Kenneth G. McKenzie

1943

PROCEEDINGS

OF THE

TWENTY-FIFTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

WINNIPEG

AUGUST 19TH, 20TH, 21ST, 23RD AND 24TH, 1943

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

Officers of the Conference

Honorary President...... ..Hon. Mr. Justice F. H. Barlow, Toronto.

President .... Peter J. Hughes, K.C., Fredericton.

Vice-President......... ...W. P. Fillmore, K.C., Winnipeg.

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 ....H. J. Wilson, K.C., Deputy Attorney-General, Edmonton.

British Columbia. J. Pitcairn Hogg, K.C., Legislative Counsel, Victoria.

Manitoba..............G. S. Rutherford, Legislative Counsel, Winnipeg.

New Brunswick.........J. Bacon Dickson, K.C., Deputy Attorney-General, Fredericton

Nova Scotia............C. L. Beazley, K.C., Legislative Counsel, Halifax.

Ontario ....Eric H. Silk, K.C., Legislative Counsel, Toronto 5.

Prince Edward Island...W. E. Bentley, K.C., Charlottetown.

Quebec................Charles Coderre, K.C., Montreal.

Saskatchewan...........J. P. Runciman, Legislative Counsel, 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.

H. J. WILSON, K.C., Deputy Attorney-General, Edmonton.

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

British Columbia:

A. C. DESBRISAY, 675 West Hastings St., Vancouver.

HON. R. L. MAITLAND, K.C., Attorney-General, Victoria.

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

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

Manitoba:

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

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

G. S. RUTHERFORD, Legislative Counsel, Winnipeg.

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

New Brunswick:

J. BACON DICKSON, K.C., 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:

HON. MR. JUSTICE F. H. BARLOW, Osgoode Hall, Toronto.
L. R. MACTAVISH, K.C., Municipal Legislative Counsel, Toronto.
ERIC H. SILK, K.C., Legislative Counsel, Toronto.
CECIL A. WRIGHT, K.C., Osgoode Hall Law School, 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.
WALTER S. JOHNSON, K.C., 437 St. James St. W., Montreal.

Saskatchewan:

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

Canada:

W. R. JACKETT, Counsel, Department of Justice, Ottawa.
W. P. J. O'MEARA, K.C., Assistant Under-Secretary of State, Ottawa.
JOHN E. READ, K.C., Legal Adviser, Department of External Affairs, Ottawa.

MEMBERS EX OFFICIO OF THE CONFERENCE

Attorney-General of Alberta: Hon. Lucien Maynard, K.C.
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. Leslie E. Blackwell, K.C.
Attorney-General of Prince Edward Island: Lt. Commander The Hon. Frederick A. Large, R.C.N.V.R.
Attorney-General of Quebec: Hon. Leon Casgrain, 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.
1943. August 19-21, 23-24, Winnipeg.

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 meetings 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, Y
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. x As part of Evidence Act.

xx Included in table pursuant to 1942 Resolution (1942 Proceedings, p. 1
and passed in substantially the same form as the Imperial statute.

MODEL STATUTES

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	....	1938*	....	....	....	Revised 1934 and 1935
....	1933	1932	....	....	1932	....	....
1934†	....	....	....	....	1928	....	....
1942Y	....	1942Y, YY	....	....	1942YY	1942Y, 1943†	....
1931	1930	1924	1933	....	1925	....	Statutory condition 17 not adopted.
....	....	....	....	....	....	....	....
....	....	....	....	....	1934	....	....
....	....	....	1939	....	1943	...	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	....	....
....	....	....	....	....	1941†	....	....
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.

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

PROCEEDINGS

PROCEEDINGS OF THE TWENTY-FIFTH 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 WILSON.

British Columbia :

HONOURABLE MR. MAITLAND, MESSRS. DESBRISAY and HOGG.

Manitoba :

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

New Brunswick :

MR. DICKSON.

Ontario :

HONOURABLE MR. JUSTICE BARLOW and MR. MACTAVISH.

Quebec :

HONOURABLE MR. BIENVENUE and MR. BROSSARD.

Saskatchewan :

HONOURABLE MR. ESTEY, MESSRS. RUNCIMAN and THOM.

Canada :

MR. JACKETT

SUMMARY OF PROCEEDINGS

The annual statement to the Canadian Bar Association respecting the work of the Conference was presented by Mr. Hogg, as follows:

"In conformity with the usual practice and acting under the instructions of the Conference of Commissioners on Uniformity of Legislation in Canada, I beg to present this statement of the matters dealt with at the annual meeting of the Conference which sat from the 19th to the 24th of August.

"The Uniform Evidence Act was amended so as to extend to persons other than banks and governments the right under certain conditions to offer in evidence microphotographic copies of records and documents. The adoption of this amendment would release an enormous amount of space required by large institutions for the storage of records.

"An Act was prepared requiring the central filing and publishing of regulations and orders passed pursuant to statutory authority. Something of this kind is needed.

"The draft uniform Married Women's Property Act was further considered. It is a restatement of the law suitable for adoption by all the common law provinces. In effect it would give a married woman the same legal capacity as an unmarried woman.

"A uniform Libel and Slander Act has been considered. Its outstanding features are, first, the abolition of the distinction between libel and slander, and secondly the formulation of law relating to defamation by radio broadcasting. The Act was referred back to the Saskatchewan Commissioners for further study and report. If the Act, as recommended by the Conference, finds acceptance by the Provinces many refinements and difficulties that have bedevilled the law will disappear.

"Consideration was given to a proposed uniform Warehouse Receipts Act, the main purpose of the Act being to establish a negotiable warehouse receipt as a document of title. The Act has been referred back to the British Columbia Commissioners for further study and report. If adopted the Act will bring the law into conformity with present day commercial practice.

"The Conference has considered and at its next meeting will continue to consider the advisibility of making a uniform law abolishing or modifying the rule in *Russell* v. *Russell* which now is causing hardship in some cases, particularly where a member of the armed forces is plaintiff in a divorce action.

"At the next meeting a report will be submitted regarding the practice in relation to extraordinary remedies such as those dealt with in Crown Practice Rules. It is believed that there are so many archaic relics and so much variety in the procedure that not more than ten per centum of the profession understands the various procedures. It is believed that the procedure could be reduced to such simplicity and uniformity that one hundred per centum of the profession would understand it.

"Some other matters were considered, such as mechanics' liens. In due course reports relating thereto will be submitted.

"For the second time commissioners from Quebec attended the Conference. Their contribution is most valuable because the differences between the common law and the civil law often enable them to throw a new light upon our problems.

"The Conference will be glad to receive suggestions from members of the profession."

MINUTES OF MEETING

NOTE :—The Conference held the following sessions:

Thursday,	August 19th.	10.30 a.m. — 12.30 p.m.
	"	2.30 p.m. — 4.30 p.m.
	"	8.30 p.m. — 10.00 p.m.
Friday,	August 20th.	10.30 a.m. — 12.30 p.m.
	"	2.30 p.m. — 4.30 p.m.
	"	8.30 p.m. — 10.00 p.m.
Saturday,	August 21st	10.30 a.m. — 12.30 p.m.
	"	2.30 p.m. — 4.30 p.m.
Monday,	August 23rd	10.30 a.m. — 12.30 p.m.
	"	2.30 p.m. — 4.30 p.m.
	"	8.30 p.m. — 10.00 p.m.
Tuesday,	August 24th	9.30 a.m. — 1.00 p.m.

FIRST DAY

Thursday, August 19th, 1943.

Opening.

The Conference assembled at 10.30 a.m. in the Judge's Library, Law Courts Building, Winnipeg.

Chairman.

The Honourable Mr. Justice Barlow, President of the Conference, occupied the chair.

Address of Welcome.

Mr. G. H. Aikin, K.C., President of The Canadian Bar Association, welcomed the Conference to Winnipeg for its annual meeting.

Secretary.

As Mr. Silk, the Secretary of the Conference, was unavoidably absent, the following resolution was adopted:

RESOLVED that Mr. MacTavish be appointed as acting Secretary for the present meeting of the Conference.

President's Address.

The Honourable Mr. Justice Barlow, the President, then addressed the Conference.

(*Appendix A*)

Minutes of the Last Meeting.

The minutes of the 1942 meeting, as printed, were taken as read, and confirmed.

Treasurer's Report.

The report of the Treasurer, Mr. O'Meara, was received and referred to Messrs. Brossard and Dickson for audit and report.

Statement to Association.

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

Nomination Committee.

Messrs. Bienvenue, Gray, Thom and Wilson were appointed a nominating committee to submit suggestions 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 12.30; for the afternoon sessions, 2.30 to 4.30; and for the evening sessions from 8.30 to 10.00, and that the Conference would sit on Saturday morning and afternoon but not on Saturday evening.

Stenographic Assistance.

The following resolution was adopted:

RESOLVED that the offer of the Trust Companies Association of Ontario to furnish stenographic services to the Conference be gratefully accepted.

Press Representative.

Mr. Fisher was appointed to act as Press Representative during the meeting.

Report of Proceedings.

The acting Secretary was requested:

(i) 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 members of the Conference; and

(ii) 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.

Next Meeting.

The following resolution was adopted:

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 Association is not held next year, a meeting of the Conference shall nevertheless be held if that course is at all practicable, in which event the time and place of the meeting shall be in the discretion of the President.

Mid-Winter Meeting.

The following resolution was adopted:

RESOLVED that the members of the Conference endeavour to receive the approval of their respective Attorneys-General to one or more representatives from each Province and from the Dominion attending the mid-winter meeting of the Conference to be held concurrently with and at the same place as the mid-winter meeting of the Council of The Canadian Bar Association.

Public Relations.

Messrs. Thom, Brossard, Hogg and MacTavish were appointed a committee on public relations to bring in a report at this meeting.

Rules of Drafting Pamphlet.

The following resolution was adopted:

RESOLVED that the very favourable reception of the Rules of Drafting pamphlet and the consequent demand for copies fully justified the printing of five hundred copies and the action of the Secretary in having this number printed is approved.

Mr. Justice Barlow.

It was resolved that the congratulations of the Conference be extended to the President on his elevation to the Bench of the Supreme Court of Ontario in that it was a fitting recognition of sterling merit earned over a long period in various legal activities

Agenda.

The meeting then considered Part II of the Agenda and determined the order in which the various items would be considered.

(Conclusion of Morning Session)

Goods sold on Consignment.

Mr. Hogg, for the British Columbia commissioners, made a verbal report on the matter of the registration of agreements where goods are sold on consignment, which matter had been referred back to the British Columbia commissioners at the 1942 Conference (1942 Proceedings, page 22), and recommended against proceeding further with the matter.

The following resolution was adopted:

RESOLVED that the report on the matter of the registration of agreements where goods are sold on consignment as presented verbally by Mr. Hogg for the British Columbia commissioners be adopted and the matter dropped from the Agenda.

Evidenct Act—Section 38.

Mr. MacTavish then presented the first and second reports of the Ontario commissioners with respect to section 38 of the Evidence Act. The draft section submitted for consideration was then discussed in detail.

(*Appendix B*)

Treasurer's Report.

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

(*Appendix C*)

(Conclusion of afternoon session)

Evidence Act—section 38.

Consideration of the draft section 38 was continued.

(Conclusion of evening session)

SECOND DAY

Friday, August 20th, 1943.

Regulations Act.

Mr. MacTavish for the Dominion representatives and the Ontario Commissioners presented the joint report on the central filing and the publication of regulations.

(*Appendix D*)

Consideration was then given to the draft Act prepared jointly by the Dominion representatives and Ontario commissioners in accordance with the resolution passed by the Conference at the 1942 meeting (1942 Proceedings, page 21).

After discussion a committee composed of Messrs. Fisher, Jackett, MacTavish and Wilson were instructed to prepare a new draft in accordance with the principles agreed upon during the discussion and to report back to the Conference as soon as practicable during the present meeting.

(Conclusion of morning session)

Evidence Act—section 38.

Consideration and discussion of the draft section 38 of the Evidence Act was continued.

(Conclusion of afternoon session)

Married Women's Property Act.

Mr. Fillmore presented the report of the Manitoba commissioners on the Married Women's Property Act which had been referred back to the Manitoba commissioners for the redrafting of certain sections by the Conference at its 1942 meeting. (1942 Proceedings, page 23).

(*Appendix E*)

The Act as redrafted was considered and discussed section by section.

(Conclusion of evening session)

THIRD DAY

Saturday, August 21st, 1943.

Married Women's Property Act.

The consideration of the draft uniform Married Women's Property Act was continued section by section.

Upon completion of this discussion the following resolution was adopted:

RESOLVED that the draft uniform Married Women's Property Act be referred back to the Manitoba commissioners for incorporation therein of the amendments made at this meeting of the Conference and that the draft as so revised be included in this year's Proceedings; that copies thereof be sent to all members of the Conference and that if the revised draft is not disapproved of by two or more Provinces by the 31st day of January, 1944, it be recommended to the Legislatures of the Provinces for enactment.

(NOTE: Copies of the draft Act were mailed to members of the Conference on September 17, 1943. As no messages of disapproval were received by the Secretary by the 31st day of January, 1944, the draft Act is accordingly recommended for enactment by the above resolution.)

Regulations Act.

The committee charged with redrafting the Regulations Act reported back to the Conference and submitted a new draft which was discussed section by section.

(Conclusion of morning session)

Regulations Act.

The Conference completed the consideration of the draft Regulations Act.

The following resolution was adopted:

RESOLVED that the draft uniform Regulations Act be referred back to the Dominion representatives and Ontario commissioners for incorporation therein of the amendments made at this meeting of the Conference and that the draft as so revised be included in this year's Proceedings; that copies thereof be sent to all the members of the Conference and that if the revised draft is not disapproved of by two or more Provinces or by the Dominion and one or more Provinces by the 31st day of January, 1944, it be recommended to the Parliament of Canada and the provincial Legislatures for enactment.

(NOTE: Copies of the draft Act were mailed to members of the Conference on September 24, 1943. As no messages of disapproval were received by the Secretary by the 31st day of January 1944 the draft Act is accordingly recommended for enactment by the above resolution.)

Evidence Act—section 38.

The consideration of the draft section 38 of the Evidence Act was continued.

Upon completion of the discussion the following resolution was adopted:

RESOLVED that the draft section 38 of the Evidence Act be referred back to the Ontario commissioners for incorporation therein of the amendments made at this meeting of the Conference and that the draft as so revised be included in this year's Proceedings; that copies thereof be sent to all members of the Conference and that if the revised draftis not disapproved of by two or more Provinces or by the Dominion and one or more Provinces by the 31st day of January, 1944, it be recommended to the Parliament of Canada and the provincial Legislatures for enactment.

(NOTE: Copies of the draft section were mailed to members of the Conference on September 24, 1943. As it was suggested by the Quebec representatives and and the Ontario commissioners that the draft section be further revised and considered at the next meeting of the Conference, no recommendation is made at this time with regard thereto.)

Libel and Slander Act.

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

(*Appendix F*)

The Conference then began the consideration of the redraft of the Libel and Slander Act as prepared by the Saskatchewan commissioners in accordance with the resolution of the Conference at the 1942 meeting (1942 Proceedings, page 17).

(Conclusion of afternoon session)

FOURTH DAY

Monday, August 23rd, 1943.

Evidence Act—section 38.

The following resolution was adopted:

RESOLVED that the matter of section 38 of the Evidence Act as agreed upon by the Conference at yesterday's sittings be re-opened with respect to the term of years mentioned in subsection 3.

Libel and Slander Act.

Consideration and discussion of the draft uniform Act was continued.

(Conclusion of morning session)

Libel and Slander Act.

Consideration and discussion of the draft uniform Act was continued.

Nominating Committee Report.

The report of the Nominating Committee as presented by Mr. Thom, was received and adopted. The report recommended the following officers:

Hon. President	Honourable Mr. Justice Barlow, Toronto.
President	Peter J. Hughes, K.C., Fredericton.
Vice-President	W. P. Fillmore, K.C., Winnipeg.
Secretary	E. H. Silk, K.C., Toronto.
Treasurer	W. P. J. O'Meara, K.C., Ottawa.

Public Relations Committee Report.

The report of the Committee on Public Relations as presented by Mr. Thom was received and adopted.

(*Appendix G*)

(Conclusion of afternoon session)

Evidence Act—section 38.

Mr. R. Leighton Foster, K.C., appeared before the Conference and made submissions to the effect that the period of time mentioned in subsection 3 of section 38 of the draft uniform Evidence Act should be shortened to six years as it was in the original draft prepared by the Ontario Commissioners.

After discussion the following resolution was adopted:

RESOLVED that the period of twelve years mentioned in subsection 3 of section 38 of the draft uniform Evidence Act be struck out and "six years" substituted therefor

Libel and Slander Act.

The discussion and consideration of the draft uniform Act was completed. The following resolution was adopted:

RESOLVED that the report of the Saskatchewan commissioners on the uniform Libel and Slander Act and the draft Act be referred back to the Saskatchewan commissioners for incorporation therein of the amendments made at this meeting of the Conference and for report next year.

Reciprocal Enforcement of Judgments.

Mr Jackett, for the Dominion and Quebec representatives, presented a verbal report with respect to Reciprocal Enforcement of Judgments which was referred to the Dominion and Quebec representatives for a joint report at last year's meeting (1942 Proceedings, page 17). The discussion which followed disclosed the inadvisability of proceeding with this matter at the present time.

The following resolution was adopted:

RESOLVED that the matter of the reciporcal enforcement of judgments be referred back to the Dominion and Quebec representatives for a joint report next year.

Sale of Goods Act.

Mr. Rutherford, for the Manitoba commissioners, presented the report with respect to the Sale of Goods Act.

(*Appendix H1*)

Mr. Brossard then presented certain notes with respect to this report.

(*Appendix H2*)

The following resolution was adopted:

RESOLVED that the report of the Manitoba commissioners and the suggested amendments to the Sale of Goods Act be be adopted and that the matter be dropped from the Agenda and that the thanks of the conference be extended to the Honourable Mr. Bienvenue and Mr. Brossard for their work in this connection.

(Conclusion of evening session)

FIFTH DAY

Tuesday, August 24th, 1943.

Warehouse Receipts Act.

Mr. Hogg presented the report of the British Columbia commissioners with respect to the uniform Warehouse Receipts

Act and the draft Act which had been referred back to the British Columbia commissioners for further consideration at the last meeting of the Conference (1942 Proceedings, page 22).

(*Appendix J*)

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 further consideration, particularly (a) from the practical aspect; (b) with regard to the civil law of Quebec; and (c) as to whether the forms of negotiable and non-negotiable receipts should be set out in the Act.

Limitations Act.

Mr. Gray presented the report with respect to the Limitations Act referred to the Alberta commissioners at last year's meeting (1942 Proceedings, page 22).

(*Appendix K*)

The following resolution was adopted:

RESOLVED that the recommendation contained in Part A of the report be adopted and the matter referred back to the Alberta commissioners to draft a section based on the English Act of 1939 (see page 1 of the Alberta report); that the recommendation contained in Part B of the report be adopted and the matter referred back to the Alberta commissioners for drafting; that the recommendation contained in Part C of the report be adopted and that the recommendation contained in Part D of the report, that is, that the uniform Act be amended in accordance with the Alberta amendments of 1942, be adopted.

Soldiers' Divorces.

Mr. MacTavish, for the Ontario commissioners, read a letter addressed to the Attorney-General for Ontario from the Secretary of the Wartime Legal Services Committee (Ontario) of The Canadian Bar Association, dated March 11th, 1943.

(*Appendix L*)

The matter was then discussed at the conclusion of which the following resolution was adopted:

RESOLVED that the matter of the rule in *Russell* v. *Russell* be referred to the Ontario commissioners for study and report at the next meeting and that in such study consideration should be given to abrogating the rule in favour not only of members of the armed forces but all persons.

Companies.

In the absence of Mr. O'Meara, Mr. Jackett presented Mr. O'Meara's report on the suggestion for representation upon boards of directors of companies of substantial minority groups of shareholders (1942 Proceedings, page 24).

(Appendix M)

The following resolution was adopted:

RESOLVED that the recommendation contained in Mr. O'Meara's report be adopted.

Service of Process by Mail.

Mr. Jackett, for the Dominion representatives, presented the report on service of process by mail (1942 Proceedings, page 25).

(Appendix N)

The following resolution was adopted:

RESOLVED that the matter of service of process by mail be referred to the British Columbia commissioners for study and report at the next meeting.

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 (1942 Proceedings, page 23), be referred back to the New Brunswick commissioners for the preparation of draft sections and report next year.

Partnership Registration.

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 back to the New Brunswick commissioners for report next year.

Annual Grant.

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.

Appreciations.

The following resolutions were adopted:

RESOLVED that the Conference advise the Chief Justice of Manitoba and the Chief Justice of the Court of King's Bench of Manitoba of its great appreciation in having the privilege of holding its meetings in the Judges' Library of the Law Courts, and extend its thanks for all the kindnesses shown to the members of the Conference in this connection.

RESOLVED that the Conference advise the Honourable J. O. McLenaghen, K.C., Attorney-General for Manitoba, of its great appreciation for the luncheon tendered the members of the Conference at the Manitoba Club, and extend its thanks to him for all the kindnesses shown during the meeting in Winnipeg.

RESOLVED that the Conference advise Mr. R. Murray Fisher, K.C., Mr. W. P. Fillmore, K.C., and Mr. G. S. Rutherford, the commissioners for Manitoba, of its great appreciation for all the hospitality given and extend its thanks for the kindnesses shown during the meeting in Winnipeg.

RESOLVED that the thanks of the Conference be extended to the Trust Companies' Association of Ontario for its kindness in making available the services of Mr. Donovan, which were greatly appreciated.

Conditional Sales.

Mr. Thom suggested that the reasons why this draft uniform Act has not been generally adopted by the Provinces should be collected and analysed and that the entire subject matter should be reviewed by the Conference.

The following resolution was adopted:

RESOLVED that the Alberta commissioners inquire into the reasons why the draft uniform Conditional Sales Act has not been adopted generally and report thereon at the next meeting of the Conference.

Family Dependents.

Mr. Rutherford spoke on the matter of family dependents and referred to the Act prepared by the Manitoba Bar Association. He suggested this as a likely subject for uniformity and consideration by the Conference.

The following resolution was adopted:

RESOLVED that the matter of family dependents be referred to the Manitoba commissioners for study and the preparation of a draft uniform Act and report to be presented at the next meeting of the Conference.

Extraordinary Remedies.

Mr. Hogg referred to the matter of extraordinary remedies, such as habeas corpus, certiorari, quo warranto, etc , as being hopelessly confused and inadequate and suggested that this is a subject which might well receive the consideration of the Conference with a view to modernization, simplification and unification.

The following resolution was adopted:

RESOLVED that the matter of extraordinary remedies, such as habeas corpus, certiorari, quo warranto, etc., be referred to the Alberta commissioners for study and report next year.

Mechanics' Liens.

Mr. Hogg suggested that mechanics' liens was a subject which could be dealt with to advantage by the Conference.

The following resolution was adopted:

RESOLVED that the provincial Mechanics' Lien Acts be studied by the Manitoba commissioners with a view to the preparation of a draft uniform Act and report next year.

New Business.

The following resolutions were adopted:

RESOLVED that the Secretary communicate with each of the Attorneys-General to inquire as to likely subject matter for the Conference.

Resolved that Messrs DesBrisay, Thom and Silk be appointed a committee to consider all suggestions for new business and report thereon at the next meeting.

President's Remarks.

Mr. Justice Barlow addressed the Conference briefly. He expressed the thanks of the Conference to the three Attorneys-General who had attended this meeting and expressed the hope that all Attorneys-General would make it a point to attend further meetings as such an attendance would aid greatly in the appreciation and understanding of the work of the Conference.

Mr. Justice Barlow also expressed the thanks of the members of the Conference to all those who had made the meeting in Winnipeg so successful and pleasant.

(Conclusion of meeting).

APPENDICES

APPENDIX A

PRESIDENT'S ADDRESS

The Conference of Commissioners on Uniformity of Legislation in Canada is now commencing its 25th Annual Meeting.

During the last 25 years the Conference has had many distinguished members of the Bar as Commissioners, to whom a great debt is owing for the time and effort which they have given in an attempt to establish a certain degree of uniformity in the laws within the various provinces. If I were to attempt to mention all the uniform Acts that have been drafted, it would fill several pages.

You will remember that some question arose a year ago as to whether we should hold our regular meeting in view of the fact that the Canadian Bar Association meeting had been cancelled. The success of our meeting in Windsor, coupled with the attendance of representatives for the first time from the Province of Quebec, and the benefit obtained from our conference with the National Conference on Uniform State Laws, amply justify us (if any justification was needed).

The first meeting of this Conference was held in 1917 when we were in the midst of the Great War. It was felt then that such an organization could do much to bring about a degree of uniformity in the legislation throughout the various provinces, which would be of great advantage in the administration of business and commercial law. When the consolidation of the uniform Acts provided for by the resolution passed at the last annual meeting is complete, it will illustrate better than I can tell you how much has been accomplished during the past twenty-five years.

Once more, we are meeting in the midst of a world war. To-day we appear to be much nearer the end of the conflict than was apparent a year ago. While it is always unwise to be overconfident, yet I am sure we all feel that before another meeting of the Conference is held there is every indication that the conflict will be ended. We in Canada may well be proud of the part that our country has taken in these difficult times, and especially the part that has been played by the members of the Bar.

Our Conference in Windsor was noteworthy in at least two respects: (1) for the first time the Province of Quebec was represented at the Conference, and (2) the Commissioners had the opportunity of attending the meeting of the National Conference on Uniform State Laws in Detroit. It was a most interesting occasion, particularly as this Conference is largely patterned on the National Conference which was some 25 years old when this Conference was organized by the late Sir James Aikens. I was particularly interested in the manner in which the National Conference is constituted. In order that they may obtain the viewpoint of all sections of the legal profession, they endeavour to have representation from the Bench, the practising lawyer, the legislative counsel, and the law schools. We have, in my opinion, failed to recognize the necessity and the value of obtaining all these viewpoints. What I say now about representation from the Bench was expressed by me before my appointment, and I am merely repeating it.

The judge must look at matters from a different angle from that of the profession generally. His training as a judge should lead him to look at a statute from the viewpoint of its interpretation without bias or prejudice. I am, therefore, of the opinion that we should in future have representation from the Bench. For that reason, and at the request of our Attorney-General, I have continued as a member of the Conference.

The law school professor brings another viewpoint, that of the student, who delves deeply into all the intricacies of the law. This can be most helpful. The legislative counsel sees all the drafting difficulties, and is invaluable. The practising barrister and solicitor sees the application of the particular uniform Act to the practical affairs met with in advising clients and in business relations. May I therefore suggest that the Conference keep this in mind in the appointment of Commissioners.

Two matters which came before the Conference at the last meeting are worthy of special mention: (1) the rules of drafting which were discussed and passed. These rules have been particularly well received. Some 550 copies have been distributed to the Commissioners, Attorneys-General, public officials, law libraries, university libraries and individuals requesting the same. The comments which have been received by our Secretary are most gratifying and speak well for the work of our Conference. Acknowledgments congratulating the Conference upon its work have been received from Sir Alison Russell, K.C., Sir Cecil Carr, the American Bar Association and the National Conference of Commissioners on Uniform State Laws. Grateful acknowledgments were also received from the High Commissioner for Northern Ireland, the Royal Yugoslav Legation at Ottawa, the

Legation of the United States of America, and others. Requests for copies were received from Mr. R. C. Normand, the Parliamentary draftsman in Melbourne, Australia, and from Mr. R. C. Lush, Assistant Tax Legislative Counsel of the Treasury Department at Washington. All of this is most gratifying. The thanks of our Conference are due to Mr. E. H. Silk, K.C., and Mr. J. P. Runciman for their careful work in drafting these rules; (2) the Conference discussed at length the procedure by which the multitude of orders-in-council might be available to the profession and the public. Mr. Eric H. Silk, K.C., has given much time, attention and research to the drafting of a uniform Act covering the procedure for filing and indexing of orders-in-council. This Act will come before the Conference at this meeting.

It is my considered opinion that the work of the Conference could be greatly strengthened and improved if we could have the benefit of the advice and direction of the Minister of Justice and the Attorneys-General of the various provinces. With this in mind, in June last I wrote the Minister of Justice and each of the Attorneys-General. The result is that we have in attendance to-day, The Honourable J. W. Estey, K.C., Attorney-General for Saskatchewan, and expect to have with us to-morrow the Honourable R. L. Maitland, K.C., Attorney-General for British Columbia and the Honourable J. O. McLenaghen, K.C., Attorney-General for Manitoba. Letters regretting their inability to be present were received from the Honourable Louis S. St. Laurent, the Minister of Justice, Honourable Leon Casgrain, K.C., Attorney General of Quebec and the Honourable F. B. McNair, K.C., Premier and Attorney-General for New Brunswick.

If our uniform Acts are to be accepted by the Dominion and the various provinces and passed into legislation, the burden of presenting the same to the particular parliament or legislature usually falls upon the Minister of Justice for the Dominion or the Attorney-General for the particular province. The opportunity which attendance at the Conference gives the Minister of Justice and the Attorneys-General to discuss these various Acts with one another can be most helpful. Furthermore, their attendance will give the Conference a real inspiration.

I am not satisfied that the Conference is accomplishing as much as can be done. One meeting a year is not enough. Perhaps it is too much to ask that the full Conference should meet for two or three days at the time of the mid-winter meeting of the Canadian Bar Association Council, but I do suggest that the Conference give consideration to the holding of a mid-winter meeting of the executive and at least one representative from the Dominion and from each province. By so doing the interest in the work of the Conference can be maintained.

For some years I have felt that the Conference has been hiding its light under a bushel. If we are going to obtain support from the Dominion and Provincial Governments and from the Bar we must not hesitate to make some attempt to publicize the work which we are accomplishing. The National Conference on Uniform State Laws consider publicity and public relations a very important matter and for some years have had a public relations committee. All their meetings are open to the press, and the press is invited to be present. They are ever ready to assist the press in preparing a proper presentation of any matter that has news value. This is a matter to which, in my opinion, we should give special consideration.

It is a great satisfaction to see that we have the Dominion and all the provinces of Canada represented at this meeting of the Conference, with the exception of Nova Scotia and Prince Edward Island. While, primarily, our object is the drafting of uniform Acts, we do and can occupy an even more important place in helping to bring about national unity in Canada. Our representative from Quebec, the Honourable Mr. Bienvenue, has in the past year by his public addresses in the Province of Quebec, set an example of what we from the other provinces may fairly well emulate. May I suggest that when we return to our respective provinces at the conclusion of this Conference, that we seize every opportunity to make public full particulars regarding the Conference and the work which it is accomplishing. The fact that the Dominion and all the provinces of Canada have joined together in a common cause but without any thought of interfering with local laws or the system of jurisprudence peculiar to any one of the provinces makes for a unity of purpose and will down through the years bring about a better understanding of each other's problems and assist business and commercial interests the more easily to do business throughout the Dominion.

If we are to have a united Canada in the reconstruction years ahead of us, we must have a national vision and adequate measures of citizenship training so that all Canadians will be willing to share fully in national responsibility and burdens.

What of the future of our Conference? Originally, and for some years, we adhered to a codification of existing law. Recently in the Evidence Act, and in the Commorientes Act, and last year in the Libel and Slander Act, we departed from this principle, and, I think, quite properly. Dr. Wright, Mr. Silk, and myself, had the opportunity last May of attending the meetings of the American Law Institute in Philadelphia and of seeing at first hand the work the Institute is doing on the restatement of the law. The American Law Institute is doing a great and important work in the field of law. It is making a contribution which will in the years to come build up a body of settled law that will make for efficient up-to-date and uniform decisions in line with changing social, commercial, and business conditions. We in Canada are, I fear, altogether too prone to be reactionary. We seem to be afraid to adopt anything that is new. If the profession of law is to hold its place in the scheme of world affairs we must be ready to advance and change; we must make our Courts and the administration of the law function in an up-to-date, modern fashion, in line with changing conditions.

It is my opinion that this Conference should give careful and searching consideration to the widening of its activities. Recently I was approached by the Chairman of the Criminal Law Section of the Canadian Bar Association with the thought that our Conference might be of assistnace in a revision of certain parts of the Criminal Code. While it does not seem possible for our Conference as presently constituted to attempt this important work, nevertheless, there is no reason why the same should not be undertaken by a branch of this Conference similarly constituted.

Let us not be reactionary. Let us realize that we have only touched a small portion of the work that can be done. It is a work well worth while both from the standpoint of the profession and that of the public generally.

We extend our congratulations to the Honourable W. F. Chipman, K.C., upon his appointment as Canadian Minister to Chile. His outstanding ability, his standing at the Bar of his own province, and his contribution to the discussions of the meeting of this Conference at Windsor, are well known to all of us. This Conference is proud to know that one of its representatives has been appointed to such an important diplomatic post.

We also extend our congratulations to the Honourable Leslie E. Blackwell upon his appointment as Attorney-General of Ontario. We hope that he may be present before this Conference closes.

Since our last meeting the Honourable Valmore Bienvenue, K.C., has become a member of the Quebec Cabinet as Minister of Game and Fisheries. We extend to him our congratulations.

We welcome to the Conference for the first time Mr. H. J. Wilson, K.C., Deputy Attorney-General of Alberta, Mr. A. C. DesBrisay, of Vancouver, British Columbia and Mr. L. R. MacTavish, Municipal Legislative Council for Ontario.

We regret to receive the resignation of Mr. H. G. Lawson, K.C., as a Commissioner from British Columbia, and Mr. J. B. Henwood, K.C., as a Commissioner from Alberta. Mr. Lawson has been a Commissioner for some 17 years. He has always been a consistently hard worker, and has contributed much to the discussions and to the uniform Acts drafted by it. Mr. Henwood always took a lively interest in the discussions and contributed much to the work of the Conference.

We regret that Mr. John E. Read, K.C., Mr. Peter Hughes, K.C., Mr. Eric H. Silk, K.C., and Mr. W. P. J. O'Meara, K.C., are unable to be in attendance this year. We are all aware of the contribution which they have made from year to year.

We all miss the genial countenance of Horace Porter, K.C., of St. John, New Brunswick, one of the older members of the Conference who had intended to be here until a few days ago when word came of the death of his son on active service in Sicily. We extend to him our deepest sympathy.

It is a real pleasure to attend this meeting in the City of Winnipeg. The support which this Conference has received from the able and helpful Manitoba Commissioners has contributed much towards its success. We have a full agenda, and the attendance this morning speaks well for a most successful and profitable meeting.

APPENDIX B

REPORT OF THE ONTARIO COMMISSIONERS ON THE PROPOSED EXTENSION OF SECTION 38 OF THE UNIFORM EVIDENCE ACT

(Microphotographic Copies)

The Uniform Evidence Act was adopted by the Conference at its 1941 meeting. Section 38 which provides for the admission in evidence of copies of documents made by photographic or photostatic process was adopted at the ensuing sessions of the Legislatures of five of the Provinces and, with certain modifications, was adopted by the Parliament of Canada in 1942.

The section as adopted by the Conference is limited to banks and Government departments, commissions, boards and branches. It is here set out for convenience:

38. (1) In this section

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

(b) "photographic film" includes any photographic plate micro photographic 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 admissable in evidence in all cases in which and for all purposes for which the object photographed would have been received, upon proof that

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

(ii) the object photographed was subsequently destroyed by or in the presence of one or more of the employees of the bank, department, commission, board or 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 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 admissable in evidence in lieu of the original affidavit.

A Bill was presented to the Parliament of Canada as a Government measure by the Honourable Mr. St. Laurent, Minister of Justice. Subsquently amendments were offered by the Government extending the scope of the Bill to include certain other types of institutions. After a good deal of discussion the Bill as amended was passed. The debate on the Bill and on the proposed amendments took place on May 22nd and May 26th, 1942, and is to be found in Hansard at pages 2929 to 2934 and 3023 to 3131. It is proper to comment here that several of the members of the House of Commons expressed high regard for the recommendations of this Conference. The section as passed by Parliament reads as follows:

29a. In this section

(a) "corporation" means the Bank of Canada, every bank to which *The Bank Act* applies or to which the *Quebec Savings Bank 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, micro-photographic film and photostatic negative.

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

(a) any 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 government 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 admissable 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 admissable in evidence in lieu of the original affidavit.

During the month of August, 1942, memoranda and letters requesting the conference to extend the scope of section 38 of the uniform Act so as to bring it into line the provisions of the

Dominion Act were received by the President and the Secretary of the Conference from the General Counsel for The Canadian Life Insurance Officers' Association, the General Solicitor for the Canadian Pacific Railway Company, the General Counsel for Canadian National Railways, Canadian National Steamships and Trans-Canada Airlines, the General Counsel for the Bell Telephone Company, the assistant secretary of the Dominion Mortgage and Investments Association and the President of the Trust Companies Association of Ontario. The secretary of The Canadian Bankers' Association also wrote assuring the Conference that the banks would not object to the requested extension of the section.

Consideration was given to the proposal at the 1942 meeting of the Conference. Several aspects of the proposed extension were discussed. It was not clear why the particular types of institutions mentioned in this Dominion section had been selected, nor could the exceptions specified be explained. The suggestion was made that as one extension would lead to applications for further extensions, the power to extend might be delegated. After some discussion it was "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." A minor change in the form of subsection 3 was adopted by the Conference but is not of importance here.

On August 31st, 1942, a letter in the following form was sent by the Secretary of the Conference to the official of each of the organizations mentioned above who had communicated with the Conference.

> "A proposal to extend the scope of section 38 of the draft uniform Evidence Act by rendering it similar in form to that in which it was adopted by the Parliament of Canada, came before the Conference of Commissioners on Uniformity of Legislation at the meeting in Windsor which was concluded last Saturday. The Conference had before it representations from various types of organizations asking that the section should be extended in a manner which would include all such organizations. After some discussion the matter was referred to the Ontario Commissioners to bring in a report next year.
>
> "During the course of the discussion it was suggested that because of the numerous types of organizations which seek or may subsequently seek to be brought within the

section, it would be desirable when altering the section to render it flexible as to the inclusion of different types of organizations rather than to describe each group which shall be included. It was suggested, for instance, that the Provincial Secretary might be authorized to permit any organization to preserve its records by microphotographic reproduction or that provision might be made for bringing various types of organizations within the scope of the section by the Order-in-Council.

"I know you are interested in the problem and I shall welcome suggestions which you may have to offer."

No new suggestions were received.

Your commissioners proceeded to study the advisability of extending the scope of the section in the manner suggested and are indebted to Mr. E. F. Wright, photographic expert of the Ontario Provincial Police, and to Mr. Alonzo Payne, handwriting analyst of Beamsville, Ontario, for their helpful assistance. Mr. Wright has had considerable experience in the detection of fraud by photographic processes. Mr. Payne has had more than fifty years' experience in his field and is frequently used before the courts of Ontario as an authority on questioned documents. We also desire to thank Mr. D. E. LaPalm, Manager of the Recordak Division of Canadian Kodak Sales Limited for his co-operation. We believe the information and advice we have received from these gentlemen is accurate, and we must rely upon information provided by one or other of them for statements of a technical or scientific nature which follow.

Our study divides itself into two main problems—

1. What can be ascertained from an original document which is not available in a photographic copy; and
2. If the section is to be extended, what limitation should be adopted?

1. What can be ascertained from an original document which is not available in a photographic copy?

The following observations will be more readily appreciated if reference is had to specimens appearing in the loose leaf binder which will be available at the Conference meeting.

Where a document is tampered with by placing a smaller paper over a portion of it, the edges of the smaller paper are usually apparent in a photograph. This is particularly so if it is made with the microphotographic process because of the arrangement of the lights which cast rays from two and sometimes four angles, producing slight shadows along the edges of the smaller paper. The appearance of shadows can, however, be overcome if the edges of the smaller paper are made to coincide with lines on the documents.

Tampering in the manner described above can easily be detected in the original document by the sense of touch, which mode of detection is entirely lost in the photograph. Further, in the case of the original, the portion of the document obliterated can be studied by the use of strong lghts or by the removal of the smaller paper.

It may be observed also that a print made from a photographic negative of writing on a white paper produces a grey background, reducing to some extent the degree of contrast between the writing and the paper. This is quite apparent with the type of paper used for ordinary purposes. It is to some extent, but not entirely, overcome by the use of more expensive paper. In somewhat the same connection it is not always easy to determine from the print whether the writing on the original is in pen or pencil. Blue typewriting shows up much the same as black and handwriting in red ink is, to the unskilled eye at least, distinguishable from writing in blue or black ink only with the greatest difficulty, if at all.

The use of infra-red light and ultra-violet rays in the detection of fraud in documents is most important. Let this be regarded as a description of some of the uses to which these two aids in the detection of tampering may be put rather than an exhaustive scientific thesis on their possibilities. For convenience two series of photographs appearing in the book of specimens referred to above are here described:

1st Series—Handwriting on a sheet of correspondence paper was erased with a wash of the type commonly used in offices. After drying, it was replaced with four lines of printing. The washed portions are only slightly distinguishable from he other portions of the paper and this only under careful scrutiny at certain angles of light reflection. Under ultra-violet light all washed portions give off a fluorescent glow standing out clearly and being easily distinguishable from the unwashed portion of the paper. Photographed with ultra-violet rays, all other light being excluded, the washed portion is also clearly distinguishable and some of the original writing becomes visible although such writing cannot even be detected when the original paper is held between the eye and the sun.

The printed address on the same paper was obliterated with several applications of office ink. Photographed by the infra-red process, the address becomes readable when the correct exposure time has been determined. The erased writing was not, however, discernable by this process, nor did the portion of the printing which was in red ink appear in these photographs.

The photograph of the same paper made by the ordinary process produced a clear print of the paper and printing but not the slightest indication of the wash or washed-out writing. The results described above are only available from the original document. These special processes cannot detect anything further from an ordianary photograph than what appears on the surface for there is nothing further there.

2nd Series—A United States one dollar bill was cleverly counterfeited into a fifty dollar bill. It had, in fact, been passed without detection before coming into the hands of the Ontario Provincial Police. The two photographs are of the reverse side of the bill. The first photograph is by the ordinary process of photography. The second is by infra-red process. In the first photograph a picture of a building occupies the centre portion of the bill. The word "one" in large letters has been almost entirely removed and is only slightly visible under the picture of the building. The figures "50" in each corner and the printed words "fifty dollars" at the foot of the bill are, to the casual observer at least, clear cut and plain as are the printed words "The United States of America" along the top. In the second (infra-red) photograph the degree of exposure used has brought out the large letters "one" very clearly at the same time rendering the building much less conspicuous. The sections of the bill surrounding the figures "50" in each corner clearly indicate tampering and a comparison of the outlines of the words "fifty dollars" with the words "The United States of America" indicates that some alteration has been made to produce the words "fifty dollars." As indicated above, the infra-red photographic process is only effective with an original document.

The possibility of overcoming the difficulty which thus confronts us by requiring microphotographs to be made by a special process such as infra-red or ultra-violet ray was investigated. To obtain the results described above with the infra-red process, various degrees of exposure, determinable only by experiment, are necessary. Nor, as is indicated in the description of the first series above, is infra-red infallible. Sometimes ultra-violet exposes what infra-red will not. A visual examination under ultra-violet ray of every document photographed might disclose alterations or tampering but against that it may be pointed out that it might not show all tampering; it would show alterations made *bona fide* and who, at that stage, is to determine which alterations were made *bona fide;* it is one thing to entrust a clerk with photographing, a mechanical process, and something quite different to entrust him with studying a document for alterations, particularly where the speed with which he performs his duties is important; and, it is necessary to examine by ultra-violet ray in a room from which all other light has been excluded.

To complete the study of the first problem we cannot do better than quote the report made to us by Mr. Alonzo Payne whose qualifications are briefly indicated above:

> "The preservation of records by microphotography copies as a general system seems to be open to debate, both as to conservation of space and for future reference. In the matter of further reference it seems to be vulnerable. In the matter of general records, which are not nor never will be open to further scrutiny, it may be a good thing. But should it be necessary to further examine them to verify genuineness it is feared photos, no matter how perfect, would be found to be defective, or at least defeat, perhaps, the end in view. The first might be a distinct advantage, but for the latter a disadvantage. It is claimed there never was a perfect photograph. The writer is inclined to agree with that statement. It cannot be assumed that all documents filed or registered are genuine in all detail. It has been the writer's experience as a handwriting expert that a considerable portion of such documents in the Registrar's office are spurious. The will of Mrs. Duncombe, of St. Thomas, recently offered for probate, would have passed for genuine had it not been for an anonymous letter which suggested fraud. The court decided it was a forged document. As a result eighty thousand dollars was saved from falling into the hands of the forger. Photographs would not have revealed what the original document did. It was found doctored. Two kinds of paper had been used, and one of the strong points was the filling in of a loop with a drop of ink. It would have been impossible to detect these two points on a photograph. This is only one of numerous cases. Documents have been presented to us for examination that had been filed away for years. In most of such cases they were found to be spurious, and large sums recovered

"If this is the case, and it is, there would seem to be a reason for debate. It might be advanced that photographic copies could be re-examined as well as the original and the same result would obtain. In most cases that may be true, but it is doubtful. The expert who is wedded to photography would differ with us. It is a well established fact that photography can make a photo say almost anything, if so desired. But that is not an essential point, inasmuch that these photographs would be taken by men honest and true, but it frequently occurs that the photo copy eliminates the very point the expert desires shown. A connecting or continuing line may, in the original, show hesitation and a break. A shadow in the photo may cover this up, Where the validity of a document depends upon the genuineness of a simple signature, or an addition after the signing, or an erasure or striking out, which were not intended, a photographic copy might very well defeat justice. It would, at least, make it more difficult for the examiner.

"Then there is the point that all documents have a back. That back may reveal to the examiner a great deal. Take an indented forgery. The back is almost as essential as the front as the indent will show through in most cases. This is true of a pencil traced forgery. It is true of a direct traced forgery. All these essential points would be wiped out, or nearly so in a photo.

"Then there is the overwriting. The writer has a case in court at the present time where someone has sought to obliterate certain words in a paragraph. The writing underneath was only deciphered after the use of reflected and direct lights had been used from the back of the document, as well as a powerful glass. Had we had other than the original this would have been impossible. The original has two sides. A photo has only one. To the examiner the back is most essential at times.

"The writer could quote many cases which have come under his eye in his long experience in this work of examining questioned documents and he has become wedded to the original document as the only safe copy.

"As to the matter of preservation. It is true that ink will fade, but at the end of any seven years it will become a decided dead black, and further along may become yellowed. But this would not alter the contents, like a shadow from a photo camera.

"As to the conservation of space. This is a matter for the filing man.

"We have treated this subject entirely from the standpoint of the expert examiner, and referred only to the detecting of spurious documents.

"Personally the writer does not think it would be a safe scheme in all details.

"The writer does not for a moment condemn photographs for court work. They are very useful as judge and jury can follow the expert much better during the giving of his evidence. He objects to the elimination of the original."

2. *If the Section is to be extended, what limitation should be adopted?*

In considering the possible extension of the section, its present scope must be borne in mind. It is now limited to banks and the Crown. Special rules of law which are in effect privileges, including rules relating to the proof of documents in court, apply to the Crown. It is submitted, therefore, that the application of the Section to the Crown may be regarded as a privilege of the Crown consistent with established practice and that what might be termed the special application of the section in the sense that it is a departure from the law applying to all subjects of His Majesty and other persons using the courts is limited to banks. The limitations upon the persons who may use the section is, then, clear cut and restricted. The number of banks as well as certain particulars regarding them and special provisions of law applicable to them are indicated in another part of this memorandum.

The Dominion provision is much broader in its application. Exact figures for the whole of Canada have not been ascertained, but the fact that in Ontario alone there are 352 telephone companies in addition to some 175 other telephone systems, 386 insurance companies in addition to 177 other insurance organizations, 15 loan companies and 26 trust companies, together with the fact that the portion of the 1941 consolidated index to Dominion legislation given over to Railway legislation (most of which comprises a listing of Private Acts) occupies some 50 pages, will afford some idea of the effect of the extension proposed.

A study of the above figures raises anew the inquiries—"Why were these institutions chosen?" and "What other classes of institutions will seek this special privilege?" and arising out of these queries arises the problem of drawing a logical line in general terms whereof it may be said "Thus far and no farther shall the privileges under this section be extended." If the section is to be extended beyond its present application to banks, which for special reasons indicated below may perhaps be considered as occupying a somewhat special position, no logical line in the sense indicated above, can be suggested by us. It would be interesting to ascertain why street railway and tramway companies and companies subject to the provisions of Part II of The Small Loans Act, 1939, are specifically excepted from the operation of the Dominion section. Inquiries have failed to disclose the reason for this.

It is suggested that if the section is to be extended to the classes of institutions asking for its extension, it would be difficult to refuse further extensions to any other applicants who might apply. It would, in fact, in the absence of discovering the logical line referred to above, be difficult to explain why it should not be extended to all persons irrespective of the business engaged in. Any provision of this nature constitutes a change in the law of evidence but the extension of the provisions to all persons must indeed be regarded as a fundamental change. Any lesser extension must be viewed accordingly.

The proposal to delegate the authority of extension is not without difficulties. With one exception enthusiasm for the section was not indicated by those to whom the letter of August 31st, 1942, quoted above, was sent. One official referred to the necessity of proving in each case that the company in question has the right to rely upon the section. Another suggests—

> ". . . . it might become an unpleasant and onerous duty. To permit one organization to have this privilege and refuse it to another might be placing Government officials in a very awkward position."

That seems to sum up the real difficulty standing in the way of delegation. Unless a yardstick or rule somewhat in the nature of the "logical line" referred to above can be laid down for the guidance of the official vested with the power to extend the section, the administration of such a provision would be unsatisfactory, however well handled.

Special Position of Banks

In view of the observations and statements contained in the foregoing it is well to inspect the present section and to review the representations which were made to the Conference prior to its adoption. The section was drafted and adopted as a result of representations made by the Canadian Bankers' Association. It was intended primarily to cover banks although government agencies were indeed included in the draft adopted. In addition to the benefits resulting from the section in the matter of conservation of space and the releasing of waste paper for the war effort, which benefits would accrue also in the case of any extension of the section, two other factors, present only in the case of banks, warrant mention here. They are as follows:—

1. Subsection 2 of section 92 of the Bank Act (Canada) reads as follows:

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

It will be seen that the effect of this provision is to deprive the banks of the usual limitation provisions of legislation. We know of no legislation which deprives other institutions included in the Dominion section of these privileges in such clear cut and direct language. It may be, however, that there are provisions under Dominion or provincial legislation which impose upon some of these other institutions a liability of a nature which requires the retention of records for a longer period than would ordinarily be necessary. For example subsection 4 of section 18 of The Loan and Trust Corporations Act (Ontario) reads:

> (4) Every trust company receiving deposits in the manner authorized by subsection 3 shall be deemed to hold the same as trustee for the depositors and to guarantee repayments thereof and there shall be earmarked and definitely set aside in respect thereof securities, including loans made upon securities or cash, including money on deposit and securities including loans made upon securities, equal to the full aggregate amount thereof.

If taken literally it would seem that there would be no statutory limitation barring recovery by a depositor and accordingly it may be that the position of trust companies coming under that Act is assimilated to that of banks.

(2) The other matter worthy of special mention is that the banks to which the section applies are few in number and all are long and well-established and very substantial institutions. Mr.

Arthur Rogers, in reply to a request for a list of all banks to which the section applies (with the information indicated) has furnished the following list, to which, as Mr. Rogers points out, the Bank of Canada must be added.

Name of Bank	Date of Incorporation	Total Assets Nov. 30, 1942
Bank of Montreal	Nov. 3, 1817	$1,181,349,280
The Bank of Nova Scotia	Aug. 1832	420,157,704
The Bank of Toronto	1855	215,636,066
The Provincial Bank of Canada	May 18, 1861*	72,525,923
The Canadian Bank of Commerce	May 15, 1867	901,963,352
The Royal Bank of Canada	Oct. 18, 1869	1,291,615,946
The Dominion Bank	Feb. 1, 1871	216,489,362
Banque Canadienne Nationale	Mar. 21, 1874	203,628,798
Imperial Bank of Canada	Apr. 8, 1875	243,752,818
Barclays Bank (Canada)	May 1, 1929	27,894,288
		$4,775,013,537

*Banque Jacques Cartier, name changed to The Provincial Bank of Canada in 1900.

Conclusions

May it be clearly understood that no reflection is by the above observations cast upon any of the institutions or groups of institutions requesting an extension of the section. It is our desire to place all relevant material before the Conference so that every consideration may be given to all aspects of the problem.

It has been the purpose of your Commissioners to prepare this report in a manner which will permit the Conference as a whole to study the problem before it rather than to construct it in support of recommendations which we might make. It is our view that having regard to the resolution adopted by the Conference last year and to the circumstances which we have since found to exist, the problem warrants the study and consideration anew by all the members of the Conference unhampered by any recommendations on our part. It is our hope that the contents of this report is ample to permit such study and consideration.

All of which is respectfully submitted.

F. H. BARLOW,
E. H. SILK,
C. A. WRIGHT,
Ontario Commissioners.

Toronto, March 25th, 1943.

REPORT No. 2
of
THE ONTARIO COMMISSIONERS
on the proposed extension of
Section 38 of THE UNIFORM EVIDENCE ACT
(Microphotographic Copies
(July 27th, 1943)

The first report of the Ontario Commissioners, which bears date March 25th, 1943, was distributed to the members of the Conference and to the persons whose memoranda and letters appear at pages 57 to 66 of the 1942 Proceedings. A letter bearing date April 6th, 1943, was received by the Local Secretary of the Ontario Commissioners from Mr. A. W. Rogers, K.C., Secretary of the Canadian Bankers Association, and as it contained a suggestion which appeared to at least partially solve some of the problems raised in the report, it was mimeographed and distributed to the members of the Conference. Copies were also given to representatives of most of the organizations whose memoranda and correspondence are referred to above. In addition, the Secretary of the Canadian Kodak Company Limited, communicated with Mr. Silk and received copies of the report and of Mr. Rogers' letter.

A meeting of interested persons was arranged by Mr. R. Leighton Foster, K.C., General Counsel for the Canadian Life Insurance Officers Association, the meeting being held at Mr. Foster's office in Toronto on June 15th. The following organizations being all those which had correspondence with the Conference, were represented by the gentlemen indicated:—

The Bell Telephone Company,	Mr. Pierre Beullac, K.C.,
The Canadian Bankers Assn.,	Mr. A. W. Rogers, K.C.,
The Dominion Mortgage and Investments Association and The Trusts Companies Association of Ontario	Mr. L. G. Goodenough,
Canadian National Railways,	Mr. D. I. Grant,
Canadian Pacific Railway Com.	Mr. E. Dent,
The Canadian Life Insurance Officers' Association	Messrs. R. Leighton Foster, K.C., and John Tuck.

Mr. E. S. Currie, Secretary of the Canadian Kodak Company, Limited, and Mr. N. C. F. Mockridge, Counsel for that Company, were also present.

The meeting commenced at 10.00 a.m., the Ontario Commissioners having been invited to join the group at 11.00 a.m. The representatives of the Canadian Kodak Company, Limited, indicated their position to the Ontario Commissioners by stating that their company had no desire to advocate or press for legislation which might result in a benefit to the company by increased sale of equipment, but having been invited to asisst the group which had been convened by Mr. Foster they would be pleased to assist both that Group and the Conference with any problems which might arise.

The Ontario Commissioners were advised that it had been agreed by those present that the observations in the report of March 25th regarding practical difficulties arising out of the form of the Dominion legislation were considered by the group to be justified; that the group had no intention of asking the Ontario Commissioners to alter their views with regard to most of the points raised in the report; and that in fact the group considered that provisions of the nature of the Dominion legislation warranted the enactment of safeguarding provisions.

Having discussed the various problems with the members of the group and having carefully considered the views expressed by them, the Ontario Commissioners would make the following observations and suggestions:

FIRST SAFEGUARD.

As the Conference is on record as approving the principle of extending the scope of the section (Resolution, 1942 Proceedings, p. 20), let us first consider the safeguards which are desirable on the assumption that the Conference section will be given the same scope as the Dominion section. The various types of organizations covered by the Dominion section are discussed in the earlier report. While the draftsmen of the legislation (both Uniform and Dominion) no doubt contemplated that the photographing would be done as part of an established practice of the organization availing itself of this privilege, the legislation in its present form does not limit the photographs which are admissible to those which are made as part of a routine practice, but strictly construed, would permit an isolated photograph of a document to be used. That is to say, it would permit an organization to photograph only one document, to destroy the original and present the photograph in evidence in lieu of the original. The danger of this does not require explanation. Your Commissioners are of the view that it is desirable to alter clause (i) of subsection 2 of section 38 of the Uniform Act so that it will read:

(i) while such book, record, bill of exchange, promissory note, cheque, receipt, original instrument of document, plan, book or paper was in the custody or control of the bank, department, commission, board or branch, the photographic film *thereof was taken in the course of an established practice of photographing objects of the same or a similar class* in order to keep a permanent record thereof, and - - -

For convenience the words which have been rearranged and those which have been added are italicized.

SECOND SAFEGUARD.

In discussing the types of documents which would be photographed by the various institutions represented at the meeting it was found that the documents divide themselves into two groups. The first group comprises signed documents which would include bills of exchange, promissory notes, cheques, receipts, original instruments, agreements and other signed documents. The other group may be described as "internal records". It includes ledger sheets and various types of records indicating payments received and similar information, none of them being signed.

There would seem to be no necessity for requiring internal records to be retained for any minimum period before being photographed and destroyed. The same is, however, not so in the case of the other group which for convenience we shall refer to as signed documents. It is desirable in our opinion to require documents belonging to this group to be retained for some period of time before being destroyed. Perhaps the logical date from which the minimum period so prescribed should run would be the date when the document ceased to be operative. Because of the virtual impossibility of determining the date of the termination of the operation of many documents which would come within this group it is impracticable to provide that the prescribed period shall commence as of that date. Because of the diversified nature of the documents coming within the group and the very great variance in their periods of operation, it is also impracticable to provide that the period shall run from the date of execution. Much time was spent and consideration given to the problem thus arising and it is only fair to say that the result arrived at and which is contained in the draft provision submitted herewith is in the nature of a compromise. The formula expressed in the draft is suggested to the Conference as a practical answer having regard to business practices in all types of organizations and to the impossibility of arriving at any practical solution and it is not suggested that that form cannot be improved although we are at this time unable to suggest any other provision which we consider to be preferable. As an amendment to the Dominion legislation the provision would read as follows:

(2a) In the case of a bill of exchange, promissory note, cheque, receipt, original instrument, agreement or other signed document, the court may refuse to admit in evidence a print from a photographic film thereof where the object photographed was intentionally destroyed by the corporation within a period of six years from,

(*a*) the date when, in the ordinary course of business, the matter to which it related ceased to be treated by the corporation as current; or

(*b*) the date of the receipt by the corporation of notice in writing of any claim in respect of such matter, whichever is the later date.

(2*b*) Subsection 2*a* shall not apply to the Bank of Canada or to any government.

The period expressed in the draft is six years because it appears to be a reasonable period of time and also because in Ontario at least, as The Limitations Act requires actions for simple contract or debt grounded upon any lending or contract without specialty, and certain other types of actions to be brought within six years, after the cause of action arose, it appears to be the logical period. See also the Uniform Limitation of Actions Act, section 3, clause (f), 1931 Proceedings, page 40.

It should be observed that the scheme of this provision is to vest discretion in the court and within its scope that discretion is without limitation. It will be for the court to decide in each case whether there is reason to reject the photographic print of an object which has been destroyed within the period indicated.

It will be observed that the proposed subsection 2*a* would, by the proposed subsection 2*b*, not apply to the Bank of Canada or to any department, commission, board or branch of the Government of Canada or of any province of Canada. We are advised that the Bank of Canada which is in fact, although not in law, a branch of the Government, has already adopted a practice which would not be consistent with the amendment contained in the proposed subsection 2*a*.

Scope of Extension

The Conference approved the principle of extending the scope of section 38 of the Uniform Evidence Act and the difficulties incidental thereto are discussed at some length in the earlier report. (See particularly the third last page under the heading—"2. If the section is to be extended, what limitation should be adopted?") It is there indicated that if the section is extended at all it would be difficult if not impossible to limit its scope in any logical manner. The first safeguard suggested above does in fact limit the use of the section to organizations which either own or rent photographic equipment and which photograph records as a regular routine of their business. This provision, together with the proposed subsection 2*a*, would afford protective measures not contained in the existing legislation, either Uniform or Dominion, and your Commissioners incline to the view that these additional safeguards would warrant amendments to the legislation providing for its general application to everyone. The net result would be that the legislation would be applicable to everyone who made a regular practice of photographing his business records.

A Further Observation

Referring to subsection 2 of section 38 as adopted by the Conference, it will be observed that the words "and destroyed, lost or delivered to a customer after such film was taken" appear in clauses *a* and *b* but not in clause *c*. The omission from clause *c* is not consistent with clause ii appearing later in the same subsection. When it is remembered that the purpose of the legislation is to permit the disposal of records it will not likely be argued that the above quoted words should not apply to clause *c*. They might then be inserted immediately following the three clauses which would render them applicable to clauses *a*, *b* and *c* and thus avoid any inconsistency with clause ii.

Suggested Draft Section.

The section required to effect the recommendations made above would read as follows:

38.—(1) In this section,—

(*a*) "government" means the government of Canada or any province of Canada and includes any department, commission, board or branch of any such government;

(*b*) "person" includes a corporation, the Bank of Canada, any other bank and the heirs, executors, administrators or other legal representatives of a person; and

(*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 a book or record kept by any person;

(*b*) a bill of exchange, promissory note, cheque, receipt, instrument or document held by any person; or

(*c*) a record, document, plan, book or paper belonging to or deposited with any government,

shall, where the object photographed was destroyed, lost or delivered to another person after such film was taken, be admissible in evidence in all cases in which and for all purposes for which the object photographed would have been so admissable, upon proof that,

(i) while the object photographed was in the custody or control of such government or person, the photographic film thereof was taken in the course of an established practice of photographing objects of the same or a similar class in order to keep a permanent record thereof, and

(ii) the object photographed was subsequently destroyed by or in the presence of such government or person or of one or more of the employees of such government or person or was lost or was delivered to another person.

(3) In the case of a bill of exchange, promissory note, cheque, receipt, original instrument, agreement or other signed document, the court may refuse to admit in evidence a print, whether enlarged or not, from a photographic film thereof where the object photographed was intentionally destroyed within a period of six years from,

(*a*) the date when, in the ordinary course of business, the matter to which it related ceased to be treated by the government or person having the custody of such object as current; or (*b*) the date of the receipt by the government or person having custody of such object of notice in writing of any claim in respect of such matter,

whichever is the later date.

(4) Subsection 3 shall not apply where the print is produced by a government or by the Bank of Canada.

(5) Proof of compliance with the conditions prescribed by this section may be given by such government or person or by one or more of the employees of such government or person having knowledge of the facts either orally or by affidavit sworn in any part of Canada by a notary public.

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

All of which is respectfully submitted,

F. H. BARLOW,
L. R. MACTAVISH,
E. H. SILK,
Ontario Commissioners.

After discussion and consideration of the above reports and draft section, the following section was tentatively adopted in accordance with the resolutions appearing on pages 21 and 22.

38.—(1) In this section,—

(*a*) "government" means the government of Canada or any province of Canada and includes any department, commission, board or branch of any such government;

(*b*) "person" includes a corporation, the Bank of Canada any other bank and the heirs, executors, administrators or other legal representatives of a person; and

(*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 bill of exchange, promissory note, cheque, receipt, instrument, agreement, document, plan or a record or book or entry therein, kept or held by any government or person shall where the object photographed was destroyed, lost or

delivered to another person after such film was taken, be admissible in evidence in all cases in which and for all purposes for which the object photographed would have been so admissible upon proof that,—

(*a*) while the object photographed was in the custody or control of the government or person, the photographic film thereof was taken in the course of an established practice of photographing objects of the same or similar class in order to keep a permanent record thereof, and

(*b*) the object photographed was subsequently destroyed by or in the presence of the person or one or more employees of the person or in the presence of one or more employees of the government or was lost or delivered to another person.

(3) Where a bill of exchange, promissory note, cheque, receipt instrument, agreement or other executed or signed document was so destroyed within a period of six years from,-

(*a*) the date when in the ordinary course of business the object or the matter to which it related ceased to be treated as current by the person having custody or control of the object; or

(*b*) the date of receipt by the person having custody or control of the object of notice in writing of any claim in respect of the object or matter prior to the destruction of the object

whichever is the latter date, the court may refuse to admit in evidence a print, whether enlarged or not, from a photographic film of the object where it is tendered by a person who destroyed the object.

(4) Subsection 3 shall not apply where the print is produced by a government or by the Bank of Canada.

(5) Proof of compliance with the conditions prescribed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn in any part of Canada before a notary public.

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

APPENDIX C

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA
TREASURER'S REPORT
FOR YEAR 1942 — 1943

RECEIPTS

Cash in Bank August 15, 1942	$1,079.22	
Contributions from—		
Saskatchewan	50 00	
Ontario	50.00	
Manitoba	50.00	
British Columbia	50.00	
Prince Edward Island	50.00	
Alberta	50 00	
New Brunswick	50.00	
Nova Scotia	50 00	
Subscription from the Department of the Secretary of State of Canada	50.00	
Bank Interest	15.75	

DISBURSEMENTS

Refund of disbursements by President re telegrams (Voucher A)		$19.93
Secretarial expenses (Voucher B)		50 00
National Printers Limited (Voucher C)		540.18
Exchange on Nova Scotia cheque (See Bank book)		.15
		610 26
To Balance—Cash in Bank		934.71
	$1,544.97	$1,544.97

W. P. J. O'MEARA,
Treasurer.

August 5th, 1943.

We have examined within accounts and find same in order with vouchers for all expenditures. Amount in Bank this date, $934.71. Aug. 18th, 1943.

ARISTO BROSSARD,
J. B. DICKSON.

APPENDIX D

REPORT OF DOMINION REPRESENTATIVES AND ONTARIO COMMISSIONERS ON CENTRAL FILING AND PUBLICATION OF REGULATIONS.

Pursuant to the Resolution adopted by the Conference at its last meeting (1942 Proceedings, page 21), the Dominion Representatives and Ontario Commissioners have prepared a draft Uniform Act, which is attached hereto. The general principles and the purposes of such legislation are discussed in a letter appearing in the 1942 Proceedings at pages 107-118 and accordingly this report is restricted to observations and comments which relate to particular sections or clauses.

The first draft of the report was studied by Major B. R. Kennedy, Director of the Federal Register of the United States and one of his legal assistants, Mr. Ruddy, and was discussed by them with Mr. Justice Barlow and Mr. Silk. We are indebted to Major Kennedy and Mr. Ruddy for their assistance and in preparing subsequent drafts have had regard to their observations and advice. Major Kennedy stressed the importance of requiring all regulations coming within the scope of the Act to be filed and published and of avoiding any provision which would authorize any regulations to be excepted from these requirements. In normal times this is entirely feasible. Sir Cecil Carr in a letter to Mr. Silk states "Up to the war I never really met a confidential rule or order". During the war emergency, however, there may be confidential regulations fixing radio frequencies for the armed forces, or relating to the location of enemy aliens who have been interned or declaring particular places to be prohibited areas or protected places. Major Kennedy agreed with the necessity for recognizing confidential orders and an appropriate provision appears in subsection 1 of section 5 of the Act. (See clause (d) of 5 (2)). With regard to Major Kennedy's caution, see also the note to subsection 4 of section 3.

The Commissioners and representatives responsible for the drafting of the legislation have had the advantage of consulting with Mr. John F. MacNeill, K.C., a former member of this Conference, who, in addition to holding the office of Parliamentary Counsel to the Senate, is in charge of the publication of Dominion Orders-in-Council in the Privy Council Office. Mr. MacNeill is responsible for many of the observations contained in this report.

Section 2, clause (a). While the Act provides for the establishment of a Regulations Board with the authority indicated in subsection 2 of section 5, the Act does not indicate whether the members of the Board would be members of the Cabinet, persons occupying positions in the Civil Service or persons appointed to the Board on a full-time basis. One view expressed is that the appointment of Ministers to the Board would result only in the delegation of the powers to members of the Civil Service and that the administration of the Act would be expedited by having the Board composed of members of the Civil Service rather than Ministers. Another view is that as the functions of the Board are properly in the nature of Ministerial responsibilities, the members of the Board should be Ministers, or that the authority which by the draft Act is vested in the Board, should be vested in a Minister.

In jurisdictions where instead of providing for the establishment of a Board, the functions assigned by this Act to a Board are assigned to a Minister, "Minister" should be defined as "that member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant-Governor in Council" or "the Minister of. .... ..", depending on the form of section 5. Changing "Board" to "Minister" would require several minor complementary changes throughout the Act.

Section 2, clauses (b) and (c). Although some of the inflections defined in (b) and (c) may not be used in the Act, it is well to define them in this way because of their probable use in the regulations passed under the Act.

Section 2, clause (c). See also subsection 2 of section 8.

Section 2, clause (e). The definition is restrictive and subclause (i) is necessary because of the concluding qualifying words.

Various types of defination were considered. This formula is simple. It avoids terms which offer difficulties in their interpretation and which vary in some aspects of their meaning in various jurisdictions (e.g. administrative, executive), yet it is concise. The draftsmen see no need for distinguishing between regulations made in Public and Private Acts. See also section 5(2) (a).

Section 3, subsection 1. One view is that no time limitation is required in this subsection because of the provisions of subsections 4 and 5. This would be carried out by eliminating the time limit requirement in subsection 1 which would render subsections 2 and 3 unnecessary. Those who hold this view feel that the provisions of subsections 4 and 5 are ample to ensure prompt filing. Against this view it may be pointed out that it is desirable to indicate that filing should be effected promptly after the making or approval of the regulations by prescribing some time limit. Failure to prescribe a time limit would permit regulations to be held for long periods of time without coming into force and then perhaps filed at the volition of some junior official. Altogether it would seem reasonable to require regulations to be filed promptly and to require that regulations which are not promptly filed shall not be filed without the approval of the Board which is largely responsible for the administraiton and successful operation of the Act.

It has been suggested that difficulty might be encountered in proving the filing of regulations as in prosecutions thereunder, but this difficulty would appear to be overcome by subsection 5 of section 4 which provides that publication shall be prima facie evidence of filing.

Section 3, subsection 2. If the Clerk of the Executive Council is appointed Registrar under the Act, appropriate alterations should be made to avoid duplication of filing with him in the different capacities.

Section 3, subsection 3. Quaere. Should an extension of the time by the Board be limited to cases where "unavoidable circumstances" are found to exist? Section 4 further renders such a requirement less important.

Section 3, subsection 4. This includes a statement of the generally accepted view of the law, viz., that regulations are not to be retroactive.

While undoubtedly the provisions of subsections 4 and 5 and of subsection 4 of section 4 are feasible in normal times and in fact, in the view of the draftsmen, are essential not only to the proper administration of the Act but to the very success of this type of legislation, the draftsmen agree that there may be matters of urgency in the present wartime emergency which would warrant the suspension of the operation of subsection 4 of section 3 and subsection 4 of section 5 until the restoration of normal times. This is more particularly true in the case of Dominion regulations. If this view is held by those responsible for the introduction of this legislation before the conclusion of the present war, it is submitted that the situation might best be taken care of by enacting the two subsections in their present form and position and including in the commencement section of the Act a provision that the two subsections shall come into force on a day to be named by Proclamation.

Section 3, subsection 5. Nullification is effective only for lack of filing. Faiture to publish is dealt with in section 4, subsections 4 and 5.

Section 4, subsection 1, Attention is drawn to the words "or any extract therefrom" and "or extract therefrom" throughout the section. The term "regulation" rather than "regulations" has been used in most cases throughout the Act. This raises the point whether a set of regulations numbered from 1 to 10; is a regulation or regulations. Since under The Interpretation Act the single includes the plural, for most purposes it is unnecessary to determine the point. However, in order to entirely safeguard the publication of extracts from regulations in case such a course should in any situation be desirable, the reference to extracts has been inserted in the section.

The view has been expressed that there are disadvantages in the proposal of publishing regulations in the official Gazette which is encumbered by a multiplicity of other material. In the United States where the Federal Register was really created to provide a medium for the publication of regulations and similar material, the same situation exists, viz, a great mass of material is published therein. This objection may be largely overcome, however, by the arrangement of the material published so that in each issue regulations will be found at the commencement, or at the end or in some particular position in the Gazette. The Dominion and each of the provinces have an official Gazette. It is submitted that it is the logical medium of publication for regulations. Many regulations are now required to be published in the Gazette and others are in practice published in it. To require the issue of some official periodical publication is, it is submitted, to discourage the enactment of this legislation. The Act may readily be adopted to the Dominion practice of issuing the official publication, Canadian War Orders and Regulations, by altering it in minor respects which would not interfere with ite general principles, but having regard to the existing practice in all of the provinces, it is submitted that a provision for publication in the official Gazette is desirable.

It is submitted also that subsection 2 of section 4 may very well be wide enough to permit publication of all regulations in a publication such as Canadian War Orders and Regulations, although in drafting it the draftsmen anticipated the practice of some of the departments of issuing regulations in separate booklets accompanied often by the authorizing Act.

Section 4, Subsection 2. This establishes publication in the Gazette as the normal procedure but permits publication in pamphlet form. See also section 5, subsection 2, clause (b).

Section 5, subsection 1. See the observations under section 2, clause (a).

Section 6, clause (a). It has been suggested that the words "or otherwise by the King's Printer" should be inserted at the end of the clause. Under section 4 publication in the Gazette is the normal procedure and that is what the Registrar would be responsible for. If the authority responsible for the making of the regulations desires to publish them in pamphlet form it is the responsibility of that authority to obtain approval and to do so, and not the responsibility of the Registrar.

Section 6, clause (b). Where a Minister is charged with the administration of the Act instead of a Board, the word "Board" at the end of the clause might be altered to read "Lieutenant-Governor in Council" rather than "Minister".

Section 7. Ontario is used only for convenience in order to indicate clearly the intended practice. It is important that the short style of citation should be uniform in all jurisdictions. The first thought was to use the initials "O.R" in the short style but this might lead to confusion because of the short style of reference to the Ontario Reports.

Respectfully submitted,

W. R. JACKETT,
W. P. J. O'MEARA,
Dominion Representatives.

F. H. BARLOW,
L. R. MACTAVISH,
E. H. SILK.
Ontario Commissioner.

AN ACT TO PROVIDE FOR THE CENTRAL FILING AND PUBLICATION OF REGULATIONS

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 "Regulations Act".

2. In this Act,—

(*a*) "Board" means the Regulations Board constituted under this Act;

(*b*) "file" means with the Registrar in the manner prescribed in section 3 and "filed" and "filing" have a corresponding meaning;

(*c*) "publish" means publish in the manner prescribed in section 4, and "published" and "publication" have a corresponding meaning;

(*d*) "Registrar" means the Registrar of Regulations appointed under this Act; and

(*e*) "regulation" means,

(i) any regulation; and

(ii) any rule or order of a legislative nature or imposing a penalty,

made under the authority of any statute of

3.—(1) The authority making a regulation shall within one week of the making or passing thereof, or where approval is required, within one week of the approval thereof, file such regulation with the Registrar by delivering such regulation to the Registrar certified by the authority making or passing the regulation or by a responsible officer thereof, and where approval is required, certified to be approved by the authority so approving or by a responsible officer thereof.

(2) Where a regulation is made, passed or approved by the Lieutenant-Governor in Council, the filing with the Registrar of a copy thereof certified to be a true copy by the authority making or passing the regulation or by a responsible officer thereof within the time prescribed by subsection 1 and in accordance with the requirements thereof shall be deemed to be compliance therewith.

(3) The Board may, by order, extend the time for filing and any such order shall be attached to the filed copy of the regulations.

(4) Unless otherwise stated therein a regulation shall come into force and have effect on and after the day upon which it is filed with the Registrar and a regulation shall in no case come into force or have effect before the day of such filing.

(5) Notwithstanding the provisions of any other Act, any regulation which is not filed in accordance with the provisions of this section shall be void and of no effect.

4.—(1) Every regulation shall, within one month of the filing thereof, be published in the. .. .. Gazette or with the approval of the Board, in the manner prescribed in subsection 2.

(2) With the approval of the Board, any regulation or any extract therefrom may, in lieu of or in addition to publication in the Gazette, be published by the King's Printer in pamphlet form within one month of the filing thereof and in every such case a notice of such publication shall be published in the Gazette with one month of the filing of the regulation.

(3) The Board may, by order, extend the time for publication of any regulation or extract therefrom or for publishing a notice of publication in the . Gazette and a copy of any such order shall be published with the regulation or extract therefrom or notice of publication as the case may be.

(4) A regulation which is not published shall not be valid as against any person who has not had actual notice thereof.

(5) Publication of a regulation or extract therefrom in the manner prescribed in this section shall,—

(*a*) be *prima facie* evidence of the text of the regulation; of the due making or passing, approval where required, and filing of the regulation; and that all requirements relating thereto have been complied with, and

(*b*) be deemed to be notice of the contents thereof to any person subject thereto or affected thereby,

and a published regulation shall be judicially noticed.

5.—(1) There shall be a Regulations Board which shall consist of such persons as the Lieutenant-Governor in Council may designate.

(2) The Board may,

(*a*) determine whether any regulation, rule or order is a regulation within the meaning of this Act;

(b) in the case of a regulation which is not published in the Gazette, determine the minimum number of copies which shall be printed in pamphlet form; the maximum price which may be charged therefor; and by whom the expense of such publication shall be borne;

(c) determine who shall be deemed to be responsible officers within the meaning of section 3;

(d) exempt from any of the provisions of this Act, for such period as it deems necessary, any regulation which is of a confidential nature;

(e) determine any problem which may arise in connection with the administration of this Act; and

(f) generally supervise and be responsible for the administration of this Act.

6. There shall be a Registrar of Regulations who shall be appointed by the Lieutenant-Governor in Council and who shall,—

(a) be responsible for the filing, numbering and indexing of all regulations delivered to him and for the publication thereof, or of notice of the publication thereof, in the Gazette; and

(b) exercise such powers and perform such duties as may be vested in or imposed upon him by this Act, the regulations passed hereunder, or the Board.

7.—(1) Regulations or amendments to regulations received by the Registrar shall be numbered in an order in which they are received, and a new series shall be commenced in each calendar year.

(2) Regulations may be cited and referred to by the expression "Ontario Regulations" or "O. Reg." followed by the number thereof, a vertical stroke and the last two figures of the calendar year of the filing thereof.

8.—(1) Subject to the approval of the Lieutenant-Governor in Council the Board may make regulations,—

(a) prescribing the powers and duties of the Registrar;

(b) regulating the form, arrangement and scheme of regulations;

(c) providing for a system of indexing;

(d) prescribing the procedure to be followed upon the making of any application to the Board;

(*e*) providing for the preparation and publication of codifications of regulations filed and published pursuant to this Act, at such intervals or times as it deems advisable, and for the preparation and publication of supplements to any such codifications; and

(*f*) generally for the better carrying out of the provisions of this Act.

(8) Publication of a regulation in any codification or supplement thereto shall be deemed to be publication within the meaning of this Act.

9.—(1) All regulations made or passed prior to the date of the coming into force of this Act shall be filed and published on or before the 31st day of December, 19—, and the provisions of this Act shall apply, *mutatis mutandis*, thereto.

(2) This section shall not affect any legal proceeding which is commenced prior to the 31st day of December, 19—.

10. This Act shall come into force on the 1st day of January, 19—.

After discussion and consideration of the above report and draft bill, the following bill was tentatively adopted in accordance with the resolution appearing at page 20.

AN ACT TO PROVIDE FOR THE CENTRAL FILING AND PUBLICATION OF REGULATIONS

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 "Regulations Act".

2. In this Act,—

(*a*) "file" means file with the Registrar in the manner prescribed in section 3;

(*b*) "local authority" means (each province define);

(*c*) "minister" means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant-Governor in Council;

(*d*) "publish" means publish in the manner prescribed in section 4;

(*e*) "registrar" means the Registrar of Regulations appointed under this Act; and

(*f*) "regulation" means any regulation, proclamation, rule or order made under the authority of any statute of..............but does not include any by-law or resolution made by a local authority or by a company incorporated under the laws of the province.

3.—(1) Every regulation or a certified copy thereof shall be filed with the Registrar.

(2) Unless a later day is provided a regulation, other than one referred to in section 10, shall come into force on the day it is filed with the Registrar but in no case shall such a regulation come into force before the day of filing.

4.—(1) The Registrar shall, within one month of the filing thereof, publish every regulation, other than one referred to in section 10, in the Gazette.

(2) The minister may, by order, extend the time for publication of a regulation and a copy of the order shall be published with the regulation.

5.—(1) Production of a regulation proved in the manner provided by *The Evidence Act* shall be *prima facie* evidence of the filing of the regulation in accordance with this Act.

(2) Production of a certificate by the registrar that the regulation was filed on a specified date shall be *prima facie* proof that it was so filed.

6.—Lieutenant-Governor in Council may exemptfrom any of the provisions of this Act any regulation, the publication of which in his opinion is not in the public interest.

7.—There shall be a Registrar of Regulations who shall be appointed by the Lieutenant-Governor in Council, who shall be under the control and direction of the minister and who shall be responsible for the recording, numbering and indexing of all regulations filed with him and for the publication thereof in accordance with this Act.

8.—(1) Regulations made after the coming into force of this Act and filed with the Registrar shall be numbered in the order in which they are received and a new series shall be commenced in each calendar year.

(2) The regulations referred to in subsection (1) may be cited as "(Ontario) Regulations" or "(O.) Reg." followed by the number thereof, a vertical stroke and the last two figures of the calendar year of the filing thereof.

9.—(1) The Lieutenant-Governor in Council may make regulations,—

(*a*) prescribing the powers and duties of the Registrar;

(*b*) prescribing the form and arrangement of regulations;

(*c*) prescribing a system of indexing regulations;

(*d*) providing for the publication of consolidations of regulations filed pursuant to this Act, at such intervals or times as he deems advisable, and for the publication of supplements to the consolidations;

(*e*) providing for the inspection of regulations; and

(*f*) generally for the carrying out of the provisions of this Act.

(8) Publication of a regulation in any consolidation or supplement thereto shall be deemed to be publication within the meaning of this Act.

10. Every regulation in effect when this Act comes into force shall be filed with the Registrar on or before the 31st day of December, 19...

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

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

APPENDIX E

REPORT OF MANITOBA COMMISSIONERS RESPECTING UNIFORM MARRIED WOMEN'S PROPERTY ACT.

At the 1942 meeting of the Conference instructions were given, and suggestions made, with regard to the reconsideration and redrafting of certain sections of the draft Act submitted to the meeting by the Manitoba Commissioners, and the draft Act was referred back to the Manitoba Commissioners for redrafting.

The Manitoba Commissioners have now redrafted the Act, having in mind the instructions given and suggestions made and have also made certain other changes. A copy of the new draft is submitted herewith.

A suggestion was made at the 1942 Conference that consderation should be given to the question whether the whole Act could not be condensed into one comparatively short statement of the rights, privileges and obligations of married women, to the general effect that a married woman should be, in all respects and for all purposes, in the same position before the law as an unmarried woman. We think that, in view of the qualifications and exceptions for which provision would have to be made, it is not practical so to condense the Act. Section 3 of the draft submitted might possibly be shortened; but in the effort to reach greater conciseness there would be danger of omissions and of the creation of uncertainty and confusion.

We have decided that nothing is to be gained by retaining section 6 of the draft Act submitted in 1942, which section was a copy of the first portion of subsection (1) of section 4 of the English Act of 1935. A question does arise as to the need of sections 6 and 7 of the draft now submitted. These sections replace section 7 of the draft submitted last year. This in turn was copied from subsection (2) of section 4 of the English Act of 1935.

Subsection (2) of section 4 of the English Act of 1935 was apparently inserted in "ex abundanti cautela". The words at the beginning of that subsection are —"For the avoidance of doubt it is hereby declared." Some may think that the subsection raises more doubts than it allays. We have considered it advisable to leave the subsection in the draft, modifying the wording to some extent, and making of it two separate sections

(6 and 7). However, we would ask that consideration be given to the question whether the sections really strengthen the Act.

We have also added to section 5 a subsection (2) in which subsection (1) is declared to be subject to the Highway Traffic Act (in the case of Manitoba). This subsection was added by reason of the fact that subsection (3) of section 81 of The Highway Traffic Act of Manitoba provides that every person driving a motor vehicle who is living with, and is a member of the family of, the owner of the vehicle, shall be deemed to be the agent or servant of the owner, and be liable as such; and shall be deemed to be driving the motor vehicle in the course of his employment. Under this section of The Highway Traffic Act the husband of a married woman is, by reason of her position as a member of his family who is living with him, liable for certain torts committed by her. In each province consideration will have to be given to the question whether subsection (2) of section 5 of the draft Act is necessary, having in mind the existing statutory provisions in that province in respect of responsibility for motor vehicle accidents.

All of which is respectfully submitted,

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

AN ACT RESPECTING THE CAPACITY, PROPERTY AND LIABILITIES OF MARRIED WOMEN.

HIS MAJESTY, by and with the advice 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". B.C., Alta., Sask., N.B., .NS., P.E.I.,—Sec 1.

INTERPRETATION

Definition of "property".

2. In this Act "property " includes a thing in action and any interest in real or personal property. B.C., Secs. 2, 25; Sask. Secs. 2, 23(1); Ont. Secs. 1, 11; N.B. Sec. 2; N.S. Secs. 2, 3(a); P.E.I., Sec. 2.

CAPACITY, PROPERTY AND LIABILITY

3. Subject to the provisions of this Act, a married woman shall Married woman,

(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 rep. capacity:

in all respects as if she were unmarried. B.C. Secs. 2, 3, 4, 6, 8, 9, 14, 15, 20, 23, 25; Alta. Secs. 2, 4, 6, 7; Sask. Secs. 2, 3, 4, 9, 10, 11a, 12, 23(1); Ont. Secs. 1, 2, 3, 4, 5, 8, 11,; N.B. Secs. 2, 3, 4, 5, 6, 11, 14, 18; N.S. Secs. 2, 3(1), 4, 5, 6, 10, 13, 14, 16, 24, 26A, 28; P.E.I. Secs. 2. 3, 4(1)(2), 5, 9, 12, 16.

4. (1) All property which Property of married women after coming into force of Act.

(a) immediately before the coming into force of this Act was the property of a married woman;

(b) belongs at the time of her marriage to a woman married after the coming into force of this Act; or

(c) after the coming into force of this Act is acquired by or devolves upon a married woman,

shall belong to her in all respects as if she were unmarried and may be dealt with accordingly. Sask. Sec. 5.

(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, in so far 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 Abolition of restraint upon anticipation.

property by a man, be void. B.C. Secs. 6, 7, 17; Alta. Sec. 2; Sask Sec. 22; Ont. Secs. 4, 10; N.B. Secs. 3(3), 19; N.S. Secs. 14, 27; P.E.I. Secs. 3(3), 17.

When restraint deemed to have been imposed.

(4) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation.

(a) an instrument attaching such a restriction executed on or after the first day of January 19 (in the 1935, 1936 English Act) 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.

5. (1) The husband of a married woman shall not, by reason only of his being her husband, be liable

(a) in respect of

(i) any tort committed by her; or

(ii) any debt or obligation arising out of a tort committed by her,

whether the tort be committed before or after marriage; or

(b) in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or

(c) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt or obligation. B.C. Secs. 2, 4, 25, 27; Alta. Secs. 4, 7, 8(b); Sask. Secs. 2, 9, 11, 11a, 23(1); Ont. Secs. 1, 3, 11; N.B. Secs. 2, 3(2), 15; N.S. Secs. 2, 3(1), 13, 25, 26A; P.E.I. Secs. 2, 3(2), 13.

(2) Subsection (1) shall be subject to the provisions of "The Highway Traffic Act".

Saving provision.

6. Except as provided by sub-paragraph (ii) of paragraph (a) of subsection (1) of section 5, nothing in this Act exempts a husband from liability in respect of a contract, debt or obligation entered into or incurred by his wife after the marriage in respect of which he would be liable if this Act had not been passed. B.C., Secs. 2, 15, 25;Sask. Secs. 2, 5, 12, 23(1); Ont. Secs. 1, 11; N.B. Secs. 2, 18; N.S. Secs. 2, 3(1), 28; P.E.I. Secs. 2, 16.

7. Nothing in this Act — Saving provision.

(a) renders a husband liable in respect of any contract, debt or obligation entered into or incurred by his wife after the marriage in respect of which he would not be liable if this Act had not been passed;

(b) exempts a husband from liability in respect of a tort committed by his wife after the marriage, in respect of which he would be liable if he had not married her;

(c) prevents a husband and wife from acquiring, holding, and dealing with 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 from 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, B.C. Secs. 2, 15, 25; Sask. Secs. 2, 5, 12, 23(1); Ont. Secs. 1, 11,; N.B. Secs. 2, 18; N.S. Secs. 2, 3(1), 28; P.E.I. Secs. 2, 16.

PROTECTION OF PROPERTY.

Remedies of married woman for protection of property.

8. (1) A married woman shall have, in her own name, against all persons, including her husband, the same remedies for the protection and security of her property as if she were unmarried, but, except as aforesiad, no husband or wife shall be entitled to sue the other for a tort.

Remedies of married man for protectior of 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. B.C. Sec. 13; Alta. Sec. 31; Sask. Sec. 8; Ont. Sec. 7; N.B. Sec. 13; N.S. Sec. 23; P.E.I. Sec. 1.

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 character or 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 may order 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 defendant 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.

Appeal.

(3) Where the value of the property in dispute exceeds two hundred dollars, an appeal shall lie to the Court of Appeal from any order made under this section. B.C. Sec. 29; Sask. Sec. 21; Ont. Sec. 12; N.B. Sec. 17; N.S. Sec. 41; P.E.I. Sec. 15.

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 Statues 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 .

After discussion and consideration of the above report and draft bill, the following bill was tentatively adopted in accordance with the resolution appearing on page 00.

AN ACT RESPECTING THE CAPACITY, PROPERTY AND LIABILITIES OF MARRIED WOMEN

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

1. This Act may be cited as The Married Women's Property Act. B.C., Alta., Sask., Man., N.B., N.S., P.E.I.,—Sec. 1. Short title.

2. In this Act "property" includes a thing in action and any interest in real or personal property. B.C. Secs. 2, 25; Sask. Secs. 2, 23(1); Man. Sec. 2; Ont. Secs. 1, 11; N.B. Sec. 2; N.S. Secs. 2, 3(a); P.E.I. Sec. 2. Definition of "property".

3. Subject to the provisions of this Act, a married woman shall Rights and obligations of a married woman.

(a) continue to be liable in respect of any tort committed, contract entered into, or debt or obligation incurred by her before her marriage

(b) be capable of making herself, and being made, liable in respect of any contract, debt or obligation;

(c) be capable of acquiring, holding and disposing of any property;

(d) be capable of suing and being sued, either in tort, contract or otherwise;

(e) be subject to the enforcement of judgments and orders; and

(f) be capable of acting in any fiduciary or representative capacity.

in all respect as if she were unmarried. B.C. Secs. 2, 3, 4, 6, 8, 9, 14, 15, 20, 23, 25; Alta. Secs. 2, 4, 6, 7; Sask. Secs. 2, 3, 4, 9, 10, 11a, 12, 23(1); Man. Secs. 2(a), 4, 5, 7, 8, 9, 10, 13, 14, 17, 19; Ont. Secs. 1, 2, 3, 4, 5, 8, 11; N.B. Secs. 2, 3, 4, 5, 6, 11, 14, 18; N.S. Secs. 2, 3(1), 4, 5, 6, 10, 13, 14, 16, 24, 26A, 28; P.E.I. Secs. 2, 3, 4(1)(2), 5, 9, 12, 16.

4. (1) All property that Rights of married woman in property after coming into force of Act.

(a) immediately before the coming into force of this Act was the property of a married woman;

(b) belongs at the time of her marriage to a woman married after the coming into force of this Act; or

(c) after the coming into force of this Act is acquired by or devolves upon a married woman, shall belong to her in all respects as if she were unmarried and may be dealt with accordingly. Sask. Sec. 5; Man. Sec. 6.

Exception

(2) Nothing in subsection (1) shall interfere with or render inoperative a restriction upon anticipation or alienation attached to the enjoyment of any property by virtue of a provision attaching such restriction contained in an instrument executed before the first day of January, 19 .

Abolition of restraint upon anticipation.

(3) An instrument executed on or after the first day of January, 19 , in so far as it purports to attach to the enjoyment of property by a married woman a restriction upon anticipation or alienation that could not have been attached to the enjoyment of that property by a man, shall be void. B.C. Secs. 6, 7, 17; Alta. Sec. 2; Sask. Sec. 22; Man. Secs. 14, 15, 20; Ont. Secs. 4, 10; N.B. Secs. 3(3), 19; N.S. Secs. 14, 27; P.E.I. Secs. 3(3), 17.

When restraint deemed to have been imposed.

(4) For the purposes of the provisions of this section relating to restrictions upon anticipation or alienation.

(a) an instrument attaching such a restriction executed on or after the first day of Janusary, 19 , 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 week 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 , notwithstanding the actual date of execution thereof, shall be deemed to have been executed after the first day of January, 19 .

NOTE:—Except in the second line of clause (c) of subsection (4) of the above section 4, the date "1936" was inserted in the English Act of 1935. In the second line of the said clause (c) the date inserted in the English Act of 1935 was "1945".

Restrictions of husband's liability.

5. (1) The husband of a married woman shall not, by reason only of his being her husband, be liable

(a) in respect of a tort committed by her before or after marriage; or

(b) in respect of a contract entered into, or debt or obligation incurred, by her before marriage. B.C. Secs. 2, 4, 25, 27; Alta. Secs. 4, 7, 8(b); Sask. Secs. 2, 9, 11, 11a, 23(1); Man. Secs. 2(a), 13(2), 18; Ont. Secs. 1, 3, 11; N.B. Secs. 2, 3(2), 15; N.S. Secs 2, 3(1), 13, 25, 26A; P.E.I. Secs. 2, 3(2), 13.

NOTE:—In provinces where the law imposes liability on the owner of a motor vehicle for the acts of members of his family living with him, a subsection as follows, or to the like effect, should be added.

(2) Subsection (1) shall be subject to the provisions of The Act.

6. Nothing in this Act

Saving provision.

(a) exempts a husband from liability in respect of a contract entered into or debt or obligation incurred by his wife after marriage in respect of which he would be liable if this Act had not been passed;

(b) prevents a husband and wife from acquiring, holding, and dealing with, property jointly or as tenants in common, or from making themselves, or being made, jointly liable in respect of any tort, contract, debt or obligation and from suing or being sued either in tort, contract or otherwise in like manner as if they were not married; or

(c) prevents the exercise of any joint power given to a husband and wife. B.C. Secs. 2, 15, 25; Sask. Secs.2, 5, 12, 23(1); Man. Secs. 2(a), 6(2), 8, 19; Ont. Secs. 1, 11; N.B. Secs, 2, 18; N.S. Secs. 2, 3(1), 28; P.E.I. Secs. 2, 16.

Remedies of married woman for protection of property.

7. (1) A married woman shall have, in her own name, against all persons, including her husband, the same remedies for the protection and security of her property, as if she were unmarried.

Actions in tort restricted

(2) No husband or wife shall be entitled to sue the other for tort except

(a) for the purposes set out in subsection (1); and

(b) while living apart under a decree or order of judicial separation for a tort committed during the separation.

NOTE:—Subsection (2) may be omitted in provinces where no decrees of judicial separation may be made.

Remedies of married man for protection of property.

(3) 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. B.C. Sec. 13; Alta. Sec. 3; Sask. Sec. 8; Man. Sec. 11; Ont. Sec. 7; N.B. Sec. 13; N.S. Sec. 23; P.E.I. Sec. 1.

NOTE:—Each province should consider the desiriablity of inserting a section dealing with the summary disposal of questions between husband and wife as to property along the lines of existing provisions in the provincial Acts hereinafter mentioned, viz: B.C. Sec. 29; Sask. Sec. 21; Man. Sec. 12; Ont. Sec. 12; N.B. Sec. 17; N.S. Sec.41; P.E.I. Sec. 15.

Dower Act to apply.

8. The provisions of this Act shall be subject to the provisions of the Dower Act. Man. Sec. 3.

Repeal.

9. The Married Women's Property Act, being chapter of the Revised Statutes of is repealed.

Uniform construction.

10. 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 of Act.

11. This Act shall come into force on the first day of January, 19 .

APPENDIX F

REPORT OF SASKATCHEWAN COMMISSIONERS RESPECTING UNIFORM LIBEL AND SLANDER ACT.

The following resolution was passed at the 1942 meeting of the Conference:

> 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.

A revised draft of the Act is accordingly submitted herewith.

The draft provisions contained in our preliminary report dated July 27, 1943, have been embodied, with some changes, in the revised draft of the Act. The preliminary report may therefore be disregarded.

Respectfully submitted,

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

Regina, August 6, 1943.

AN ACT TO MAKE UNIFORM THE LAW RESPECTING DEFAMATION.

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

hort title

SHORT TITLE

1. This Act may be cited as "The Defamation Act".

INTERPRETATION

nterpretation

2. In this Act:

defamation";

(a) "defamation" means false defamatory matter:

(i) expressed or conveyed by written or printed words or in any other permanent form; or

(ii) expressed or conveyed by spoken words, sounds, signs, gestures, actions or in any other form which is not permanent;

and published of and concerning any person without lawful justification or excuse;

New.

Newspaper";

& 45
ct. c. 60,
1.

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

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

ublic
eting".

& 52
t. c. 64,
1.

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

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

ACTIONS FOR DEFAMATION

sumption
lamage.

3. In an action for defamation, where defamation is proved damage shall be presumed.

New.

4. The plaintiff may aver that the matter complained of was used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the matter was used in that sense, and the averment shall be put in issue by the denial of the alleged defamation; and where the matter set forth, with or without the alleged meaning, shows a cause of action, the statement of claim shall be sufficient. Averments by plaintiff. 15 & 16 Vict. c. 76, s. 61.

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

5. Where the defendant has pleaded a denial of the alleged defamation only or has suffered judgment by default or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. Apology in mitigation of damages. 6 & 7 Vict. c. 96, s. 1.

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

6. The defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and such payment shall have the same effect as payment into court in other cases. Payment into court by way of amends.

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

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

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

8. Upon an application by two or more defendants in two or more actions brought by the same person for the same or sub- Consolidation of actions for same defamation.

stantially the same defamation, the court may make an order for the consolidation of the actions so that they shall be tried together; and after an order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect of any such defamation shall also be entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the actions already consolidated.

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

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

Assessment of damages and apportionment of damages and costs.

9. In a consolidated action under section 8 the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately. If the jury find a verdict against the defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against these defendants; and, if the plaintiff is awarded the costs of the action, the judge shall make such order as he deems just for the apportionment of the costs between and against these defendants.

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

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

Liability of owner and operator of radio station.

10. (1) In the case of defamation conveyed by radio the owner and the operator of the radio station from which the defamatory statement is made shall be liable to an action for damages where the operator employed the speaker to make the statement or was negligent in not preventing the speaker from making the statement.

(2) Subsection (1) shall not affect the liability of the person by whom the defamatory statement is made.

New.

Costs.

11. In an action for defamation, whether requested to do so or not, the court may, if of opinion that the damages awarded are nominal, direct that the costs of the plaintiff be disallowed and may further direct that the plaintiff shall pay the costs of the defendant.

New. See Man. s. 15.

Security for costs.

12. (1) In an action for defamation for defamatory words spoken of a woman or girl imputing unchastity or adultery, the defendant may, at any time after the delivery of the statement of claim, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that in the belief of the deponent the plaintiff is not possessed of property sufficient to answer the costs of the action if judgment is given in favour of the defendant, and that the defendant has a good defence upon the merits or that the grounds of action are trivial or frivolous; and the court may make an order that the plaintiff shall give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of (*name of province*). The order shall be a stay of proceedings until the security is given.

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

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

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

NEWSPAPERS

Privileged Publications.

13. (1) A fair and accurate report published in a newspaper of proceedings in the Senate or House of Commons of Canada, in the Legislative Assembly of this province or any other province of Canada, or in a committee of any of such bodies, or of a public meeting, or, except where neither the public nor any newspaper reporter is admitted, of any meeting of a municipal council, school board, board of education, board of health, or of any other board or local authority formed or constituted under the provisions of any public Act of the Parliament of Canada or the Legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority, shall be privileged, unless it is proved that the publication was made maliciously.

Certain repor and other publications privileged.

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

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

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

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

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

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

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

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

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

Reports of proceedings in court privileged.

14. (1) A fair and accurate report published in a newspaper of proceedings publicly heard before any court shall be absolutely privileged if:

(a) the report contains no comment;

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

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

(c) the report contains nothing of a seditious, blasphemous or indecent nature;

unless the defendant has been requested to insert in the newspaper in which the report complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and has not done so.

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

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

Alta. s. 10(2).

ACTIONS FOR NEWSPAPER DEFAMATION

Limitation of actions.

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

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

16. (1) No action shall lie unless the palintiff has, within six weeks after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, in the case of a daily newspaper, five, and in the case of a weekly newspaper, fourteen clear days' notice in writing of his intention to bring an action, specifying the language complained of. Notice of action.

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

(2) The notice shall be served in the same manner as a writ of summons.

Alta. s. 8(1); Ont. s. 15; Sask. s. 16(3).

17. The action shall be tried, in the county (*or* judicial district) where the chief office of the newspaper is, or in the county (*or* judicial district) wherein the plaintiff resides at the time the action is brought; but upon the application of either party the court may direct the action to be tried, or the damages to be assessed, in any other county (*or* judicial district) if it appears to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to the payment of witness fees and otherwise as the court deems proper. Place of trial.

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

18.(1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards he inserted in the newspaper a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff. Evidence in mitigation of damages. 6 & 7 Vict. c. 96, s. 2.

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

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered 51 & 52 Vict. c. 64, s. 6.

damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought.

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

When plaintiff to recover special damage only.

19. (1) The plaintiff shall recover only special damage if it appears on the trial.;

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

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

(c) that it did not impute to the plaintiff the commission of a criminal offence;

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

(e) that a full and fair retraction of any statement therein alleged to be erroneous was published in the newspaper before the commencement of the action, and was so published in as conspicuous a place and type as was the alleged defamatory matter.

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

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

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

Reference in pleading to blasphemous or obscene matter.

20. It shall not be necessary to set out in any pleading or process any blasphamous or obscene passages, but it shall be sufficient to deposit in the proper office the newspaper containing the alleged defamation, together with particulars showing precisely by reference to pages, columns and lines where the alleged defamation is to be found. Such particulars shall be deemed to form part of the record and all proceedings may be taken thereon as though the passages complained of had been set out in pleading or process.

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

B.C. s. 14.

Security for costs.

21. (1) The defendant may, at any time after delivery of the statement of claim, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that in the belief of the deponent the plaintiff is not possessed of property sufficient to answer the costs of the action if judgment is given in favour of the defendant, that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith or that the grounds of action are trivial or frivolous; and the court may make an order that the plaintiff shall give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of (*name of province*). The order shall be a stay of proceedings until the security is given.

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

(2) Where the alleged defamation imputes to the plaintiff the commission of a criminal offence the defendant shall not be entitled to security for costs unless he satisfies the court that the action is trivial or frivolous or that the conditions set forth in paragraphs (a), (b), (d) and (e) of subsection (1) of section 19 appear to exist.

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

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

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

Publication of name of publisher and address of publication.

22. (1) No defendant shall be entitled to the benefit of sections 15, 16 and 19 unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

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

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

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

DEFAMATION OF RACE OR CREED

Injunction

23. (1) The publication of defamatory matter against a race or creed likely to expose persons belonging to the race or professing the creed to hatred, contempt or ridicule, and tending to raise unrest or disorder among the people, shall entitle a person belonging to the race or professing the creed to sue in the Court of King's Bench for an injunction to prevent the continuation and circulation of the defamation.

Man. s. 14(1).

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

Man. s. 14(2).

MISCELLANEOUS

›plication Act.

24. This Act shall apply to actions for defamation commenced after the Act comes into force, whether the defamation occurs before or after the Act comes into force.

›nstruction.

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

rogation of nmon law.

26. The rules of the common law are abrogated in so far as inconsistent with the provisions of this Act.

peal.

27. The following enactments are hereby repealed.

ming into ce.

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

APPENDIX G

REPORT OF SPECIAL COMMITTEE ON PUBLIC RELATIONS.

Your Special Committee on Public Relations has met and endeavoured to consider the matters which might be included in the reference made to it.

We are of opinion that if, as is the fact, we consider the work which we are doing as of importance we are not only justified in making, but should make, an effort to see that it results in action in the appropriate quarters. While in the earlier stages of the Conference it seems to have been thought by many that our duty was to prepare suitable draft Acts and, having given them form, then to let others use them as they saw fit, the fact is that the members of our Conference do have impressed on them, more than it is on anybody else, the real value of our work and we think it is only desirable that we should follow that up by seeing that it is made use of.

Assuming then that we adopt that policy, the question is what methods can our Conference as a body, and our individual members, adopt to accomplish those ends. And in passing we we make it clear that we are not suggesting that a great many of the steps which we mention in this report have not already been taken to a considerable extent.

We are working under this disadvantage—that our output, while affecting closely the lives of the citizens of the country, does not arouse public interest in the same way as what might be called political questions, and we have to work against this more or less apathy.

We wish to acknowledge that the Canadian Bar Association, in having our body make its annual report to the Association in its general meeting, and in printing that annual report in its annual proceedings and in the Canadian Bar Review, is recognizing the duty of the legal profession as a whole to actively appreciate and press for the implementation of our work. The officers of the Canadian Bar Association in speeches and otherwise have not failed to emphasize the importance of the activities of the Conference. We feel sure that this attitude will continue and we hope that, if anything, there will be increased publicity given to our Conference through the Bar Association.

The focal point of our impact in each province is the Attorney-General of that Province. The approach to him is through the

Commissioners from each province. These Commissioners, as soon as the annual meeting is completed, should place before the Attorney-General in writing and also verbally what we have done and should of course follow that up by seeing that he is furnished at the earliest possible date with the written report of our meetings. In any case where an Attorney-General is not, to use a colloquial expression, "sold" on the work of the Conference, the conversational approach is particularly valuable.

Recognizing that we cannot expect the Attorneys-General to sit through the whole of our sessions, we might get a greater number to actually meet us, gain the interest that comes through the personal touch and thereby acquire more appreciation of our work, if we called the last day "Attorney-General's Day" and issued special invitations for them to be present on that day. We so recommend.

Then there are the members of the Legislatures themselves. We are very much afraid that the whole object and system of the operations of the Conference is very little understood by the average M.L.A. An effort should be made to make them feel that we are an organization which is trying to help them and make them understand the value of our help. We will mention one possible approach to this end later.

Next comes the legal profession in each of the provinces. Again even here there is considerable lack of knowledge of the real function and value of our Conference. The Commissioners from each province should see to it that through the provincial Bar Associations and the local Bar Associations, the profession is informed and kept so.

Then there is the public generally. Perhaps it is too much to hope that the value of our quiet work on non-political subjects shall be realized by that general public. But when one considers the importance of our contribution to the commercial world, it might be hoped that through Boards of Trade a considerably widened general knowledge of our work and its value might be brought about. If Boards of Trade were asked to make suggestions for our consideration, it would give them a more concrete interest in our activities.

More or less incidentally, both for the benefit of the profession and public, we would suggest that when the Commissioners go back to their respective homes they might, while it is still "news", call up the editor of their local paper; in the ordinary case it will be found that he will be glad to send around a reporter and to give us a little news write-up on what we have been doing during our absence. Such a write-up would itself have great publicity value.

We recommend that a pamphlet be gotten up written by a lawyer with a flair for the type of publicity that reaches the public ear. This pamphlet would give a short history of the Conference from its inception, a statement of the more important work that has been done, (with perhaps an appendix of the whole, taking care not to make the pamphlet look too formidable), and the extent to which it has been adopted, and should include in very readable language a presentataion of the value of the work to the commercial and trading public. We recommend that a large number of such pamphlets be printed at the expense of the Conference and plenty of copies distributed to each set of provincial Commissioners who would use them as enclosures with any letters which they might be sending to Attorneys-General, M.L.A.'s, Bar Associations or Boards of Trade with respect to the Conference.

With this pamphlet in their hands as an introduction to the subject, it would have to be left to the local Commissioners to approach the various objectives mentioned in the manner in which they considered most effective having regard to the circumstances in each case.

We realize that those members of the Conference who hold an official place with their respective Governments cannot be expected to put themselves in the position of promoting specific legislation. They can, however, do a great deal along the lines indicated in this report acting strictly as members of the Conference. The members of the Conference who are in active practice will have to be prepared to assume a full share of the burden of doing what we might call the "missionary" work.

We recommend that one of our members be appointed as what we might call "Director of Publicity". This is not to relieve any member from doing whatever he can but is to ensure that on some one is fixed the special responsibility of keeping the movement going. We recommend that Mr. Silk, the Secretary, be asked to assume this additional duty, to include arranging for the preparation, publication and distribution of the pamphlet.

If we go from this year's Conference resolved to do all we can along the lines suggested in this report and any others which may present themselves, we will no doubt come back with further suggestions at succeeding meetings.

D. J. Thom,
J. P. Hogg,
A. Brossard,
L. R. MacTavish

Winnipeg, Manitoba, August 21st, 1943 *Committee.*

APPENDIX H1

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

The following resolution was passed at the 1942 Conference (see page 17 of the Proceedings):

> "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."

Having obtained much valued assistance and information from the Honourable Valmore Bienvenue, one of the Quebec Commissioners, the Manitoba Commissioners have given consideration to the sections of the Civil Code of Lower Canada and the Quebec Code of Civil Procedure which are applicable to the matter referred. Study has also been made of certain cases bearing on the subject. The particular sections and cases to which reference is made are listed in the appendix to this report.

The privileges granted by the Civil Code to an unpaid vendor of goods are three:

(a) A right to revendicate;
(b) A right to dissolve the sale;
(c) A preference upon the price.

RIGHT TO REVENDICATE.

The right to revendicate is a judicial procedure and is subject to four conditions (Article 1999 C.C.). It is desired to refer at this time particularly to the first condition—

"The sale must not have been made on credit."

It is suggested that in the case of ordinary mercantile sales by manufacturers or wholesalers this condition must impair to a large extent any value to be obtained by the adoption of the principle in the common law provinces, since most of such sales are on credit. This clearly appears in the case of *In re Commercial Textiles Ltd. Ex parte Johnson Woollen Mills Ltd.*, reported at 21 C.B.R. 387. Briefly, in this case goods were shipped on "terms 30 days net". Mr. Justice Urquhart in his judgment made it plain that this was a sale "on credit". The headnote reads, in part,—

> "The sale was made upon credit and to invoke the *right* of revendication under art. 1999 of the Civil Code 'the sale must not have been made on credit' ".

The Manitoba Commissioners have been informed that in practice the right of revendication is not very much used in Quebec, and that its principal use is in cases of sales on the instalment plan—such sales presumably as are covered, in common law jurisdictions by conditional sale agreements; or as they are commonly called in the prairie provinces at least—"lien notes".

There already exists in provinces under the common law a summary method of enforcing conditional sale agreements by extra-judicial repossession, so that on this score at least, the revendication procedure is not required, and might in fact complicate the law by requiring judicial procedure in respect of some repossessions, while in others the extra-judicial procedure remains.

Right to Dissolve the Sale.

The right of dissolution can be exercised where the sale is on credit. The Manitoba Commissioners are informed that the right of dissolution which is given under Article 1543 of the Civil Code, is an application of a very old principle of the civil law, whereby every bilateral contract contains a tacit resolutive condition; and a party who has executed, or offers to execute, his obligations under the contract can ask for the dissolution thereof if the other party refuses to implement his own obligations.

On first consideration it may appear that certain advantages would accrue to sellers if the right of dissolution were added to the existing right of stoppage in transitu. Principally these advantages would accrue in case of insolvency of the buyer by permitting the seller to obtain possession of his goods as against the creditors of the buyer or the trustee in bankruptcy. This leads us to enquire whether such legislation would be affected by The Bankruptcy Act; and whether it would be intra vires the provincial legislatures. By statute we would be providing that, notwithstanding the vesting of title to the goods in the buyer, the sale could be dissolved; while under the Quebec law, as we understand it, the title to the goods does not absolutely vest in the buyer.

Sections 19 and 20 of "The Sale of Goods Act" of Manitoba deal with the passing of the property in goods sold. These sections are copied from the English Act which has been generally adopted in the eight provinces not subject to the civil law. Rule 1, to be found in section 20, deals with the most common case. The first part of section 20 to the end of Rule 1 provides as follows:

> "20. Unless a different intention appears, the following are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:
>
> (a) Rule 1—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed;

The rule under the civil law would seem to be quite different. Reference is made to the decision of the Appellate Division of the Supreme Court of Ontario in the case of *Re Hudson Fashion Shoppe Ltd. Ex parte Royal Dress Co.* (1926) 1 D.L.R. 199.

The following extracts from the judgment of Riddell, J.A., with whom the other judges concurred, are informative:

> "What follows from this conclusion is the important matter for determination. Most of the confusion in this case arises from the difference in meaning and effect of the word 'sale', or the corresponding word in other languages, at the common law and at the civil law. In order to arrive at the proper conclusion we must bear this difference in mind—it was agreed on the argument that we might determine foreign law by examining authorities, text-writers, decisions.
>
> "It is elementary that a sale under the common law vests the property in the purchaser—*ipso facto* the property passes at latest on delivery. But at the Roman law a transfer of property was not complete by the sale or even by the delivery of the property without payment or security for the price (unless, indeed, there was an express or implied general credit).
>
> "Beyond question, had the transaction taken place in Ontario, the goods when delivered for transmission f.o.b. would have become the property of the purchasers, but in Montreal under the rule of the civil law, the basis of Quebec law as of ancient and modern French law, it was not so—the trans-

action had the effect merely of passing the possession over to the purchaser with a qualified property only, a property *sub modo*, not the absolute property in our common law sense.

"The Quebec law defines sale in C.C. (Que.), art. 1472, as follows:—'Sale is a contract by which one party gives a thing to the other for a price in money which the latter obliges himself to pay for it. It is perfected by the consent alone of the parties, although the thing sold be not then delivered; subject nevertheless to the provisions contained in article 1027 and to special rules concerning the transfer of registered vessels'. (The special matters referred to are not of importance here). It does not require delivery to complete a sale, as is made plain by this article and art. 1025:—'A contract for the alienation of a thing certain and determinate makes the purchaser owner of the thing by the consent of the parties, although no delivery be made. The foregoing rule is subject to the special provisions contained in this code concerning the transfer and registry of vessels'.

"But it is also carefully provided that a contract of sale shall be subject to the same rules as other contracts. Article 1473 reads:—'The contract of sale is subject to the general rules relating to contracts and to the effects and extinction of obligations declared in the title *OF OBLIGATIONS*, unless it is otherwise specially provided in this code'.

"In sales when the price is unpaid there is no right *per se* to dissolution if the article sold is an immovable (art. 1536); but if it be a moveable the right exists if exercised while the thing remains in the possession of the purchaser.

"Article 1543 reads:—'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 sellers 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'.

"This right to dissolution is not simply a privilege: it inheres in the contract itself and controls the title—so long as the goods are in the hands of the purchaser unpaid, he has not an absolute title in the common law sense: he can sell and give a better title than he himself has, and yet his ownership is not ownership in the common law sense but ownership *sub modo* only."

The extracts quoted above show the reasons why, in the case of a sale under the Quebec law, the unpaid vendor is able to reclaim the goods (under certain conditions such as repayment to the buyer of such part of the price as the seller has received, etc.) as against a trustee in bankruptcy, for, as Mr. Justice Riddell has said, the purchaser "has not an absolute title in the common law sense". In fact all sales on credit are analogous to the common law conditional sale, and the legal title never vests in the buyer and therefore does not pass to the trustee in bankruptcy.

Changes in the Law Required

It appears therefore that in order successfully to incorporate the rights of revendication and dissolution in their own system of law, the common law provinces would have to make a fundamental and far-reaching change in principles now long established and incorporated in the various Sale of Goods Acts.

Upon reading the Hudson Fashion Shoppe case we had assumed that the court there enforced the revendication principle on the basis that under private international law, the *lex loci contractu* governed. In fact Riddell, J.A., so states. Subsequent to that decision the present section 10 of The Conditional Sales Act of Ontario was enacted, and thereafter a decision of interest was made by the Registrar in the case of *In Re Meredith.*

Section 10 of The Conditional Sales Act of Ontario would appear to make a limited change in, or modification of, the usual rules as to passing of title in favour of contracts made in other jurisdictions, particularly jurisdictions where a right of revendication exists, subject to the filing of the contract, or a caution relating thereto, in the proper office.

It is interesting to note that if the decision of the Registrar in the case of *In re Meredith* is correct the Quebec law is of effect in Ontario only because the latter province has voluntarily subjected itself thereto (11 C.B.R. at p. 408).

A somewhat similar situation would appear to exist under Nova Scotia law, and the matter was considered in the case of *In re Satisfaction Stores.* In this case also it is suggested (although not decided) that the goods, having passed to the possession of the trustee in bankruptcy, could no longer be said to be "in the possession of the buyer" within the meaning of Article 1543 of the Civil Code.

There would seem then to be a question whether the adoption in some provinces of the rights of revendication and dissolution would be effective in case of the bankruptcy of the buyer if the province of the buyer did not have or enact legislation similar to that of Ontario or Nova Scotia recognizing (under conditions as to registration, etc.) these incidents in contracts made outside the jurisdiction of the province of the buyer.

If such a change were made, it is suggested that in effect it would be to convert all sales other than "cash on the counter" sales into conditional sales; and to make statutory certain conditions now commonly found in conditional sale contracts. The inconveniences that might result from such a fundamental change might be found to outweigh the advantages. It is submitted that no such change should be recommended by the Conference without much more study.

In the event of such a change being made, what would be the position of the present much used conditional sale (lien note) contracts? It would be inconsistent to have two types of conditional sale contracts, one statutory and one contractual. Presumably the present contractual form of sale would have to be assimilated to the statutory form. In some provinces registration of the present conditional sale (lien note) contracts is required. If all credit sales were put on the same statutory basis presumably either this requirement would have to be dropped, or all such credit sales would have to be registered—"a consummation (not) devoutly to be wished".

Conclusions

To sum up:

1. The adoption of the principle of revendication would be of limited benefit, and if applied to existing forms of conditional sale contracts in the common law provinces, would involve the substitution of a judicial procedure for the present extra-judicial procedure.

2. The adoption of the principle of dissolution of sale contracts might, in the common law provinces, unless the whole basis of the law of Sale of Goods were altered, be found to conflict with The Bankruptcy Act and therefore to be unconstitutional. To remove such possible conflict would involve a fundamental change in the code respecting the sale of goods as established for a great length of time in the common law and crystallized in the various Sale of Goods Acts. This in turn might lead to considerable confusion and inconsistency in the laws relating to various kinds of credit sales as hereinbefore mentioned.

3. There is at least some reason for thinking that advantages that might accrue from the adoption of the principles of revendication and of dissolution of sale of goods contracts would be seriously impaired if other provinces did not adopt reciprocal legislation to implement those principles. Without general adoption some confusion might be introduced into the situation now existing in the common law provinces with their practically uniform Sale of Goods Acts.

4. Finally, consideration must be given to the dictum of Chief Justice Harris in the Satisfaction Stores case that the benefit of Article 1543 of the Civil Code is, in any event, lost if the possession of the goods has passed to a trustee in bankruptcy.

The Manitoba Commissioners therefore have not prepared a further draft as instructed, and report that, in their opinion, the resolution of the 1942 Conference, to which reference is made at the beginning of this report, should be rescinded and the instructions recalled for the present at least; and that if it is desired to proceed with the matter at all, a much more exhaustive study of the subject, and all the implications of the proposed legislation, should be made.

Respectfully submitted,

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

Winnipeg, July 7th, 1943.

APPENDIX

CIVIL CODE OF LOWER CANADA

Articles 1472, 1496, 1536, 1538 to 1544 both inclusive, 1998, 1999, 2000.

QUEBEC CODE OF CIVIL PROCEDURE:

Articles 833, 909, 932 to 939 both inclusive, 946 to 952 both inclusive, 955, 956.

CASES:

In re Commercial Textiles Ltd. Ex parte Johnson Woollen Mills Ltd. 21 C.B.R. 387.

In re Rosenweig, Goldfine's Claim, 2 C.B.R. 255.

Re Hudson Fashion Shoppe Ltd. Ex parte Royal Dress Co. (1926) 1 D.L.R. 199.

In re Meredith, 11 C.B.R. 405.

In re Satisfaction Stores, 11 C.B.R. 141.

APPENDIX H2

NOTES ON DRAFT REPORT OF THE MANITOBA COMMISSIONERS ON SUGGESTED AMENDMENTS TO THE SALE OF GOODS ACT.

I have read with great interest the draft report prepared by the Manitoba Commissioners. Owing to the difficulties which they foresee, I agree with their conclusions, namely that the resolution of the 1942 Conference re Sale of Goods be rescinded and that the matter be referred for further study, should the common law commissioners so desire.

As a civilian, I lack the necessary qualifications to give an opinion whether the advantages to be derived from the intended amendments are outweighed by greater disadvantages, but feeling as I do that all was not said pro civil law, with some hesitation and much diffidence, I shall venture the following short remarks, in the hope it might help in the course of further discussion.

(a) I do not believe there is any fundamental difference between civil and common law sales, and when Riddell J.A. states that in Quebec, possession and qualified ownership only passes to the purchaser, this is against the very text of C.C. 1472 which edicts that sale is perfect by mere consent, before delivery (contrary to Roman law.)

True it is that the unpaid vendor has the right to ask for dissolution or rescission, but in our opinion, this does not prevent the passing of absolute ownership to the buyer.

If I am not mistaken, a similar right of recission is to be found in English law in the case of fraudulent sales. *Cf.* Anson's Principals of Contract, 14th Ed. p. 213, (6). In England, as in Quebec, a sale obtained by fraud is voidable only, not void ab initio (C.C. 1000 and Anson's p. 214) and similarly the defrauded vendor has no rights against bona fide subsequent purchasers.

Could it be said, in England, in the case of a fraudulent sale, that ownership had only passed sub modo? is only qualified property? I don't think so. The fraudulent purchaser has acquired full ownership but he is liable to be brought before the Court for rescission. So in Quebec, saving that there is also rescission for the unpaid vendor.

(b) It seems also that the difficulty re constitutionality, as against the Bankruptcy Act, may have been over-emphasized.

Section 2ii of the Bankruptcy Act defines a secured creditor as one holding, inter *alia*, a privilege (v.g. a right of preference).

Section 24.2 provides for the realization of a creditor's security allowing him to deal with it "in the same manner as if this section had not been passed". Privileges and securities recognized by the Bankruptcy Act include those established by provincial parliaments within their jurisdictions and there is no text that I know of to prevent further privileges being created. The assets of a bankrupt are distributed according to existing privileges, whatever they are. However should the question of constitutionality be found fatal to the proposed amendments, it should not be more difficult, but rather easier, to amend the Dominion wide Bankruptcy law than to alter eight different provincial Sale of Goods acts.

Finally as to the dictum of Harris J. in the Satisfaction Stores case, I would like to quote the contrary opinion to be found in De la Durantaye's Traité de la faillite (Montreal 1934), 125:

> "Le dessaisissement atteint les biens du failli
> "dans l'étendue seulement du droit que le failli
> "y possède. Ils restent donc sujets à la résolu-
> "tion conventionnelle ou judiciaire de la proprié
> "té du failli par l'opération du pacte commissoi-
> "re exprès ou tacite."

And the author goes on to deal with the case of the unpaid vendor of moveable property, stating that he is entitled to exercise his privileges against the estate of the bankrupt.

A. BROSSARD,
One of the Quebec Commissioners.

Montreal, June 11th, 1943.

APPENDIX J

REPORT OF BRITISH COLUMBIA COMMISSIONERS ON THE WAREHOUSE RECEIPTS ACT.

At the 1942 Conference a resolution was passed that this matter be referred back to the British Columbia Commissioners for consideration at the next meeting of the Conference. (See page 22, 1942 Proceedings).

The report of the British Columbia Commissioners submitted in 1942, together with draft Act is found commencing page 140 of the 1942 Proceedings

This Act is conceived with the idea of making negotiable warehouse receipts documents of title. The necessity of the Act arises by reason of the fact that in practice the public treat warehouse receipts as though they were documents of title, and it appears to be desirable from the point of view of business. Under the present law they are not. The act creates a distinction between negotiable receipts on the one hand and non-negotiable receipts on the other, defining the rights attached to each.

We have reconsidered the proposed Act and amended it substantially and submit herewith a new draft. The previous draft was based largely on a uniform Act in force in many of the States.

The draft herewith submitted differs from the former draft in the following particulars.

The references to sections are those appearing in the former draft.

Section	1.	"uniform" deleted.
"	2.	Definition of "delivery" and "valuable consideration" deleted. Definitions altered:—"goods", "warehouse receipt" and "warehouse man".
"	3.	Deleted.
"	4.	Deleted.
"	5.	Altered and now section 3.
"	6.	Altered and now section 4.
"	7.	Altered and now section 5.
"	8.	Amplified and now section 6.
"	9.	Amplified and now section 7.
"	10.	Altered and now section 8.

N.B—A new section has been inserted in the draft herewith as section 9.

Section 11. Deleted.
" 12. Deleted.
" 13. Deleted.
" 14. Unaltered and now section 10.
" 15. Altered and now section 11.
" 16, Deleted.
" 17. Unaltered and now section 12.
" 18. Deleted.
" 19. Divided into two sections numbered 13 and 14. Section 13 being new.
" 20. Altered and now section 15.
" 21. Deleted.
" 22. Altered and now section 16.
" 23. Altered and now section 17.
" 24. Deleted.
" 25. Unaltered and now section 18.
" 26. Deleted.
" 27. Deleted.
" 28. Altered and now section 19.
" 29. Unaltered and now section 20.
" 30. Altered and now section 21.
" 31. Unaltered and now section 22.
" 32. Altered and now section 23.
" 33. Unaltered and now section 24.
" 34. Unaltered and now section 25.
" 35. Unaltered and now section 26.
" 36. Unaltered and now section 27.
" 37. Unaltered and now section 28.

N.B.—It will be noted that the effect of section 24 and section 28 of the attached draft is to give to the holder for value of the receipt title to the goods notwithstanding that the person from whom he purchased the receipt did not have a good title.

This would not be the case at common law. Thus in the case of bills of lading the holder for value of a bill of lading has no better title than that of his predecessor. The question arises as to whether or not the provisions of this Act should go farther than the existing law.

Section 38. Unaltered and now section 29.
" 39. Unaltered and now section 30.
" 40. Deleted.

Section 41. Unaltered and now section 31.
" 42. Unaltered and now section 32.

N.B.—We doubt the desirability of the last section being included.

Respectfully submitted,

R. L. MAITLAND,
J. P. HOGG,
A. C. DESBRISSY,
British Columbia Commissioners.

August 20th, 1943.

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 "Warehouse Receipts Act." Short title.

2. In this Act, unless the context or subject matter otherwise requires:— Interpretation of expressions

"Action" includes counterclaim and set-off;

"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" includes all chattels personal other than things in action and money;

"Holder", as applied to the negotiable receipt, means a person who has 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;

"Negotible receipt" is one in which it is stated that the goods therein specified willl 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;

"Warehouse receipt" means an acknowledgment in writing by a warehouseman of the receipt for storage of goods not his own;

"Warehouseman" means a person engaged in the business of storing goods as a custodian for reward.

Form of receipts.

3. A receipt need not be in any particular form, but shall be in writing and shall contain the following particulars:

(a) The location of the warehouse or other place where the goods are stored;

(b) The name of the person by whom or on whose behalf the goods are deposited;

(c) The date of issue of the receipt;

(d) A statement either:

(i) that 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

(ii) that the goods will be delivered to bearer or to the order of any named person;

(e) The rate of storage charges;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman or his authorized agent;

(h) A statement of the amount of any advance made and of any liability incurred for which the warehouseman claims a lien.

A warehouseman shall be liable for damage to any person caused by the omission from a negotiable receipt of any of the foregoing particulars; but no receipt shall by reason of the omission of any such particulars be deemed not to be a warehouse receipt.

A warehouseman may insert in a receipt, issued by him, any other term or condition that,

(a) is not contrary to any provision of this Act; and

(b) does not in any way impair his obligation to exercise such care and diligence in regard to the goods as a careful and vigilant owner of similar goods would exercise in the custody of them in similar citcumstances

4. Words in a negotiable receipt limiting its negotiability shall be void. Negotiable and non-negotiable receipts.

5. No more than one receipt shall be issued in respect of the same goods except in case of a lost or destroyed receipt, in which case the new receipt, if one is given, shall bear the same date 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. Duplicate receipts must be so marked.

6. A receipt upon the face of which the word "duplicate" is plainly marked is a representation and warranty by the warehouseman that it is an accurate copy of a receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability. Effect of duplicate receipts.

7. A warehouseman who issues a non-negotiable receipt shall cause to be plainly marked upon its face the words "non-negotiable" or "not negotiable". In case a warehouseman fails to do so, a holder of the receipt who purchases it for valuable consideration believing it to be negotiable may, at his option, treat the receipt as vesting in him all rights attaching to a negotiable receipt and imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable, and the warehouseman shall be liable accordingly. Failure to mark "Not negotiable".

8. A warehouseman in the absence of a lawful excuse, shall deliver the goods referred to therein: Obligation of warehouseman.

(a) In the case of a negotiable receipt to the bearer thereof upon demand made by the bearer and upon the bearer
 (i) satisfying the warehouseman's lien, and
 (ii) surrendering the receipt with such indorsements as are necessary for the negotiation of the receipt, and
 (iii) acknowledging in writing the delivery of the goods; and

(b) In the case of a non-negotiable receipt to the holder thereof upon the holder,
 (i) satisfying the warehouseman's lien, and
 (ii) surrendering the receipt, and
 (iii) 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 his refusal or failure.

Delivery on presentation negotiable receipt.

9. A warehouseman is justified in delivering goods to a person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or his order or to bearer, or that has been duly endorsed to him or endorsed in blank if the delivery is made in good faith and without notice of any defect in the title of such person.

Negotiable receipts must be cancelled or marked when goods or part thereof are delivered

10. Except as provided in section 20, where a warehouseman delivers goods for which he has issued a negotiable receipt and fails to take up and cancel the receipt, he shall be liable to any one who purchases the receipt in good faith and for valuable consideration, for failure to deliver the goods to him, whether such purchaser acquired the receipt before or after the delivery of the goods by the warehouseman. Except as provided in said section 20, 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 the purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Lost or destroyed receipts.

11. 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 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 in accordance with the practice of the Court to protect the warehouseman from any liability or expense, that he or any person injured by the delivery incurs, by reason of the original receipt remaining outstanding; and the warehouseman shall be entitled to his costs of the motion or petition.

Warehouseman has reasonable time to determine validity of claims.

12. If someone 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.

13. Every negotiable receipt shall in the hands of a holder who has purchased it for valuable consideration be conclusive evidence of the receipt by the warehouseman of the goods therein described as against the warehouseman and any person signing the same on his behalf, notwithstanding that the goods or some part thereof may not have been so received unless the holder of the negotiable receipt has actual notice at the time of receiving same, that the goods had not in fact been received. Conclusiveness of negotiable receipt.

14. If the goods are described in a receipt merely by a statement, Description of goods in receipt.

(a) of certain marks or labels on the goods or on the packages containing them, or

(b) that the goods are said by the depositor to be goods of a certain kind, or

(c) that the packages containing the goods are said by the depositor to contain goods of a certain kind,

or by a statement of import similar to that of clause (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.

15. A warehouseman shall be liable for loss of or injury to goods caused by his failure to exercise such care and diligence in regard to them as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances. Liability for care of goods.

16. 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 holder shall be entitled to such proportion thereof as the quantity shown by his receipt to have been deposited bears to the whole. Co-mingled goods and warehouseman's liability therefor.

17. If goods are delivered to a warehouseman by the owner or 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 Attachment or levy upon goods for which a negotiable receipt has been issued.

in the possession of the warehouseman, be levied under an execution, unless the receipt is first surrendered to the warehouseman.

Negotiable receipt must state charges for which lien is claimed

18. 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.

Perishable and hazardous goods.

19. If 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 depositor 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. The 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 the 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 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.

20. 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 19, 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 indorsement.

21.(1) A negotiable receipt may be negotiated by delivery in either of the following cases:—

(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 that person or a subsequent endorsee has indorsed 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 indorsed in blank or to bearer the receipt may be negotiated by the bearer indorsing the same to a named person, and in such case the receipt shall thereafter be negotiated by the indorsement of the indorsee or a subsequent indorsee, or by delivery if it is again indorsed in blank or to bearer.

(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 indorsement of such named person. The indorsement may be in blank, to bearer or to a named person. If indorsed to a named person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another named person. Subsequent negotiation may be made in like manner.

22. A non-negotiable receipt may be transferred by the holder by delivery to a purchaser or donee of the goods of a transfer in writing executed by the holder. A non-negotiable receipt cannot be negotiated. Transfer receipts.

23. 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 upon so doing acquires 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 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 the deposit with the warehouseman by another person of another transfer from the transferor. Rights of person to whom a receipt has been transferred.

24. A person to whom a negotiable receipt has been duly negotiated acquires, Rights of person to whom a receipt has been negotiated.

(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 indorsement.

25. Where a negotiable receipt is transferred for valuable consideration by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is made.

Warranties on sale of receipt.

26. A person who for valuable consideration negotiates or transfers a receipt by indorsement 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 that 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.

Indorser not a guarantor.

27. The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

When negotiation not impaired by fraud, mistake or duress.

28. The validity of the negotiation of a negotiable receipt is not impaired by the fact that the 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.

29. Where a person having sold, mortgaged or pledged goods that are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged a negotiable receipt representing 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.

30. 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 the receipt has been negotiated, whether the negotiation be prior or subsequent to the notification to the warehouseman who issued the 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. **Negotiation defeats vendor's lien.**

31. The provisions of this Act do not apply to receipts made and delivered prior to.......... ... **Application to existing receipts.**

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

APPENDIX K

REPORT OF THE ALBERTA COMMISSIONERS ON CORRESPONDENCE RELATING TO THE LIMITATION OF ACTIONS ACT APPEARING IN 1942 PROCEEDINGS AT PAGE 119.

The Alberta Commissioners have had under consideration the questions raised in the letters of Dean Falconbridge of Osgoode Hall and Mr. F. J. Turner, K.C., of Winnipeg appearing in the 1942 proceedings at page 119 and beg to report as follows:—

A.—Extinguishment of title of owner of chattel who is out of possession for the Statutory period.

The Limitation Act, 1939 (Imp) Ch .21 of 1939 contains the following Section:—

"3 (1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired and he has not during that period recovered possession of the chattel the title of that person to the chattel shall be extinguished."

The provision with regard to the extinguishment of title to land referred to by Dean Falconbridge is section 38 of the Uniform Act and reads as follows:—

"38. At the determination of the period limited by this Act, to any person for taking proceedings to recover any land, rent charge or money charged on land the right and title of such person to the land or rent charge or the recovery of the money out of the land shall be extinguished."

There would seem to be no logical objection to extending this principle of extinguishment of title to chattels, and that it would be advisable to adopt the English section quoted above. It might properly be inserted immediately after section 38 as Section 38A. The Alberta Commissioners recommend to the favourable consideration of the Conference the adoption of the provisions of the English Act relating to chattels.

B. The second suggestion made by Dean Falconbridge is that sections 15, 34, 35 and 36 of the Uniform Statute (page 284, Proceedings 1931) should be reconsidered in the light of the English Act, The Limitations Act 1939. These sections of the Uniform Act read as follows:—

"15.—(1) No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent charge, though secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable or so secured, or any damages in respect of such arrears, except within the time which the same would be recoverable if there were not any such trust.

(2) The preceding subsection shall not operate so as to effect any claim of a cestui que trust against his trustee for property held on an express trust."

"34. Subject to the other provisions of this Part no claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by this Act."

"35.—(1) In this section "trustee" includes an executor, an administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, and also includes a joint trustee.

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use.

(a) All rights and privileges conferred by this Act shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee;

(b) If the action is brought to recover money or other property, and is one to which no limitation provision of this Act applies, the trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action in the like manner and to the same extent as if the claim had been against him in an action for money had and received;

Provided that the limitation provisions of this Act shall run against a married women entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.'

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary that he could have obtained if he had brought the action and this section had been pleaded."

"36. Where any property is vested in a trustee upon any express trust, the right of the cestui que trust or any person claiming through him to bring an action against the trustee or any person claiming through him to recover the property, shall be deemed to have first accrued at and not before the time at which it was conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him."

Section 35 quoted above is taken from the English Trustee Act 1888 and sub-section (2) particularly seems cumbersome and there can be no doubt that Sections 19 and 20 of the English Limitations Act 1939 are clearer and the language is more concise. These sections read as follows:—

"19—(1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit

from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence."

"20. Subject to the provisions of sub-section (1) of the last foregoing section, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due."

Sub-section (1) of Section 19 clearly states the cases in which the Limitation Act does not apply in favour of a Trustee and the other provisions of Sections 19 and 20 provide definite periods of limitation.

It seems to the Alberta Commissioners that the Uniform Act would be improved by omitting Section 34 and including in Part V the following:—

"34.—(1) In this Section "Trustee" includes an executor, an administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee and also includes a joint trustee.

(2) Insert sub-section (1) of Section 19 of the Limitations Act 1939 quoted supra.

(3) Sub-section (2) of said Section 19.

(4) Sub-section (3) of said Section 19."

"35. Subject to the provisions of sub-section (2) of Section 34 no action in respect of any claim to the personal estate of a deceased person or to any share or interest in the estate whether under a will or an intestacy shall be brought after the expiration of six years from the date when the right to receive the share or interest accrued and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears shall be brought after the expiration of six years from the date on which the interest became due."

It is necessary to retain the definition of trustee. In the 1939 English Act Trustee is defined as having the same meaning as in The Trustee Act 1925 and that Act is defined as extending to "implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of a personal representative and "trustee" where the context admits includes a personal representative and "new trustee" includes an additional trustee."

If these changes are favourably considered by the Conference they would probably involve further changes in Sections 12 and 15 of the Uniform Act and in that event the Commissioners recommend that the Act be referred back for further consideration and drafting.

The other points referred to the Alberta Commissioners appear in the letter of Mr. F. J. Turner, K.C., of Winnipeg which is at page 120 of the 1942 proceedings.

C. The first point mentioned by Mr. Turner is the apparent cutting down by Robson J. A. in *Cummins* v. *Cummins* 41 M.R. 607 of the effect of Section 7 of the Uniform Act, (1931 proceedings at page 287) dealing with acknowledgements and part payments. Sub-section (1) reads in part as follows:—

"(1) Whenever any person who is, or would have been but for the effluxion of time, liable to an action for the recovery of money as a debt or his agent in that behalf,

(a) conditionally or unconditionally promises his creditor or the agent of the agent of the creditor in writing signed by the debtor or his agent to pay the debt; or

(b) gives a written acknowledgement of the debt signed by the debtor or his agent to his creditor or the agent of the creditor; or

(c) makes a part payment, etc., etc.,"

Then the action may be brought within six years of the acknowledgement etc., and sub-section (2) says:—

"(2) A written acknowledgement of a debt or a part payment on account of the principal debt or interest thereon 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."

Robson J. A. in the case referred to in Mr. Turner's letter said at page 618 of the report:—

"If there could be extracted from the agreement and treated as a thing distinct the recital reading "And whereas there is still owing to the party of the second part the sum of nine hundred and fifty dollars" there would be an acknowledgement within Sub-section (2) but I cannot think that the sub-section justifies any such treatment but rather that the whole document must be read together and that when a special promise to pay accompanies the acknowledgement the generality of the obligation which would otherwise result from it must be excluded or limited by the special provision. Here the special provision is, when a certificate of title is obtained to say nothing of agreement on terms of the second mortgage, I do not think the statutory provision was intended to depart from the principles governing the matter set forth so fully in Spencer vs. Hemmerde (1922) 2 A.C. 507."

There were two distinct things in the agreement, an acknowledgement of the debt and a convenant to execute a security for the debt, conditional on a certificate of title being obtained. The title was not obtained so it seems to us that it was not necessary to rely on the statute of limitations at all. The acknowledgement of the debt made the debt actionable under the statute but the action on the convenant was another matter altogether.

Robson J. A. was the only member of the Court of Appeal who dealt with the Statute of Limitations. Truman J. A. dismissing the appeal on the ground that the agreement was too indefinite to be enforced and the other Judges giving no reasons. If this case be taken as holding that in the circumstances, an acknowledgement of the debt would not support an action on the debt itself it is directly contrary to the plain language of the statute.

The reasoning of Robson J. A., however, was adopted by Donovan J. in *Buckley* v. *Taylor* 45 M.R. 232.

In *McCutcheon* v *Gregg* 47 M.R. 193 Dysart J. held that an acknowledgement must be unconditional, quoting English authorities, without reference to the fact that the statute says the opposite.

We do not see how the statute could be made any clearer and have no amendment to suggest to the Conference.

D. The second question raised by Mr. Turner was also as to Section 7, and is whether that section has any application to a judgment.

Simple contract debts and judgments are dealt with separately in Section 3 of the Uniform Act and our view is that that sectiom as it stands in the Uniform Act does not apply to judgment debts. The Alberta Act, now R. S. A., 1942, C 133 was amended as to Section 9 (Section 7 of the Uniform Act) in 1942 by inserting in sub-section (1) immediately after the words "liable to an action" the words "on a judgment or order for the payment of money or".

The effect of this is that an acknowledgement etc., in the last six years of the life of a judgment, would extend the time during which an action could be brought on the judgment.

Respectfully submitted,

W. S. GRAY,
H. J. WILSON.
Alberta Commissioners.

Edmonton, Alberta, July 29th, 1943.

APPENDIX L

March 11, 1943.

Hon. G. D. Conant, K.C.,
Attorney-General,
The Province of Ontario,
Parliament Buildings,
Toronto, Ontario.

Dear Sir:

The Wartime Legal Services Committee (Ontario) of the Canadian Bar Association, in considering ways and means of making litigation less onerous and costly to members of the armed forces, after due consideration at a number of meetings, and on recommendation of a sub-committee, have instructed me to write requesting the Government for the Province of Ontario to amend The Evidence Act, R.S.O. 1937, Chapter 119, to overcome the rule in *Russell* v. *Russell.* It is suggested that the proposed amendment should read as follows:

"The Evidence Act is amended by adding thereto the following section:

"7a Where a party to any proceeding instituted in consequence of adultery is a member of or the husband or wife of a member of His Majesty's Forces on active service beyond the Dominion of Canada or its territorial waters, such party shall be competent to give evidence of non-access in such proceeding."

You are no doubt aware that there have been some recent cases, particularly that of *Hare* vs. *Hare,* 1943, O.W.N. at page 121, dealing with this subject. In that case the evidence was that the plaintiff (husband), a soldier, had last seen his wife on the 9th day of August, 1940. Proof was submitted that the Defendent (wife) gave birth to a child on the 27th day of July, 1941. The evidence of the Records Officer called at the trial was that according to the records the Plaintiff had gone overseas on the 13th day of August 1940 and had not since been granted a furlough for Canada. This evidence was rejected as incompetent.

This type of case will no doubt, unfortunately, multiply; hence the necessity for the suggested amendment.

If our Committee can be of any further assistance to you in discussing the above amendment further, I should appreciate if you would so advise.

Yours very truly,

GEO. E. EDMONDS,

Secretary—
Wartime Legal Services,
Committee (Ontario)
Canadian Bar Association

APPENDIX M

REPORT OF W. P. J. O'MEARA ON SUGGESTION FOR REPRESENTATION UPON BOARDS OF DIRECTORS OF COMPANIES OF SUBSTANTIAL MINORITY GROUPS OF STOCKHOLDERS.

By resolution passed at the 1942 meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, the undersigned was 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. The adoption of this resolution followed an address by The Honourable Mr. Maitland who referred to a memorandum prepared by Mr. H. G. Garrett, Registrar of Companies for British Columbia, upon that subject.

At the outbreak of the present war, the Dominion-Provincial Committee on Uniformity of Company Law in Canada had completed its first draft uniform Companies Act, copies of which were distributed at the Vancouver meeting of the Canadian Bar Association in 1938, where many sections of the draft were discussed in some detail. The undersigned, as Secretary of the Committee, and Doctor E. H. Coleman, K.C., its Chairman, earnestly invited members and any others interested to submit further written observations or suggestions for consideration at subsequent meetings of the Committee.

During the intervening war years, however, it has not been found feasible, for obvious reasons, to hold further meetings of the Committee, members of which are scattered throughout the Dominion and who are impeded both because of necessity for economy in expenditure of public funds and transportation difficulties from doing unnecessary travelling, and by reason of their preoccupation with special wartime duties. Careful note has been made, however, of all suggestions which have reached the Committee or its officers from time to time.

Since last year's meeting of the Conference of Commissioners a significant development has occurred in the light of which the officers of the Dominion-Provincial Committee have felt that the next meeting ought to be further deferred. I refer to the appointment of a strong Committee to study the operation of the Companies Act of the United Kingdom with a view to proposing any amendments which may be thought desirable. The Committee, which is under the Chairmanship of the Honourable Mr. Justice Cohen, comprises distinguished barristers, bankers, accountants and business executives. Its terms of reference are "to consider and report what major amendments are desirable in the Companies Act, 1929, and in particular to review the requirements prescribed in regard to the formation and affairs of companies and the safeguards afforded for investors and for the public interest." Arrangements have been made for supplying to the Secretary of the Dominion-Provincial Committee copies of any papers which may be issued from time to time by the Board of Trade or otherwise concerning the work of the Committee headed by Mr. Justice Cohen.

Among the specific subjects mentioned by the London press as being included in the agenda of the Committee are problems dealing with the qualifications of directors and the composition of boards of directors.

Undoubtedly the evidence adduced and the recommendations made by the United Kingdom Committee will be of great interset in the consideration of the relative provisions of the Companies Acts of the Dominion and of the Provinces of Canada. In these circumstances the undersigned recommends that the suggestion raised by the memorandum of Mr. Garrett be reserved for consideration at the next meeting of the Dominion-Provincial Committee on Uniformity of Company Law in Canada and that Mr. Garratt's memorandum, as well as the reports and recommendations of the United Kingdom Committee, be submitted to the Dominion-Provincial Committee at the earliest date at which it may be feasible to re-convene that Committee but that no action be taken meanwhile by the Conference of Commissioners on Uniformity of Legislation in Canada with respect to the representation of a substantial minority of stockholders upon boards of Directors.

All of which is respectfully submitted,

W. P. J. O'MEARA.

Ottawa, July 31st, 1943.

APPENDIX N

REPORT OF DOMINION REPRESENTATIVE ON SERVICE OF PROCESS BY MAIL IN THE SMALL DEBT COURTS

By a resolution passed at the last meeting of the Conference, the matter of making provision for effecting service by mail in the small debt courts was referred to the Dominion Representatives for study and report.

Service of process in small debt matters by registered mail has been found to be a satisfactory substitute for personal service in many American jurisdictions and has the advantage of eliminating much expense and delay with little added risk of injustice. See volume 34 of the Columbia Law Review at page 935 (1934) and a publication of the United States Department of Labour entitled "Growth of Legal-Aid Work in the United States" at page 41 (1936).

Service by registered mail has been adopted for bankruptcy purposes in Canada, (section 185 of the Bankruptcy Act) and has been adopted in Saskatchewan for Small Debt District Court and even for some Supreme Court matters (sections 8 and 11 of the Small Debts Recovery Act, chapter 86 of the Revised Statutes of 1940, section 49 of the District Courts Act, chapter 62 of the Revised Statutes of 1940 and Rule 444(4) of the 1942 Revised Rules of Court).

The Select Committee appointed to enquire into the Administration of Justice in Ontario has recommended the use of registered mail for service of process in division courts (Report made in 1941 at page 28). There is also a very interesting article by Gerard Trudel advocating use of the mails for service in the September 1941 number of La Revue du Barreau de la Province de Quebec at page 203.

The following draft provision (adapted from the Saskatchewan District Court Act) is submitted to the Conference for consideration:

"(1) In addition to any other method of service, a writ of summons (or as the case may be) may be served upon a defendant resident within the province by forwarding to him by registered and prepaid mail a true copy thereof; and such service shall be sufficient if a receipt from the postmaster for the letter containing such copy and a post office receipt for such letter, purporting to be signed by the defendant, are produced as exhibits to an affidavit of service in the following form:

AFFIDAVIT OF SERVICE

(STYLE OF CAUSE)

I.......... ..of............in the Province of.... .. .., make oath and say:

(1) That I did on the.. ....day of . . ... 19 .. , serve the above named defendant with a true copy of the original writ of summons (or as the case may be) hereunto annexed and marked exhibit "A" to this my affidavit (or as the case may be), having enclosed such copy in an envelope addressed to the defendant at.. .. . ... in the Province of. ...., and posted the same by registered mail in the post-office at........ ..

(2) Hereunto annexed and marked exhibit "B" is the receipt from the postmaster at...... .... for such registered letter and hereunto annexed and marked exhibit "C" is the receipt of the defendant for such registered letter.

Sworn before me at the... ... .
of. .... in the..
Province of..........................
this ....day of........ ...
A.D. 19.....

A Commissioner, etc.

(2) Any document which has been served under this section is deemed to have been served on the day of the date of the receipt which purports to be signed by the defendant."

Respectfully submitted,

W. R. JACKETT,
W. P. J. O'MEARA.
Dominion Representaties.

INDEX