissioners who gave so freely of their time in drafting these two model acts should go an expression of our appreciation. It is of interest to note that the American Law

Institute is at present studying a code of evidence which it is intended will supplement all the provisions of the common law and all statutes inconsistent with the code itself. This is a much wider and more comprehensive undertaking than was attempted by this Conference. Professor Morgan of the Harvard Law School, under whose direction the new code of evidence is being prepared, wrote an article outlining some of the highlights of the changes suggested by the code, which article appears in the Canadian Bar Review for April, 1942. I presume that the members of this Conference have already read this article. If there are any who have not done so, I strongly recommend its careful study. I am of the opinion, however, that the drafting of such a new code of evidence is beyond the intended work of this Conference. The work of this Conference, as I understand it, is in the nature of codification. It has nothing to do with whether the law is good or bad from an ethical or political point of view. It is rather a question of correct form. The portions of the law to which this conference has chiefly devoted its attention is commercial and business law which is within the provincial jurisprudence and which in principle is the same in all the provinces where the basis of it is the English system and I am told not materially different from the Province of Quebec and that even there, generally speaking, for the proof of facts concerning commercial matters recourse is had to the English rules of evidence.

We welcome to this meeting of the Conference Mr. W. F. Chipman, K.C., Bâtonnier Général of the Province of Quebec, The Honourable Valmore Bienvenue, K.C., Speaker of the Legislative Assembly of Quebec and Bâtonnier of Quebec Section of the Bar and Mr. Ariste Brossard, representative of the General Council of the Bar of the Province of Quebec. During recent years we have not had the assistance and advice of representatives from the Province of Quebec. I wish our colleagues from the Province of Quebec to be assured that there is nothing sinister in the work of our Conference. We have no wish to interfere in any way with the existing system of jurisprudence in this province or to dictate in any way what laws this province, or in fact any province, should pass. This, I think, is made perfectly clear when it is once again recalled that the objects of the Association are to promote uniformity of legislation throughout Canada so far as it is consistent with the preservation of the basic systems of law in the various provinces.

In conclusion may I extend on behalf of the members of this Conference our felicitations to the Honourable R. L. Maitland, K.C., on his appointment as Attorney General of British Col-

umbia. For some years Mr. Maitland has been a member of this Conference and has contributed of his wide knowledge and experience most helpful suggestions in all matters that have come before the Conference for consideration. We also extend greetings to Mr. W. R. Jackett of the Department of Justice, Ottawa, and Mr. G. S. Rutherford, Legislative Counsel for the Province of Manitoba, who are with us today for the first time and hope that they will appreciate the aims and objects of the Conference and will enjoy the work which we attempt to perform.

APPENDIX B

REPORT OF DOMINION REPRESENTATIVES ON RECIPROCAL ENFORCEMENT OF JUDGMENTS.

The question of reciprocal enforcement of judgments was surveyed in a draft report entitled Reciprocal Enforcement of Judgments, dated July 24, 1936. At the Conference in 1936 it was resolved (1936 Proceedings pp. 14, 15):

"That the draft Report be referred to the Commissioners for Ontario in co-operation with the Dominion representatives with instructions to submit to the next session of the Conference:

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

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

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

A report was submitted in 1937 (1937 Proceedings, pp. 32, 33) and after discussion the following resolution was adopted:

> "Resolved that in the opinion of the Conference the adoption of a policy of international reciprocal enforcement of judgments is desirable and that the Dominion representatives be requested to prepare a report on the nature and scope of the Legislation required to enable the adoption of such a policy, together with a draft Uniform Act thereon."

The Report on Reciprocal Enforcement of Judgments was submitted to the Conference in 1939 (1939 Proceedings, p. 40), and after discussion it was resolved that the Act should be referred to the Commissioners for Alberta for consideration and report at the next Conference.

At the 1941 Conference it was resolved that the Act be referred to the Dominion Representatives for consideration and report at the next meeting of the Conference.

The legislative position with regard to reciprocal enforcement of judgments has not changed since the position was outlined in the draft report on Reciprocal Enforcement of Judgments of July 24, 1936. It may be briefly outlined as follows:

(a) A Model Act, dealing with inter-provincial reciprocal enforcement of judgments was adopted by the Conference in 1924, and amended in 1925. It was adopted by Saskatchewan (1924); British Columbia (1925); Alberta (1925); New Brunswick (1925); Ontario (1929);

(b) With regard to Reciprocal Enforcement of Judgments within the British Empire, Saskatchewan and Alberta proceeded independently and made provision for extending the principle of enforcement of judgments to other parts of His Majesty's dominions. The other provinces have not followed this example.

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

It is considered desirable that the Draft Uniform Act of 1939 be examined by this Conference, and when any necessary amendments have been made that it be committed to the Provinces for approval.

The Act contains machinery not only for inter-provincial reciprocal enforcement of judgments (and would, therefore, if adopted supplant the Model Act of 1924) but also machinery for the reciprocal enforcement of judgments in His Majesty's dominions outside Canada, and for international reciprocal enforcement of judgments with those countries with whom we have an agreement providing for substantial reciprocity.

It is true that the machinery for the reciprocal enforcement of foreign judgments contemplates the existence of agreements between Canada and foreign countries, but it is desirable that the Act be accepted by all the Provinces before an international agreement is negotiated. It would be inadvisable for the Canadian Government to negotiate a treaty with a foreign country which applied to only a few of the provinces, not only because foreign countries are reluctant to deal with parts of a country, but also because of the confusion which would result from such partial application.

The fact that negotiations with foreign countries in war time are difficult, and in many cases, impossible, is therefore not a compelling consideration against adoption of the Act by the provinces, as such adoption is prerequisite to negotiation of an international agreement. If the Act were adopted now by the provinces there would be uniform inter-provincial enforcement of judgments, reciprocal enforcement of judgments in His

Majesty's dominions would be facilitated, and the field would be clear for the reciprocal enforcement of foreign judgments when the international situation warrants the negotiation of agreements to that end.

If, therefore the conference is of the opinion that it would be desirable to proceed this year, it is suggested that we might begin with an examination of Appendix A, in the 1939 Proceedings. Chapters I - II could be reviewed, and the Conference after detailed examination of the draft Uniform Act as set forth in Chapter III could make necessary revisions. It is essential in this case that the Act should fit in with the Quebec Law, and the draft, with suggestions for revision, might well be remitted for consideration by the Quebec Commissioners with a view to considering particularly what changes were necessary in order to fit in with the laws in force in that province. There would indeed be much to be said for committing the matter also to the Commissioner of one of the common law provinces, with a view to a possible conference in the course of the year with the Quebec Commissioners.

J. E. READ
for Dominion Representatives.

Ottawa, July 17th, 1942.

APPENDIX C

REPORT OF MANITOBA COMMISSIONERS ON SUGGESTED AMENDMENT TO THE SALE OF GOODS ACT.

The Conference of Commissioners on Uniformity of Legislation in Canada did not draft a uniform Sale of Goods Act but recommended that the Imperial "Sale of Goods Act 1893" subject to necessary verbal modifications should be adopted in all the Provinces in which the English common law prevails (1919 Proceedings pp. 11 and 50; 1920 Proceedings pp. 7 and 20). This legislation is now in force in all the Provinces of Canada except Quebec. Incidentally we suggest that this Act and the Partnership Act of 1890 might be included in the Table of Model Statutes with an appropriate explanation (1920 Proceedings pp. 20-21).

A memorandum submitted by the Canadian Manufacturers Association (1941 Proceedings p. 42) was referred to the Manitoba Commissioners for report (1941 Proceedings pp. 16 and 24).

The suggestion of the C.M.A. was that the law in the common law Provinces should be brought into line with the law of the Province of Quebec, which gives a Quebec vendor certain rights of revendication and dissolution in connection with the sale of goods.

The proposed amendment involves a new policy and was originated by an interested group. Under the circumstances the Manitoba Commissioners recommend:—

(1) The Conference should first decide on a form for the proposed amendment.

(2) The proposed amendment should then be submitted to the Attorneys General of the common law provinces.

(3) Finally upon the request of at least three Attorneys General the Conference should recommend an amendment to the legislatures of the common law provinces for enactment.

With respect to the form of the proposed amendment the Manitoba Commissioners submit the following report.

Under the law of the Province of Quebec, the unpaid vendor has three recourses: a right of revendication, a right of preference upon the price of the thing sold, and the right to have the sale dissolved. The first two rights are conferred under Articles 1998 et seq. of the Civil Code and the third under Article 1543 of the Code. The text of these Articles is as follows:—

"1998. The unpaid vendor of a thing has two privileged rights:

1. A right to revendicate;
2. A right of preference upon its price.

In the case of insolvent traders these rights must be exercised within thirty days after the delivery."

"1999. The right to revendicate is subject to four conditions.

1. The sale must not have been made on credit.
2. The thing must still be entire and in the same condition.
3. The thing must not have passed into the hands of a third party who has paid for it.
4. It must be exercised within eight days after the delivery; saving the provision concerning insolvent traders contained in the last preceding article."

"1543. In the sale of moveable things the right of dissolution by reason of non-payment of the price can only be exercised while the thing sold remains in the possession of the buyer, without prejudice to the seller's right of revendication as provided in the title of 'privileges and Hypothecs.'

In the case of insolvency such right can only be exercised during the thirty days next after the delivery."

Article 2000: "If the thing be sold pending the proceedings in revendication, or if, when the thing is seized at the suit of a third party, the vendor be within the delay and the thing in the conditions perscribed for revendication, the vendor has a privilege upon the proceeds in preference to all other privileged creditors hereinafter mentioned.

If the thing be still in the same condition but the vendor be no longer within the delay, or has given credit, he has a like privilege upon the proceeds, except as regards the lessor or the pledgee."

It is to be noted that in the case of the buyer's insolvency each of these rights must be exercised within thirty days after the delivery of the goods.

If the vendor has sold on credit, or is no longer within the stipulated delay, he still has a privilege upon the proceeds of the sale of the goods, but ranks after the claim of the lessor and that of the pledgee; this right of preference only applies in the event of a judicial sale of the goods and not in the event of a private sale made in the ordinary course.

According to Quebec authorities, it is important to analyse the juridical difference between the right of revendication granted by Article 1999 and th right of dissolution granted by Article 1543.

The right of revendication is a right to obtain physical repossession and the test of its exercise within the stipulated delay of thirty days must be whether the vendor has in fact obtained or applied to the Courts for physical repossession. While revendication involves physical repossession in fact or in law within the thirty days, the right of dissolution is of a different nature. The important step is the exercise within the thirty days of the vendor's right to have the contract cancelled. His physical repossession of the goods is simply the corollary to the cancellation of the sale. What the vendor exercises under Article 1543 is "the right of dissolution of the contract, not the right to obtain physical repossession of the goods".

The following is a quotation from In re Rosenzweig, Goldfine's Claim (1921), 2 C.B.R. 255, at p. 256, 3 Can. Abr. This passage is quoted In re Commercial Textiles Limited, 21 C.B.R. 394:—

> "The unpaid vendor of a moveable thing may in our law exercise three privileges: (1) The right to revendicate the thing sold within eight days of delivery, or thirty days, in case of bankruptcy (Art. 1998, Civil Code); (2) The right to be privileged on the price (Art. 1998, Civil Code); (3) The right to ask the rescission of the sale if the goods are still in the possession of the debtor. This right must be exercised, in case of bankruptcy, within thirty days of delivery. These three privileged rights of the seller are distinct from each other; only the last of these rights is involved in this case."

The following is a quotation from page 395, 21 C.B.F:—

> "Now an unpaid vendor in the case of a sale of goods in the Province of Quebec has the right to have dissolution of the sale under Article 1543 by reason of non-payment of the purchase price while the Article remained in the possession of the buyer and the buyer was solvent. In the case of insolvency this right must be exercised within thirty days of delivery of the goods. He also has the right of revendication under certain conditions under Articles 1998 and 1999."

The above will indicate the rights and privileges given to an unpaid vendor of goods under the Quebec Civil Code.

When goods are brought into Ontario these rights are lost unless the vendor by filing a caution under "The Conditional Sales Act" R.S.O. 1937, cap. 182, sec. 10 preserves his rights.

The following is the wording for the proposed amendment suggested by the Manitoba Commissioners:

RECISSION OF SALE

(1) In this section

(a) "buyer" shall not include a wage earner as defined in the "Bankruptcy Act" (Canada) or a person engaged solely in farming or the tillage of the soil.

(b) "trustee" includes a custodian or a trustee appointed pursuant to the provisions of the "Bankruptcy Act" and any person to whom a buyer has made an assignment for the benefit of his creditors.

(2) Subject to the provisions of this Act, when the buyer of goods or a trustee, agent or bailee for the buyer has obtained delivery of the goods, the unpaid seller, as security for the purchase price, may rescind the the sale and resume possession of the goods, provided:—

(a) the seller within 30 days of the time when the buyer has obtained delivery of the goods has demanded in writing from the buyer or from a trustee, agent or bailee for the buyer possession of the goods, and

(b) that the goods are in the same condition and remain in the possession of the buyer or a trustee, agent or bailee for the buyer, and that the title thereto or a document of title thereto, or the right to the possession thereof has not been lawfully transferred to any person as buyer or owner of the goods, who takes the goods or document of title in good faith and for valuable consideration, and if the transfer was by way of mortgage or pledge or other disposition for value or if the goods were seized by a sheriff or bailiff under a writ of execution, the seller's right of rescinding the sale and resuming possession of the goods shall only be exercised subject to the rights of the transferee, sheriff or bailiff.

(3) within————days of the repossession of the goods by the unpaid seller, the buyer or a

> trustee, agent or bailee for the buyer upon payment or tender to the unpaid seller of the purchase price or any balance owing shall have the right to obtain redelivery of the goods.

The question will arise as to whether the suggested amendment amounts to insolvency legislation by providing for a method of distribution in conflict with that laid down by the "Bankruptcy Act." The Quebec legislation has apparently been held valid because the rights and privileges given to the seller by the civil code are considered a term of the contract made between the seller and the buyer.

The approval of the proposed amendment will raise the question as to whether the Conditional Sales Acts of Ontario, Saskatchewan and Nova Scotia should be amended by repealing the requirement for registration of a caution as a condition of the seller exercising his privilege of rescission.

Respectfully submitted,

W. P. FILLMORE,
G. S. RUTHERFORD,
R. M. FISHER.
Manitoba Commissioners.

Winnipeg, July 7th, 1942.

APPENDIX D

REPORT OF SASKATCHEWAN COMMISSIONERS ON LIBEL AND SLANDER

In accordance with the resolutions passed at the last meeting of the Conference your Commissioners beg to report as follows:

1. Use of Portraits in Advertisements

Your Commissioners were instructed to incorporate in the draft uniform Libel and Slander Act 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. (1941 Proceedings, page 21).

The following draft provision is therefore presented for the consideration of the Conference:

> (1) No person shall in any advertisement relating to his business use the portrait or picture of a living person without having first obtained his consent or, if he is a minor, the consent of his parents or parent or guardian.
>
> (2) A person who violates subsection 1 shall be guilty of an offence and liable on summary conviction, in the case of a natural person, to a fine of not less than $ nor more than $ and in default of payment to imprisonment for a term of not more than sixty days, and in the case of a body corporate, to a fine of not less than $ nor more than $.

It might be advisable to add a provision similar to section 49 of the Saskatchewan Interpretation Act, which reads as follows:

> "The imposition of a penalty shall not relieve any person from liability to answer for special damages to the person injured."

II. Defamatory Statements in Radio Broadcasts.

Your Commissioners were also 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".

(a) *Libel or Slander?*

A libel for which an action will lie is a false defamatory statement, 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. Halsbury (Hailsham Edition) Vol. XX, page 384.

A slander for which an action will lie is a false defamatory statement, expressed or conveyed by spoken words, sounds, signs, gestures, actions, or in some form which is not permanent, published of and concerning the plaintiff without lawful justification or excuse, whereby the plaintiff has suffered special damage (which he must allege and prove), or which is a defamatory statement actionable *per se.* Halsbury (Hailsham Edition) Vol. XX, page 386.

While those two definitions are authoritative statements of the law, it should nevertheless be noted that the cases from which the definitions are developed have no specific bearing on defamation by radio.

The main legal result based on the distinction between libel and slander appears to be that in the case of libel there is a presumption that damage must result from publication, while in the case of slander there is no such presumption and actual damage must be proved except where the statement is defamatory *per se.*

However, some questions at once present themselves. Should defamatory words which are read from a prepared statement be designated as libel and should extemporaneous utterances be designated as slander? And following on these we come to the main questions—Should all radio defamation be unified, whether delivered extemporaneously or from a written statement? If unified, should it be designated as libel or slander?

There has been and will no doubt continue to be difference of opinion in the answers to these questions.

The dissemination of the human voice by radio is a new phenomenon within the last twenty-five years and presents new facts which do not bear any great resemblance to any on which the law was pronounced before the advent of the radio. In con-

sidering the question with regard to these new facts there are no underlying principles to use as a test.

In some old English cases it has been held that if a person reads a defamatory statement, knowing it to be defamatory, to a person other than the person defamed, there is publication of a libel. Anon (1606) 5 Co. Rep. 125a; 1 Saund. 132n; John Lamb's Case (1610) 9 Co. Rep. 60; Forrester v. Tyrell (1893) 9 T. L. R. 257 (C.A.); Gatley p. 93.

There appear to be no English or Canadian cases dealing directly with the matter of defamation by radio.

In Meldrum v. Australian Broadcasting Corporation (1932) Victorian L. R. 425 it was held that the reading of defamatory matter from a written document over the radio is the publication of a slander, on the ground that the distinction between libel and slander depends on the mode of publication.

In Sorensen v. Wood (1932) 123 Neb. 348 and other more recent cases in the United States it has been held that defamatory matter read over the radio from a written document is libel. This leaves an implication that in the absence of a written document the offence would be slander.

We will not attempt to analyze the decision in the Meldrum case except to say that it is not accepted by text book writers and other writers as a conclusive and final word on the subject. This is easily understood when we look at the differences of legal opinion on other points in the law of defamation. For example take the case of Osborne v. Thos. Boulter & Son, a decision of the Court of Appeal in England reported in 1930 2 K.B. 226. The defendant dictated defamatory matter to his typist. The occasion on which the letter was written was one which the law regards as privileged, a discussion of the quality of goods sold by one party to another. Was the privilege lost when the party who dictated the letter thereby communicated the defamatory matter to the typist? The Court of Appeal, reversing Horridge, J. at trial, was unanimously of opinion that the privilege was not thereby destroyed. But we mention this case particularly because the judges disagreed on one point which was perhaps not very material to the case but which is interesting in our discussion. Scrutton, L. J. said that what Mr. Boulter dictated to the typist "appears to be a slander." Slesser, J. says "there is considerable doubt whether the publication was a slander or a libel". Greer, J. is inclined to think "that the dictation to the typist of the letter in question was a libel".

The following comment in the same case is suggestive of the change there may be in law by such a fundamental advance in physical science as the development of the radio. In discussing Pullman v. Hill and Company [1891] 1 Q.B. 524 (C. A. Lord Esher, Kay, L. J. and Lopes, L. J.)—a decision that the dictation of a defamatory statement to a stenographer was not a privileged occasion, Greer, J. said:

> "Where a question arises in 1930 as regards matters which took place in 1929 the inference to be drawn by a judge as to what are the reasonable methods of conducting business is not the same as that which had to be decided in 1890."

The distinction which has been built up between libel and slander has been severely criticized from time to time. Lowe, J. (Meldrum v. Australian Broadcasting Corporation [1932] Victorian L.R. 425) puts the situation very well when he says:

> "In the first place the distinction between libel and slander though now well established, is said to be due to historical accident and the whole law of defamation to be 'open to criticism for its doubts and difficulties, its meaningless and grotesque anomalies' and to be 'as a whole absurd in theory and very often mischievous in its practical operations'."

After discussing the reason for the distinction between libel and slander, Gatley, at page 5, says:

> "This reason for the distinction between libel and slander has, however, been completely destroyed by the modern system of broadcasting by which a slander uttered by one person may be spread over the whole world".

"It has been argued that writing shows more deliberate malignity, but the action is not maintainable upon the ground of the malignity, but for the damage sustained." Sir James Mansfield, C. J. in Thorley v. Lord Kerry (1812), 4 Taunt, at page 364.

When one considers the vast public which may be reached by the radio and also the well known fact that what is said over the radio is deliberate and considered—if it is not so the speaker has forgotten himself and deserted from the rules governing his performance—one must come to the conclusion that the consequences which follow from the publication of a libel are more appropriate than those which follow from the publication of a slander.

After a careful study of the law and available text books and articles, your Commissioners reach the conclusion that, with respect to defamatory statements broadcast from written matter, the doctrine of visibility should be discarded and that all such statements should be treated as libel; and further, that the technicalities which cloud the general law relating to the distinction between libel and slander should not be allowed to complicate the law of defamation by radio and therefore that all defamation by radio should be unified and treated as libel.

Another question presents itself. Is this a matter which should be dealt with by the Conference? There is no statute law and there is little case law with respect to defamation by radio. Should the law be allowed to grow up, perhaps in an illogical and haphazard way, as indeed the general law of libel and slander has grown up, or should the Conference in drafting a uniform Libel and Slander Act take the opportunity which presents itself and endeavour to place the matter on a solid basis and so prevent possible confusion?

The Conference has discussed on previous occasions the question as to how far it is the duty of the Conference to recommend entirely new law. That cannot be avoidable altogether. Indeed our very existence depends upon the fact of divergence in the legislation of the different provinces. It appears to your Commissioners that in this case the Conference should not delay and thus invite possible confusion but should act now and so avoid what may become a more difficult situation at some future time. In our uniform Commorientes Act, which has already been adopted in seven provinces, we have a precedent for the recommendation of new law, and a more recent precedent is the Evidence Act provision governing the admissibility of photographic films, approved by the Conference last year, which has already been adopted by the Parliament of Canada and the Legislatures of several provinces.

(b) *Broadcasting Stations—Privilege*

This question relates closely to the liability of a person uttering a defamatory statement through the facilities of the station, and the answer therefore depends on the decision of the Conference with respect to that matter, that is, whether such person is guilty of libel or slander.

The radio has undoubtedly taken a very important place in the life of the nation, perhaps as important as the newspaper. It is not desirable therefore that owners of broadcasting facilities,

with their vast power for good or evil, should have the same immunity as and no more responsibility than they would have if defamatory statements made over the radio were merely slander and the owner of the broadcasting facilities were merely lending an instrument which the slanderer uses for increasing his vocal capacity. On the other hand, if radio defamation is libel, the owners of broadcasting facilities should have such limited protection as will enable them to give the public reasonable service.

Your Commissioners are of opinion that the privileges enjoyed by the publishers of newspapers could be appropriately extended to owners of broadcasting facilities and that they should be permitted to enjoy such privileges.

(c) *Canadian Broadcasting Corporation—Agent or Servant of the Crown—Liabilities*

For convenience this portion of the resolution is repeated:

> "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."

Your Commissioners do not know of any bodies in Canada which can be said to be similar to the Canadian Broadcasting Corporation, as emanations of the Crown, and take it that the question to be dealt with here is whether the Canadian Broadcasting Corporation should be subject to any special legislation affecting other owners of broadcasting facilities. It is also assumed that the word "emanation" simply means, "agent or servant". International Railway Co., v. Niagara Parks Commission (P.C.) [1941] 3 D.L.R. 385, 2 W.W.R. 338.

The Canadian Broadcasting Corporation is an agent of the Crown. Recorder's Court v. C.B.C. [1941] 2 D.L.R. 551.

"It seems pretty definitely established that the Crown or an emanation of the Crown cannot be successfully sued in tort except possibly in very exceptional circumstances". Per McTague, J. A. in Gooderham & Worts v. Canadian Broadcasting Corporation, [1939] 4 D.L.R. 241 at page 244.

In the opinion of your Commissioners it is unnecessary and inadvisable to express any opinion as to whether the Canadian Broadcasting Corporation should be subject to any special legislation with regard to the law pertaining to libel and slander, as

this appears to be a matter which only the Parliament of Canada can deal with.

III. Amendment of the Law in England

With regard to the final paragraph of their report last year (1941 Proceedings, page 99) your Commissioners beg to remind the Conference that the situation in England respecting proposed amendments to the law of libel and slander should not be overlooked.

Respectfully submitted,

D. J. Thom,
J. P. Runciman.

Regina, July 30, 1942.

APPENDIX E

REPORT OF SASKATCHEWAN COMMISSIONERS ON UNFAIR NEWSPAPER REPORTS RESPECTING CERTAIN PERSONS.

The following is a copy of a letter addressed to the Lieutenant Governor in Council of Ontario by an Ontario barrister. A copy of the letter was forwarded by the writer to the President of the Conference:

"Permit me to draw to the attention of the Government of the Province of Ontario the threat to our Institutions inherent in the falsification by a section of the Press of news about persons in elected positions.

"Democracy is based on the theory that the public, informed by the Press, will reach sound conclusions in matters of government. Obviously the formula will not work if the public mind is confused by false reports.

"The Press is subject to the ordinary laws of the land, e.g. the law of libel. It is also subject to the general principle that no person may be permitted to injure another.

"I suggest that consideration be given to the enactment at the forthcoming session of the Provincial Legislature of legislation along the following lines:

'Every person who is a member of a Provincial Legislature or of a Municipal Council or other elected governing body, within the jurisdiction of the Province of Ontario, and every person lawfully nominated for election to such Legislature, or Council, or governing body who is injured by an unfair report in any newspaper, of his words spoken, or acts done, while in public office or while a candidate therefor, shall have an action for damages against the proprietor and publisher of such newspaper triable before a jury in any court of competent jurisdiction'.

"Newspapers which are fair and truthful in their reports will not be affected by the legislation. Those newspapers which are unfair can have no right to complain against a law which is operative only when it can be demonstrated to judge and jury that injury has been caused to a person in public office by an unfair report."

Your Commissioners are of opinion that a uniform Libel and Slander Act is not a suitable place for a provision respecting newspaper reports which, even though unfair and damaging, are not libellous.

Respectfully submitted,

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

Regina, July 30, 1942.

APPENDIX F

EXTRACT FROM A LETTER FROM MR. R. M. FISHER, K.C., TO MR. E. H. SILK, K.C., DATED APRIL 2nd, 1942; *RE* UNIFORM COMMORIENTES ACT

"The Manitoba Legislature passed the Uniform Commorientes Act this year. While the Act was in Committee Mr. Isaac Pitblado, K.C., suggested that he thought that the drafting of subsection 3 of section 2 might be improved. He suggested that in the sixth line the word 'had' be inserted before the word 'died' and in the seventh line the word 'died' be inserted between the words 'or' and 'in', and the same changes would be made in the tenth line.

The Committee felt that they would not change our Act, as it would disturb the technical uniformity, but the Attorney-General suggested to me that Mr. Pitblado's suggestions might be submitted to the Conference, and if the Conference was agreeable, the suggestions might be adopted."

APPENDIX G

MEMORANDUM *RE* INTERPRETATION ACT SECTIONS.

The following suggestions were received by the Secretary with regard to Proposed Alterations.

1. Alter section 10 to read as follows:

> The marginal notes and headings in the body of an Act and the references to former enactments *and reference notes to decided cases, other Acts and other sections of the same Act,* shall form no part of the Act but shall be deemed to be inserted for convenience of reference only.

This suggestion is made because some of the Provinces are now putting into their statutes reference notes to decided cases, or to other statutes or to other sections of the statute. (Submitted by Manitoba).

2. Alter section 18 (2) to read as follows:

> A citation of or reference to an Act shall be deemed to be a citation of or reference to the Act as amended *from time to time.*

This suggestion is made because it is contended that the words "as amended" include only amendments up to the date of the passing of the Act in which the citation or reference appears, and do not include subsequent amendments on the ground that a Legislature could not intend to approve in advance of subsequent amendments which might be made by another jurisdiction. It is contended that subsection 1 of section 5 of the draft uniform Act sections is not an answer to the criticism. (Submitted by Manitoba).

3. Section 20, clause (s)—the definition should read:

> "Writing", "written" or any term of like import includes words printed, painted, engraved, lithographed, photographed or represented or reproduced by any other mode in a visible form.

This was submitted by the British Columbia Commissioners as their understanding of the definition agreed upon at the 1941 meeting. They think, however, that both definitions mean the same thing.

4. Add a section:

> The provisions of any Act shall not affect litigation pending at the time of its enactment unless it is so expressly stated therein.

This provision is the same as section 11 of the Manitoba Interpretation Act and is submitted by the Manitoba Commissioners.

5. Add a section:

> Where any statute or any law in force provides that any proceeding, matter or thing shall be done by or before a judge, the term "judge" shall in all such cases mean a judge of the court mentioned or referred to in the statute and any proceeding, matter or thing, when properly commenced before a judge may be continued or completed before any other judge of the same court.

This provision is similar to section 32 of the Manitoba Interpretation Act. It is submitted by the Manitoba commissioners.

6. Provide that—

> "unless otherwise specified all statutes should be deemed to come into force on assent".

This proposal is made by the Manitoba commissioners with a view to eliminating "the usual clause in the great majority of cases".

E. H. SILK,
Secretary.

Toronto, June 1st, 1942.

APPENDIX H

MEMORANDUM *RE* DRAFT UNIFORM EVIDENCE ACT.

The following suggestions were received by the Secretary but were not of a nature which prevented the automatic adoption of the draft uniform Evidence Act by the Conference pursuant to the resolution appearing on page 22 of the 1941 proceedings. Certain changes in the Act which corrected typographical errors or were of a minor nature, were incorporated into the Act as printed in the 1941 proceedings.

1. *Section 2*:

   Delete the words "unless the context otherwise requires" in line 1. The Manitoba commissioners suggest this should be done because of the provisions of subsection 1 of section 2 of the uniform Interpretation Act sections.

2. *Section 19*:

   The British Columbia commissioners suggest that the word "solemn" in the third line should be deleted.

3. *Section 20, subsection 3*:

   The British Columbia commissioners suggest that the word "where" in the second line should be changed to "whereon" as it appears in the former draft.

4. *Section 38, subsection 3—alter to read*:

   (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 facts, either orally or by affidavit sworn in any part of Canada before any notary public.

   The New Brunswick commissioners suggest that this redrafting of the section is desirable because while one of the conditions to be proven in subsection 2 is that the film was taken in order to keep a permanent record thereof, the matters to be proven as itemized in subsection 3, as adopted do not include proof that the film was taken in order to keep a permanent record.

5. *Section 38—Insert a subsection 3a as follows:*

(3a) Such affidavit shall be receivable in evidence in any proceeding in any court.

The New Brunswick commissioners state "The affidavit in proof will not be entitled in any court or cause and will probably contain proof with respect to many other documents filmed at the same time. There is some question as to whether the affidavit contemplated will be receivable in evidence in the absence of a special statutory provision."

6. *Section 41, subsection 2:*

The British Columbia commissioners suggest the word "and" at the commencement of line 8 should be deleted and a new sentence commenced.

7. The British Columbia commissioners suggest that—"an Act as finally adopted by the Conference does not have any references at the end of each section and . . . these should be eliminated". See however, resolution, 1941 Proceedings, foot of page 20.

8. The British Columbia commissioners suggest several alterations in the side notes. These were studied by the Dominion representatives and the secretary, and some of the suggested alterations are now included in the printed Act appearing in the 1941 Proceedings.

E. H. SILK,
Secretary.

APPENDIX I

MEMORANDUM AND LETTERS *RE* SECTION 38 OF THE UNIFORM EVIDENCE ACT

THE CANADIAN LIFE INSURANCE OFFICERS ASSOCIATION

MEMORANDUM

TO THE COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

RE: UNIFORM EVIDENCE ACT—PROOF OF RECORDS BY PHOTOGRAPHIC REPRODUCTIONS.

1. At your 1941 Conference the draft Uniform Evidence Act appearing as Appendix J to the Proceedings of that Conference was adopted and recommended for enactment by the Parliament of Canada and the Legislatures of the several Provinces. One of the sections of this Uniform Act relates to the proof of bank and Government records by photographic reproductions. It reads as follows:

"38. (1) In this section

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

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

(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 photograhed 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.

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

2 The above provision was adopted at the ensuing sessions of the Legislatures of the Provinces of British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island.

3 A Bill to amend the Canada Evidence Act was introduced in the House of Commons at the recent session of Parliament in substantially the same form as the above-quoted Section 38 of the draft Uniform Act. Representations were made to the Dominion authorities suggesting the extension of the section to include railway companies, telephone companies, life insurance companies, and a number of other types of organizations.

4. In this Association's representations to the Dominion authorities (contained in a letter from the General Counsel to the Minister of Justice) it was pointed out that:

(a) The general practice of life insurance companies is to keep indefinitely numerous kinds of documents, e.g., policy records, cancelled cheques, discharges, etc. The

storage space required to keep these records is very great. Much of this space could be saved by the use of microphotographic films, and at the same time the number of steel filing cabinets required for storage could be cut down and a great deal of waste paper released for salvage.

(b) Some life insurance companies already use microphotographic films to some extent but, under existing laws, it is very difficult for a company to determine which records it is safe to destroy. For instance, in the case of lapsed policies it is never prudent to destroy policy records. A company may be called upon to establish at some indefinite date in the future the fact that the policy actually lapsed. Even if the insured has died, his representative may contest the lapse.

5. The following is the text of the Dominion provision as finally passed by Parliament:

"29A. (1) In this section

(a) 'corporation' means the Bank of Canada, every bank to which *The Bank Act* applies or to which the *Quebec Savings Banks Act* applies, and each and every of the following carrying on business in Canada, namely, every railway, express, telegraph and telephone company (except a street railway and tramway company), insurance company or society, trust company and loan company (except a company subject to the provisions of Part II of *The Small Loans Act, 1939*);

(b) 'government' means the government of Canada or of any province of Canada and includes any department, commission, board or branch of any such government;

(c) 'photographic film' includes any photographic plate, microphotographic film and photostatic negative.

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

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

(b) any bill of exchange, promissory note, cheque, receipt, instrument or document held by any govern-

ment or corporation 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 government or corporation;

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, instrument or document, plan, book or paper was in the custody or control of the government or corporation, 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 government or corporation, 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 government or corporation, 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.

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

6. The Association now respectfully suggests that the Commissioners on Uniformity of Legislation in Canada should recommend that the Provinces which have already adopted Section 38 of the Uniform Act set out in paragraph 1 above amend that provision to include the changes made by the Dominion and that the other Provinces should be asked to adopt the wording of the Dominion section.

R. LEIGHTON FOSTER,
General Counsel.

August 10, 1942.

CANADIAN PACIFIC RAILWAY COMPANY
Law Department

MONTREAL, August 10, 1942.

Eric Silk, Esq., K.C.,
Queen's Park,
Toronto, Ontario.

Dear Sir:

My attention has been drawn to the fact that a Conference of Commissioners on the Uniformity of Laws is to take place this year at Windsor on August 18th, and that you are Secretary of that Conference. I understand also that one of the matters which is to be discussed at the Conference involves a proposal to amend the Ontario Evidence Act along the lines of the recent amendment to the Dominion Evidence Act which provides that certain corporations including incorporated banks and railway, express and telegraph companies, may prove documents and records by means of micro-film in lieu of the original documents. While this Company has not as yet made any attempt to assess the possible savings to it of the use of micro-film, it is obvious that they would be very considerable. In any case the Company could not avail itself of this practice until the laws of all the Provinces are in conformity with that of the Dominion, and I feel that it would be exceedingly desirable to pave the way for such savings by having the law made uniform throughout Canada.

Yours truly,

G. A. WALKER,
General Solicitor.

CANADIAN NATIONAL RAILWAYS
CANADIAN NATIONAL STEAMSHIPS
TRANS-CANADA AIRLINES
Law Department

MONTREAL, August 10, 1942.

Eric Silk, Esq,. K.C.,
Parliament Buildings,
Queen's Park,
Toronto, Ont.

Dear Sir: *The Evidence Acts.*

Referring to Dominion legislation recently passed amending the Canada Evidence Act and with reference particularly to the admissibility of prints from photographic films, I understand

that the Conference of Commissioners on Uniformity of Laws will meet in Windsor, Ontario, on August 18th, and I beg to suggest that the recent legislation passed in the Provinces dealing with the same subject matter might receive consideration by the Conference with a view to having the Conference recommend amendments to the Provincial Acts along the lines of the Dominion enactment.

We are particularly interested in having railways, express, and telegraph companies included in the various Provincial Acts.

I am advised by our Comptroller that such an amendment would be of very great value to the Railways and would result in a great saving of space now used to file various Railway documents and papers. We are not able to give you an estimate of what space might be saved as we have not heretofore studied how much space might be saved if we had the right to make photographic prints of the various classes of documents we are now compelled to preserve but I am advised that at the present time a great deal of storage space is required for our documents and that the supplying of such space involves very considerable expense to the Railways more particularly when vault space is required for old contracts such as bills of lading, etc.

Yours truly,

R. H. M. TEMPLE,
General Counsel.

BEULLAC, MUNNOCH & VENNE
Barristers

MONTREAL, August 13th, 1942.

Conference of Commissioners on Uniformity of Laws,
Canadian Bar Association,
c/o Mr. Eric Silk, K.C.,
Legislative Counsel,
Parliament Buildings,
Toronto, Ont.

Dear Sirs,

I beg to convey my concurrence in the efforts made or to be made to have all provinces of Canada follow on the lines of the Dominion "Evidence Act".

Believe me, dear Sirs,

Yours sincerely,

PIERRE BEULLAC.

THE CANADIAN BANKERS' ASSOCIATION

MONTREAL, August 13th, 1942.

Eric Silk, Esq., K.C.,
Secretary,
Conference of Commissioners on Uniformity of Laws,
Queen's Park, Toronto.

Dear Mr. Silk: *The Evidence Act.*

This is just a line to assure you that so far as the banks are concerned there will be no objection if section 38 of the Draft Act as originally prepared by the Conference and adopted by all of the provinces except Alberta, Saskatchewan and Quebec, were to be extended by the Conference as finally adopted by Parliament and so recommended to the provinces.

May I express my appreciation of your kind co-operation and that of the other members of the Conference in connection with the preparation of the draft and its eventual, almost general, enactment throughout Canada.

Yours Sincerely,

A. W. ROGERS,
Secretary.

THE DOMINION MORTGAGE and INVESTMENTS ASSOCIATION

TORONTO, 2, CANADA, August 14th, 1942.

F. H. Barlow, Esq., K.C.,
President, Conference of Commissioners on Uniformity of Legislation in Canada,
Osgoode Hall,
Toronto, Ontario.

Dear Sir:

You will recall that the 1941 Conference of Commissioners on Uniformity of Legislation in Canada adopted and recommended for enactment by the Parliament of Canada and the Legislatures of the Provinces, a Uniform Evidence Act. One of the sections of the Act provided for proof of bank and government records by photographic reproduction and this provision was adopted at the subsequent sessions of the Legislatures of Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba and British Columbia.

At the recent session of the Parliament of Canada an amendment to the Canada Evidence Act was introduced in substantially the same form as Section 38 of the draft Uniform Evidence Act which appears as Appendix J to the proceedings of your 1941 conference. As a result of representations made to the Dominion authorities the application of the amendment was broadened to include life insurance companies, trust and loan companies, and railway, express, telegraph and telephone companies.

The provision in the Canada Evidence Act in regard to proof of corporation and government records by photographic reproduction is now as follows:

(For text of section see memorandum from The Canadian Life Insurance Officers Association, *supra.*)

Membership in this Association includes the principal life insurance, trust and loan companies operating in the Dominion. We understand that representations on behalf of the life insurance companies are being made to you by the Canadian Life Insurance Officers Association and we should like to bring to your attention the interest of the trust and loan companies in this matter.

In the ordinary course of their business the trust and loan companies have to keep indefinitely numerous kinds of documents relating to estates, trusts, mortgages, savings deposits, stock transfers, etc. Keeping these records requires considerable storage space, a great deal of which could be saved by the use of microphotographic films. In addition, there would be a saving in the number of steel filing cabinets required for storage and wastepaper would be released for salvage.

It is to be hoped that the Provincial Legislatures at their next sessions will follow the lead given by the Dominion. This Association respectfully suggests that the 1942 Conference of the Commissioners on Uniformity of Legislation in Canada should recommend that the provinces amend their respective Evidence Acts to bring them into line with the recent amendment to the Canada Evidence Act quoted above.

Yours very truly.

NORMAN A. WHITE,
Assistant Secretary.

TRUST COMPANIES ASSOCIATION OF ONTARIO

TORONTO, Ontario, August 15th, 1942.

F. H. Barlow, Esq., K.C.,
President, Conference of Commissioners on Uniformity of Legislation in Canada,
Osgoode Hall,
Toronto, Ontario.

Dear Sir:

It has been brought to our notice that the Commissioners on Uniformity of Legislation in Canada will be holding their 1942 conference in the near future and we should like to direct your attention to the situation in regard to the Uniform Evidence Act which was adopted and recommended for enactment by your 1941 conference.

Section 38 of the draft Uniform Evidence Act which appears as Appendix J to the proceedings of your 1941 conference provided for proof of bank and government records by photographic reproduction. Subsequently this provision was incorporated in the Evidence Acts of Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Manitoba and British Columbia. In addition, a bill was introduced at the recent session of the Parliament of Canada to make a similar amendment to the Canada Evidence Act. However, as a result of representations to the Dominion authorities it was decided to extend the application of the section dealing with proof of records by photographic reproduction to include life insurance companies, trust and loan companies, railway express, telegraph and telephone companies.

You will realize that extension of this section in the Canada Evidence Act to include trust companies will not be of much value unless the provincial legislatures at their next sessions also provide for proof of trust company records by photographic reproduction. The trust company business requires that voluminous records be kept for an indefinite period of time. For instance, documents relating to estates, trusts, mortgages, savings deposits, stock transfers, etc., have to be kept indefinitely This requires a great deal of space and the use of photographic films would mean a substantial saving. Furthermore, a smaller number of steel filing cabinets would be required for storage.

It is our hope that those provincial legislatures which have adopted section 38 of the draft Uniform Evidence Act appearing

as Appendix J to the proceedings of your 1941 conference will now extend the application of this section to trust companies. We respectfully suggest that your 1942 conference should recommend such course of action and that those provinces which have not yet enacted section 38 of the Uniform Evidence Act should be urged to adopt the provision as extended by the 1942 amendment to the Canada Evidence Act.

Yours very truly,

C. S. HAMILTON,
President.

APPENDIX J

RULES OF DRAFTING

FOREWORD

At the Twenty-third Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada held at Toronto in September, 1941, two of the Commissioners, J. P. Runciman, Legislative Counsel for Saskatchewan, and E. H. Silk, K.C., Legislative Counsel for Ontario, were appointed a committee of two to prepare a revision of the rules of drafting which had been adopted by the Conference in 1919 and to report thereon at the next meeting.

The report of the committee with three appendices was presented at the 1942 meeting of the Conference and the following resolution was adopted :

RESOLVED that—

(1) the report of Messrs. Runciman and Silk on rules of drafting, including the appendices, as revised by the Conference, be adopted by the Conference;

(2) the rules and the observations and suggestions comprising appendices I and II to the report be observed in the preparation of uniform Acts by the Conference; and

(3) in addition to printing the report and all appendices thereto in the annual volume of Conference proceedings, the Secretary be instructed to have 200 additional copies published in pamphlet form for distribution to law libraries and persons engaged in the drafting of legislation and regulations.

CONTENTS

(References are to numbering at the foot of the pages)

OBSERVATIONS AND SUGGESTIONS ON THE DRAFTING OF LEGISLATION. (Appendix II to Report).

REPORT DATED JULY 8th, 1919, OF THE COMMITTEE ON LEGISLATIVE DRAFTING APPOINTED BY THE CONFERENCE IN SEPTEMBER, 1918. (Appendix III to Report).

REPORT OF MESSRS. RUNCIMAN AND SILK ON RULES OF DRAFTING.

At the 1941 meeting of the Conference the undersigned commissioners were 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".

We respectfully commend a study of the report of the British Columbia commissioners appearing in the 1919 Proceedings. That report is not accurately described by the Conference as "Rules of Drafting" but is rather in the nature of suggestions as to the various principles which are to be followed in drafting uniform statutes. Each principle enunciated is placed before the reader by the use of extracts from texts in which the proposition is discussed, sometimes at length. The text books from which the extracts were taken are listed at the conclusion of the 1919 report. A more recent publication is Sir Alison Russell's *"Legislative Drafting and Forms"*, 4th Ed. 1938.

We are of opinion, however, and respectfully suggest that in the interests of uniform drafting this Conference requires a set of rules, concisely stated and numbered for convenience, embodying recognized principles of good drafting and principles of mechanics which are customarily followed by this Conference. Accordingly we have prepared and submit a draft set of rules embodying such principles, which we have endeavoured to set forth in concise form and have numbered for convenience.

Where any principle enunciated in the texts and other authorities has been found to vary and where the difference in view has appeared to be one of taste rather than of fundamental importance, we have chosen the view which seemed best suited to the needs of the Conference and most consistent with the precedents of the Conference. For that reason the rules submitted should be regarded as rules suitable for adoption by the Conference rather than a codification of all existing undisputed rules of good draftsmanship.

These rules are intended to embody general principles. We have endeavoured to express each rule as a general principle, avoiding such refinements of and exceptions to the rule as could be omitted without rendering the statement of the general principle inaccurate. Experience may indicate that it is desir-

able for the Conference to amend the draft submitted so as to recognize certain refinements or exceptions. The draft rules form Appendix I to this report.

In selecting the principles which should be embodied in these rules, several principles which should be followed in legislative drafting, but which on account of their nature are unsuitable to be incorporated as rules, were considered. Because it would be well in the drafting of uniform Acts to pay heed to many of these principles we have prepared a separate memorandum headed "Observations and Suggestions on Legislative Drafting". It is attached to this report as Appendix II.

For convenience a copy of the report of the Committee on Legislative Drafting made to the Conference in 1919 is attached as Appendix III.

J. P. RUNCIMAN,
E. H. SILK.

June 30, 1942.

RULES OF DRAFTING

designed particularly for
The Conference of Commissioners on Uniformity of Legislation in Canada.
(Appendix I to Report)

ARRANGEMENT OF ACTS

1. (1) The principle of the Act shall be enunciated in concise form at the outset.

(2) General provisions shall be placed first.

(3) Special and exceptional provisions shall be dealt with later.

(4) Temporary provisions shall be placed at the end of the Act.

SECTIONS

2. (1) Sections shall be numbered consecutively by Arabic figures throughout the Act whether or not the Act is divided into Parts.

(2) Sections shall be divided into subsections where division is necessary in order to avoid undue length and complexity.

(3) Subsections shall be numbered consecutively by Arabic figures in brackets.

(4) A subsection or section which does not comprise subsections may contain two or more clauses indented and lettered with italicized letters in brackets commencing with the letter *a*, if the clauses are preceded or followed by general words applicable to both or all of them.

(5) A clause may contain two or more subclauses, further indented and numbered with small Roman numerals in brackets commencing with the number i, if the subclauses are preceded or followed by general words, within the clause, applicable to both or all the subclauses.

(6) A subsection or a section which does not comprise subsections, shall contain only one sentence.

(7) Long sections and long subsections should be avoided.

(8) The cases or conditions should be stated first followed by the rule, unless the rule is to apply to several cases or condi-

tions in which event it may be found advisable to state the rule and follow with the cases or conditions. Where both cases and conditions are expressed, cases should precede conditions.

Parts

3. (1) A complex Act should be divided into "Parts", each Part being treated as a simple Act and containing its principle in concise form at the outset of the Part.

(2) An Act should not be divided into Parts unless the subjects are so different that they might appropriately be embodied in separate Acts.

Headings

4. (1) Where an Act is lengthy, headings may be used to aid visualization of its provisions.

(2) Headings should be used sparingly.

Interpretation Sections

5. (1) Where an Act contains a section defining words used in the Act the section shall immediately follow the short title section.

(2) The expressions "shall mean and include" and "means and includes" shall not be used.

(3) The expressions "means" and "includes" shall be used in preference to the expressions "shall mean" and "shall include".

Voices

6. The active voice should be used and the passive voice avoided.

Tenses

7. (1) The present tense should be used.

(2) Future tenses should be avoided.

(3) Past tenses may be used where the present tense is also used and it is necessary to express a time relationship between two or more acts or occurrences.

"Shall" and "May"

8. "Shall" should be used to express the imperative and "may" should be used to express the permissive.

Junction of Clause and Phrase Groups

9. Where several clauses or phrases are enumerated, the word "and" or "or" should be used only after the penultimate clause or phrase.

Words and Expressions

10. (1) Different words or expressions should not be used to denote the same thing, nor should the same word or expression be used to denote different things.

(2) Synonyms should be avoided.

(3) Pairs of words having the same effect should be avoided.

(4) The expressions "It shall be lawful", "It is the duty", "It is declared" and similar expressions should be avoided.

(5) The words "said", "aforesaid", "same", "beforementioned", "whatever", "whatsoever", "wheresoever" and the device "and/or" should be avoided.

(6) The word "such" should be avoided where "the" may be used.

(7) The words "any", "each" and "every" should be avoided where the article may be used.

Punctuation

11. (1) Acts should be carefully punctuated.

(2) Bracketing for punctuation should be avoided.

References to Other Provisions

12. A reference to another section, subsection, clause or subclause should identify the section, subsection, clause or subclause by its number or letter and not by such terms as "preceding" or "following".

Provisoes

13. (1) Provisoes should be avoided.

(2) Provisoes should be used only for taking special cases out of a general enactment and providing specially for them.

Marginal Notes

14. (1) Marginal notes should be short and distinctive and should describe but not summarize the provisions to which they relate.

(2) When read together, marginal notes should have such a consecutive meaning as will give a reasonably accurate idea of the contents of the provisions to which they apply.

(3) Marginal notes should usually be in substantive form.

(4) Marginal notes should be prepared by the draftsman of the Act.

(5) Where a marginal note must be long to be distinctive, a presumption is raised that the section or subsection to which it relates should be broken into two or more subsections.

(6) Marginal notes shall be included in all drafts of uniform Acts, including the final draft adopted by the Conference.

Short Title Section

15. A short title section shall appear at the commencement of every draft uniform Act and shall read "This Act may be cited as The . . . . . Act".

Uniform Act Section

16. Every draft uniform Act shall conclude with a section reading 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".

References to Legislation

17. Every draft uniform Act, including the final draft adopted by the Conference, shall include at the end of each section a reference to corresponding or similar sections of provincial statutes and, where feasible, of Dominion, Imperial and other statutes.

Spelling

18. (1) Spelling shall be in accordance with the Concise Oxford Dictionary of Current English, Third Edition, Oxford, The Clarendon Press, 1934, and any new edition hereafter published.

(2) Capital letters should be used sparingly.

RESOLUTIONS
passed by the Conference

INDICATION OF CHANGES WHERE ACT REDRAFTED

RESOLVED that when any proposed draft Act has been referred back to the Commissioners of any province for revision, the revising Commissioners should indicate in their revised draft any changes which they have made. (1937 Proceedings, p. 17.)

EXPLANATORY NOTES FOR CONFERENCE

RESOLVED that when an Act is referred to Commissioners for drafting or redrafting, they include with the draft or redraft, whether it is intended as an interim draft or a final draft, explanatory notes for the use of the other Commissioners, which should include, as far as practicable, an historical summary of each section and a resume of the discussion relating to each section when the Act or proposal was last before the Conference. (1942 Proceedings).

EXPLANATORY NOTES WHERE ACT ADOPTED BY CONFERENCE.

RESOLVED that the Commissioners responsible for the preparation of the final draft of each uniform Act as adopted by the Conference should prepare a general statement and explanatory notes suitable for the use of persons responsible for the explanation of the Act before a legislative body, and that such statement and explanatory notes shall be printed with the proceedings following the Act without the necessity of their being placed before the Conference. (1942 Proceedings).

OBSERVATIONS AND SUGGESTIONS
on the Drafting of Legislation
(Appendix II to Report)

General

1. Nothing is so difficult as to construct Acts of Parliament properly; and nothing is so easy as to pull them to pieces. Lord St. Leonards, O'Flaherty v. McDowell, 6 H.L. Cas. 179.

2. People who draw Acts of Parliament are very commonly found fault with by those who never drew an Act themselves. Bramwell C.J., The Queen v. Monck, 2 Q.B.D. 552.

3. It may be well to warn the draftsman that in his case virtue will, for the most part, be its own reward, and that after all the pains that have been bestowed on the preparation of a Bill, every Lycurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity. Moreover, when the Bill has become law, it will have to run the gauntlet of the judicial bench, whose ermined dignitaries delight in pointing out the shortcomings of the Legislature in approving such an imperfect performance. Lord Thring, Practical Legislation, p. 8.

4. . . . that degree of precision which is essential to every one who has ever had, as I have had on many occasions, to draft Acts of Parliament, which, although they may be easy to understand, people continually try to misunderstand, and in which therefore it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. Stephen J., In re Castioni, [1891] Q.B. 167.

Importance of Careful Draftsmanship

5. The importance of careful draftsmanship in the preparation of uniform statutes cannot be too greatly emphasized. Favourable consideration by a Government of a proposed uniform statute should not be endangered by any defect in form. Every uniform statute recommended by the Conference should therefore be beyond criticism not only as to substance but also as to form.

Interpretation Acts

6. The draftsman should be thoroughly conversant with the provisions of the various Interpretation Acts. While there is a considerable degree of uniformity in the various provincial Interpretation Acts and the Interpretation Act of Canada, they are not identical. Accordingly, the enactment by all provincial Legislatures and by the Parliament of Canada of the Uniform Interpretation Act provisions adopted by the Conference would greatly facilitate the work of the Conference.

General Rules of Interpretation

7. The draftsman should be thoroughly familiar with the general rules of interpretation which are based on judicial decisions. These are conveniently summarized in Ilbert's Mechanics of Law Making, pages 119–121, and reproduced in the Conference Proceedings, 1919, pages 47–48. (See page 874 hereof). Texts useful in interpreting statutes are Beal's "Cardinal Rules of Legal Interpretation", Craies' "Statute Law", Maxwell's "Interpretation of Statutes", and Odger's "The Construction of Deeds and Statutes", Part II.

Formation of Sentences

8. (1) Each sentence should be as short and simple as possible. Long sentences should be avoided. If a sentence becomes too long it should be broken up into two or more short sentences.

(2) Where it is desired to refer to a number of contingencies, alternatives, requirements or conditions, the reference should be broken up into a number of clauses, each referring to only one contingency, alternative, requirement or condition. The arrangement of a sentence in detached or tabular form increases its clarity and enables the reader to distinguish readily between the main and dependent clauses.

Definitions

9. Definitions are useful for the purpose of avoiding tedious repetition or ambiguity but care should be taken to use them sparingly. While definitions are frequently used to extend or restrict the ordinary meaning of a word, words should not be defined in an unnatural sense. Where a word defined is not capitalized in the body of the Act it should not be capitalized in the definition.

Headings

10. Some Interpretation Acts provide that headings in the body of an Act shall form no part of the Act but shall be deemed to be inserted for convenience of reference only. Care should therefore be taken to ensure that the scope and application of each section is clear without reference to a heading.

Use of "Shall" and "May"

11. While the general rule is that "shall" should be reserved to express the imperative and "may" should be used where the provision is permissive, it has been held by the courts that in certain circumstances "may" is to be construed as obligatory, as where a power is vested with a public officer or a thing is permitted to be done for the sake of justice or the public good.

Powers, Duties and Privileges

12. Sections conferring a power or privilege or imposing a duty should clearly indicate upon whom the privilege is conferred, in whom the power is vested, or upon whom the duty is imposed. The use of the active voice will avoid vagueness in this regard.

Ejusdem Generis Rule

13. The general rule is that, where particular words are followed by general words, the latter must be construed as *ejusdem generis* with the former, that is, the general words must be limited by reference to the preceding words. For the purpose of avoiding doubt as to the meaning of the language used, the draftsman should consider whether or not it is necessary to add a declaration that the general words shall not be limited by the particular words.

"Where"; "When"

14. The word "where" or "when" should be used in preference to "in cases in which". "Where" should be used if frequent occurrence of an event is contemplated. "When" may be used if single or rare occurrence of the event is contemplated.

Titles

15. The long title should indicate the general purpose of the Act, as the title may be referred to for ascertaining the general scope of the Act. The short title is provided merely for convenience of citation or reference.

Preambles

16. Preambles should be avoided. An Act should explain itself and if reference to a preamble is necessary in construing any provision of an Act, it would indicate that the draft requires revision.

Declaratory Provisions

17. It is well to avoid the use of declaratory provisions. If used, the Act should clearly indicate whether such provisions are intended to apply retrospectively or not.

Unnecessary Particulars

18. Enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion, in accordance with the maxim "*expressio unius est exclusio alterius*".

Application of Qualifying Words

19. Where adjectives or other qualifying words are intended to apply either to one or to all of a group of nouns, care should be taken in the construction and punctuation that the intention is clearly expressed.

REPORT DATED JULY 8th, 1919

of the Committee on Legislative Drafting Appointed by the Conference in September, 1918.

(Appendix III to Report)

At the meeting of the Conference held in Montreal in September, 1918, a committee was appointed under the following resolution:—

"That the Commissioners from British Columbia be requested to prepare and to submit to the Commissioners from the other Provinces a set of general rules or suggestions for use in the drafting of uniform Statutes, and to report to the next meeting of the Conference with regard to such rules or suggestions and with regard to the interpretation Acts of the various Provinces."

The purpose of this pamphlet is to place before the Commissioners, in compliance with this resolution, a set of rules or suggestions which may be found of assistance in the drafting of uniform Statutes.

Introductory

The improvement of methods of legislative drafting and the training of men for the work of drafting Statutes have in no country received the attention which their importance merits. It is only within comparatively recent years that marked improvement has taken place in England in the methods of drafting and the form of Statutes. In 1869 the office of Parliamentary Counsel was established, and it is to the efforts of the able men who have filled that office that the improvement of the English statute law is largely due. The books written by two of these men, the late Lord Thring and Sir Courtenay Ilbert, based on their experience as Parliamentary Counsel, afford to-day the most practical directions for those in need of assistance in taking up the work of drafting Statutes.

The movement in the United States of America for more uniform, consistent, and better drafting of Statutes is of still more recent origin. This movement has now attained considerable importance, largely through the efforts of various associations and conventions, and by reason of the establishment in a number of the States of bureaux for legislative reference work and the drafting of Bills.

In 1913 the American Bar Association appointed a special committee on legislative drafting. This committee has since then been working on the preparation of a legislative manual or code of instructions to draftsmen "containing a collection of directions or suggestions for drafting laws, and model clauses for constantly recurring statutory provisions". Tentative drafts of parts of this proposed manual have been completed, and may be found in the annual reports of that Association for the years 1914, 1915, and 1916.

The National Conference of Commissioners on Uniform State Laws in 1916 instructed its Committee on Legislative Drafting to "prepare a set of general rules or suggestions to be observed as far as practicable in the drafting of legislation by draftsmen of uniform laws". The report of the Committee, contained in the Proceedings of that Conference for 1917 at page 299, presents ten recommendations for the observance of draftsmen of uniform laws.

We in Canada have, with marked advantage, followed the English practice as to arrangement and division of Acts, including the subdivision of sections and other aids to the visualization of Statutes. While thus profiting to some extent by the improvement in the English statute law, too little attention is given in Canada to the technical or mechanical side of legislative drafting. For this reason it is desirable that the Conference of Commissioners on Uniformity of Legislation in Canada should, at its inception, give some consideration to this important subject.

A very brief consideration should suffice to convince us of the importance of careful draftsmanship in the preparation of the model Statutes which will be recommended to the different Provinces for enactment. As these Statutes will be prepared with ample time for careful scrutiny and revision, it will naturally be expected that in form as well as in substance they should surpass in quality the work which in the preparation of our Provincial Statutes is often done in the hurry of the legislative session. The uniform laws recommended by the Conference should be framed in the best possible manner before they are submitted to the scrutiny and criticism of the different Provincial officials. Time spent in perfecting our draft Bills in this way will well repay the cost, as no defect of form should be allowed to endanger the favourable consideration of laws otherwise meritorious.

The committee in preparing this pamphlet has not presumed to formulate rules for the guidance of the Conference in drafting

Statutes, but is placing before the Commissioners certain suggestions in the form of extracts from the writings of those who from their long experience and acknowledged ability are best able to speak with authority on this subject. The work of the committee has been directed to the selection of the material most likely to be found useful by those who may be engaged in the drafting of uniform Statutes.

In a brief pamphlet such as this the space which can be devoted to any one matter is necessarily limited. It is hoped that the extracts are presented with sufficient fullness to appeal to the inexperienced draftsman. They will certainly be appreciated by all those who from experience in drafting know the very great difficulty of expressing the intent of even a comparatively simple law in exact words.

It is to be regretted that the number of text-books of practical value to draftsmen is so limited. As more than one writer has pointed out, great care and effort have for years been expended in the gathering of judicial experience for the guidance of Courts in construing Statutes, but comparatively little has been done to provide guides for the drafting of legislation.

A list of the text-books from which extracts are taken is appended. In many cases the points dealt with are more fully elaborated in the text. The draftsman is recommended not only to familiarize himself with the rules for good drafting contained in the extracts, but to make a careful study of the books from which the extracts are taken, and always to remember that even the best draftsman cannot dispense with careful and repeated scrutiny and revision of his work.

Interpretation Acts

The provisions of the general interpretation Acts of the different Provinces should be carefully borne in mind by the draftsman of uniform Statutes. The proper observance of these provisions will materially shorten the language of statutory enactments and contribute to uniformity of expression.

It should be remembered in the drafting of Statutes that these interpretation Acts do much more than define terms in common usage. They also state explicitly a number of convenient rules which settle important problems in construction. A careful study of these rules will be found indispensable to draftsmen in the wording of uniform Statutes.

Your Committee, in discharge of its duty to report with regard to the Interpretation Acts of the various Provinces, has examined the Act of each Province, except that of Prince Edward Island, of which they were unable to obtain a copy. From a comparative analysis made of these Acts there was found to already exist a large degree of uniformity, the chief differences being in arrangement of provisions and in certain definitions of a local significance which would necessarily differ even if a uniform Act were adopted.

In a few cases provisions inserted in one Act do not appear in some of the others, but these are principally rules of construction which under the decided cases would be followed by the Courts in every Province irrespective of the provisions of the Interpretation Act of that Province. Attention is directed, however, to one or two matters in this connection, a consideration of which may prove useful to those engaged in the drafting of uniform laws.

In the British Columbia, Nova Scotia, and Ontario Acts a provision is found that the interpretation section of the Supreme Court or Judicature Act shall extend to all Acts relating to legal matters. The British Columbia and Ontario Acts also provide that the interpretation section of the Municipal Act shall extend to all Acts relating to municipal matters. The effect of these provisions is quite material, and should be kept in mind by the draftsman of uniform laws. No similar provisions are found in the interpretation Acts of the other Provinces.

Quite frequently in drafting Provincial Statutes it is found desirable to have some appropriate word interpreted to mean "His Majesty the King acting in right of the Province". In the Statutes of British Columbia the word "province" has been used in a number of instances with this meaning, although that word is defined in the Interpretation Act (R.S.B.C. 1911, ch. 1, s. 26 (9)) to mean the Province of British Columbia territorially. In the Interpretation Act of Alberta (Stat. 1906, ch. 3, s. 7, subsec. (7)) and in that of Manitoba (R.S. 1913, ch. 105, s. 27 (*f*)) the word "Government" is defined as meaning His Majesty the King acting for the Province, while in the Nova Scotia Act (R.S. 1900, ch. 1, s. 23 (7)) and that of Quebec (R.S. 1909, art. 36, 13) the word "Government" is defined as meaning the Lieutenant-Governor acting in conjunction with the Executive Council of the Province.

In most Provinces the expression "Lieutenant-Governor in Council" is used to mean the Lieutenant-Governor acting in

conjunction with the Executive Council. This appears to be an apt expression for the purpose, and at the same time sufficiently concise. It is suggested that the word "Government" might with advantage be uniformly adopted in all the Provinces to mean His Majesty the King acting in right of the Province.

Another matter of more general interest to the draftsman of uniform laws, and one which tends to the shortening of legislative expression, may be mentioned. In numerous Acts in all the Provinces are to be found instances where, for the purpose of sectional reference or reference to a certain part of the same Act, expressions similar to the following occur: "subject to the provisions of section 2 *of this Act,*" "within the scope of this Part *of this Act,*" or "as provided in Part IV *of this Act*". It is suggested that in all these instances it should be possible to eliminate the words "of this Act". In some of the Provinces the interpretation Act makes partial provision for this (e.g., R.S. Man. 1913, ch. 105, s. 26 (3), and R.S.N.B. 1903, ch. 1, s. 13 (1)) which provide that where in any Act reference is made by number to a section it shall be deemed a reference to the section bearing that number in the Act in which the reference occurs, unless there is something to indicate that a reference to some other Act is intended. In a number of the Provinces the drafting practice appears to be to eliminate the words "of this Act" in this connection, and it is hardly conceivable that any serious question of construction can arise by so doing, even where the interpretation Act contains no provision relating to the matter.

In the same way a reference to a schedule or to a form by letter or number without the use of further words clearly indicates a reference to the schedule or to the form of like description in the Act in which the reference occurs. Thus the expression "in the Schedule to this Act" might well be shortened by eliminating the last three words, and the expression "in Form A in the Schedule to this Act" shortened to "in Form A."

If the Conference is of the opinion that legislation is necessary to confirm this practice, it is suggested that a uniform clause be drawn and recommended to the several Legislatures for enactment as part of the Interpretation Act.

Interpretation Sections

Sections defining certain words to be used in a special sense throughout an Act should be placed at the beginning of the Act, as is the usual practice now in all the Provinces.

"Special definitions should be sparingly used, and only for the purpose of avoiding tedious repetitions, or of explaining terms which would be ambiguous without them. A definition is a very dangerous tool to use, especially if it gives a word a non-natural sense, i.e., makes it include something which is not included in its ordinary acceptation. Indeed, a word should never be defined in a non-natural sense. . . .

"It should be made clear whether the definition is intended to be explanatory, restrictive, or extensive. The expression 'shall mean' is explanatory and *prima facie* restrictive. The expression 'shall include' is extensive (see *Corporation of Portsmouth* v. *Smith*, L.R. 13 Q.B. 184; *Pound* v. *Plumstead Board of Works*, L.R. 7 Q.B. 194). Therefore the combination 'shall mean and include', though not uncommon, should be avoided, as it raises a doubt whether the definition is intended to be restrictive or extensive." (Ilbert's Legislative Methods and Forms, p. 281.)

Marginal Notes

Marginal notes to all uniform Statutes should be prepared by the draftsman. His knowledge of the subject-matter enables him readily to put them into proper form, and this attention on his part is necessary to ensure their uniformity.

"Marginal notes should receive more attention than is usually given to them. Each note should express in a concise form the main object of the section on which it is made, or should at least indicate distinctly its subject-matter; and all the notes, when read together in the 'Arrangement of sections', should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act." (Thring, p. 50.)

"Attention should be paid to the framing of marginal notes. A marginal note should be short and distinctive. It should be general and usually in a substantival form, and should describe, but not attempt to summarize, the contents of the clause to which it relates. For instance, a marginal note should run: 'Power of [local authority] to, &c.,' and not 'Local authority may, &c.'

"The marginal note often supplies a useful test of the question whether a subject should be dealt with in one or more clauses. If the marginal note cannot be made short without being vague, or distinctive without being long, the presumption is that more clauses than one are required." (Ilbert's Legislative Methods and Forms, p. 246.)

General Arrangement of Acts

The following directions to draftsmen are recommended for consideration:—

"His first step must be, in the case of a simple Act, to settle the principle or leading motive, and in the case of a complex Act the several principles or leading motives of the Act on which he is engaged. . . .

"In a simple Act, the principle when selected must be enunciated in its most concise form at the very outset of the Act either in one section or in two or more consecutive sections, as the subject may require. In a complex Act, the principles should be arranged in different parts of the Act, and each part of the Act should be treated as a simple Act, and contain its principle enunciated in the most concise form at the outset of the part. . . .

"This arrangement is to be recommended both for Parliamentary and for practical reasons. It enables Parliament to decide at once on the principle of an Act unembarrassed by the consideration of details, and it places before the reader at the outset a clear view of the law intended to be enacted, without the confusing intermixture of the conditions under which and the mode in which that law is to be administered. The principle thus being settled, the conditions can be considered separately, and no confusion arises between objections of principle and objections of detail." (Thring, pp. 28, 29, 30.)

"If formal details precede, the debate may bring out minor differences of opinion which split the support of the bill and make difficult a later agreement as to general policy. If the main object is agreed upon first, the adjustment of details will seldom offer serious difficulties." (Jones, p. 108.)

"So far as parliamentary exigencies will admit, the subject-matter of a Bill should be arranged with reference to administrative convenience; in other words, its arrangement should be orderly and logical.

"Normal and general provisions should be placed first. Special, exceptional, and local provisions should be placed towards the end. . . .

"Temporary and transitional provisions should be placed at the end of the Bill, because when they are spent they can be repealed without making gaps in the main body of the Act.

"As a general rule, it is convenient to lay down first the rules of law to be observed, and then to state the authorities by which they are to be administered and the procedure to be followed in administering them.

"The framework of a Bill may be made more intelligible by dividing it into parts and by grouping clauses under italic headings. But excessive subdivision should be avoided. As a rule a Bill should not be divided into parts unless the subjects of the parts are so different that they might appropriately be embodied in separate Acts. The division of an Act into parts may effect its construction by indicating the scheme of arrangement." (Ilbert's Legislative Methods and Forms, pp. 245, 246.)

Numbering of Sections

While it is the uniform practice in Canada to number sections consecutively throughout the Act, the method of numbering subsections is not so uniform. It is suggested that the numbers of subsections should be in parentheses, and that the first paragraph of a section should be numbered as subsection "(1)", immediately following the section number, this being the prevailing practice in a majority of the Provinces. The use of letters in parentheses instead of figures for enumerating conditions or for tabular purposes in a section or subsection will avoid confusion with the subsection numberings.

Length of Sections

"It is desirable to cut up the matter of enactment into short sections for several reasons: 1. The person preparing the statute will compel himself to detach and lay out clearly his ideas and finish up one thing at a time. 2. The sense of the statute will be more easily grasped if it is made easy to proceed step by step than if it is seemingly or actually made necessary to assimilate much matter at once. 3. Parts of the statute will be more easily referred to and designated in discussion. 4. The statute can be more easily amended in parts which may need amendment without disturbing other parts or reprinting long paragraphs." (Willard, Sec. 278.)

"A long and complex clause should be cut up into subsections." (Ilbert's Legislative Methods and Forms, p. 246.)

"Each proposition of a statute that is separable from other propositions should be placed in a separate section.

"This will compel the draftsman to detach and lay out clearly his ideas and finish up one thing at a time. It will also aid very considerably in the discussion of the measure in the legislative body and facilitate amendments before final passage." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 299.)

"The one thing needful is to make each distinct subject the matter of a separate section, or, if necessary, a separate series of sections, and not at the commencement to aim at conciseness when conciseness is placed in competition with or in antagonism to clearness of expression, or fullness in working out the details of the law." (Thring, pp. 47, 48.)

Formation of a Legislative Sentence

"Each sentence should be as short and simple as possible.

"The rules to be laid down will be either general or special, and either absolute or qualified.

"Where a rule is to apply only to a particular case or set of circumstances, it is usually most convenient to state the case or set of circumstances first and let the rule follow. But where the rule is to apply to several cases or sets of circumstances, it is often convenient to state the rule first and enumerate the cases afterwards.

"Where the rule is to be subject to qualifications, exceptions, or restrictions, these should follow the statement of the rule. But it is often convenient to prefix to the rule words indicating that it is to be so qualified.

"Enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion, in accordance with the maxim '*expressio unius est exclusio alterius*'.

"Each rule should be stated in general terms, but so far as practicable its application to particular cases should be tested for the purpose of seeing how it will work in each case." (Ilbert's Legislative Methods and Forms, p. 247.)

"Sentences ought to be and can be made as short and simple as desired. Indeed, any long-winded sentence can be broken up and recast into many short sentences, which would very much enhance the clearness of statutory expression. Frequently a long series of subjects is followed by many predi-

cates and by many dependent clauses of co-ordinate value. If the subject were repeated with each predicate, the length of the statute would be appreciably increased, but in all such cases it is possible to use the detached form of statement, that is, paragraph each predicate, every dependent clause, and the parts of the sentence upon which these clauses depend." (Statute Law-making in Iowa, p. 383).

"There is a difficulty in the way of making sentences short in statutory expression which arises from the necessity of joining many predicates to one subject or many subjects to one predicate or many dependent clauses of co-ordinate value to one leading statement. In such cases European statute-writers have resorted to the expedient of detaching these co-ordinate expressions by the manner of setting out the law on the written or printed page. The attempt is made by a system of paragraphing to more clearly indicate the equivalent value of what is co-ordinate, also to indicate what is dependent and upon what it depends, when the same end could not be reached by any system of mere punctuation, and when the matter could not be broken up into a number of separate sentences without much repetition." (Willard, Sec. 285.)

"Where it is deemed desirable to cover by one section a number of contingencies, alternatives, or conditions, it will add to the clearness of thought and expression and to the facility of discussion if the section is broken up into a number of distinct paragraphs distinguished by figures or letters." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 299.)

The arrangement of sentences in detached or tabular form and the use of mechanical devices for graphic presentation of enactments are common in English and Canadian Statutes. Clearness is materially increased by these expedients. They enable the reader to readily distinguish between the main and the dependent clauses, and to see the relation of the subject to its various predicates.

Coode in his analysis of a legislative expression considers it as consisting of four elements: First, the description of *the legal subject*; second, the enunciation of *the legal action*; third, the description of *the case* to which the legal action is confined; and, fourth, *the conditions* on performance of which the legal action operates. (Coode, p. 6.)

The analysis presented by this writer and the rules which he develops from that analysis are strikingly clear and logical.

The following brief extracts only can be presented here, but his entire book will well repay a careful study by every draftsman:—

"The purpose of the law in all cases is to secure some benefit to some person or persons. . . .

"It is only possible to confer a Right, or Privilege, or Power, on one set of persons, by imposing corresponding Liabilities or Obligations on other persons, compelling these to afford the benefit conferred, or to abstain from invading it. . . .

"Now no Right, Privilege, or Power can be conferred, and no Obligation or Liability imposed, otherwise than on some person.

"The person who may or may not or shall or shall not do something or submit to something is *the legal subject* of the legal action.

"The importance of a just discrimination and correct expression of the legal subject cannot easily be exaggerated. The description of the *legal subject* determines the *extent* of the law. On this portion of every legal sentence it depends whether a right or privilege shall be limited to too few persons or extended to too many; whether an obligation is imposed on more persons than is necessary or is not extended to sufficient persons in order to secure the correlative right; whether powers are reposed in right or wrong persons; whether sanctions are or are not made to fall on the proper subjects." (Coode, pp. 7, 9.)

"The *legal action* is that part of every legislative sentence in which the Right, Privilege, or Power, or the Obligation or Liability, is defined, wherein it is said that a person *may* or *may not* or *shall* or *shall not* do any act, or *shall* submit to some act.

"As the *legal subject* defines the *extent* of the law, so the description of the *legal action* expresses the *nature* of the law. It expresses all that the law effects, as law. The selection of the legal subject is important; but it is on the description of the *legal action* that the whole function of legislation exercises and exhausts itself." (Coode, pp. 9, 10).

"The rules of most effect as to the expression of the legal subject are:—

"First, to keep the *legal subject* distinct in form and in place from other parts of the legal sentence.

"Secondly, not to permit it to be withdrawn from view, or disguised by the non-description of *persons*, or by the substitution of *things* instead of persons, or by the use of impersonal forms of expression." (Coode, p. 14).

"Not one case can be imagined in which it is necessary or convenient to use any other than permissible or imperative language in the enacting verb; and these two rules, therefore, ought never to be allowed to be infringed:—

"1st. That the copula, which joins the *legal subject* and the *legal action*, is to be *may*, or *may not*, or *shall*, or *shall not*, as, 'any person *may*,' 'no person *may*,' 'every person *shall*,' or 'no person *shall*'.

"2nd. That the whole of the enacting verb is always to be an active verb, excepting only where the legal subject is to submit or suffer, as where executory force, or punishment (sanctions), are directed to be submitted to by the person described in the legal subject. . . .

"There could arise no difficulty if these rules were observed:—

"Whenever an act is allowed *as a right*, or as *a privilege*, that is to all the members of the community, or to certain persons for their own benefit, the proper *copula* is '*may*'.

"Whenever the act is authorized *as a power*, that is to certain persons to perform, not for their own benefit, but for the benefit of others on whose behalf the power is given, the proper *copula* is *shall*." (Coode, pp. 16, 17).

"As on the due expression of the *legal subject* the *extent* of the law depends, and as on that of the *legal action* the *nature* of the law depends; so on the expression of *the case*, and of *the conditions*, do the clearness, precision, and form of our statute law mainly depend.

"The rule to be observed is of such simplicity as to make its utterance appear almost an absurdity; but, simple as it is, it is the most frequently neglected of any rule of composition.

"It is, that *wherever the law is intended to operate only in certain circumstances, those circumstances should be invariably described* BEFORE *any other part of the enactment is expressed.*

"If this rule were observed, nine-tenths of the wretched provisoes and after-limitations and qualifications with which the law is disfigured and confused would be avoided, and no doubt could ever possibly arise, except through the bad choice of terms, as to the occasions in which the law applied, and those in which it did not. . . .

"It would add much to the facility of discovering *the case* immediately in every legal sentence, if it invariably commenced with the words 'when' or 'where' or 'in case'." (Coode, pp. 22, 24).

"A law universal as to its *subjects*, and restricted or not restricted to certain occasions (*cases*), may still operate only upon the performance by some person of certain *conditions*. It is not till something has been done that the right can be enjoyed, or that compliance with the obligation can be enforced, or that the liability can be applied.

"These *conditions* are invariably conditions precedent. The action of the law never takes place till these are complied with. . . .

"For the reason that the legal action is postponed, and cannot act upon the legal subject, until these conditions are all complied with, *the expression of the conditions ought immediately to precede that of the legal subject.*" (Coode, pp. 28, 29, 31).

"Every form of every possible legislative enunciation resolves itself into two or more of these four elements, of which *the legal subject* and *the legal action* are essential, and must necessarily be present, while *the case* or *the condition* may or may not be present.

"If the enactment is to operate on its subject universally, constantly, and unconditionally, the sole elements are the *legal subject* and the *legal action.*

"If the enactment is only to operate on its subject in certain circumstances, *the case* must express these circumstances in *the first words of the sentence,* and not in a subsequent phrase inserted parenthetically in the description of the subject or the action, nor in a separate proviso.

"If the enactment is only to operate on its subject after performance by somebody of certain precedent conditions, these *conditions should be all expressed immediately before the legal subject, and in the order in which they must be executed;* that is, in their chronological order.

"Next comes the *legal subject,* immediately followed by the appropriate modal *copula,* introducing the *legal action.*" (Coode, pp. 33, 34).

"Parliamentary considerations favour the accumulation of materials into one clause. But as a question of composition and interpretation, there can be no doubt that the more strictly each clause is limited to one class of *cases,* one class of *legal subjects,* and one class of *legal actions,* the better; and that it is

a mischief to confer in one sentence two distinct species of rights, to impose two distinct kinds of obligations, to confer two distinct kinds of powers, and so on: where parliamentary convenience does not prevail, no good draftsman ever does so." (Coode, p. 42).

"It will perhaps seem to be a great waste of care to make all these distinctions, as to the elements, the method of distribution, and the expression of a *single legislative sentence*. . . .

"But it is of these simple elements that the whole law consists. If these be not well discriminated and well marshalled in each sentence, there is no hope for their being well combined in the whole law." (Coode, p. 68).

USE OF WORDS

"Different words should not be used to express the same thing." (Ilbert's Legislative Methods and Forms, p. 247).

"The same words should not be used with different meanings." (*Ibid*, p. 248).

"It is common in Acts of Parliament to use 'such' as a demonstrative, equivalent to 'the' or 'that'. But this departure from the English of ordinary life seems unnecessary, and often causes confusion where the expression 'such . . . as' has to be used in the same context." (*Ibid.*)

"An unnecessary use is made of the words 'said' and 'aforesaid'. They are rarely essential to exactness of expression. In many of the cases where 'said' is used the definite article will answer the purpose equally well. In other cases, its place may be supplied by another word, or it may be omitted altogether. Overuse of these terms reduces statutory expression to the level of the common-place products of legal drudgery." (Willard, Sec. 350).

"Pairs of words often needlessly pad the laws. Examples of some of frequent occurrence are the following: 'Authorize and empower'; 'each and every'; 'each and all'; 'by and with the authority'; 'order and direct'; 'desire and require'; 'full and complete'; 'from and after'. The word 'such' appears *ad nauseam* in hundreds of our laws, otherwise examples of good draftsmanship. It is unnecessary, probably nine times out of ten; 'each' and 'any' are usually unnecessary, and 'the same', 'aforesaid', and 'before mentioned' can usually be avoided by slight changes in phraseology." (Jones p. 126).

"Brevity and simplicity and good style might have been further cultivated by Iowa draftsmen if they had avoided the

use of such clumsy and archaic words as 'said', 'aforesaid', 'such', and 'the same'; no words in the English language have been so terribly abused in law-writing." (Statute Law-making in Iowa, p. 352).

"The legislator is tempted to make an extravagant use of broad-sounding words, multiplying the word 'any' and adding 'whatsoever' and 'wheresoever' where a simpler expression would answer the purpose. The multiplication of these words serves in many cases only to give to the statute a pretentiousness of expression without increasing the breadth of its application. There need be no forced avoidance of the use of the word 'any' where it is the natural expression, or of the other words where their use is needed to show a sweeping intent in a statute liable to receive strict construction. But it is a good plan after a statute is put in its first form to look it over and prune out the extravagances when they are perceived to be clearly such." (Willard, Sec. 352).

"The drafters of statutes have always indulged in the use of synonyms for fear that a single word would not cover all possible contingencies. This practice, as well as the constant repetition of the same series of words, has conduced to the formation of rambling sentences and sections. . . .

"Repetition or redundancy is the bane of so many legislative utterances that it takes but a few lines of a long sentence in a single enactment to render the reader dizzy." (Statute Law-making in Iowa, pp. 354, 355).

"Attention is particularly called to the needless employment and cumulation of the words 'said', 'aforesaid', 'such', 'whatsoever', or 'whatever'. It is obvious that in many cases these expressions add nothing to the sense or clearness of the matter." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 300).

"The one quality absolutely essential to a statute, as it is to an attorney's pleading, or a court's opinion, is clearness. This can be attained in exactly the same way as in any other form of composition. Long and involved sentences, useless repetitions, the insertion of superfluous words, or phrases without a definite meaning, render a statute obscure or ambiguous. Whenever possible, ordinary language should be used, but with careful precision and accuracy. In many cases, however, the use of technical terms cannot be avoided for the reason that these are the only means of expressing definitely the intended sense. Technical terms may be either of a legal kind, or those

pertaining to the subject-matter with which the statute deals, as, for instance, a trade or profession. Care should of course be taken to use such words with scrupulous correctness." (California State Library Legislative Reference Bulletin No. 1, p. 4).

The attention of draftsmen is also called to the well-established rules, found in practically all interpretation Acts, that the singular number includes the plural, and the masculine gender includes the feminine. These rules apply unless the context or the character of the law calls for an exception, and their observance will obviate many needless repetitions. In the same way "person" is used to include corporations as well as individuals.

In the use of the auxiliary verb "may", it is well to bear in mind the following advice given by Lord Thring in his Practical Legislation:—

"The inclination of the Courts to construe 'may' as sometimes imperative in an Act of Parliament requires that in doubtful cases the draftsman should add words such as 'The Court may *in its discretion*', or 'may *if it thinks it expedient*', and so forth." (Thring, p. 62).

Use of Present Tense

A rule of construction, common to all our interpretation Acts, which is too frequently overlooked by draftsmen, is that dealing with the application of expressions in the present tense. This rule is that the law is considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise.

"The future conditional ('if he shall') should be avoided. The future 'shall' is apt to be confused with the imperative. . . .

"An Act of Parliament should be treated as always speaking. The idea on which this rule is based is, according to Lord Bowen, that a code on some particular subject is being constructed, and so, when the present tense is used, it is used, not in relation to time, but as the present tense of logic." (Ilbert's Legislative Methods and Forms, p. 248).

"All laws in theory act in the present even though their actual operation be suspended till some future time. On the statute books they stand as continuing commands. The tense favoured, therefore, for describing the cases in which they are to operate is the present. The future form is especially to be avoided. It is easily confused with the imperative which is needed for the statement of the legal action. In fact, the use of

the future form in statement of the case is logically absurd. In statements as 'whenever any deer shall be shot', and 'in case a county shall lie partly in two senatorial districts', the future form is evidently meaningless. The careless use of 'shall' is objected to because, *on first reading*, it makes it difficult to distinguish language meant to be descriptive from that meant to be imperative. In many cases even careful study will still leave a doubt as to whether the law meant to express command or merely to state a condition." (Jones, p. 98).

"The prevailing practice in uniform laws, as in other well-drawn statutes, seems to be to reserve the word 'shall' for statutory directions and prohibitions. Thus the Limited Partnership Act says in Section 16: 'A limited partnership *shall* not receive from a general partner', etc., but says in Section 17, 'A limited partner *is* liable', etc., and not 'A limited partner *shall* be liable'.

"It is suggested that in penal clauses the use of the word 'shall' in the description of forbidden acts is unnecessary, and should be reserved for the specification of the penalty as follows: 'A person who *does* such an act shall be punished', and not 'A person who *shall* do such an act'." (Proceedings, National Conference of Commissioners on Uniform State Laws, 1917, p. 300).

"An Act of Parliament should be deemed to be always speaking, and therefore the present or past tense should be adopted, and 'shall' should be used as an *imperative* only, and not as a *future*. 'If' should be followed by the indicative where it suggests a case; for example, 'If any person commits, &c., he shall be punished as follows'." (Thring, p. 83).

"The auxiliary 'shall' may well be omitted in all dependent clauses as in the following:—

" 'Any person who shall drink intoxicating liquors as a beverage on any passenger railway car or street car in service or who shall use profane or indecent language on such railway or street car shall be guilty of a misdemeanour.'

"This proposition is more naturally stated and less artificial if 'shall' is deemed superfluous in the first two places. The future tense should give way to the present tense, and the future perfect to the perfect in all such dependent clauses." (Statute Law-making in Iowa, p. 352).

"It is supposed sometimes that it is necessary to describe *the case* and *the conditions* in the future or perfect future, for fear that if it were expressed in the present tense, as, 'when any

person *is* aggrieved', the law would operate only upon cases existing at the moment of the passing of the Act; or that if it were expressed, 'when any person *has been* convicted', &c., the law would be retrospective, and apply only to convictions previous to the passing of the Act. But this apprehension is entirely founded on a mistake. The rule of interpretation is never to give a retrospective effect to a statute, except when a retrospective intention is manifested by clear words; accordingly there are multitudes of instances existing, in the statutes, of cases, including many descriptions of offences, where the construction of the statute would be most strict in which the verbs are in the present or past tense. . . .

"If the law be regarded while it remains in force as *constantly speaking*, we get a clear and simple rule of expression, which will, whenever a case occurs for its application, accurately correspond with the then state of facts. The law will express in the present tense facts and conditions required to be concurrent with the operation of *the legal action;* in the perfect past tense, facts and conditions required as precedents to the *legal action.*" (Coode, p. 63).

"This mode of expression, assuming the law to be always speaking—*reciting facts concurrent with its operation, as if they were present facts,* and *facts precedent to its operation as if they were past facts,*—has two very considerable advantages:—

"First, it avoids the necessity of very complicated grammatical construction in the statement of cases and conditions, often involving the use of futures, perfect futures, and past conditionals—

> "If a person *shall* be convicted of, &c.; and if he *shall have been* before convicted of the same offence; and if he *shall* not have undergone the punishment which he *should have undergone* for the offence of which he *shall have been so before convicted.*

"Secondly, keeping the description of *cases* and *conditions* in the present and in the perfect tenses, it leaves the imperative and potential language of *the legal action* clearly distinguished, by the broadest and most intelligible forms of expression. Narration will appear in narrative language, instead of being allowed, as now, to usurp imperious language, and thus to confound *the facts* and *the law.*" (Coode, p. 66).

USE OF ACTIVE AND IMPERSONAL FORMS OF EXPRESSION

"Do not use the passive mood when the active will serve. Expression in the active mood is apt to be much clearer. For instance, it is better to say: 'The proper officer shall give notice' than 'notice shall be given by', etc." (California State Library Legislative Reference Bulletin No. 1, p. 6).

"An Act of Parliament is intended to confer rights and impose duties. It should be made clear on whom the rights are conferred and the duties are imposed. For this purpose, as a rule, the active form ('may do' or 'shall do') should be used, and the passive form ('may be done' or 'shall be done') should be avoided." (Ilbert's Legislative Methods and Forms, p. 248).

"The expressions 'It shall be lawful', 'It is the duty', and similar impersonal forms should not be used when the auxiliary verbs 'shall', 'shall not', or 'may' will do equally well. Sometimes it is useful to substitute 'It shall be lawful', for the auxiliary form of expression, in order that verbs in the infinitive mood may be used in the dependent sentences." (Thring, p. 62).

"It may sometimes be convenient, instead of naming the legal subjects, to use an impersonal form, as, 'it shall be lawful' where it is intended to confer a right, privilege, or power on many undefined persons, but not universally on all persons. The form, however, has no advantage, but is needlessly indefinite where the persons on whom the right, power, or privilege is to be conferred are easily denoted; thus, 'it shall be lawful for any two justices' may be better expressed by 'any two justices *may*' 'it *shall* be lawful for any person to', or 'it *shall not* be lawful for any person to', are more clearly expressed by 'every person *may*', 'no person shall'." (Coode, p. 14).

"If a right, privilege, or power is conferred, the appropriate *copula* is *may* or *may not;* if a right, power, or privilege is to be abridged, the appropriate *copula* is *may not;* if an obligation is imposed to render any duty, the appropriate *copula* is *shall;* if the obligation is to abstain, the appropriate *copula* is *shall not;* again, if the purpose is to affect the legal subject with a liability or sanction, the appropriate *copula* is still *'shall';* only when the subject is to be active, the whole enacting verb will be active, *'shall* forfeit', &c., and where the subject is to submit, or be passive, the whole enacting verb will be passive, as *'shall* be imprisoned', &c.

"All such descriptive and narrative expressions as 'it is hereby allowed, authorized, and permitted', instead of *may;* 'is hereby commanded and required to', or 'shall, and is hereby

required to', instead of simply '*shall*'; and all such passive expressions where the legal subject is intended to be active, as 'notice *shall* be given', leaving the person to give it unascertained, instead of 'the surveyor (?) *shall* give notice'; 'the rates *shall* be made, allowed', &c., leaving it impossible to ascertain by whom, as in the 4 & 5 Wm. IV., c. 76, s. 35; instead of 'the Guardians (?) or the Overseers (?) *shall* make the rates'; 'the allowances *shall* be examined and audited' instead of 'the chief constable (*qu.* the treasurer?) *shall* account for the allowances, and the justices *shall* examine and audit such account', &c., are at the best weak and inexpressive, and are very frequently, as in some of the above instances, wholly unintelligible." (Coode, pp. 15, 16).

Improper Use of Provisoes

The Committee on Legislative Drafting of the National Conference of Commissioners on Uniform State Laws recommends that the proviso be avoided as far as possible in uniform laws. (Proceedings, 1917, p. 301).

"Provisoes should never be used to define the case or the condition or the legal subject; their proper function is to make a special exemption from a general statutory declaration, and they should be exclusively confined to that function." (Thring, p. 80).

"A proviso properly so called is 'something engrafted on a preceding enactment for the purpose of taking special cases out of the general enactment and providing specially for them. In its abuse it contains all unconnected matters and disposes of whatever is incapable of combination with the rest of any clause'. . . .

"An exception, like a proviso, restrains the enacting clause to particular cases, but unlike the proviso it does not provide special rules for the cases it includes." (Jones, pp. 201, 202).

"Invariably, however, the reader is introduced to a complex sentence at the conclusion, perhaps, of an already overloaded section. Nothing contributes more to stretch out the contents of a law than the use of these provisoes for which the legislature has entertained such remarkable affection: nothing contributes more to make the law unintelligible. . . .

"The use of '*Provided*' makes enactments stilted and pompous very often when the substitution of the word 'but' or 'and' will produce the thought in plain English." (Statute Law-making in Iowa, p. 367).

"Sometimes the usual '*Provided*' breaks into the thought of an act and the reader is led to think that all which follows belongs to the proviso, only to discover upon close examination that the proviso ends somewhere with a comma, and that the main body of the act rambles on, to be followed perhaps by another proviso at the end of the section. If a proviso is used at all, it should end with a period and to that extent at least respect the reader's patience." (*Ibid.*, p. 368).

"Statutes are often disfigured by the multiplication of provisoes at the end of sections. They are engrafted frequently in debate as a convenient and easy form of amendment. In the original preparation of a statute it is rarely necessary to resort to this form of expression. And in amendment the words 'provided that' are often unnecessarily used or might be replaced by 'but'. The conspicuous words of exception are rarely necessary when the controlling statement is to be placed side by side with the statement which is to be controlled. If the section to which it is proposed to add a qualifying statement or proviso is already too long, the matter of the proviso may usually be embodied in a separate section or sections (to follow the section which will govern) without any sacrifice of definiteness in its application." (Willard, Sec. 360).

"The insertion of provisoes in the body of sections may create confusion unless care is taken to show clearly where the proviso ends, and where the main statements of the section re-commence. When the word 'provided' appears in a section the first inference is that all the following matter is dependent upon it, or is included within the exception. It often is unnecessary to use the word where a clause is interpolated. Here, as in other cases, the conjunction 'but' will usually answer the purpose equally well and will not confuse the construction." (*Ibid.*, Sec. 363).

"It is most desirable that the use of provisoes should be kept within some reasonable bounds. It is indeed a question whether there is ever a real necessity for a proviso. At present the abuse of the formula is universal. Formerly they were used in an intelligible manner;—where a general enactment had preceded, but a special case occurred for which a distinct and special enactment was to be made, different from the general enactment, this latter enactment was made by way of proviso. For instance, the 43 Eliz. c. 2, having made dispositions for the relief generally of the poor in all parishes in England, proceeds by way of proviso to make a special enactment for the Island of Foulness,

in Essex, adapted to its special circumstances. The proviso might still be legitimately used on the same plan, of taking special cases out of the general enactments, and providing specially for them.

"Nothing has inflicted more trouble on the judges than the attempt to give a construction to provisoes. The Courts have generally assumed, in accordance with the old practice just described, that a proviso was a mode of enactment by which the general operation of a statute was excluded in favour of some case. There are, therefore, in their decisions various distinctions propounded between mere exemptions, or exceptions, or salvoes and proper provisoes. But it is admitted by all writers to be impossible to make any general application of the doctrines laid down by the Courts to the multitude of cases in which the formula of a proviso has been adopted. Where the form of a proviso in fact serves only to make a mere exception, how can a doctrine which distinguishes a proviso from an exception apply? And what common doctrines of interpretation can possibly be applied to the innumerable provisoes used in our statutes only as formulæ for heaping together matter wholly unconnected, or only so remotely connected as to be incapable of being combined with the rest, by the use of any form of speech of a settled meaning?

"The present use of the proviso by the best draftsmen is very anomalous. It is often used to introduce mere exceptions to the operation of an enactment, where no special provision is made for such exceptions. But it is obvious that such exceptions would be better expressed as exceptions; if particular cases were excepted to be expressed in *the case*; if particular conditions were dispensed with, to be expressed in *the condition;* if certain persons were to be excluded from the operation of the enactment, to be expressed in *the subject.* In fact, where the enunciation of the general provision is merely to be negatived in some particular, the proper place for the expression of that negation is by an exception expressed in immediate contact with the general words by which the particular would otherwise be included. This would make, in all cases, the definition of the case, condition, subject, or action complete at once, that is to say, it would show in immediate contact all that is included and all that is excluded. . . .

"Another common use of provisoes is to introduce the several stages of consecutive operations. In such cases the words 'provided always' are mere surplusage, or should be replaced by the conjunction 'and'.

"Worse than all the above anomalies, however, is the use commonly made by ordinary draftsmen of the proviso. Wherever matter is seen by the writer to be incapable of being directly expressed in connection with the rest of any clause, he thrusts it in with a proviso. Whenever he perceives a disparity, an anomaly, an inconsistency, or a contradiction, he introduces it with a 'provided always'." (Coode, pp. 50-54).

EJUSDEM GENERIS RULE

"The general terms of an enumeration are restricted by the particular words which just precede or follow.

"If a statute is to apply to a class generally, it is safest to name the class in general terms rather than to mention particular cases, followed by general language. Thus, in the clause 'if a baker, brewer, distiller, or other person shall sell, offer, or expose to sale any unwholesome bread, beer, or liquor whatsoever', the words 'other person' might be taken to mean some one engaged in a pursuit similar to those of the persons named. Similarly, where 'articles of food' are described to include 'fresh meat . . . fresh fruit, fish, game, poultry, eggs, butter, and other articles intended for human consumption', do the last words refer to all kinds of food other than those specifically named or only to similar kinds? If the former, articles of food would have been sufficiently defined as 'food intended for human consumption'. Accordingly, enumerations that seem to be perfectly clear are really uncertain." (Statute Law-making in Iowa, p. 382).

"An enumeration of special cases is liable to be construed as narrowing the application of a following sweeping term. Passages are not infrequently met with in statutes where several special terms are followed by a general one. It is rarely the purpose, in inserting the special enumeration, to narrow the application of the general terms. The special cases are inserted because they present themselves to the mind of the legislator preparing the bill and by the specific mention the application of the statute to them is thought to be more sure. It is sometimes the better plan to omit the specification of cases entirely. In other instances any undue inference may be controlled by a statement at the end of the section to the effect that all cases included in the general term are embraced within its meaning whether 'of the same sort' as the cases specified or not." (Willard, Sec. 312).

"Any question of limitation of the force of the bill to the cases specifically mentioned may properly be removed by a statement at the end of the section that the general term shall include all cases within its meaning and not be limited to the cases specifically stated. The purpose of the *ejusdem generis* rule is to ascertain the real intent of the law-maker; it is not a rule of abrogation, and an express declaration which makes the intent clear when the act is judged as a whole will prevent it from overriding other rules of construction. . . .

"In view of the widely different practice in different jurisdictions it is not advisable to put any language in a law which may allow the application of the *ejusdem generis* rule. It may cut down the scope of the law because the intent is so lacking in clearness as to force the courts to resort to construction. As the courts have repeatedly said, where the intent is clear there is no room for rules of construction. In proportion as laws are carefully drafted the importance of the *ejusdem generis* rule will decrease." (Jones, pp. 135, 136).

JUDICIAL RULES OF INTERPRETATION

The standard works on the interpretation of Statutes are written primarily for use by the Courts and legal practitioners. They are not so readily useful from the standpoint of the draftsman, being too detailed in their treatment for his general purposes. The draftsman should, however, make sufficient use of them to enable him to form a general conception of the rules used by the Courts in interpreting and construing statutes.

The following extract from Sir Courtenay Ilbert's Mechanics of Law Making will be found suggestive in this connection:—

"The English draftsman has to consider not only the statutory rules of interpretation which are to be found in the Act of 1889, but also the general rules which are based on judicial decisions and which are to be found in a good many useful textbooks on the interpretation of statutes. Among the most important of these rules are:—

"1. The rule that a statute must be read as a whole. Therefore the language of one section may affect the construction of another.

"2. The rule that a statute may be interpreted by reference to other statutes dealing with the same or a similar subject-matter. Hence the language of those statutes must be studied. The meaning attached to a particular expression in

one statute, either by definition or by judicial decision, may be attached to it in another. And variation of language may be construed as indicating change of intention.

"3. The general rule that special provisions will control general provisions.

"4. The similar rule that where particular words are followed by general words (horse, cow, or other animal), the generality of the latter will be limited by reference to the former ('Ejusdem generis' rule).

"5. The general rule, subject to important exceptions, that a guilty mind is an essential element in a breach of a criminal or penal law. It should, therefore, be considered whether the words 'wilfully' or 'knowingly' should be inserted, and whether, if not inserted, they would be implied, unless expressly negatived.

"6. The presumption that the legislature does not intend any alteration in the rules or principles of the common law beyond what it expressly declares.

"7. The presumption against any intention to contravene a rule of international law.

"8. The presumption against the retrospective operation of a statute, subject to an exception as to enactments which affect only the practice and procedure of the courts.

"9. The rule that a power conferred on a public authority may be construed as a duty imposed on that authority ('may' = 'shall')." (Ilbert's Mechanics of Law Making, p. 119).

List of Text-books

Legislative Expression. By George Coode. Philadelphia, T. & J. W. Johnson. 1848.

A Legislative Handbook. By Ashton R. Willard. Boston. 1890.

Practical Legislation. By Lord Thring, K.C.B. (First edition 1877). Toronto, George N. Morang & Company, Limited. 1902.

Legislative Methods and Forms. By Sir Courtenay Ilbert, K.C.S.I. London, Henry Frowde. 1901.

Statute Law Making in the United States. By Chester Lloyd Jones. Boston, The Boston Book Company. 1912.

The Mechanics of Law Making. By Courtenay Ilbert, G.C.B. New York, Columbia University Press. 1914.

Statute Law-making in Iowa. Being Vol. III. of Applied History, published by the State Historical Society, of Iowa, Iowa City. 1916.

Conclusions

If the suggestions contained in this pamphlet are found to be of practical assistance to draftsmen, the Conference is recommended to consider the appointment of a special committee on legislative drafting, with instructions to enlarge the scope of these suggestions and, if thought practicable, to supply model clauses for statutory provisions of frequent recurrence.

Respectfully submitted,

J. N. Ellis,
H. E. A. Courtenay,
A. V. Pineo,
Committee.

Victoria, B.C., July 8th, 1919.

APPENDIX K

LETTER RE CENTRAL FILING AND PUBLICATION OF REGULATIONS

Office of
THE LEGISLATIVE COUNSEL
ONTARIO

Toronto, July 24th, 1942.

F. H. Barlow, Esq., K.C.,
President, The Conference of Commissioners
on Uniformity of Legislation in Canada,
Toronto, Ontario.

Dear Mr. Barlow:

The matter of providing facilities for making available to the legal profession as well as to the public generally, at some convenient place or in some convenient form regulations and other delegated legislation passed under the authority of Ontario statutes has for some time occupied my attention. Recently I communicated with members of the profession and officials of the other Provinces of Canada and of the Government of Canada and found that in most of the Provinces as well as at Ottawa, a similar problem exists and that in only one of these jurisdictions (Nova Scotia) has any attempt been made by way of legislation to remedy the situation.

One of the provincial officials who is a member of the Conference, in replying to my inquiry, suggested that the problem is one which might well receive study by the Conference. Because it is a problem which exists in a greater or less form in all of the Provinces and because only one of the Provinces has taken any action, I agree with the suggestion. Further, because of the membership of the Dominion representatives and because of the unprecedented number and volume of Dominion regulations of a special wartime emergency nature passed, and which will be passed, by federal authorities, it is my view that the Conference might at its 1942 meeting very well consider and pass upon the principle of whether or not a model Act should be prepared by the Conference. If this procedure is followed and a model Act is to be prepared, a draft Act could be made available for study at the 1943 meeting.

Having suggested that the principle of whether or not a model Act is to be prepared by the Conference should be determined at the 1942 meeting, I shall endeavour to furnish you with information which may be of assistance in studying the situation. Much could be and has been written on the subject. Please understand, therefore, that what follows is intended as a sketch rather than a detailed analysis of the situation.

Ontario.—Let me first state some facts with regard to the situation in our own Province which is fairly representative of that in most of the other Provinces of Canada, for the trend of legislation towards delegated authority is not limited to any one Province or country. Of the 399 statutes comprising the Revised Statutes of Ontario, 1937, 271 statutes delegate authority to make rules, regulations, orders or subordinate legislation in some form. Professor Finkelman of the Faculty of Law of the University of Toronto, spent some months collecting the various regulations and estimated that a printing of them would occupy as much space as the Revised Statutes. Something of the difficulties encountered in acquiring a complete set of all regulations in force passed under provincial legislative authority may be gathered by referring to Professor Finkelman's evidence given before the Select Committee of the Legislature appointed on February 21st, 1940, to inquire into the administration of justice. For further information regarding delegated legislation in Ontario, I would refer you to a volume entitled "*Canadian Boards at Work*" (McMillan, 1941) at pages 170-190. The book is edited by Mr. John Willis of Dalhousie University and the final chapter entitled "The Making, Approval and Publication of Delegated Legislation in Ontario" is by Professor Finkelman.

While it is true that all regulations which may be made or are required to be approved by the Lieutenant-Governor in Council are on file in the office of the Clerk of the Executive Council, many regulations are made by other authorities and do not require such approval. One problem is to provide for the central filing of all regulations. Other problems are the matter of making regulations available to those desiring copies and that of making them available in a form in which they may be used in court without difficulty as to their proof.

The Select Committee referred to above made the following recommendations under the heading "Rules and Regulations Generally":

> 1. That all rules, regulations and other delegated legislation passed under the authority of any Act of the Legislature be required to be filed with the Clerk of the Executive Council within thirty days

of being passed or approved, as the case may be; that all rules, regulations and other delegated legislation heretofore passed be required to be filed with the Clerk of the Executive Council not later than January 1st next following the session of the legislature at which legislation requiring such filing is enacted; and, that any such rules, regulations or other delegated legislation not so filed should have no force or effect. (This provision would not affect regulations required to be made or approved by the Lieutenant-Governor in Council as they are now required to be filed with the Clerk of the Executive Council);

2. That the Clerk of the Executive Council be required to keep an index of rules, regulations and other delegated legislation according to subjects as well as according to the Acts under which such delegated legislation is passed; and

3. That a list of all rules and regulations passed during each year be published in the annual volume of the statutes.

No legislative action has been taken in pursuance of these recommendations.

Nova Scotia.—In 1941 the Nova Scotia Legislature passed as chapter 9, An Act to Require the Laying Before the House of Assembly of Certain Regulations. Subsection 1 of section 1 requires that "A copy of all rules and regulations heretofore or hereafter made . . . . by the Governor in Council . . . . by the Minister presiding over any department of the Public Service of the Province or by any official of such department . . . . or . . . . by any board, commission or body mentioned in the Schedule to this Act . . . . shall be laid before the House of Assembly". The time for filing those already made as well as those which may be made in future is prescribed, and subsection 2 provides, "If such copy is not laid before the House of Assembly in compliance with the provisions of this Act, such rules and regulations shall *ipso facto* be and stand repealed."

The only other section of this short Act provides that "Any Act heretofore or hereafter enacted authorizing the making of any rules or regulations shall be read and construed as subject in all respects to the provisions of this Act, and in case of conflict the provisions of this Act shall prevail unless the contrary intention is expressly stated".

It will be observed that this Act accomplishes a central filing by requiring all regulations coming within its scope to be tabled in the House. It does not provide for printing or other publication nor does it provide for indexing or other details. Compliance with the Act is effectively enforced by a virtual nullification of offending regulations.

Canada.—Little need be said regarding the amount and scope of delegated legislation passed under The War Measures Act and

other Dominion statutes since war became imminent. Some of these regulations, rules and orders are published in the Canada Gazette. Others are published in pamphlet form by the Department or Board having their administration.

Six volumes entitled "Proclamations and Orders-in-Council" are now available and will be added to quarterly. These volumes, the first three of which appear to be limited to "Proclamations and Orders-in-Council Passed under the Authority of The War Measures Act" are now described on their cover as containing "Proclamations and Orders-in-Council Relating to the War". It will be noted that the three more recent volumes are not limited to Proclamations and Orders-in-Council passed under any particular Act. Certain Proclamations and Orders-in-Council relating to the war and published elsewhere are omitted from this compilation. While these volumes are issued under the authority of a recommendation of the Honourable C. G. Power, Convener of the Committee of the Cabinet on Legislation, concurred in by the Committee of the Privy Council, are printed by the King's Printer and are a matter of great convenience, they are limited in their contents firstly, by containing only Proclamations and Orders-in-Council, and secondly, by containing only those relating to the War.

The problem of collecting centrally all delegated legislation including that which does not depend upon Proclamation or Order-in-Council for its validity, still remains.

England.—It is not surprising to find that the Imperial Parliament has led the way in this as in other fields. The Rules Publications Act, 1893, (Imperial) and the regulations passed thereunder soon after its enactment still continue in substantially the same form as that in which they were originally passed.

This Act is not lengthy. It may be divided as to its functions. The first section provides for the giving of forty days' notice of the making of statutory rules by publication of notice in the London Gazette and in certain cases in the Dublin Gazette. During that period copies of the proposed rules may be obtained by public bodies upon payment of a nominal fee and suggestions may be made by any interested public body which suggestions shall be taken into consideration by the rule-making authority. The term "statutory rules", as defined for the purposes of section 1 (as contained in subsection 4) is very limited in its scope. Section 2 provides for the passing of provisional rules to come into force immediately in cases of urgency.

Section 3 serves quite a different function. For its purposes "statutory rules" has a wider meaning but one with definite

limitations (see section 4 which is the definition section of the Act). The purpose of section 3 is to require that "All statutory rules . . . . shall forthwith after they are made be sent to the Queen's printer of Acts of Parliament, and shall, in accordance with regulations made by the Treasury, with the concurrence of the Lord Chancellor and the Speaker of the House of Commons, be numbered, and (save as provided by the regulations) printed and sold by him". Statutory rules may be cited by the number so given and the calendar year, (subsection 2). Where statutory rules are required by any Act to be published in one of the Gazettes, a notice in the Gazette of the rules having been made and of the place where copies may be purchased, shall suffice, (subsection 3). The scope of the regulations, as indicated in subsection 4 is, in my opinion, very important. The regulations may provide for the different treatment of statutory rules which are in the nature of public Acts and those which are in the nature of local and personal or private Acts. The regulations may also determine the classes of cases in which the exercise of a statutory authority constitutes or does not constitute the making of a statutory rule and may provide for the exemption from section 3 of any such classes. In the making of such regulations, each Government department concerned is to be consulted and due regard had to the views thereof, (subsection 5).

The regulations, which were passed in 1894, restrict the application of section 3 of the Act to the "exercise of a statutory power by a rule-making authority, which is of a legislative and not an executive character." They exclude from the operation of section 3 of the Act the "exercise of a statutory power which is confirmed only by a rule-making authority". They provide for distinguishing between statutory rules which are general and those which are local and personal. With certain exceptions provision is made for printing all statutory rules. Statutory rules similar to public general Acts are also to be printed in an annual volume. The Treasury with the concurrence of the Lord Chancellor and the Speaker of the House of Commons (who are responsible for making the regulations) reserve to themselves the right to exclude certain rules from publication and to determine certain questions which may arise in connection with the operation of the Act and regulations.

Let me here quote from a small volume entitled *"Delegated Legislation"* comprising three lectures by Cecil T. Carr, LL.D., (Cambridge University Press, 1921). Sir Cecil Carr has been editor of Statutory Rules and Orders since 1923, and the

remarks which I here quote from pages 45 to 47 are directed at the Act and regulations described above.

> The creation of this official system of publication has removed the reproach that the law embodied in statutory rules was less well known and less easy to find than the law embodied in Acts of Parliament. Nevertheless the title Statutory Rules and Orders is not synonymous with delegated legislation, for the official system of publication does not cover the whole field. The system, as has been stated is based on section 3 of the Act of 1893, and section 3 was a kind of afterthought introduced in the later stages of a Bill originally designed to apply only to rules about legal procedure. The Act therefore, even when finally extended to other rules, was not dealing with all delegated legislation but with the legislation made by certain 'rule-making authorities'. 'Rule-making authority' was defined by section 4 as including 'every authority authorized to make any statutory rules'. 'Statutory rules' were defined (in section 3).
>
> . . . . . .
>
> Many of the bodies to which Parliament has delegated legislative power are excluded by this definition. A railway is not a 'rule-making' authority nor is a municipal corporation; their bye-laws are therefore not statutory rules and orders.
>
> There are other classes of secondary legislation which also escape the net of section 3 of the Rules Publication Act.
>
> A large number are ruled out because they are merely confirmatory, others because they are of an executive rather than a legislative character. This latter distinction corresponds roughly with the distinction between general and particular commands which various writers have discussed. Confidential rules are also excluded; so also, subject to the direction of the Treasury with the approval of the Lord Chancellor and Speaker, are annual or periodically renewed rules such as the militia regulations or the education codes. The editor is allowed a discretion; if doubts arise, questions are decided by the Treasury, Lord Chancellor and Speaker.
>
> Not every document which is officially registered and numbered is printed. Many which are of local interest are not printed, but are tabulated in a classified list at the end of the annual volumes of Statutory Rules and Orders. If departments think it unnecessary to have their orders printed, their wishes are considered. And not every Statutory Rule and Order is put on sale. Sometimes the department makes a free distribution to the persons concerned.
>
> Finally Statutory Rules and Orders have been interpreted as being only those which are descended immediately from Acts of Parliament. If a rule or order is made by virtue of a previous rule or order, then the result is not the child but the grandchild of an Act of Parliament, it is not statutory but sub-statutory, and therefore it has strictly no right to be published in the series. This distinction between child and grandchild did not greatly matter until August, 1914, but during the war the Defence of the Realm Act had numbers of grandchildren; the Defence of the Realm Regulations were the immediate parents, and the Act was the grandparent. Mr. Alexander Pulling came to the rescue by producing a set of manuals of emergency legislation which introduced those grandchildren to the public.

It will be seen that the English Act does not apply to all delegated legislation. It is suggested that any Act adopted by the Conference should be more extensive in its scope. The limitation of its scope and the machinery for determining what regulations are of a public rather than a private or personal nature and what delegated legislation is of a legislative rather than of an executive nature, are matters which require special consideration.

The Committee on Ministers' Powers in its report (1932 Cmd. 4060) includes recommendations for the amendment of The Rules Publication Act, 1893, at page 66 which may be of assistance to the draftsman of a model Act. Among its recommendations is one that "Publication — possibly in the Gazette— should be a condition precedent to the coming into operation of a regulation. . . . ." According to my information, the tendency has been to cut down all gazetting. A list and description of official publications relating to Statutory Rules and Orders appears on pages 61 and 62 of Sir Cecil Carr's book above referred to.

The United States of America.—In 1935 Congress passed the Federal Register Act. The Act requires publication in the Federal Register of Presidential Proclamations and Executive Orders except those having no general applicability and legal effect; documents which the President determines have general applicability and legal effect, (all documents prescribing penalties are deemed to come within this class) documents required so to be published by Act of Congress, and documents authorized to be published by the regulations under the Federal Register Act. "Document" means any Presidential Proclamation or Executive Order and any order, regulation, rule, certificate, code of fair competition, license, notice or similar instrument issued, prescribed or promulgated by a Federal Agency. The regulations also prescribe the classes of documents required to be filed (reg.2.2) and also contain, as an appendix, almost nineteen pages (double column) listing enactments under the heading "Documents or classes of documents determined by the President of the United States pursuant to section 5 (A) of the Federal Register Act, to have general applicability and legal effect". Certainly the result is that the scope of the Act is much wider than that of the English Act of 1893.

The original and two duplicate originals or certified copies of any document coming under the Act are required to be filed with the Division of Federal Register of the National Archives.

The day and hour of filing are noted. The original is retained in the Archives. One copy is at once available for public inspection and one copy is transmitted immediately to the Government Printing Office. All documents required or authorized to be published by the Act are printed in the Federal Register, a daily publication.

The Archivist, an officer of the Department of Justice designated by the Attorney-General, and the Public Printer are constituted a permanent Administrative Committee. With the approval of the President they may prescribe regulations.

Section 7 of the Act is sufficiently important to quote in whole—

> 7. No document required under section 5 (a) to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof until the duplicate originals or certified copies of the document shall have been filed with the Division and a copy made available for public inspection as provided in section 2: and, unless otherwise specifically provided by statute, such filing of any document, required or authorized to be published under section 5, shall, except in cases where notice by publication is insufficient in law, be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby. The publication in the Federal Register of any document shall create a rebuttable presumption (a) that it was duly issued, prescribed, or promulgated; (b) that it was duly filed with the Division and made available for public inspection at the day and hour stated in the printed notation; (c) that the copy contained in the Federal Register is a true copy of the original, and, (d) that all requirements of this Act and the regulations prescribed hereunder relative to such document have been complied with. The contents of the Federal Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.

This mode of enforcing filing should prove very effective.

Section 8 permits publication in the Federal Register of any "notice of hearing or of opportunity to be heard" which is "required or authorized to be given by or under an Act of Congress, or which may otherwise properly be given." Section 9 provides for the cost of the Federal Register.

As originally passed section 11 applied to documents issued prior to the coming into force of the Act. As re-enacted in 1937 it provides for the filing, at five year intervals, by each Government agency of "a complete codification of all documents which, in the opinion of the agency, have general applicability and legal effect and which have been issued or promulgated by such agency and are in force and effect and relied upon by the agency

. . . ." Provision is made for publication of such codifications in a supplemental edition of the Federal Register. While the establishment of a Codification Board is provided for, this Board has been abolished and its functions transferred to the National Archives and consolidated with the Division of Federal Register, under the President's Re-organization Plan number 11, section 202 which was passed under the Re-organization Act of 1939.

In the interests of uniformity and efficiency the regulations prescribe the manner of the preparation, arrangement and form of various classes of documents, including such details as the method of numbering. Special attention is given to codification.

The publication entitled "The Code of Federal Regulations of the United States of America" is the result of the re-enactment of section 11 of the Federal Register Act referred to above. The Code includes fifty titles divided into chapters. It comprises some sixteen volumes together with a one or two volume annual supplement.

It may be well here to compare the English system of publication with that of the United States. In England the two current classes of publications are (1) Statutory Rules and Orders issued singly and placed on sale at prices from a penny upwards, and (2) Annual Volumes of Statutory Rules and Orders. (There are also a triennial consolidation and a Revised Edition of 1903). In the United States (where there has never been an Official Gazette) there are (1) daily or regular editions of the Federal Register, and (2) the supplemental edition known as the Code of Federal Regulations. To summarize my views with regard to our need for publications, I suggest that as we have an official Gazette in each jurisdiction we do not require anything further corresponding to the Federal Register. To hope for anything corresponding to the Code of Federal Regulations is, I think, reaching too far at this time. The code is a convenience; the central filing and regular publication which we seek is almost a necessity. A publication corresponding to the Annual Volumes of Statutory Rules is also I think, at this stage, more in the nature of a luxury than an actual requirement. And so I suggest that we provide that regulations of a legislative character and in the nature of a public Act shall, unless of a confidential nature, be published in the Gazette or in official pamphlet form in which latter case a notice of the publication shall appear in the Gazette.

Before leaving the legislation of the United States may I, in order to indicate something of the causes which were responsible for its enactment, quote from the General Preface to the Code of Federal Regulations:

The establishment of an office for the central publication of Federal administrative regulations had long been advocated. The United States was the only important Nation without an official gazette fulfilling this function. Great Britain, Germany, France, Australia, Ireland, Canada, New Zealand, South Africa and most of the Latin American countries supported systematic publications which made available and accessible the records of the acts of their executive authorities. At the direction of President Franklin D. Roosevelt, who had advocated such a reform since 1914, an official committee, under the chairmanship of the then Assistant Secretary of Commerce, studied the subject in detail from 1933 to 1935. In 1934 the American Bar Association adopted a recommendation that—

> Rules, regulations and other exercises of legislative power by executive or administrative officials should be made easily and readily available at some central office, and, with appropriate provision for emergency cases, should be subjected to certain requirements by way of registration and publication as prerequisite to their going into force and effect.

The argument of an important constitutional case (*Panama Refining Co.* v. *Ryan*, 293 U. S. 388; see selected Papers of Homer Cummings, Swisher ed., 1939, pp. 123-124) in the Supreme Court of the United States in the fall of 1934, in which the Assistant Attorney-General representing the Government, disclosed to the Court his discovery that the parties had proceeded in the lower courts in ignorance of the technical, though inadvertant, revocation of the regulation upon which the case rested, served to highlight the need for systematic publication of administrative regulations and called forth renewed pleas for a remedy. (See Griswold, *Government in Ignorance of Law—A Plea for Better Publication of Executive Legislation*, 48 Harv. L. Rev. 198)

The Federal Register Act, "to provide for the custody of Federal proclamations, orders, regulations, notices and other documents, and for the prompt and uniform printing and distribution thereof", was the direct result of these suggestions.

I draw your attention to the part played by the American Bar Assoication.

Conclusion.—Sir Courtney Ilbert wrote of the situation which prevailed in England prior to the Act of 1893—"The objection that the law embodied in statutory rules is less known and less easy to find than the law embodied in Acts of Parliament was . . . . substantial and serious." Sir Cecil Carr has written —"Before that Act (Rules Publication Act, 1893) was passed, delegated legislation was almost undiscoverable. Part of it was buried in the pages of the 'London Gazette' the arid nature of which still justifies Macaulay's criticisms; the rest was scattered over Parliamentary Papers or other departmental documents or files without any definite system." In Canada no corresponding Act has been passed, with the possible exception

of the Nova Scotia Act above referred to. Further, in the past forty years the increase in the occurrence of delegated legislation has been tremendous. That regulations, properly passed, are not less effective and forceful than the statutes themselves requires no further comment.

I take the liberty then of suggesting that if an Act is to be prepared by the Conference its preparation should be proceeded with without delay and in order to crystallize some of the problems and facilitate the determination of policies I respectfully make the following suggestions which may serve as a basis for discussion :

1. While the matter of providing for a central registry or place of filing is of paramount importance and that of providing for publication in a convenient form admissible in Court, is of secondary importance, the Act should provide for both.

2. As the Clerk of the Executive (or Privy) Council already has many regulations on file in his office, he might very well be named in the Act as the official with whom regulations shall be filed.

3. Publication in the Gazette of all regulations which are in the nature of a public Act and are not declared to be confidential should be required where there is no other official printing of the regulations. Where the official printing is otherwise than in the Gazette, notice of the regulation should be required to be printed in the Gazette.

4. No provision for codification or periodical consolidation similar to the Code of Federal Regulations or Annual Volumes of the Statutory Rules and Orders should be included in any Act prepared at this time.

5. Filing and publication should be enforced by rendering unfiled or unpublished regulations inoperative or by a provision similar to section 7 of the United States Act.

6. The Act should apply to existing regulations as well as those made after the coming into force of the Act.

7. The establishment of a board of three members, comprising the official with whom regulations are to be filed, the Legislative Counsel and a law officer of the Attorney-General's Department should be provided for.

8. The board would,—

(a) determine what delegated legislation is of an executive rather than a legislative character and consequently would not require filing;

(b) determine what delegated legislation is not in the nature of a public Act and what delegated legislaton is of a confidential nature and which consequently, in either case, would not require publication;

(c) make regulations governing the form of delegated legislation coming under the Act and other matters similar to those contained in the regulations under the English and American Acts; and

(d) settle other incidental problems.

9. Each set of regulations should be assigned a number for convenience of reference.

10. A system of indexing should be provided for.

11. The Act should provide for the admissibility in evidence of,—

(a) copies of regulations printed pursuant to the Act; and

(b) copies of regulations certified by the official with whom the regulations are required to be filed.

12. Where regulations are substantially amended, the passing of a consolidation rather than amending the regulations should be encouraged.

All of which is respectfully submitted to you as President of the Conference in a spirit of helpful suggestion.

Yours faithfully,

E. H. SILK.

APPENDIX L

LETTERS RE UNIFORM LIMITATION OF ACTIONS ACT

OSGOODE HALL LAW SCHOOL
OSGOODE HALL
Toronto 2, Canada

26th June, 1942.

Eric H. Silk, Esq., K.C.,
Legislative Counsel,
Parliament Buildings,
Toronto 5.

Dear Silk:

I venture to write to you as secretary of the Conference of Commissioners on Uniformity of Legislation in Canada for the purpose of suggesting that you bring before the Conference at its meeting in August next the question whether the uniform Limitation of Actions Act, adopted by the Conference in 1931, and amended in 1932, and subsequently enacted in four provinces, should be further amended in respect of the following matters.

(1) In England the Limitation Act, 1939 (which has superseded many old English limitation statutes passed at various times from 1623 to 1888) contains in s. 3 a provision for the extinguishment of the title of the owner of a chattel who is out of possession for the statutory period. This provision (quoted in my Law of Mortgages (3rd ed. 1942) 536) fills in a curious gap in the former English and present Canadian law, namely, that whereas the title of the owner of land is extinguished if he is out of possession for the statutory period, the title to pure personalty is not extinguished by lapse of time. The same s. 3 above mentioned also contains a useful provision with regard to the case of successive conversions of the same chattel. I suggest that the uniform statute should be amended accordingly.

(2) The law of limitations with regard to claims against trustees and as to land held upon trust is in an obscure condition in the Canadian statutes. See ss. 15, 34, 35 and 36 of the uniform statute (Conference Proceedings, 1931, pp. 43, 50,

51); *cf.* R.S.O. 1937, c. 118, ss. 24, 46, 47 (discussed in my Law of Mortgages, pp. 579-582). In England the law has been notably simplified by the Limitation Act, 1939 (as indicated on p. 582 of my Law of Mortgages). I suggest that ss. 15, 34, 35 and 36 of the uniform statute should be reconsidered in the light of the Limitation Act, 1939.

As for the present Ontario Limitations Act I have in my book discussed many of its obscurities and incongruities, but that is of course another story.

Yours sincerely,

JOHN D. FALCONBRIDGE,
Dean.

AIKINS, LOFTUS, MACAULAY, TURNER, THOMPSON & TRITSCHLER
Barristers and Solicitors

Winnipeg, Canada,
August 13th, 1942.

R. Murray Fisher, Esq., K.C.,
Deputy Provincial Secretary,
Legislative Building.
Winnipeg.

Dear Murray:

Re: "THE UNIFORM LIMITATION OF ACTIONS ACT."

Referring to our telephone conversation of yesterday, I would refer you to Section 7 of the Manitoba "Limitation of Actions Act," 1931, which provided that a promise, written acknowledgment, or a part payment, prevented the operation of the statute. This section was apparently based on the English statutes and would be governed by the relevant English cases.

In 1932 however, Section 7 of our Limitation Act was amended to provide that the statute would not run where the debtor (a) conditionally or unconditionally promised in writing to pay; (b) gave a written acknowledgment; (c) made a part payment; and it is provided, by sub-section (2), that a written acknowledgment or a part payment shall have full effect whether or not a promise to pay can be implied therefrom and whether or not it is accompanied by a refusal to pay.

My impression was that the Committee on Uniformity were endeavouring to get away from some of the English cases in connection with acknowledgments and promises and had done so by providing that a conditional or unconditional promise was sufficient, and that an acknowledgment was sufficient whether or not a promise to pay could be implied, or whether or not it was accompanied by a refusal to pay. Subsequent cases in Manitoba, however, do not seem to bear this out.

Judge Robson, in *Cummins* v. *Cummins*, 41 M.R. 607, at the foot of p. 618, referring to our 1932 amendment, says that he does not think the provision was intended to depart from the principles set forth in *Spencer* v. *Hemmarde*. In *Buckley* v. *Taylor*, 45 M.R. 232, Donovan, J., at p. 239, follows Robson, J.A., in the Cummins case, and in *McCutcheon* v. *Gregg*, 47 M.R. 193, Dysart, J., in spite of our statute, holds that to take a debt out of the operation of the statute, the promise or acknowledgment must be unconditional, referring to the English cases collected in Halsbury. At the foot of p. 196, Dysart, J., refers to our 1931 statute, but not to the amendment of Section 7 passed in 1932.

There is also another point in connection with this statute which is not as clear as it might be. Under the former "Real Property Limitation Act," a judgment had to be sued within ten years, unless a payment or acknowledgment was made. This provision was all contained in one section. Now, Section 3 of our new Act gives a list of the limitation periods. Sub-section (f) allows six years on a simple contract debt, and sub-section (j) ten years on a judgment. When one comes to look at Section 7 above mentioned, it provides for a period of six years from the promise, acknowledgment or part payment. Does Section 7 apply to a judgment at all, and if it does, is the period six years from the payment made on account of the judgment, or a further ten years as provided by sub-section (j)? The better opinion would seem to be that if Section 7 applies to a judgment at all, the period would be six years from the payment.

Yours very truly,

F. J. TURNER.

APPENDIX M

PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY AND RELEVANT CORRESDENCE AND OTHER MATERIAL

PROVINCE OF MANITOBA

ATTORNEY-GENERAL
WINNIPEG

August 8th, 1942.

Mr. R. M. Fisher, K.C.
Local Secretary for Manitoba,
Commissioners on Uniformity
of Legislation in Canada,
351 Legislative Building,
Winnipeg, Manitoba.

Dear Sir:

Re : PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY WHICH ARE TO BE UTILIZED ABROAD.

Enclosed please find—

(1) Copy of letter dated June 13th, 1942, from E. H. Coleman, K.C., Under Secretary of State, Ottawa, Canada, to His Honour, The Lieutenant-Governor of Manitoba, Winnipeg.

(2) Copy of letter dated 15th June, 1942, from His Honour R. F. McWilliams, K.C., Lieutenant-Governor of Manitoba, to myself.

(3) One print of the Protocol on Uniformity of Powers of Attorney which are to be utilized abroad, referred to in (1) and (2) above.

(4) Copy of my letter of today to
His Honour R. F. McWilliams, K.C.,
Lieutenant-Governor of Manitoba,
Legislative Building,
Winnipeg, Manitoba.

Will you please have this matter considered this year at the Conference of Commissioners on Uniformity of Legislation in Canada.

In due course please let me have your report as to what is the recommendation, etc., of the said Commissioners in the matter.

Yours truly,

JAMES MCLENAGHEN,
Attorney-General.

August 8th, 1942.

His Honour R. F. McWilliams, K.C.,
Lieutenant-Governor of Manitoba,
Legislative Building,
Winnipeg, Man.

Dear Sir:

Re : PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY WHICH ARE TO BE UTILIZED ABROAD.

On 15th June, 1942, you wrote me herein enclosing—

(1) Copy of letter dated June 13th, 1942, to yourself from E. H. Coleman, K.C., Under Secretary of State, Ottawa, Canada.

(2) One print of the Protocol on Uniformity of Powers of Attorney which are to be utilized abroad.

The said letter dated June 13th, 1942, is as follows—

DEPARTMENT OF THE SECRETARY OF STATE OF CANADA

Ottawa, June 13, 1942.

Sir:

On March 24, 1942, the Senate of the United States of America approved the ratification, without amendment or reservation, of the "Protocol on Uniformity of Powers of Attorney" opened at the Pan-American Union, on February 17, 1940, to the signature of States Members.

On laying this Protocol before the President for transmission to the Senate, the Acting Secretary of State of the United States pointed out :

"Citizens and corporations of the United States have experienced considerable difficulties in the tech-

nical interpretation of powers of attorney in a number of the other American republics. In those countries a legally acceptable power of attorney is required in nearly all instances wherein any party acts as agent for or on behalf of a principal. The execution of a power of attorney in the other American republics is usually characterized by many more formalities and its exercise is usually governed by rules far more stringent than obtain in the United States. Insistence upon technical perfection in powers of attorney has been carried to such extremes in some of the American republics that cases in courts have been delayed for years by objections and exceptions to powers of attorney. According to information received by the Department of State, unless a claim involves more than $1,000 an American corporation often will abandon it rather than make an attempt to collect it in the courts. It is thought that these difficulties encountered by American citizens and corporations will be greatly reduced, if not altogether removed, by the operation of the protocol, in those American republics which shall give it effect."

An inquiry has been made by the Department of External Affairs from the Minister of Justice, the Canadian Ministers to the Argentine Republic and Chile and to Brazil and the Canadian Bar, as to whether they consider that there may be advantage for Canada to sign with the other American States an agreement along the lines of the Protocol of February 17, 1940.

In its reply, dated May 14, 1942, the Department of Justice expressed the opinion that this was a matter which would require sanction by the Provinces before any action could be taken and it therefore recommended that copies of the Protocol be forwarded to the Lieutenant-Governors of the several Provinces, in order that the views of their respective Governments might be obtained.

The Secretary of State will be grateful if your Honour will accordingly furnish the Government of your Province with a copy of the Protocol and kindly advise him, in due course, of their views as regards the desirability for Canada to conclude with the other American States an agreement similar to the Protocol ratified by the Senate of the United States of America in March last.

One copy of the Protocol is appended hereto for this purpose.

I have the honour to be,

Sir,

Your obedient servant,

E. H. COLEMAN,
Under Secretary of State.

His Honour,
The Lieutenant-Governor of Manitoba,
Winnipeg, Manitoba.

As I understand it, this matter of the simplification and uniformity in the laws governing powers of attorney among the countries of the Pan American Union was first brought to the attention of The Seventh International Conference of American States, held at Montevideo, Uruguay, from December 3rd to 26th, 1933. That Conference gave expression to the growing realization of the necessity of ameliorating a legal situation so prejudicial to the development of Pan American commerce, and adopted a resolution to that end.

The American Bar Association took cognizance of the said resolution adopted by the said Montevideo Conference and appointed a Committee of its Section of International and Comparative Law to report upon the feasibility of obtaining simplification and uniformity in respect to the problems involved and to co-operate with the Pan American Union for the attainment of the ends contemplated by the Montevideo Conference resolution.

The above Committee reported to the Section of International and Comparative Law and the American Bar Association at the latter's Annual Meeting held in the city of Milwaukee, Wisconsin, August 27th–30th, 1934.

The said report and its draft of recommended uniform legslation was transmitted by the American Bar Association to the Pan American Union in the fall of 1934, pursuant to the resolution which appears in volume 59, page 196, of the reports of the American Bar Association, which resolution is set out at page 3 of said print of the Protocol on Uniformity of Powers of Attorney which are to be utilized abroad.

The Pan American Union then appointed its Commission of Legal Experts in pursuance of the Montevideo Conference resolution, which Commission consisted of four Latin American jurists and David E. Grant, an able and experienced attorney of New York City.

The final protocol on powers of attorney was the outcome of the deliberations of the said Commission of Legal Experts based upon the report submitted by the American Bar Association and assisted by the observations of a number of Latin American governments on tentative drafts transmitted to them for that purpose in the course of the years 1935 and 1936.

It is apparent that citizens and corporations of the United States have experienced difficulties in the technical interpretation of powers of attorney in a number of the other American republics. See the said letter dated June 13th, 1942.

As far as I am aware no complaints have been made by residents of Manitoba relative to difficulties experienced in the matter of powers of attorney in the transaction of business, etc., with persons in Latin American republics.

The question before us as set out in said letter dated June 13th, 1942, is

> as to whether there may be advantage for Canada to sign with the other American States an agreement along the lines of the said Protocol on Uniformity of Powers of Attorney which are to be utilized abroad.

As under the constitution of Canada such a matter requires sanction by the provinces before action can be taken by the National Government at Ottawa, Manitoba as one of the nine provinces of Canada has been asked to express its views, etc.

In view of what is stated above, in my opinion this whole matter is one pre-eminently for consideration first by representatives from the Provinces and the Dominion in conference. Hence in my opinion the matter now before us should first be considered by the Commissioners on Uniformity of Legislation in Canada.

I will take steps to have this whole matter discussed if possible this year at the Conference of Commissioners on Uniformity of Legislation in Canada which Conference will be held towards the end of August at Windsor in Ontario.

After the said Commissioners on Uniformity of Legislation in Canada have considered this matter the same will receive further consideration on behalf of the Government of Manitoba.

Yours truly,

JAMES MCLENAGHEN,
Attorney-General.

GOVERNMENT HOUSE
WINNIPEG

15th June, 1942.

Dear Sir:

I am in receipt of a letter from the Under Secretary of State of Canada requesting me to lay before the Government of the Province a Protocol on Uniformity of Powers of Attorney, signed by the President of the United States, which is under consideration for adoption in Canada. As the matter dealt with is a legal matter, it would doubtless be referred by the Government to you for consideration and I am, therefore, forwarding it directly to you.

I enclose a copy of the Under Secretary's letter of the 13th explaining his purpose and also the enclosed publication of the Government of the United States setting out and explaining the terms of the Protocol referred to.

Would you be good enough to look into this matter and take it up with the Executive Council and advise me as to what reply I should make.

Yours very truly,

R. F. MCWILLIAMS,
Lieutenant-Governor.

The Honourable James McLenaghen, K.C.
Attorney-General,
Legislative Building.

(CONFIDENTIAL)

77th Congress, 2d Session — SENATE — Executive A

PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY, WHICH ARE TO BE UTILIZED ABROAD

MESSAGE
from
THE PRESIDENT OF THE UNITED STATES

Transmitting

A PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY WHICH ARE TO BE UTILIZED ABROAD, SIGNED FOR THE UNITED STATES ON OCTOBER 3, 1941.

March 5, 1942.—Protocol was read the first time and referred to the Committee on Foreign Relations and together with the message and the accompanying papers was ordered to be printed in confidence for the use of the Senate.

THE WHITE HOUSE, March 5, 1942.

TO THE SENATE OF THE UNITED STATES:

To the end that I may receive the advice and consent of the Senate to ratification thereof, I transmit herewith a protocol on uniformity of powers of attorney which are to be utilized abroad, opened at the Pan American Union on February 17, 1940, to the signature of States members of the Union, which under my authority was signed for the United States of America, ad referendum, by the Secretary of State on October 3, 1941.

I transmit also a report by the Acting Secretary of State regarding the protocol, to which I invite the attention of the Senate.

FRANKLIN D. ROOSEVELT.

UNIFORMITY OF POWERS OF ATTORNEY.

DEPARTMENT OF STATE.

Washington, March 3, 1942.

The President,
The White House:

The Undersigned, the Acting Secretary of State, has the honor to lay before the President, with a view to its transmission to the Senate, to receive the advice and consent of that body to ratification, if his judgment approve thereof, a protocol on uniformity of powers of attorney which are to be utilized abroad. This protocol was drafted by a committee of experts appointed by the governing board of the Pan American Union pursuant to a resolution (No. XLVIII) of the Seventh International Conference of American States, held at Montevideo, December 3-26, 1933, which is quoted as a part of the preamble of the protocol. The protocol was opened at the Pan American Union on February 17, 1940, to the signature of the states members of the Union in accordance with a resolution of January 3, 1940, of the governing board of the Union. It is a companion protocol to the protocol governing recognition of the juridical personality of foreign companies to the ratification of which the Senate gave its advice and consent on June 12, 1941, and in respect of which the subsequent procedure necessary to bring the protocol into force and make public the act that it had been brought into force was completed by the issuance of the President's proclamation on August 21, 1941.

By virtue of the authority vested in the Secretary of State, by the President's full power, the Secretary signed the protocol on uniformity of powers of attorney which are to be utilized abroad for and in the name of the United States of America ad referendum, on October 3, 1941, as was permitted by its article XII which provides that the protocol would become operative as respects each high contracting party on the date of signature by such party, except that each state desiring to do so might sign the protocol ad referendum in which case the protocol would not take effect with respect to such state until after the deposit of its instrument of ratification.

The protocol on uniformity of powers of attorney which are to be utilized abroad has been signed also for the following countries on the dates set forth after their names: Venezuela, February 9, 1940, with a modification; Panama, April 10, 1940, ad referendum; El Salvador, May 21, 1940, ad referendum; Colombia, May 25, 1940, ad referendum, with a reservation; Nicaragua,

May 27, 1940, ad referendum; Brazil, August 6, 1940; Bolivia, September 26, 1940, ad referendum, with a clarification.

Although the representative of El Salvador signed the protocol on uniformity of powers of attorney to be utilized abroad ad referendum without any reservation, two reservations were made by El Salvador in its instrument of ratification deposited with the Pan American Union on February 6, 1941. Venezuela deposited its ratification with the Pan American Union on November 3, 1941, including in it the modification made by the Venezuelan representative on the occasion of signature.

Article XIII of the protocol provides that any state desiring to approve the protocol with modifications may indicate when signing it the form in which the instrument will be given effect within its territory. It is believed that the modification, reservations, and clarifications which have been made are within the privilege accorded by article XIII and are not of a character to make the protocol as modified by them, in respect of Venezuela, Colombia, El Salvador, and Bolivia, respectively, unacceptable to the United States.

As El Salvador and Venezuela have ratified the protocol with their accompanying reservations and modification the protocol is already in effect as respects those two countries as well as Brazil which signed it without any modification or reservation. So far as the Department is informed Bolivia, Colombia, Nicaragua, and Panama have not deposited instruments of ratification as would be required because the signatures of their plenipotentiaries were made ad referendum.

On August 31, 1934, at its annual meeting in Milwaukee the American Bar Association adopted the following resolution regarding a report and a draft of a uniform law on powers of attorney in Latin-American countries:

"WHEREAS, the Seventh International Conference of American States, held at Montevideo in 1933, recommended to the Pan American Union to prepare and draft a uniform law for powers of attorney in Latin-American countries, and

"WHEREAS, the American Bar Association is especially interested in the work of the Pan American Union, and

"WHEREAS, a committee appointed by the Section of International and Comparative Law of the American Bar Association has submitted a report containing a draft of such uniform legislation; now therefore be it

"RESOLVED, that the report and the draft of uniform legislation recommended by the Section be approved and that the

report as printed and laid before the Section be forwarded to the Pan American Union with the recommendation that it be adopted by the committee of the Pan American Union for submission to the governments of the member countries of the Union."

The Department of Commerce and the Department of Justice have considered the protocol as opened for signature and have concurred with this Department in the view that the United States may appropriately become a party to it. The protocol as opened for signature has been endorsed by members of the Committee of the American Bar Association on the simplification and Uniformity of the Laws Governing Powers of Attorneys Among Countries of the Pan American Union, and by the attorneys for a number of American corporations having important business interests in other countries of the Americas.

Article I of the protocol sets forth rules to which powers of attorney must conform by providing that the attesting official shall certify to the identity and legal capacity of the person executing the instrument; to the authority of a representative executing a power of attorney in the name of a third person and that such representation is legal according to documents exhibited; and in addition, in the case of a power of attorney executed in the name of a juridical person, to the due organization, home office and legal existence of the juridical person and that the purposes for which the instrument is granted are within the scope of its objects or activities.

In addition to laying down the rules to which powers of attorney must conform the principal purposes of the protocol are to place the burden of proof on the party challenging the power of attorney (art. II); to recognize the validity of general powers of attorney to consummate administrative acts (art. IV); to provide that powers of attorney executed in one country in conformity with the protocol, and legalized in accordance with the special rules governing legalization, shall be given full faith and credit in the other countries (art. V); and to permit representation of any person, who may intervene or become a party to a suit, by a volunteer pending due substantiation of the volunteer's authority (art. VIII).

Citizens and corporations of the United States have experienced considerable difficulties in the technical interpretation of powers of attorney in a number of other American republics. In those countries a legally acceptable power of attorney is required in nearly all instances wherein any party acts as agent for or on behalf of a principal. The execution of a power of attorney in

other American republics is usually characterized by many more formalities and its exercise is usually governed by rules far more stringent than obtain in the United States. Insistence upon technical perfection in powers of attorney has been carried to such extremes in some of the American republics that cases in courts have been delayed for years by objections and exceptions to powers of attorney. According to information received by the Department of State, unless a claim involves more than $1,000 an American corporation often will abandon it rather than make an attempt to collect it in the courts. It is thought that these difficulties encountered by American citizens and corporations will be greatly reduced, if not altogether removed, by the operation of the protocol in those American republics which shall give it effect.

Article XII of the protocol provides that the protocol shall remain operative indefinitely, but that any party thereto may terminate its own obligations thereunder 3 months after it has given to the Pan American Union notice of such intention.

Respectfully submitted,

SUMNER WELLES,
Acting Secretary of State.

THE ENGLISH TEXT OF PROTOCOL ON UNIFORMITY OF POWERS OF ATTORNEY WHICH ARE TO BE UTILIZED ABROAD,

The Seventh International Conference of American States approved the following resolution (No. XLVIII):

"The Seventh International Conference of American States, resolves:

"1. That the Governing Board of the Pan American Union shall appoint a Commission of five experts, to draft a project for simplification and uniformity of powers of attorney and the juridical personality of foreign companies, if such uniformity is possible. If such uniformity is not possible, the Commission shall suggest the most adequate procedure for reducing to a minimum both the number of different systems of legislation on these subjects and the reservations made to the several conventions.

"2. The report should be issued in 1934, and be given to the Governing Board of the Pan American Union in order

that it may submit it to the consideration of all the Governments, members of the Pan American Union, for the purposes indicated."

The committee of experts appointed by the Governing Board of the Pan American Union pursuant to the above resolution prepared a draft of uniform legislation governing powers of attorney to be utilized abroad, which was submitted by the Governing Board to the governments, members of the Pan American Union, and revised in accordance with the observations of the said governments.

A number of the governments of the American Republics have indicated that they are prepared to subscribe to the principles of the said draft, and to give them conventional expression, in the following terms:

ARTICLE I

Powers of attorney granted in the countries, comprising the Pan American Union, for utilization abroad, shall conform to the following rules:

1. If the power of attorney is executed by or on behalf of a natural person, the attesting official (notary, registrar, clerk of court, judge or any other official upon whom the law of the respective country confers such functions) shall certify from his own knowledge to the identity of the appearing party and to his legal capacity to execute the instrument.

2. If the power of attorney is executed in the name of a third person, or if it is delegated or if there is a substitution by the agent, the attesting official, in addition to certifying, in regard to the representative who executes the power of attorney, or delegates or makes a substitution, to the requirements mentioned in the foregoing paragraph, shall also certify that such representative has in fact the authority to represent the person in whose name he appears, and that this representation is legal according to such authentic documents as for this purpose are exhibited to said attesting official and which the latter shall mention specifically, giving their dates, and their origin or source.

3. If the power of attorney is executed in the name of a juridical person, in addition to the certification referred to in the foregoing paragraphs, the attesting official shall certify, with respect to the juridical person in whose name the power is executed, to its due organization, its home office, its present

legal existence, and that the purposes for which the instrument is granted are within the scope of the objects or activities of the juridical person; which declarations shall be based on the documents which for that purpose are presented to the official, such as the instrument of organization, by-laws, resolutions of the board of directors or other governing body, and such other legal documents as shall substantiate the authority conferred. The attesting official shall specifically mention these documents, giving their dates and their origin.

ARTICLE II

The certification made by the attesting official pursuant to the provisions of the foregoing article, shall not be impugned except by proof to the contrary produced by the person challenging its accuracy.

For this purpose, it shall not be necessary to allege falsity of the document if the objection is founded only on an erroneous legal construction or interpretation made by the official in his certification.

ARTICLE III

It shall be unnecessary for the grantee of a power of attorney to signify therein his acceptance of the mandate: such acceptance being conclusively presumed by the grantee's acting under the power.

ARTICLE IV

Special powers of attorney to authorize acts of ownership granted in any of the countries of the Pan American Union, for use in another member country, must specify in concrete terms the nature of the powers conferred, to enable the grantee to exercise all the rights necessary for the proper execution of the power with respect to property as well as to the taking of all necessary steps before the tribunals or administrative authorities in defense thereof.

General powers of attorney for the administration of property shall be sufficient, if expressly granted with that general character, to empower the grantee to consummate all manner of administrative acts, including the prosecution and defense of lawsuits and administrative and judicial proceedings, in connection with the administration of the property.

General powers of attorney for lawsuits, collections or administrative or judicial proceedings, when so worded as to indicate that they confer all general powers and all such special powers as,

according to the law, ordinarily require a special clause, shall be deemed to be granted without any limitation or restriction whatever.

The provisions of this article shall have the character of a special rule which shall prevail over such general rules to the contrary as the legislation of the respective country may establish.

ARTICLE V

Powers of attorney granted in any of the member countries of the Pan American Union, which are executed in conformity with the rules of this protocol, shall be given full faith and credit, provided, however, that they are legalized in accordance with the special rules governing legalization.

ARTICLE VI

Powers of attorney granted abroad and in a foreign language may be translated into the language of the country of their destination and the translation incorporated as part of the text of the instrument thereof. In such case, the translation, so authorized by the grantor, shall be deemed accurate in every particular. The translation of the power of attorney may also be made in the country where the power is to be utilized, in accordance with the local usage or pertinent laws of such a country.

ARTICLE VII

Powers granted in a foreign country do not require as a prerequisite their registration or protocolization thereof in designated offices. However, this rule will not prevail when the registration or protocolization of such instruments is required by the law as a special formality in specific cases.

ARTICLE VIII

Any person who may, pursuant to the pertinent legislation, intervene or become a party in a judicial or administrative proceeding for the defense of his interests, may be represented by a volunteer, on condition, however, that such representative shall furnish the necessary legal authority in writing, or that, pending the due substantiation of his authority, such representative shall furnish bond, at the discretion of the competent tribunal or administrative authority, to respond for the costs or damages which his action may occasion.

ARTICLE IX

In the case of powers of attorney, executed in any of the countries of the Pan American Union in accordance with the foregoing provisions, to be utilized in any other member country of the Union, notaries duly commissioned as such under the laws of their respective countries shall be deemed to have authority to exercise functions and powers equivalent to those accorded to native notaries by the laws and regulations of (name of country), without prejudice, however, to the necessity of protocolization of the instrument in the cases referred to in article VII.

ARTICLE X

What has been said in the foregoing articles with respect to notaries, shall apply with equal force to the authorities or officials that exercise notarial functions under the laws of their respective countries.

ARTICLE XI

The original of the present protocol in Spanish, Portugese, English and French, under the present date shall be deposited in the Pan American Union and opened for signature by the States, members of the Pan American Union.

ARTICLE XII

The present protocol is operative as respects each High Contracting party on the date of signature by such party. It shall be open for signature on behalf of any of the States, members of the Pan American Union, and shall remain operative indefinitely but any party may terminate its own obligations hereunder three months after it has given to the Pan American Union notice of such intention.

Notwithstanding the stipulations of the foregoing paragraph any State desiring to do so may sign the present Protocol Ad Referendum, which protocol in this case, shall not take effect, with respect to such State, until after the deposit of the instrument of ratification, in conformity with its constitutional procedure.

ARTICLE XIII

Any State desiring to approve the present Protocol with modifications may indicate, when signing the Protocol, the form in which the instrument will be given effect within its territory.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having deposited their full powers found to be in due and proper form, sign this Protocol on behalf of their respective governments, and affix thereto their seals on the dates appearing opposite their signatures.

The foregoing document has been deposited on this date with the Pan American Union and opened to the signature of the States, members of the Pan American Union, in accordance with the resolution of January 3, 1940, of the Governing Board of the Pan American Union.

L. S. ROWE,
Director General of the Pan American Union.

Washington, D. C., February 17, 1940.

(TRANSLATION)

FOR VENEZUELA:

The Representative of Venezuela signs the present Protocol with the following modification of section 1 of the first article:

> "1. If the power of attorney is executed by or on behalf of a natural person, the attesting official (notary, registrar, clerk of court, judge or any other official upon whom the law of the respective country confers such function) shall certify that he knows the person executing the instrument and that he has the legal capacity to execute it, according to the documents he has produced."

(S) DIOGENES ESCALANTE February 29, 1940. (SEAL)

FOR PANAMA:

(S) JORGE E. BOYD ad referendum April 10, 1940. (SEAL)

FOR EL SALVADOR:

(S) HECTOR DAVID CASTRO ad referendum May 21, 1940, (SEAL)

(The Salvadoran instrument of ratification was deposited with the Pan American Union on February 6, 1941. Contains the following "modifying reservations":

> "(a) Article IX, as respects its application in El Salvador, shall be considered as reading as follows:

"Article IX. Powers of attorney executed in any of the countries of the Pan American Union in accordance with the foregoing provisions and in conformity with the laws of the country of origin to be utilized in any other country of the Union shall be considered as having been executed before a competent notary of the country in which they may be utilized, without prejudice, however, to the necessity of protocolization of the instrument in the cases referred to in Article VII.

"(b) The reservation is made to Article VIII that unauthorized action by the attorney, as plaintiff or defendant, cannot be admitted in judicial or administrative matters for which Salvadoran laws require that representation be accredited by a special power of attorney.")

FOR COLOMBIA:

"The Plenipotentiary of Colombia signs the Protocol on the Legal Regime of Powers of Attorney ad referendum to approval by the National Congress, making the reservation that Colombian legislation set forth in Article 2590 of the Civil Code, provides that notaries are responsible only for the form and not for the substance of the acts and contracts which they authenticate."

(S) GABRIEL TURBEY May 25, 1940. (SEAL)

FOR NICARAGUA:

(S) LEON DE BAYLE ad referendum May 27, 1940. (SEAL)

FOR BRAZIL:

(S) CARLOS MARTINS PEREIRA E SOUSA September 6, 1940 (SEAL)

FOR BOLIVIA:

"The Plenipotentiary of Bolivia signs the present Protocol with the following clarification of Article I, Section 2:

"For the correct application of Article I, Section 2, of the Protocol on Uniformity of the Legal Regime of Powers of Attorney in the territory of the Republic of Bolivia it is necessary that the notary or official charged with the authentication of documents insert in the Powers of Attorney which are executed by delegation or by substitution the integral text of the original powers of Attorney and of all those documents which prove the legal capacity of the person conferring the power of Attorney."

(S) LUIS GUACHALIA ad referendum September 26, 1940, (SEAL)

FOR THE UNITED STATES OF AMERICA:

(S) CORDELL HULL ad referendum October 3, 1941, (SEAL)

I hereby certify that the foregoing document is a true and faithful copy of the original, with the signatures affixed thereto up to the present date, of the Protocol on Uniformity of Powers of Attorney which are to be utilized abroad, deposited in the Pan American Union and opened for signature by the States, members of the Pan American Union, on February 17, 1940.

PEDRO DE ALBA,

Secretary of the Governing Board of the Pan American Union.
Washington, D.C., October 7, 1941.

(SEAL)

APPENDIX N

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

WAREHOUSE RECEIPTS ACT

At the 1938 Conference a resolution was passed that the matter of a Uniform Warehouse Receipts Act be referred to the British Columbia Commissioners for consideration and report next year.

The British Columbia Commissioners have prepared and submit herewith a draft Warehouse Receipts Act, having used as a basis the draft Act that was submitted to the Conference in 1939 by Messrs. Locke, Lane & Nicholson, barristers of Vancouver.

A warehouse receipt has not by custom any peculiar incidents attached to it and its transfer does not pass to the transferee the property in the goods. Certain statutes, however, have attached specific incidents to warehouse receipts, and the following statutes need consideration, namely:

(a) Alberta.
  (1) Factors Act R.S. 1922, c. 147, secs. 9, 10 and 11.
  (2) Warehousemen's Lien R.S. 1922, c. 105.

(b) British Columbia.
  (1) Warehousemen's Lien Act, R.S. 1936, c. 304.
  (2) Sale of Goods Act, R.S. 1936, c. 250, sec. 2, definition "document of title", and secs. 32, 60, 61, 63, 66, 67.

(c) Canada.
  (1) Canada Grain Act 1930, c. 5, secs. 90 to 94, 96, 109, 110, 113 to 117, 120, 126 to 129, 133, 135, 136.
  (2) Bank Act, 1934, c. 24, secs. 2 and 86 and 90, 146 to 149.
  (3) Excise Act, dealing with bonded warehouses.

(d) Manitoba.
  (1) Factors Act, R.S. 1940, c. 70.
  (2) Sale of Goods Act, R.S. 1940, c. 185, secs. 2 (e) and 27.
  (3) Warehousemen's Lien Act 1940, c. 228.

(e) New Brunswick.
  (1) Factors Act, R.S. 1927, c. 154, secs. 2, 12 and 13.

(f) Nova Scotia—(Statutes after 1923 not available to your Commissioners.)
  (1) Factors Act, R.S. 1923, c. 203.
  (2) Storage Warehousekeepers Act, 1923, c. 125.
  (3) Sale of Goods Act, 1923, c. 206, sec. 27.

(g) Ontario.
  (1) Factors Act, R.S. 1937, c. 185.
  (2) Mercantile Law Amendment Act, R.S. 1937, c. 178, secs. 8 *et seq.*
  (3) Sale of Goods Act, R.S. 1937, c. 180, sec. 25.
  (4) Warehousemen's Lien Act, R.S. 1937, c. 186.

(h) Saskatchewan.
  (1) Factors Act, R.S. 1940, c. 282, secs. 9 and 10.
  (2) Sale of Goods Act, 1940, c. 284, secs. 2, 25 and 26.
  (3) Warehousemen's Lien Act, R.S. 1940, c. 297.

(i) Prince Edward Island. Statutes not available to your Commissioners.

The draft Act submitted to the Commission contained provisions regarding warehousemen's liens. In view of the fact that the Conference has already prepared a Uniform Warehousemen's Lien Act, which has been enacted by several of the Provinces, the British Columbia Commissioners do not think it is necessary to include any provisions in the new Act regarding a warehouseman's lien. Your Commissioners, however, recommend that section 3 of the Uniform Warehousemen's Lien Act be amended so as to provide, in the case of negotiable warehouse receipts, there shall be no lien except for storage charges subsequent to the date of the receipt unless the receipt expressly enumerates the other charges, so that there will be no conflict with section 25 of the draft Act.

July 21st, 1941.

Respectfully submitted.

J. P. HOGG,
H. G. LAWSON,
For British Columbia Commissioners.

AN ACT TO MAKE UNIFORM THE LAW RESPECTING WAREHOUSE RECEIPTS

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

1. This Act may be cited as the "Uniform Warehouse Receipts Act."

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

"Action" includes counterclaim and setoff;

"Delivery" means voluntary transfer of possession from one person to another;

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

"Goods" means personal chattels in storage, or that have been or are about to be stored;

"Holder", as applied to a negotiable receipt, means a person who has both possession of the receipt and a right of property therein, and, as applied to a non-negotiable receipt, means the person named therein as the person to whom the goods are to be delivered or his assignee;

"Negotiable receipt" is one in which it is stated that the goods therein specified will be delivered to bearer or to the order of any named person;

"Non-negotiable receipt" is one in which it is stated that the goods therein specified will be delivered to the depositor or to any other named person;

"To purchase" includes to take as mortgagee or as pledgee;

"Purchaser" includes mortgagee and pledgee;

"Receipt" means a warehouse receipt;

"Valuable consideration" includes,

(a) any consideration sufficient to support a simple contract,

(b) an antecedent debt or liability;

"Warehouse receipt" means any receipt given by any warehouseman for any goods in his actual, visible and continued possession in good faith and not as of his own property;

"Warehouseman" means a person lawfully engaged in the business of storing goods as a bailee for hire; and includes any person who is the owner or keeper of a harbour, cove, pond, booming ground, wharf, yard, bunker, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, whether such person is engaged in other business or not.

3. A thing shall be deemed to be done "in good faith," within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

Persons who may issue warehouse receipts

4. Warehouse Receipts may be issued by any warehouseman and shall be numbered with a distinctive number.

Form of receipts.

5. Warehouse receipts need not be in any particular form, but shall be in writing and shall set out or contain the following particulars:

(a) A description of the location of the warehouse or other place where the goods are stored;

(b) The name, address and occupation of the person by whom or on whose behalf the goods are deposited;

(c) The date of issue of the receipt;

(d) The distinctive number of the receipt;

(e) A statement whether the goods received will be delivered to the person by whom or on whose behalf the goods are deposited, or to any other named person, or to bearer or to the order of any named person;

(f) The rate of storage charges;

(g) A description of the goods or of the packages containing them;

(h) The signature of the warehouseman or his authorized agent;

(i) A statement of the amount of any advance made and of any liability incurred for which the warehouseman claims a lien. If an advance has not been made or any liability incurred or the amount of any advance made or of any liability incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that an advance has been or will be made or liability has been or will be incurred and the purpose thereof shall be sufficient.

A warehouseman shall be liable to any person for all damage caused to such person by the omission from a negotiable receipt of any of the foregoing terms.

A warehouseman may insert in a receipt, issued by him, any other term or condition, provided that such term or condition shall not:—

(a) Be contrary to any provision of this act;

(b) In any wise impair his obligation to exercise that care and diligence in keeping and preserving the goods entrusted to him which a careful and vigilant man would exercise in the custody of goods of a similar description and character of his own in similar circumstances.

Negotiable and non-negotiable receipts.

6. A provision in a negotiable receipt that it is non-negotiable shall be void.

Duplicate receipts must be so marked.

7. Not more than one receipt bearing the same number shall be issued by the same warehouseman except in case of a lost or destroyed receipt, in which case the new receipt, if one is given, shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." A warehouseman shall be liable for all damage caused by his failure to observe the provisions of this section to any person who purchases the subsequent receipt for valuable consideration, believing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Effect of duplicate receipts.

8. A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate.

Failure to mark "Not negotiable".

9. A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it the words "non-negotiable" or "not negotiable." In case a warehouseman fails so to do, a holder of the receipt who purchases it for valuable consideration believing it to be negotiable may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

Obligation of warehouseman.

10. A warehouseman, in the absence of some lawful excuse provided by this Act, shall deliver the goods referred to in a

receipt to the holder of the receipt or to his duly authorized agent upon demand made by the holder or such agent and upon the holder,

(a) Satisfying the warehouseman's Lien, and

(b) Surrendering the receipt if it is negotiable with such endorsements as would be necessary for the negotiation of the receipt, and

(c) Acknowledging in writing the delivery of the goods.

In case the warehouseman refuses or fails to deliver the goods in compliance with the provisions of this section, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal or failure.

Excuse of warehouseman to deliver

11. A warehouseman is excused from delivering goods specified in a receipt to the holder or his duly authorized agent,

(a) If he has notice that the holder of the receipt is not entitled to be the holder thereof, or

(b) If the holder became the holder by fraud of which the warehouseman has notice.

Justification of warehouseman in delivering.

12. The warehouseman is justified in delivering the goods, subject to the provisions of sections 13, 14 and 15, to one who is :—

(a) The person lawfully entitled to the possession of the goods, or his agent;

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper.

Warehouseman's liability for misdelivery.

13. Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable for conversion to all persons having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by clause (b) of section 13 and though he delivered the goods as authorized by said clause he shall be so liable, if prior to such delivery he had either:—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Negotiable receipts must be cancelled or marked when goods or part thereof are delivered

14. Except as provided in section 29, where a warehouseman delivers goods for which he issued a negotiable receipt and fails to take up and cancel the receipt, he shall be liable to any one who purchases such receipt in good faith and for valuable consideration, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Except as provided in said section 29, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, to any one who purchases such receipt in good faith and for valuable consideration, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Lost or destroyed receipts

15. Where a negotiable receipt has been lost or destroyed, a Judge of the Supreme Court may upon motion or petition by the person lawfully entitled to the possession of the goods order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the Judge to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The Judge may also in his discretion order the payment of the warehouseman's costs of the motion or petition. The delivery of the goods under an order of a Judge as provided by this section, shall not relieve the warehouseman from liability to a person who is the holder for valuable consideration and who has not had notice of the motion or petition or of the delivery of the goods.

Warehouseman cannot set up title in himself.

16. No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the holder at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

17. If some one other than the holder of a receipt claims that he is the owner of or entitled to the goods and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the holder of the receipt or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to commence interpleader proceedings. Warehouseman has reasonable time to determine validity of claims

18. Except as provided in sections 11, 12, 17 and 29, no right or title of a third person shall be a defence to an action brought by the holder of a receipt against the warehouseman for failure to deliver the goods according to the terms of the receipt. Adverse title is no defence except as above provided

19. A warehouseman shall be liable to the holder of a receipt, issued by him or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of warehouse receipts, for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If the goods are described in a receipt merely by a statement, Liability for non-existence or misdescription of goods

(a) Of certain marks or labels on the goods or on the packages containing them, or

(b) That the goods are described by the depositor as goods of a certain kind, or

(c) That the packages containing the goods are described by the depositor as containing goods of a certain kind,

or by a statement of import similar to that of clauses (a), (b) or (c) such statement shall not impose any liability on the warehouseman in respect of the nature, kind or quality of the goods, but shall be deemed to be a representation by the warehouseman either that the marks or labels were in fact on the goods or packages, or that the goods were in fact described by the depositor as stated, or that the packages containing the goods were in fact described by the depositor as containing goods of a certain kind, as the case may be.

20. A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care and diligence in regard to them as a reasonably careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances, but he shall not be liable, in the Liability for care of goods.

absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care and diligence.

Goods must be kept separate

21. Except as provided in section 22, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Co-mingled goods and warehouseman's liability therefor.

22. If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various holders of the receipts for the mingled goods shall own the entire mass in common, and each such holder shall be entitled to such proportion thereof as the amount deposited bears to the whole. The warehouseman shall be liable to each holder for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

Attachment or levy upon goods for which a negotiable receipt has been issued.

23. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter while in the possession of the warehouseman, be levied under an execution, unless the receipt is first surrendered to the warehouseman or unless it is established to the satisfaction of the Court that the person against whom the execution is levied is the owner of the goods.

24. A warehouseman loses his lien upon goods:—

(a) By surrendering possession thereof; or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this Act.

Negotiable receipt must state charges for which lien is claimed.

25. If a negotiable receipt is issued for goods, the warehouseman shall have no lien on the goods, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed.

Warehouseman need not deliver until lien is satisfied.

26. A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

Warehouseman's lien does not preclude other remedies.

27. Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

Perishable and hazardous goods.

28. If the goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odour, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the holder of the receipt for the goods if the name and address of the holder is known to the warehouseman or if not known to him then to the person in whose name the goods are stored as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time specified in the notice the warehouseman may sell the goods at public or private sale without advertising. Any such notice may be given by sending it by prepaid registered letter post addressed to the person to whom it is to be given at the person's last known place of address, and the notice shall be deemed to be given on the day following the mailing of it. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any manner he may think fit, and shall incur no liability by reason thereof. From the proceeds of any such sale the warehouseman shall satisfy his lien and he shall hold the balance in trust for the holder of the receipt for the goods.

Effect of sale

29. After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of pursuant to the provisions of section 28, the warehouseman shall not thereafter be liable for failure to deliver the goods to the holder of the receipt for the goods.

Negotiation of negotiable receipts by delivery and by endorsement.

30. (1) A negotiable receipt may be negotiated by delivery :

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a named person, and such person or a subsequent holder of the receipt has endorsed it in blank or to bearer.

(2) Where, by the terms of a negotiable receipt the goods are deliverable to bearer or where a negotiable receipt has been endorsed in blank or to bearer the receipt may be negotiated by the holder endorsing the same to himself or to any other named person, and in such case the receipt shall thereafter be negotiated only by the endorsement of such endorsee or a subsequent holder of the receipt.

(3) Where by the terms of a negotiable receipt the goods are deliverable to the order of a named person, the receipt may be negotiated by the endorsement of such named person. The endorsement may be in blank, to bearer or to a named person. If endorsed to a named person, it may be again negotiated by the endorsement of such person in blank, to bearer or to another named person. Subsequent negotiation may be made in like manner.

Transfer of receipts

31. A non-negotiable receipt may be transferred by the holder by delivery to a purchaser or donee of the goods by a transfer in writing executed by the holder. A non-negotiable receipt cannot be negotiated.

Rights of person to whom a receipt has been transferred.

32. A person to whom a non-negotiable receipt has been transferred acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. Such person also acquires the right to deposit with the warehouseman the transfer or a duplicate thereof, and thereby to acquire the benefit of the obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the deposit with the warehouseman by the transferor or transferee of the transfer the title of the transferee to the goods and the right to acquire the benefit of the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of goods by the transferor.

Rights of person to whom a receipt has been negotiated.

33. A person to whom a negotiable receipt has been duly negotiated acquires,

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to assign to a purchaser in good faith for valuable consideration, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to assign to a purchaser in good faith for valuable consideration; and

(b) The benefit of the obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

Transfer of negotiable receipt without endorsement.

34. Where a negotiable receipt is transferred for valuable consideration by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the endorsement is made.

Warranties on sale of receipt

35. A person who for valuable consideration negotiates or transfers a receipt by endorsement or delivery, including one who assigns for valuable consideration a claim secured by a receipt, unless a contrary intention appears, warrants:—

(a) That the receipt is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity of the receipt; and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

Endorser not a guarantor.

36. The endorsement of a receipt shall not make the endorser liable for any failure on the part of the warehouseman or previous endorsers of the receipt to fulfil their respective obligations.

When negotiation not impaired by fraud, mistake or duress

37. The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress or conversion, if the person to whom the receipt was negotiated, or the person to whom the receipt was subsequently negotiated, paid value therefor in good faith, without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion.

Subsequent negotiation.

38. Where a person having sold, mortgaged or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged or pledged

the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

egotiation efeats endor's lien.

39. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or be justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

/hen rules common w still pplicable.

40. In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

pplication existing ceipts.

41. The provisions of this Act do not apply to receipts made and delivered prior to . . . .

onstruction.

42. 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.

APPENDIX O

REPORT OF MANITOBA COMMISSIOMERS RESPECTING UNIFORM MARRIED WOMEN'S PROPERTY ACT.

At the 1935 Meeting of the Conference the following resolution was adopted:

> "It was *Resolved* that the Manitoba Commissioners submit next year a report on the desirability of the Conference undertaking the preparation of a draft Uniform Married Women's Property Act."
>
> (See 1935 Proceedings, page 18).

At the 1936 Conference the report of the Manitoba Commissioners as to the desirability of the Conference undertaking the preparation of a draft uniform Married Women's Property Act was received and it was resolved that the Nova Scotia Commissioners should prepare and submit next year a draft Act in accordance with the report.

(See 1936 Proceedings, page 14 and pages 19 to 23).

At the 1937 Conference a verbal report was given by the Nova Scotia Commissioners concerning the preparation of a draft uniform Married Women's Property Act. The matter was referred to the Manitoba Commissioners with instructions to submit next year a draft on this subject.

(See 1937 Proceedings, page 14).

At the 1938 Meeting the following resolution was adopted:

> "RESOLVED:
>
> THAT The Married Women's Property Act be left to the Manitoba Commissioners to prepare a draft and report thereon."
>
> (See 1938 Proceedings, page 19).

At the 1939 Meeting the matter of the preparation of a uniform Married Women's Property Act was again referred to the Manitoba Commissioners for report next year.

(See 1939 Proceedings, page 39).

In accordance with the foregoing decisions of the Conference your Commissioners have prepared a draft Act and a report thereon.

It is not intended to review the law relating to this subject except insofar as it may be necessary for the purposes of explaining the draft. The report submitted by the Manitoba Commissioners in 1936 contained certain references. The members of the Conference are also referred to a small text by Sir Arthur Underhill relating to the Law Reform (Married Women and Tortfeasors) Act, 1935, and the Fourth Interim Report of the Law Revision Committee submitted in December, 1934, (Cmd. 4770). It was on this report that the English Act of 1935 was based.

In order to assist the Commissioners from the various provinces we have prepared a comparison of the existing Married Women's Property Acts in force in the common law provinces, using as the basic Act the Manitoba Act as it appears in the R.S.M. 1940. The references in the notes hereinafter given will be to the Manitoba sections. By reference to this comparison the appropriate section of any province may be ascertained.

The following is the comparison :

Man.	B.C.	Alta.	Sask.	Ont.	N.B.	N.S.	P.E.I.
Sec. 1	1	1	1	..	1	1	1
" 2	2, 25		2, 23 (1)	1,11	2	2, 3 (1)	2
" 3	.	.		.			. .
" 4	3	2	3	2 (1)	3 (1)	4	3 (1)
" 5	8, 9	6	4	2 (2), (3)	4, 5	5, 6	4 (1), (2)
" 6		.	5	..			....
" 7	.	.	.	..		..	....
" 8	. .	. .	...	. .			....
" 9	23	.			11	10	9
" 10	20			5	6	16	5
" 11	13	3	8	7	13	23	11
" 12	29		21	12	17	41	15
" 13	4	4, 7	9, 11a	3 (1), (2)	3 (2)	13, 26 A	3 (2)
" 14	6	2		4	3 (3)	14	3 (3)
" 15	7						
" 16	24		6		12	11, 12	10
" 17	14		10	8	14	24	12
" 18	27	8 (b)	11	3 (3)	15	25	13
" 19	15		12		18	28	16
" 20	17		22	10	19	27	17
" 21							
" 22	26		13-20	13	20	31-39	18
" 23	21		23 (2)	9	21	3 (2)	20
	10-12			.	8-10	7-9	6-8
	19					20-22	
	28				16	26	14
			.	6	7	15	

Attached hereto is a first draft of a uniform Married Women's Property Act. This is not intended to be a complete or final draft but is merely submitted for discussion purposes.

We propose to discuss the form of this Act and the inclusion and the exclusion therefrom of certain sections by reference to the Manitoba Act and the English Acts of 1882 et seq. including the Law Reform (Married Women and Tortfeasors) Act 1935.

Notes on Draft Act

1. The short title perhaps is not sufficiently wide. It is, however, well known. An alternative is "The Married Women's Act." This is perhaps too wide. Attention should also be directed to the long title. This corresponds to the English Act and to the Alberta Act.

2. The definition of "property" is similar to that contained in section 205 of the English Law of Property Act, 1925. Compare the Ontario definition.

In section 2 of the present Manitoba Act "contract", "married woman" and "wife" and "property" are defined.

The definition of property in section 2 (c) of the Manitoba Act is as follows:

> "2. (c) 'property' means any real or personal property, of every kind and description, of a married woman, whether acquired before or after the commencement of this Act, and includes the rents, issues and profits of any such real or personal property, and includes also things in action, and all annuities, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of any bank, and all shares, stock, debentures, debenture stock or of other interests of, or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial provident, friendly, benefit, benevolent, building or loan society, and all wages, earnings, money and property, gained or acquired by a married woman in any employment, trade or occupation in which she is engaged or which she carries on separately from her husband, and in which her husband has no proprietary interest, or by the exercise of her literary, artistic or scientific skill; and includes also land, messuages, tenements and hereditaments, corporeal and incorporeal, of every kind and description whatever the estate or interest therein may be, and whether legal or equitable, vested or contingent, in possession, reversion, expectancy or remainder, together with all paths,

passages, ways, water courses, liberties, privileges and easements appertaining thereto, and all trees and timber thereon, and mines, minerals and quarries thereon or thereunder, unless any such are specially excepted".

This lengthy definition seems to be entirely unnecessary.

In connection with the words "separately from her husband" used in the above definition see the cases of *Re Edward ex parte Harvey* (1895) 43 W.R. 509; *Douglas* v. *Fraser*, 17 M.R. 439 and *Cohn* v. *Canary* (1925) 36 B.C. Reps. 185.

3. This section is designed in short form to take the place of sections 2 (a), 4, 5, 7, 8, 9, 10, 13, 14, 17 and 19 of the Manitoba Act.

Note sections 6, 7, 8, 9, 13 and 18 of the English Act of 1882 which are still unrepealed.

This section is similar to section 1 of the English Act of 1935 except

(a) that paragraph (a) has been put in to replace Manitoba section 17 (compare section 13 of the English Act of 1882 which has not been repealed by the Act of 1935). There may be no necessity for this.

(b) that paragraph (f) has been put in to replace section 19 of the Manitoba Act (compare also section 29 of the Manitoba Trustee Act). It also replaces section 18 of the English Act of 1882 which has been left unrepealed by the 1935 English Act. This reference to acting in a representative capacity will get over such cases as *Thyne* v. *St. Maur* 34 Ch. D. 465; *Mastin* v. *Mastin* (1893) 15 P.R. 177, re *Opal* v. *Ross* (1937) 3 W.W.R. 471; *Drinkwater* v. *National Sand and Material Company Ltd.* (1938) O.W.N. 43; *Hildebrand* v. *Franck* (1922) 3 W.W.R. 755, etc.

4. This section is almost identical with section 2 of the English Act of 1935.

Subsection (1) of the draft replaces section 6 of the Manitoba Act. This section seems to do away with the necessity of sections 2(c), 6(2), 8, 9, 10, 14, and 15 of the Manitoba Act.

Subsection (2) is merely a proviso.

Subsection (3) abolishing the restraint upon anticipation changes the principle expressed in sections 14, 15 and 20 of the Manitoba Act.

Subsection (4) is necessary by reason of the abolition of the restraint upon anticipation.

5. This section in part reproduces sections 2(a), 13(2) and section 18 of the Manitoba Act. This is similar to the English Act of 1935, section 3.

6. This is a saving provision and corresponds to the English Act of 1935, section 4(1).

7. This is a declaratory provision which corresponds to section 4(2) of the English Act of 1935. This covers in part Manitoba sections 2(a), 6(2), 8 and 19.

8. This corresponds to sections 11 and 12 of the Manitoba Act. See section 17 of the English Act of 1882.

9. This covers section 3 of the Manitoba Act.

All of which is respectfully submitted,

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

Dated at Winnipeg.

DRAFT UNIFORM MARRIED WOMEN'S PROPERTY ACT

An Act respecting the Capacity, Property and Liabilities of Married Women

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

SHORT TITLE

Short title

1. This Act may be cited as "The Married Women's Property Act."

INTERPRETATION

Definition of "property"

2. In this Act "property" includes a thing in action and any interest in real or personal property.

CAPACITY, PROPERTY AND LIABILITY

Married woman,

3. Subject to the provisions of this Act, a married woman shall

(a) continue to be liable in respect of any tort committed, contract entered into, debt contracted or obligation incurred by her before her marriage; — remains liable for ante-nuptial torts, contracts, etc,

(b) be capable of rendering herself, and being rendered, liable in respect of any contract, debt or obligation; — liable for contracts, debts, etc,

(c) be capable of acquiring, holding and disposing of any property; — capable of acquiring property,

(d) be capable of suing and being sued, either in tort or in contract or otherwise; — may sue or be sued,

(e) be subject to the enforcement of judgments and orders; and — may have judgments enforced,

(f) be capable of acting in any fiduciary or representative capacity, — capable of acting in representative capacity.

in all respects as if she were a femme sole.

4. (1) All property which — Property of married women after passing of Act

(a) immediately before the passing of this Act was the separate property of a married woman or held for her separate use in equity;

(b) belongs at the time of her marriage to a woman married after the passing of this Act; or

(c) after the passing of this Act is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were a femme sole and may be disposed of accordingly.

(2) Nothing in subsection (1) shall interfere with or render inoperative any restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of any provision attaching such restriction contained in any instrument executed before the first day of January 19 (in the English Act of 1935, 1936). — Proviso.

(3) Any instrument executed on or after the first day of January 19 (in the English Act of 1935-1936), shall, insofar as it purports to attach to the enjoyment of any property by a married woman any restriction upon anticipation or alienation which could not have been attached to the enjoyment of that property by a man, be void. — Abolition of restraint upon anticipation.

(4) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation — When restraint deemed to have been imposed.

(a) an instrument attaching such a restriction as aforesaid executed on or after the first day of January 19 (in

the 1935 English Act, 1936) in pursuance of an obligation imposed before that date to attach such a restriction shall be deemed to have been executed before the said first day of January;

(b) a provision contained in an instrument made in exercise of a special power of appointment shall be deemed to be contained in that instrument only and not in the instrument by which the power was created; and

(c) the will of a testator who dies after the thirty-first day of December, 19 (in the 1935 English Act, 1945) shall (notwithstanding the actual date of execution thereof) be deemed to have been executed after the first day of January, 19 (in the 1935 English Act 1936).

Abolition of husband's liability for wife's torts and ante-nuptial debts, contracts, etc

5. The husband of a married woman shall not, by reason only of his being her husband, be liable

(a) in respect of any tort committed by her whether before or after marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or

(b) to be sued, or made a party to any legal proceeding brought in respect of any such tort, contract, debt or obligation.

Saving provision.

6. Nothing in this Act shall

(a) during coverture which began before the first day of July, 1885, affect any property to which the title (whether vested or contingent, and whether in possession, reversion or remainder) of a married woman accrued before that date, except property held for her separate use in equity;

(b) affect any legal proceedings in respect of any tort if proceedings had been instituted in respect thereof before the passing of this Act.

NOTE: In those provinces which adopted the English provision of 1935 with respect to liability of the husband in respect to wife's torts, etc., some years ago, this paragraph should not be inserted.

Declaration to avoid doubt.

7. For the avoidance of doubt it is hereby declared that nothing in this Act

(a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed;

(b) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation, not being a debt or obligation arising out of the commission of a tort incurred by her after the marriage, in respect of which he would have been liable if this Act had not been passed;

NOTE: In view of the enactment in Manitoba in 1937 by chapter 28, section 1, with the provision contained in section 3 of the English Act of 1885, it may be necessary to make some amendment to this paragraph.

(c) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered jointly liable in respect of any tort, contract, debt or obligation, and of suing and being sued either in tort or in contract or otherwise, in like manner as if they were not married;

(d) prevents the exercise of any joint power given to a husband and wife.

PROTECTION OF PROPERTY.

Remedies of married woman for protection of her property.

8. (1) A married woman shall have, in her own name, against all persons whomsoever, including her husband, the same remedies for the protection and security of her property as if she were a femme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort.

Remedies of married man for protection of his property.

(2) A married man shall have against his wife the same remedies for the protection and security of his property as his wife has against him for the protection and security of her property.

Capacity to give evidence.

(3) In any proceedings under this section a husband or wife shall be competent to give evidence against each other.

Summary disposal of questions between husband and wife as to property.

9. (1) In any question between husband and wife as to the title to or possession of property, either party, or any corporation, company, public body or society in whose books any stocks, funds or shares of either party are standing may apply in a summary way to a judge of the Court of King's Bench, or at the option of the applicant irrespective of the value of the property in dispute, to the judge of the County Court of the district in which either party resides; and the judge may make such order with respect to the property in dispute and as

to the costs of and consequent on the application as he thinks fit or may direct such application to stand over from time to time, and any enquiry or issue touching the matters in question to be made or tried in such manner as he shall think fit.

Removal of proceedings from County Court into Court of King's Bench.

(2) All proceedings in a County Court under this section, in which by reason of the character or value of the property in dispute, such court would not have had jurisdiction if this section had not been passed, may at the option of the defendent or respondent be removed as of right into the Court of King's Bench, but any order made or act done in the course of the proceedings prior to the removal shall be valid unless an order is made to the contrary by the Court of King's Bench.

Hearing.

(3) The judge, if either party so requests, may hear any such application in private.

Corporation's costs.

(4) Any such corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs or otherwise be treated as a stakeholder only.

Appeal.

(5) An appeal shall lie to the Court of Appeal from any order made under this section where the value of the property in dispute exceeds two hundred dollars.

APPLICATION OF DOWER ACT.

Dower Act to apply.

10. All the provisions of this Act shall be subject to the provisions of "The Dower Act".

REPEAL.

Repeal.

11. "The Married Women's Property Act", being chapter 128 of the Revised Statutes of Manitoba, 1940, is repealed.

INTERPRETATION.

Uniform construction.

12. 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.

COMMENCEMENT.

Commencement of Act.

13. This Act shall come into force on the first day of January, 19 .

APPENDIX P

REPORT OF THE NEW BRUNSWICK COMMISSIONERS ON THE UNIFORM CONDITIONAL SALES ACT —SECTION 12—CHATTELS AFFIXED TO LAND.

At the 1941 Conference the matter of conditional sales of chattels affixed to land was referred to the New Brunswick commissioners to draft sections to provide for the conditions upon which such fixtures may be removed, and also providing for the registration of conditional sales agreements in land titles offices or registry offices (see 1941 proceedings, p. 25). Discussion of the principles involved has occupied the time of the Conferences of 1938 and 1939. The report of the Alberta commissioners (1939 proceedings, Appendix J, p. 85) ends with a recommendation of legislation along the lines of the Imperial Agricultural Holdings Act. Following the recommendations of that report, which recommendations we believe to have been approved by the Conference, we now recommend that the present section 12 of the Act be repealed and the following substituted therefor:

(NOTE: The following is the section as revised and adopted by the Conference).

12. (1) Notwithstanding that the goods have been affixed to realty, they shall remain subject to the rights of the seller as fully as they were before being so affixed, and the seller may remove them as freely as if they were goods unaffixed, but if the goods were at the date of the sale to the knowledge of the seller intended to be affixed to realty or if they were of such a nature that it might be reasonably anticipated that they would be so affixed the seller shall, unless he has, within days of delivery of the goods registered the conditional sale agreement as a document affecting realty, have no right of removal or in the goods except as against the buyer or a person having notice of the conditional sale agreement.

(2) The seller shall not remove any goods affixed to realty without giving to the owner of the realty one month's previous notice in writing of the intention to remove.

(3) At any time before the expiration of the notice of removal the owner of the realty, by notice in writing given to the seller, may elect to purchase the goods so affixed and shall have the right as against the seller to purchase the goods

upon payment of the amount owing on them which amount must be paid within fifteen days or the vendor's rights shall revive.

(4) In the removal of the goods the seller shall not do any avoidable damage to the realty.

(5) Immediately after the removal of the goods, the seller shall make good all damage, other than the value of the goods removed, occasioned to the realty by the removal.

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

APPENDIX Q

MEMORANDUM TO THE HONOURABLE R. L. MAITLAND, K.C., FROM H. G. GARRETT, REGISTRAR OF COMPANIES FOR BRITISH COLUMBIA.

Cumulative Voting for Directors.

1. The subject is concisely stated in the "Principles of Corporation Law" by W. W. Cook. He says:

> "*Cumulative voting* is provided for in some of the states by the constitution or statutes to enable a substantial minority of the stockholders to elect a minority of the directors. By this system each stockholder is entitled to as many votes for directors as equal the number of shares he owns multiplied by the number of directors to be elected. Thus, if there are six directors to be elected, a stockholder who owns one hundred shares may poll six hundred votes, and these votes he may give entirely to one or two or more of the six candidates as he may see fit. In this way any minority of the stockholders owning one-sixth of the stock, acting together, may elect one member of a board of six directors, and thus secure a representation in that body. A larger minority might secure the election of two members of such a board, the possibility of increasing the minority representation increasing as the minority increases . . . . The larger the number of directors, the smaller would be the minority which would be able to elect one member of the board; and the larger the minority, the greater the representation possible to be secured. . . . . There are certain dangers about this mode of voting, and an unwary majority may find that a smart minority has deprived the majority of the control . . . . Even though the stockholders are entitled to vote on the cumulative plan yet they are not obliged to do so."

In further comment he says "the control of a corporation generally determines its success or failure. The control also gives power, patronage, perquisites, salaries and position; hence it is sought for."

2. It appears that the earliest legislation dates back to 1880 and that in addition to the various State Laws there has been some enactment of the kind by Congress.

3. Legislation dealing with the matter is in force in 38 States of the Union and is of two types. In 21 States there is a statutory right conferred on the shareholder to cumulate his votes. In 17 States the right only exists if it is provided for in the Articles of Incorporation or By-laws.

In an article entitled "Cumulative Voting at Elections of Directors of Corporations" by two Barristers of the New York Bar and published in the Minnesota Law Review of March, 1937, the authors express the opinion that the mandatory type is preferable to the permissive.

4. The "Companies Act" of this Province would permit this system or any other system of voting than merely one vote to each member or one vote for each share to be adopted by Articles of Association. Various different methods of voting have been devised, for example, on a scale of so many votes to so many shares; votes for some classes and not for others; no votes unless there is a minimum holding, and even votes to non-members of the company. There would be no objection to a system of voting by proportional representation as in various democratic elections.

In any of these cases, however, a majority could by special resolution abolish any privilege which existed unless the privilege was made a condition of the Memorandum of Association.

5. The object of such legislation is to enable a minority interest to "obtain direct contact with the business of the corporation and its management and to observe the conduct of the corporation officers".

6. Undoubtedly a certain evil exists in the administration of company management and the misuse of the freedom conferred by company law. A leading attorney in the State of Washington says that "a condition had been built up whereby a few owning 51 per cent or more of the stock could elect directors of their own choosing and bar the minority stockholders from having any voice in the corporation, thus developing a condition where they could pay such salaries as they saw fit to their own people, pay dividends if, as and when they saw fit and freeze out the minority interests." His experience is that "there is now a great deal more protection of minority interests and the majority are compelled to listen to reason." Then the case frequently occurs of a large shareholder dying and his interest being practically at the mercy of a majority. Reference might also made to the case of Houston vs. Victoria Machinery Depot, 33 B. C. L. R. 425.

The question is how wide spread is the evil. It is not sufficient ground for special legislation that there should be a few hard

cases. The basic principle of the "Companies Act" is freedom of contract. At the same time the Act by sections 99 and 100 does endeavour to provide some protection by requiring at least two directors for a public company and that one director at least must reside in the Province.

7. A leaflet issued by the Corporation Trust Company of New York in December, 1932, states that "there can be no doubt of the benefit of cumulative voting to the minority stockholder since in the absence of such a provision the majority can consistently outvote the minority". The New York Barristers in the article above mentioned summarize the matters thus: "While it is possible to conceive of situations in which the grant of the privilege of voting cumulatively might turn out to be valueless or a neeedless refinement, it is difficult to imagine any situation in which that privilege would be a burden or handicap to persons other than those comprising a majority group which desires to exclude the minority from any participation in the management of corporate affairs in derogation of the very purpose underlying such enactments."

Then the Secretary of the National Conference of Commissioners on Uniform State Laws in a letter to me says that although he would not assume too broad an experience, his impression is that generally speaking the provision is regarded as a desirable safeguard to the rights of minority stockholders.

8. While the right of cumulative voting was intended to protect minorities it may strangely enough work out in the opposite way. It is said that "an unwary majority may lose control of the Board." In an article entitled "The Mathematics of Cumulative Voting" by one, C. W. Gerstenberg, he says:—

> "Where cumulative voting is permitted or prescribed, the result of an election is not determined by numbers alone. Indeed it can easily be demonstrated that mere superiority in numbers if not properly marshalled may fail to procure control. Let us suppose that a capitalization of 900 shares is divided in the ratio of five to four between two parties. If five directors are to be elected the number of votes available to the majority will be 2,500, while the number available to the minority will be 2,000. Now, if the majority seeks to procure four places, each of its candidates will get one-quarter of 2,500 votes, or 625 votes, while the minority may give one-third of its 2,000 votes to each of three candidates. In this way the minority might defeat the majority by electing to office three directors to the latter's two . . ."

In order to guard against surprise the enactments of some States require that there shall be advance notice or warning of the intention to cumulate votes.

9. It would appear that cumulative voting is not practicable in large corporations, especially where the shares are widely spread and in comparatively small holdings. In fact, there must be a substantial minority for the system to work at its best. It might also be pointed out that if the controlling interests elect a majority of the Board they can still, for example, vote large salaries. All that the minority representation can do is to act as a watch dog and be in a position to prevent dishonesty.

10. Almost as important as the election of directors is the power to remove them. Some States "prevent the use of removal proceedings by a majority interest faction for the purpose of eliminating minority representation" on the Board. Other States allow removal in such a way that the right of cumulative voting could be nullified.

11. Certain other points will have to receive consideration. Difficulties, for instance, have occurred where a Statute prescribes a residential qualification and no qualified resident is proposed by either faction or if proposed does not receive a plurality of the votes. Then again there may be a tie and no candidate actually elected. Should new elections take place under these circumstances? None of the laws in the States appear to provide expressly whether the right of cumulative voting should be exercised by proxy.

(Signed) H. G. GARRETT,
Registrar of Companies for British Columbia.

APPENDIX R

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

TREASURER'S REPORT
FOR PERIOD AUGUST 2ND, 1939 — AUGUST 31ST, 1941

RECEIPTS

Cash in Bank August 2nd, 1939	$479.81	
Contributions from—		
British Columbia	100.00	
Alberta	50.00	
Saskatchewan	100.00	
Manitoba	100.00	
Ontario	200.00	
New Brunswick	100.00	
Nova Scotia	100.00	
Prince Edward Island	50.00	
Canada	100.00	
Bank Interest	20.76	

DISBURSEMENTS

Cost of transferring bank account		$1.21
Secretarial expenses		42.03
National Printers Limited		305.27
Exchange on cheques		.45
Flowers *re* I. A. Humphries		5.03
		353.99
To Balance—Cash in bank		1,046.58
	$1,400.57	$1,400.57

E. H. SILK,
Treasurer.

September 2nd, 1941.

Audited and found correct:

W. E. BENTLEY,
W. P. J. O'MEARA,
Auditors.

September 8th, 1941.

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

TREASURER'S REPORT
FOR YEAR 1941 — 1942

RECEIPTS

Cash received from previous Treasurer	$1,046.58	
Plus interest to October 1st, 1942	1.30	
		$1,047.88
Contributions from *—		
Saskatchewan		50.00
Prince Edward Island		50.00
Manitoba		50.00
Nova Scotia		50.00
New Brunswick		50.00
British Columbia		50.00
Alberta		50.00
Subscription from the Department of the Secretary of State of Canada		50.00
Bank Interest		7.87

* Ontario's contribution was paid in advance and is included in cash received from previous Treasurer.

DISBURSEMENTS

Secretarial expenses		$85.00
National Printers Limited		290.38
Excise stamps		1.00
Exchange on cheques		.15
		376.53
To Balance—Cash in Bank		1,079.22
	$1,455.75	$1,455.75

W. P. J. O'MEARA,
Treasurer.

August 15th, 1942.

Audited and found correct:

PETER J. HUGHES,
D. J. THOM,
Auditors.

August 22nd, 1942.

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