1944

PROCEEDINGS

OF THE

TWENTY-SIXTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

NIAGARA FALLS, ONTARIO

AUGUST 24TH, 25TH, 26TH, 28TH AND 29TH, 1944

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1944-45

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

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

Vice-President. . W. P. J. O'Meara, K.C., Ottawa.

Treasurer .... J. P. Runciman, Regina.

Secretary . . .. L. R. MacTavish, K.C., Toronto.

LOCAL SECRETARIES

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., Charlottetwon.

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 Counsel, 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.

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

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

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

Manitoba:

JOHN ALLEN, K.C., Deputy Attorney-General, Winnipeg.

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

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

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

*(Commissioners appointed under the authority of the Revised Statutes of Manitoba, 1940, c. 223).

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.
JOSEPH SEDGWICK, K.C., 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.
HON. F. A. LARGE, Attorney-General, Charlottetown.
GEORGE J. TWEEDY, K.C., Charlottetown.

Quebec:

GERALD FAUTEUX, K.C., Montreal.
JEAN FRANCOIS POULIOT, K.C., M.P., Rivière du Loup.
ANTOINE RIVARD, LL.L., C.R., Quebec.

Saskatchewan:

ALEX. BLACKWOOD, K.C., Deputy Attorney-General, Regina.
J. P. RUNCIMAN, Legislative Counsel, Regina.
DOUGLAS J. THOM, K.C., Regina.

Canada:

ROBERT FORSYTH, K.C., Senior Counsel, Department of Justice, Ottawa.
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. Maurice Duplessis, K.C.
Attorney-General of Saskatchewan: Hon. J. W. Corman, K.C.

PAST PRESIDENTS OF THE CONFERENCE

1918–23 Sir James Aikins, K.C., Winnipeg.
1923–25 Mariner G. Teed, K.C., St. John.
1925–30 Isaac Pitblado, K.C., Winnipeg.
1930–35 John D. Falconbridge, K.C., Toronto.
1935–37 Douglas J. Thom, K.C., Regina.
1937–38 I. A. Humphries, K.C., Toronto.
1938–41 R. Murray Fisher, K.C., Winnipeg.
1941–43 Honourable Mr. Justice F. H. Barlow, Toronto.
1943–44 Peter J. Hughes, K.C., Fredericton.
1944 — W. P. Fillmore, K.C., Winnipeg.

PAST AND PRESENT MEMBERS OF THE CONFERENCE

A

Honourable Sir James Aikins, K.C., Winnipeg . . . 1918–28
John Allen, K.C., Winnipeg . . . 1944–

B

William J. Baird, Vancouver . . 1929–30
Honourable Mr. Justice F. H. Barlow, Toronto . . . 1939–
C. L. Beazley, K.C., Halifax . . 1939–
William E. Bentley, K.C., Charlottetown . . 1918–29; 1933–
Hjalinar A. Bergman, K.C., Winnipeg . . 1922
Honourable Valmore Bienvenue, K.C., Quebec. 1942–43
Alex. Blackwood, K.C., Regina . . 1944–
J. C. F. Bown, K.C., Edmonton . . 1920
Ariste Brossard, Montreal . . 1942–43
Charles J. Burchell, K.C., Halifax . . 1921–23

C

A. C. Campbell, K.C., Winnipeg . . 1933–38
William D. Carter, K.C., Victoria . . 1924
W. F. Chipman, K.C., Montreal . . 1942
A. H. Clarke, K.C., Calgary . . 1919
J. C. Collinson, K.C., Winnipeg . . 1933-34
W. Randolph Cottingham, K.C., Winnipeg . . 1923–27
H. E. A. Courtney, Victoria . . 1919–20
James Bowes Coyne, K.C., Winnipeg . . 1921
Honourable Richard W. Craig, K.C., Winnipeg . . 1927–32
John A. Creaghan, Newcastle, N.B. . . 1930–34

D

A. C. DesBrisay, Vancouver 1943–
Sylvere DesRochers, Charlottetown 1930–32; 1938–44
J. Bacon Dickson, K.C., Fredericton 1935–
Honourable C. Gavan Duffy, K.C., Charlottetown ... 1920; 1923
Allan M. Dymond, K.C., Toronto 1929–31

E

Joseph N. Ellis, K.C., Vancouver 1919–28
Honourable John C. Elliott, K.C., London 1920–31

F

John D. Falconbridge, K.C., Toronto 1918–33
W. P. Fillmore, K.C., Winnipeg 1939–
R. K. Finlayson, Winnipeg 1941
R. Murray Fisher, K.C., Winnipeg 1928–
Frank Ford, K.C., Edmonton 1918–24
Robert Forsyth, K.C., Ottawa 1944–
R. Leighton Foster, K.C., Toronto 1933–34
James Friel, K.C., Moncton 1925–27

G

Honourable Wilfrid Gariepy, K.C., Edmonton 1918
Herbert G. Garrett, Victoria 1923
W. S. Gray, K.C., Edmonton 1936–

H

Ralph P. Harley, K.C., Woodstock; Fredericton. 1930–34
G. B. Henwood, K.C., Edmonton 1939–42
J. Pitcairn Hogg., K.C., Victoria 1938–
J. Edward Hughes, Fredericton 1941
Peter J. Hughes, K.C., Fredericton 1935–
I. A. Humphries, K.C., Toronto 1933–37

I

Cyrus F. Inches, K.C., St. John 1925–29

J

W. R. Jackett, Ottawa 1942–
Stuart Jenks, K.C., Halifax 1918–23
Walter S. Johnson, K.C., Montreal 1943
Hon. Wendell P. Jones, K.C., Woodstock, N.B. 1925–29

K

Francis King, Kingston 1918–31

L

Eugene Lafleur, K.C., Montreal	1918–20
T. W. Laidlaw, Winnipeg	1931
Daniel W. Lang, K.C., Toronto	1934–38
Henry G. Lawson, K.C., Victoria	1925–42
J. D. Pollard Lewin, St. John	1918–24
N. W. Lowther, Charlottetown	1936–44
Hon. John F. Lymburn, K.C., Edmonton	1927

M

Thomas D. MacDonald, Halifax	1938; 1942–
Vincent C. MacDonald, K.C., Halifax	1934–
Philip E. Mackenzie, K.C., Saskatchewan	1918; 1920
J. F. MacNeill, K.C., Ottawa	1941
L. R. MacTavish, K.C., Toronto	1943–
W. J. Mahoney, M.L.A., Halifax	1925–26
Hon. R. L. Maitland, K.C., Vancouver	1931–
K. M. Martin, K.C., Charlottetown	1941–44
Hon. William M. Martin, K.C., Regina	1921
Frederick Mathers, K.C., Halifax	1920–39
W. L. Mathieson, Charlottetown	1936–37
Stanley H. McCuaig, K.C., Edmonton	1932–34; 1937–39
Alexander Andrew McGillivray, K.C., Calgary	1921
Hector McInnes, K.C., Halifax	1918
Wilson E. McLean, K.C., Winnipeg	1935–39
Hartley D. McNairn, Toronto	1938
Charles P. McTague, K.C., Windsor, Ont	1932–34
Frank L. Milner, K.C., Amherst	1927–29

N

Henry G. Nolan, Calgary	1932–33

O

W. P. J. O'Meara, K.C., Ottawa	1936–

P

Harold H. Parlee, K.C., Edmonton	1922–24
John A. M. Patrick, K.C., Yorkton	1921–22
C. P. Plaxton, K.C., Ottawa	1936–39
Eric Pepler, Victoria	1930
Avard V. Pineo, Victoria	1918–34
Isaac Pitblado, K.C., Winnipeg	1918–32
Horace A. Porter, K.C., St. John	1935–
Jean F. Pouliot, K.C., M.P., Riviere du Loup	1944–

R

J. L. Ralston, K.C., Halifax	1920; 1923–26
John E. Read, K.C., Halifax; Ottawa	1924–28; 1936–
E. René Richard, Sackville	1928–34
Antoine Rivard, LL.L., C.R., Quebec	1944–
Arthur W. Rogers, Toronto	1926–28
J. P. Runciman, Regina	1935–
G. S. Rutherford, Winnipeg	1942–

S

His Honour Judge H. W. Sangster, Windsor, N.S.	1930–32
Walter S. Scott, K.C., Edmonton	1919–29
Joseph Sedgwick, K.C., Toronto	1944
Eric H. Silk, K.C., Toronto	1935–
Robert W. Shannon, K.C., Regina	1918–32
R. Andrew Smith, K.C., Edmonton	1930–39
Sidney E. Smith, Halifax	1929–33
Cecil L. Snyder, K.C., Toronto	1938
Donald O. Stewart, Summerside	1930–32; 1938–44
James D. Stewart, K.C., Charlottetown	1919–20
Travers Sweatman, K.C., Winnipeg	1920–23
Hon. Mr. Justice E. F. Surveyer, Montreal	1918–41
Herbert J. Symington, K.C., Winnipeg	1918–26

T

Mariner G. Teed, K.C., St. John	1918–23
Douglas J. Thom, K.C., Regina	1922–
William J. Tupper, K.C., Winnipeg	1918–19
Hon. W. F. A. Turgeon, K.C.	1918–20
George J. Tweedy, K.C., Charlottetown	1930–32; 1938–

W

William B. Wallace, K.C., St. John	1918–24
E. K. Williams, K.C., Winnipeg	1922–23
H. J. Wilson, K.C., Edmonton	1943–
Matthew Wilson, K.C., Chatham, N.B.	1918–19
Cecil A. Wright, K.C., Toronto	1943–

Y

J. Stuart Yates, Victoria	1921–24

PREFACE

More than twenty five years have elapsed since the Canadian Bar Association recommended that each provincial government should provide for the appointment of commissioners to attend conferences organized for the purpose of promoting uniformity of legislation in the provinces.

This recommendation was based upon observation of the National Conference of Commissioners on Uniform State Laws, which has met annually in the United States since 1892 to draft model statutes. These Acts by subsequent adoption by many of the State Legislatures have resulted in a substantial degree of uniformity of legislation throughout the United States, particularly in the field of commercial law.

The seed of the Canadian Bar Association fell on fertile ground and the idea was soon implemented by most provincial governments and later followed by the remainder. The first meeting of commissioners appointed under the authority of provincial statutes and of representatives from those provinces where no provision had been made for the formal appointment of commissioners took place in Montreal on September 2nd, 1918, and there the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. In the following year the Conference adopted its present name.

Since the organization meeting in 1918 the Conference has met 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.
1941. September 5, 6, 8–10, Toronto.
1942. August 18–22, Windsor.
1943. August 19–21, 23, 24, Winnipeg.
1944. August 24–26, 28, 29, Niagara Falls.

Due to war conditions the annual meeting of the Canadian Bar Association scheduled to be held in Ottawa in 1940 was cancelled and for the same reason no meeting of the conference was held that year. Although in 1941 both the Canadian Bar Association and the Conference held meetings, in 1942 the Canadian Bar Association cancelled its meeting which was scheduled to be held in Windsor. The Conference, however, proceeded with its meeting. This meeting was significant in that the National Conference of Commissioners on Uniform State Laws in the United States was holding its annual meeting at the same time in Detroit which enabled several joint sessions to be held of the members of both Conferences.

It is interesting to note that since 1935 the Dominion Government has sent representatives to the meetings of the Conference and that although the Province of Quebec was represented at the organization meeting in 1918, representation from that Province was spasmodic until 1942, but since then representatives from Quebec have attended each year.

In most provinces statutes have been passed providing for grants towards the general expenses of the Conference and for payment of the travelling and other expenses of the Commissioners. In the case of provinces where no legislative action has been taken and in the case of the Dominion, representatives are appointed and expenses provided by order of the executive. The members of the Conference do not receive remuneration for their services. Generally speaking, the appointees to the Conference are representative of the various branches of the legal profession, drawn from the Bench, governmental law departments, faculties of law schools and the practising profession.

The appointment of commissioners or representatives by a government does not of course have any binding effect upon the government or legislature which may or may not, as it wishes, adopt the conclusions or recommendations of the Conference. However, it is only when the recommendations of the Conference are accepted and acted upon by the legislatures that uniformity of law can be achieved.

The primary object of the Conference is to promote uniformity of legislation throughout Canada or the provinces in which uniformity may be found to be practicable by whatever means are suitable to that end. The usual means is the annual meetings of the Conference, at which consideration is given to those branches of the law in respect of which it is desirable and practicable to secure uniformity. Between meetings the work of the Conference is forwarded by correspondence among the members of the executive and the local secretaries. The actual work of the Conference at its annual meetings consists largely in the preparation of model statutes which when completed are recommended to the legislatures for enactment.

While the primary work of the Conference has been and is to achieve uniformity in respect of subject matters covered by existing legislation, the Conference has nevertheless gone beyond this field in recent years and has dealt with subjects not yet covered by legislation in Canada which after preparation are recommended to the legislatures for enactment. Examples of this practice are the Commorientes Act, section 38 of the Uniform Evidence Act and the Uniform Regulations Act. In these instances the Conference has felt it better to establish and recommend a uniform statute before any legislature has dealt with the subject rather than wait until the subject has been legislated upon in several jurisdictions and then attempt the more difficult task of recommending changes to effect uniformity.

Another innovation in the work of the Conference was the establishment at this year's meeting of a section on criminal law and procedure. This proposal was first put forward by the Criminal Law Section of the Canadian Bar Association under the chairmanship of J. C. McRuer, K.C., at the Winnipeg meeting in 1943. It was there pointed out that no body existed in Canada with the proper personnel to study and prepare recommendations for amendments to the Criminal Code and relevant statutes in finished form for submission to the Minister of Justice. This discussion resulted in a resolution of the Canadian Bar Association that the Conference should enlarge the scope of its work to en-

compass this field. At this year's meeting of the Conference this recommendation was acted upon and a section constituted for this purpose, to which several provinces and the Dominion appointed special representatives. The work of the first meeting of the Criminal Law Section is reported in this volume of the Proceedings.

L.R.MacT.

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	. .	....	....
Defamation	1944	....	....	....
Devolution of Real Property	1927	1928	....	
Evidence	1941	... 1941-42y, yy		1942y, yy
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
Married Women's Property	1943	. .	....	
Partnership xx	..	1899	1894	1897
Partnership Registration	1938	..	. .	.
Reciprocal Enforcement of Judgments	1924	1925, am. 1935	1925	.
Regulations	1943	..	...	..
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. 18) 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	. . .	Am. '31
....	1930	.	. ..	....	1929	....	Am. '31 & '32
1927	....	....	1933	....	....	....	Am. '25 & '39
1940	1941	1940	1940	. . .	1942	..	... ...
1927	1930	....	1934	....	. ..	..	Am. '27, '29, '30 & '33.
1925	1926	..	1938*	....	1944	..	Rev. '34 & '35
. .	1933	1932	.	...	1932	. ..	. . . .
....	....	....	....	....	....	....	.....
1934†	.	..		....	1928	..	.. ..
1942Y	.	1942Y,YY...		....	1942YY	1942Y, 1943†	Sec. 38 rev. '44
1931	1930	1924	1933	....	1925	...	Stat. cond. 17 not adopted.
....	. ..	....	....	....	..	....	. .. .
. ..	...	.. .	....	....	1934	....	.....
....	....	....	1939	. ..	1943	. ..	Am. 39' & '41
1926	....	....	....	....	1928	. ..	Am. '26
1931, am. 1934	....	. ..	1939x	....	....	....	Am. '31
1938	....	...	1939	....	....	....	....
1920	$	1921	1920	$	1920	....	.....
1924	1925	1924	1933	....	1924	....	....
. .	. ..	...	1939‡	....	1932	....	Am. '32
....	....	....	....	....	....	....	.....
1921	1911	1920	1920	....	1898	....	....
.. .	....	. ..	....	....	1941†	....	....
1925	.. .	1929	....	....	1924	....	Am. '25
....	....	1944‡	....	....	....	....	.....
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-SIXTH 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 :

HONOURABLE MR. MAYNARD, MESSRS. GRAY and WILSON.

British Columbia :

HONOURABLE MR. MAITLAND, MESSRS. DESBRISAY and HOGG.

Manitoba :

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

New Brunswick :

MR. HUGHES.

Ontario :

HONOURABLE MR. BLACKWELL, HONOURABLE MR. JUSTICE BARLOW, MESSRS. MACTAVISH, SEDGEWICK, SILK and WRIGHT.

Prince Edward Island :

HONOURABLE MR. LARGE and MR. BENTLEY.

Quebec :

MESSRS. POULIOT and RIVARD.

Saskatchewan :

MESSRS. BLACKWOOD, RUNCIMAN and THOM.

Canada :

MESSRS. FORSYTH, JACKETT and O'MEARA.

SUMMARY OF PROCEEDINGS

Statement of H. J. Wilson, K.C., representing the Conference of Commissioners on Uniformity of Legislation in Canada, presented to the Twenty-seventh Annual Meeting of the Canadian Bar Association at Toronto, Ontario, on Friday, September 1st, 1944.

The Conference of the Commissioners on Uniformity of Legislation in Canada recently concluded the Twenty-sixth Annual Meeting. The sittings were held in Niagara Falls and Toronto with representation from the Dominion, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Prince Edward Island, including in their number five Attorneys-General.

In conformity with established practice and as directed by the Conference, I beg to present this statement of the matters dealt with at the meeting.

A major step has been taken by the Conference this year. I refer to the creation of a section to deal specifically with criminal law and procedure with a veiw to recommending improvements and preparing draft provisions. This development in the scope of the work of the Conference stems directly from the resolution passed by the Criminal Justice Section of this Association last year in Winnipeg and subsequently approved by the Council as it was considered that in this way a valuable contribution could be made to the administration of justice.

It was decided to form strong provincial committees in each Province with the Commissioner representing the province as chairman, to which important matters of revision and improvement in the criminal law can be referred for study and revision. The following matters were referred to Provincial committees to draft and report back to the next meeting:

1. Revision of Part XVI of the Criminal Code to Mr. John Allen, K.C., Chairman of the Manitoba Provincial Committee.
2. Revision of Part XVIII of the Criminal Code to Mr. Jos. Sedgwick, K.C., Chairman of the Ontario Provincial Committee.
3. Revision of Part XV of the Criminal Code to Mr. Des-Brisay, Chairman of the British Columbia Provincial Committee.

4. A revision of the various penalty sections of the Code with a view to removing inconsistencies and obtaining uniformity was referred to Mr. Alex. Blackwood, K.C., Chairman of the Saskatchewan Provincial Committee.

5. The consideration of the advisability of introducing into the Criminal Law of Canada provisions relating to habitual criminals similar to those enacted in England, was referred to Mr. H. J. Wilson, K.C., Chairman of the Alberta Provincial Committee.

6. The consideration of amendments to the Criminal Code to deal with cases of infanticide analogous to The Infanticide Act of England, was referred to Mr. Alex. Blackwood, K.C., Chairman of the Saskatchewan Provincial Committee.

Consideration was given to a large number of suggested amendments to the Criminal Code and it is recommended that the Criminal Code be amended as follows:

1. That section 951 (3) be amended to provide that the section be made applicable to a trial by a judge alone in the Provinces of Alberta and Saskatchewan as well as to a trial by a jury.

2. That section 827 be amended to enable a judge before whom a prisoner elects for speedy trial to take an election without production to him of the depositions taken at the preliminary inquiry.

3. That the provisions of Part XV be amended to permit an application for leave to appeal from the decision of a county or district court judge on a question of law.

4. That the provisions of sections 1023 and 1025 be amended to make the procedure under section 1023 applicable to an appeal from the setting aside of an acquittal under section 1025 (3).

5. That the provisions of section 757 be amended to require a justice to transmit all material relating to the trial to the Clerk of the Court to which the appeal is taken.

6. That section 242 be amended to provide that under paragraph (c) of section 4 the Crown would not be required to prove that the accused left his wife "without lawful cause or excuse", but that the onus be shifted to the accused to prove the same.

7. That section 698 be amended to provide that any magistrate having the powers of two justices of the peace be authorized to grant bail after committal for trial.

8. That section 750 (e) be amended to allow for a cash bail in lieu of a recognizance if the appeal is from a conviction or order adjudging imprisonment.

9. That section 750 (b) be amended to provide that the time for appealing from a summary conviction be extended to thirty days with no power to further extend the time.

10. That section 762 be amended to provide that the appellant may make a cash deposit in lieu of entering into a recognizance to prosecute his appeal under this section.

A matter of importance dealt with by the Conference at this year's meeting was the adoption of a Uniform Defamation Act. This Act, which has been under discussion for several years, has as its fundamental feature the abolition of the distinction in law between libel and slander and it includes provisions thought necessary by reason of the development of a new means of publication, namely, radio. Another feature of this Act is the simplification of procedures in actions for defamation.

A Uniform Warehouse Receipts Act was also adopted. This Act which is based on the Uniform Act in force in many of the States in the United States is designed not only to achieve uniformity in this important field of commercial law but also to bring the law into accord with modern business practices. In many respects this Act may be said to be a codification of the law with respect to warehouse receipts. As such it is expected that it will serve a very useful purpose when enacted into law.

In connection with the Uniform Evidence Act it will be recalled that the Conference has dealt with the matter of microphotographic records. The recommendation of the Conference in this connection has been enacted in six provinces and in an extended form by the Dominion and one province. This provision, known as section 38, is applicable to governments and banks and in its extended form to railway companies, telephone companies, certain insurance companies and certain other types of organizations, and has proven very popular. In the light of this, the Conference now recommends a draft section which extends with safeguards the application of the principle to everyone, governments, banks, corporations and individuals alike. Should this recommendation be acted upon by Parliament and the Legis-

latures it will then be possible for anyone desiring to do so to preserve records by means of microphotographic films and to destroy the originals in the expectation that should occasion arise a print from the photographic negative will be admissible in evidence.

Another matter dealt with was the adoption of a provision respecting the service of judicial process by mail.

A report was received on extraordinary remedies, such as habeas corpus, certiorari, and the like. It is believed that the procedures in these matters are unduly obscure and that a great improvement can be made through uniformity. The subject has been referred back to the Alberta Commissioners to prepare draft rules for submission at next year's meeting of the Conference.

Progress was also made in the consideration of a Uniform Testator's Family Maintenance Act. However, as time did not permit its completion, it was referred back to the Manitoba Commissioners for further study and report next year.

The Conference resolved to distribute copies of its pamphlet entitled "Uniformity—Coast to Coast" to members of the Bar throughout Canada. This pamphlet sets out the objects, history, organization and accomplishments of the Conference. In this way it is hoped that the work of the Conference will become better known to the profession and that in turn the Conference will become of greater service to the profession and public. In this connection the Conference recommends that each pamphlet be accompanied by an appropriate letter from the President of the Canadian Bar Association.

In closing this report I would like to say that the Conference will be pleased to receive suggestions from members of the profession as to improvements in criminal law and procedures, and as to subject matters where uniformity might prove desirable.

MINUTES OF MEETING

The Conference held the following Sessions:

First Session— Thursday,	August 24th.	10.00 a.m.—12.30 p.m.
Second Session— Thursday,	August 24th,	2.30 p.m.— 4.00 p.m.
Third Session— Thursday,	August 24th,	8.00 p.m.—10.30 p.m.
Fourth Session— Friday,	August 25th,	10.00 a.m.—12.30 p.m.
Fifth Session— Friday,	August 25th,	2.30 p.m.— 4.00 p.m.
Sixth Session— Friday,	August 25th,	8.00 p.m.—10.30 p.m.
Seventh Session— Saturday,	August 26th,	10.00 a.m.— 1.00 p.m.
Eighth Session— Monday,	August 28th,	10.00 a.m.—12.30 p.m.
Ninth Session— Monday,	August 28th,	2.30 p.m.— 5.30 p.m.
Tenth Session— Tuesday,	August 29th,	10.00 a.m.—12.30 p.m.
Eleventh Session— Tuesday,	August 29th,	2.30 p.m.— 4.00 p.m.

FIRST DAY

Thursday, August 24th, 1944.

First Session

Opening.

The Conference assembled in the Commissioners Board Room in the Refectory, Queen Victoria Niagara Falls Park, at Niagara Falls, Ontario.

Chairman.

Mr. Hughes, President of the Conference, occupied the chair.

Address of Welcome.

The Honourable L. E. Blackwell, K.C., Attorney General for Ontario, welcomed the members of the Conference.

President's Remarks.

Mr. Hughes addressed the Conference, outlining the work of this meeting as set out in the agenda (Appendix A).

Minutes of the Last Meeting.

The minutes of the 1943 meeting, as printed in the Proceedings, were taken as read and confirmed, subject only to the correction of certain typographical errors which were indicated by Mr. Fisher (Appendix B).

Treasurer's Report.

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

Statement to Canadian Bar Association.

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

Constitution.

The matter of the establishment of a Criminal Law Section of the Conference was discussed, including the adoption of a proposed new constitution (Appendix C).

The following resolution was adopted:

RESOLVED that the matter of the revision of the constitution to provide for the establishment of the Criminal Law Section be referred to a committee to be appointed by the Chairman to report at the next meeting, and that for the time being the members duly appointed by the respective jurisdictions to consider criminal law matters be authorized to meet and consider such matters as they deem expedient and to report to this meeting of the Conference.

NOTE:—The following members were appointed to the committee: Messrs. Wilson (Chairman), Forsyth, Hogg, MacTavish and O'Meara.

Nominating Committee.

Messrs. Barlow, Fisher, Gray and Thom were appointed a nominating committee to submit suggestions as to the election of officers of the Conference.

Place of Meeting.

In view of the program of the Canadian Bar Association at Toronto, on Tuesday August 29th, it was decided that the Tuesday Session of the Conference should be held at Osgoode Hall in Toronto.

Hours of Sittings.

It was decided that the hours of sittings would be, for the morning sessions—10.00 to 12.30; for the afternoon sessions—2.30 to 4.00; and for the evening sessions 8.00—to 10.30; that the Conference would not sit on Saturday afternoon or evening and that the Monday afternoon session would be extended and that no session would be held on Monday evening.

Next Meeting.

The following resolution was adopted:

RESOLVED that the next meetng 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.

Secretarial Assistance.

The following resolution was adopted:

RESOLVED that the Secretary be authorized to employ such secretarial assistance as he may require, to be paid out of the funds of the Conference.

Annual Grants.

The following resolution was adopted:

RESOLVED that the Treasurer communicate with each local secretary with a view to obtaining from the Government of the Dominion and of each Province a fixed annual grant of fifty dollars ($50.00) for the necessary support of the Conference.

Publicity.

A verbal report was made by the Secretary on the distribution of the pamphlet "Uniformity—Coast to Coast" and after some discussion the following resolution was adopted:

RESOLVED that unless the cost is prohibitive the Secretary be authorized to have sufficient copies of the pamphlet printed to furnish one copy to each barrister and solicitor in the common law provinces of Canada and that the Quebec members of the Conference be consulted as to the desirability of sending copies to members of the Bar of Quebec.

NOTE:—See further resolution page 32.

Report of Proceedings.

The Secretary was requested:

(i) to prepare a report of the proceedings of the Conference; 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.

After discussion the following resolution was adopted:

RESOLVED that ten copies of the Proceedings be sent to the bar association or other corresponding body in each province, or that a suitable number of copies be sent to local law associations in the discretion of the Secretary after consulting with the respective local secretaries.

Press Representative.

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

Second Session

Conditional Sales Act.

Mr. Gray presented the report of the Alberta Commissioners (Appendix D).

After discussion the following resolution was adopted:

RESOLVED that the Uniform Conditional Sales Act be referred to the Alberta Commissioners to redraft in the light of modern conditions and the experience gained since the adoption of the Uniform Act in 1922.

Evidence Act—Section 38.

Mr. MacTavish presented a memorandum of the Ontario Commissioners on section 38 of the Uniform Evidence Act (Appendix El). The matter was referred to a sub-committee comprising the Ontario Commissioners and Messrs. Fillmore, Fisher and Pouliot to report back to this meeting.

Reciprocal Enforcement of Judgments.

In the absence of Mr. Read, who has special knowledge of the situation, the matter was referred back to the Dominion and Quebec representatives for report next year.

Service of Process by Mail.

Mr. Hogg presented the report of the British Columbia Commissioners (Appendix F1).

Third Session

Service of Process by Mail (continued).

After discussion the matter was referred to Mr. Hogg to revise the affidavit of service and report back the following morning.

Warehouse Receipts Act.

Mr. DesBrisay presented the report of the British Columbia Commissioners. Consideration of the draft Act was proceeded with (Appendix G1).

SECOND DAY

Friday, August 25th, 1944.

Fourth Session

Service of Process by Mail (concluded)

Mr. Hogg submitted a revised draft of the affidavit of service. When consideration of this draft had been completed the following resolution was adopted:

RESOLVED that the draft provision with respect to the service of process by mail be referred back to the British Columbia 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 (Appendix F2); that copies thereof be sent to all members of the Conference and that if the

revised draft is not disapproved by two or more Provinces or by the Dominion and one or more Provinces by the 30th day of November, 1944, it be recommended to the Parliament of Canada and the Provincial Legislatures for enactment in appropriate statutes with whatever changes may be necessary in order to conform with the content.

Defamation.

Mr. Runciman presented the report of the Saskatchewan Commissioners (Appendix H1). Consideration of the draft Uniform Act was proceeded with.

Fifth Session

Defamation (continued).

Consideration of the draft Uniform Act was continued.

Sixth Session

Defamation (continued).

Consideration of the draft Uniform Act was continued.

THIRD DAY

Saturday, August 26th, 1944.

Seventh Session

Treasurer's Report (concluded).

The report of the Treasurer as approved by the auditors, Messrs. Hogg and MacTavish, was received and adopted (Appendix J).

Defamation (concluded).

Consideration of the draft Uniform Defamation Act was continued. Upon completion of the discussion the following resolution was adopted:

RESOLVED that the draft Uniform Act be referred back to the Saskatchewan 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 (Appendix H2); that copies thereof be sent to all members of the Conference and that if the draft as so revised is not disapproved

by two or more Provinces by the 30th day of November, 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 October 5th, 1944. As no messages of disapproval were received by the Secretary by the 30th day of November, 1944, the draft Act is accordingly recommended for enactment by the above resolution.

Evidence Act—Section 38 (concluded)

Mr. MacTavish for the sub-committee reported to the Conference as to the matters dealt with by it.

The Conference then considered the redraft of section 38 as submitted by the Ontario Commissioners with the amendments recommended by the sub-committee.

Upon completion of the consideration of the redraft of section 38, 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 (Appendix E2); that copies thereof be sent to all members of the Conference and that if the revised draft is not disapproved by two or more Provinces or by the Dominion and one or more Provinces by the 30th day of November, 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 15th, 1944. As only one message of disapproval (Prince Edward Island) was received by the Secretary by the 30th day of November, 1944, the draft section is accordingly recommended for enactment by the above resolution.

Warehouse Receipts Act (continued)

Consideration of the draft Uniform Act was continued.

FOURTH DAY

Monday, August 28th, 1944

Eighth Session

Warehouse Receipts Act (concluded)

Consideration of the draft Uniform Warehouse Receipts Act was concluded.

The following resolution was adopted:

RESOLVED that the draft Uniform Warehouse Receipts Act be referred back to the British Columbia 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 (Appendix G2); that copies thereof be sent to all members of the Conference and that if the revised draft is not disapproved by two or more Provinces by the 30th of November, 1944, it be recommended to the provincial Legislature for enactment.

NOTE: Copies of the draft Act were mailed to members of the Conference on October 12th, 1944. As two messages of disapproval (Manitoba and Ontario) were received by the Secretary by the 30th day of November, recommendation of the draft Act is withheld.

Limitations Act.

The report of the Alberta Commissioners was presented by Mr. Gray and considered by the Conference (Appendix K1).

Ninth Session

Limitations Act (concluded).

Consideration of the report and draft amendments to the Uniform Limitations Act was continued and concluded.

The following resolution was adopted:

RESOLVED that the amendments to the Uniform Limitations Act be referred back to the Alberta 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 (Appendix K2); that copies thereof be sent to all members of the Conference and that if the revised draft is not disapproved by two or more Provinces by the 30th day of November,

1944, the amendments be recommended to those provincial legislatures which have enacted the Uniform Limitations Act.

NOTE: Copies of the draft amendments were mailed to members of the Conference on November 18th, 1944. As no messages of disapproval were received by the Secretary by the 30th day of November, 1944, the draft amendments are accordingly recommended for enactment by the above resolution.

Extraordinary Remedies.

Mr. Gray presented the report of the Alberta Commissioners (Appendix L).

The report was discussed and the following resolution adopted:

RESOLVED that the Alberta Commissioners be requested to prepare draft uniform rules similar in nature to the Alberta rules respecting extraordinary remedies for presentation to the Conference at the next meeting.

Mr. Henry J. Lawson.

Mr. Hogg conveyed to the Conference the good wishes of Mr. Lawson who served as a member of the Conference for many years.

The following resolution was adopted:

RESOLVED that this Conference gratefully appreciates Mr. Lawson's expresson of good wishes for the future success of the Conference, and expresses the hope that he will quickly regain his usual good health.

FIFTH DAY

Tuesday, August 29th, 1944.

Tenth Session

The Conference convened in one of the committee rooms of the Law Society of Upper Canada at Osgoode Hall, Toronto.

Lieut. John James Chitty Read.

Mr. O'Meara announced that Lieut. John James Chitty Read, son of John E. Read, K.C., one of the Dominion representatives, had been killed in action in Normandy on August 10th, 1944.

The following resolution was adopted:

RESOLVED that the sympathy of the Conference be extended to Mr. and Mrs. John E. Read in the loss of their son, Lieut. John James Chitty Read, killed in action in Normandy on August 10th, 1944, and that an appropriate letter be sent by the Secretary to Mr. and Mrs. Read.

Appreciations of Hospitality.

The following resolution was adopted:

The Conference expresses its great appreciation of the courtesy and hospitality extended to it by the Honourable L. E. Blackwell, K.C., Mr. Lynn Spencer, K.C., the Honourable R. L. Maitland, K.C., Jean F. Pouliot, K.C., M.P., Antoine Rivard, LL.L., C.R., Lt.-Col. Victor McKague, The Niagara Parks Commission and the Benchers of the Law Society of Upper Canada, and that the Secretary send an appropriate letter to each.

Nominating Committee (concluded).

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

Hon. President	Peter. J. Hughes, K.C., Fredericton.
President	W. P. Fillmore, K.C., Winnipeg.
Vice-President	W. P. J. O'Meara, K.C., Ottawa.
Secretary	L. R. MacTavish, K.C., Toronto.
Treasurer	J. P. Runciman, Regina.

Statement to Canadian Bar Association.

Mr. Wilson was authorized to include in his report to The Canadian Bar Association a reference to the pamphlet "Uniformity—Coast to Coast" and to suggest the desirability of The Canadian Bar Association sharing the cost of the printing and further distribution of the pamphlet and that in such case an appropriate letter from the President of The Canadian Bar Association accompany each pamphlet distributed.

Constitution Committee.

Mr. O'Meara on behalf of the Committee stated that the resolution appointing the Committee was not sufficiently clear to enable the Committee to function effectively. After discussion the following resolutions were adopted:

RESOLVED that the Conference approve the formation of a Criminal Law Section of the Conference;

RESOLVED that the Constitution Committee consider the revision of the constitution and prepare a draft constitution for submission to the Conference at the next meeting.

Soldiers' Divorces.

The following resolution was adopted:

RESOLVED that the rule in Russell *vs* Russell be referred back to the Ontario Commissioners for study and report at the next meeting in the light of the resolution adopted by the Conference at the last meeting.

Criminal Law Section.

Mr. Wilson presented the report of the Section on Criminal Law.

The following resolution was adopted:

RESOLVED that the report of the Section on Criminal Law be received and adopted and that there be included in the Proceedings of this Conference minutes of the Section on Criminal Law (page 33).

Partnership Registration.

Mr. Hughes presented the report of the New Brunswick Commissioners (Appendix M).

After discussion the following resolution was adopted:

RESOLVED that the drafting of amendments to the Uniform Partnership Regisration Act having for their purpose the controlling of the assumption of partnership and trade names and the prohibition of the use of names found to be objectionable, be referred to the Saskatchewan Commissioners for report at the next meeting.

Mechanics' Liens.

Mr. Fillmore for the Manitoba Commissioners mentioned several points on which the Manitoba Commissioners wish direction and stated that the Manitoba Commissioners would appreciate receiving the views of the members of the Conference on these points, which he suggested might be forwarded by mail.

The following resolution was adopted:

RESOLVED that the provincial Mechanics' Liens Acts be further studied by the Manitoba Commissioners in the light

of the comments received from members of the Conference and that they report thereon next year.

Family Dependents.

Mr. Rutherford presented the report of the Manitoba Commissioners (Appendix N1).

Eleventh Session

Family Dependents (concluded).

Consideration of the draft Act was continued.

The following resolutions were adopted:

RESOLVED that the draft Act be referred back to the Manitoba Commissioners for further consideration and incorporation therein of the amendments made at this year's meeting of the Conference and to report thereon at the next meeting.

RESOLVED that the draft Uniform Act as amended at this meeting of the Conference be printed in the Proceedings (Appendix N2) and that any suggestions in connection therewith be forwarded to the Manitoba Commissioners before March 31st, 1945.

Publicity, "Uniformity—Coast to Coast."

The following resolution was adopted:

RESOLVED that Messrs. Barlow and O'Meara be appointed to consult with members of the Bar of Quebec for the purpose of inquiring into the desirability of sending the pamphlet "Uniformity—Coast to Coast" to members of the Bar of their Province and that the Secretary be authorized to act upon their recommendation.

Motor Vehicle Encumbrances.

Mr. Hughes for the New Brunswick Commissioners presented a report on this matter (Appendix O).

The following resolution was adopted:

RESOLVED that the report of the New Brunswick Commissioners be printed in this year's Proceedings.

President's Remarks.

Mr. Hughes addressed the Conference briefly. He thanked the members for their co-operation during his presidential term and outlined the progress made during the meeting.

(Conclusion of Meeting)

MINUTES OF THE CRIMINAL LAW SECTION

FIRST DAY

Thursday, August 24th, 1944.

Officers.

The following resolution was adopted:

RESOLVED that Mr. Wilson be Chairman of the meeting and Mr. Forsyth, Secretary.

Nominating Committee.

The following resolution was adopted:

RESOLVED that provincial committees be set up in each province, a member of this Section to be chairman thereof, and such other members added thereto as the said member with the assistance of the Vice-President of The Canadian Bar Association for that province might decide upon, and that matters pertaining to the business of this Section be referred to the said committees for consideration and report back to this Section.

Part XVI of Code.

The following resolutions were adopted:

RESOLVED that Part XVI of the Criminal Code should be re-codified and that the preparation of a draft thereof be referred to Mr. Allen and the Manitoba Provincial Committee for a report at the next meeting of the Section.

RESOLVED that the proposed amendment of the Criminal Code to permit magistrates to try offences against section 236 thereof be not proceeded with and that the matter be dropped from the agenda.

Part XVIII of Code.

The following resolution was adopted:

RESOLVED that Part XVIII of the Criminal Code should be re-codified and that the preparation of a draft thereof be referred to Mr. Sedgwick and the Ontario Provincial Committee for a report at the next meeting of the Section.

Part Payment of Fines.

The following resolution was adopted:

RESOLVED that the proposed amendment of the Criminal Code to permit part payment of a fine imposed so that it will

operate to reduce the number of days imprisonment imposed in proportion to the amount of the fine be referred to Messrs. DesBrisay and Sedgwick to prepare a draft amendment for submission to this meeting of the Section.

Appeals.

The following resolution was adopted:

RESOLVED that the proposed amendment of the Criminal Code to render the provisions of section 1012 *et seq.* respecting appeals from convictions on indictment applicable to the decision of a county or district court judge on an appeal under Part XV be referred to Mr. Wilson to prepare a draft amendment for submission to this meeting of the Section.

Motor Manslaughter.

The following resolution was adopted:

RESOLVED that the proposed amendment of subsection 3 of section 951 of the Criminal Code to clarify the meaning thereof in order that it may apply to a trial by judge as well as to trial by jury (applicable only to the Provinces of Alberta and Saskatchewan) be referred to Mr. Wilson to prepare a draft amendment for submission to this meeting of the Section.

Gaming Houses.

The following resolution was adopted:

RESOLVED that inasmuch as the proposed deletion of the words "but the provisions. . . . . religious object" from subclause (ii) of clause (b) of section 226 of the Criminal Code involved a change in substantive law, it was one which should not be dealt with by the Section and that the matter be dropped from the agenda.

Election.

The following resolution was adopted:

RESOLVED that as there was no necessity for the judge being in possession of the depositions when a prisoner is arraigned for the purpose of making his election and as the absence of the depositions has on occasion been to the detriment of the prisoner by causing undue delay, section 827 of the Criminal Code should be amended by deleting the words "having first obtained the depositions on which the prisoner was so committed, if any"; and that Mr. Wilson prepare such an amendment for submission to this meeting of the Section.

Warnings.

The following resolution was adopted:

RESOLVED that as the question of whether or not a statement is taken voluntarily depends more on the method of approach to the prisoner than on the form of the words used, that no action be taken to recommend a statutory form of caution and that the matter be dropped from the agenda.

SECOND DAY

Friday, August 25th, 1944.

Penalties.

The following resolution was adopted:

RESOLVED that in the opinion of the Section obvious inequalities and injustices now exist in the penalty provisions of the Criminal Code which necessitate the complete revision of all such provisions in order that they may fit more adequately the particular offence to which they apply, and that the matter be referred to Mr. Blackwood and the Saskatchewan Provincial Committee for a report at the next meeting of the Section.

Appeals to the Supreme Court of Canada.

The following resolution was adopted:

RESOLVED that the procedure for appeals to the Supreme Court of Canada set forth in subsection 3 of section 1023 of the Criminal Code should be made applicable to appeals under section 1025, and that Mr. Blackwood and Mr. Rivard prepare such an amendment for submission to this meeting of the Section.

Juvenile Delinquents Act.

The following resolutions were adopted:

RESOLVED that the matter of a general revision of the Juvenile Delinquents Act be referred to the appropriate section of the Canadian Bar Association for study and advice.

RESOLVED that section 37 of the Juvenile Delinquents Act should be amended to provide an appeal from a magistrate and that Mr. Wilson prepare such an amendment for submission to this meeting of the Section.

Warrant for Apprehension where Offender in Prison.

The following resolution was adopted:

RESOLVED that Mr. Sedgwick consider and report to the next meeting of the Section as to whether or not the Criminal

Code contains adequate provisions for allowing a prisoner to appear and elect to a further charge under subsection 4 of section 662.

Appeals.

The following resolution was adopted:

RESOLVED that section 757 of the Criminal Code should be amended to provide that the justice shall forward to the court all papers in his possession in connection with the case under review, and that Mr. Blackwood prepare such an amendment for submission to this meeting of the Section.

Shooting at Airplanes.

The following resolution was adopted:

RESOLVED that as a proposed amendment of the Criminal Code to make it an offence for any person to shoot at an airplane passing overhead involves a change in the substantive law, it is a matter with respect to which the Section should not make any recommendation and that, therefore, the matter be not considered further.

Infanticide.

As an anomaly appears to exist under the Criminal Code where a mother kills her one or two months old illegitimate child in circumstances which amount to murder and yet is given a sentence of only a few months, the Section was of opinion that the matter warranted consideration.

The following resolution was adopted:

RESOLVED that the matter of a proper charge to be laid in the circumstances outlined above should be given individual consideration by members of the Section and that it be brought up again for attention at a later date; that the question of the advisability of introducing legislation in Canada in conformity with the English Infanticide Act be referred to Mr. Blackwood and the Saskatchewan Provincial Committee for study and report to the next meeting of the Section.

Non-Support.

The following resolution was adopted:

RESOLVED that the onus which rests on the Crown to prove that a father deserted his family without lawful excuse should be shifted to the deserting father to establish that he had a

lawful excuse for so doing and that the preparation of an amendment of clause (c) of subsection 4 of section 242 of the Criminal Code to effect such purpose be referred to Mr. Allen for submission to this meeting of the Section.

Suspended Sentence.

It was pointed out that anomalies exist in the provisions of section 1081 of the Criminal Code with respect to the suspension of sentences.

The following resolution was adopted:

RESOLVED that the matter of the anomalies in section 1081 of the Criminal Code be referred to Mr. Blackwood and the Saskatchewan Provincial Committee for consideration in connection with their report on Penalties.

THIRD DAY

Saturday, August 26th, 1944.

Habitual Criminals.

The following resolution was adopted:

RESOLVED that the matter of legislation dealing with habitual criminals such as is in force in England, the State of New York and other States in the United States be referred to Mr. Wilson and the Alberta Provincial Committee for study and report to the next meeting of the Section.

Bail after Committal for Trial.

The following resolution was adopted:

RESOLVED that the Criminal Code should be clarified to remove any doubt as to when a justice may admit a prisoner to bail; that the Code should enable a magistrate having the power of two justices to admit a prisoner to bail after committing him for trial and that Mr. Sedgwick prepare such an amendment for submission to this meeting of the Section.

Bail on Appeal.

The following resolution was adopted:

RESOLVED that under Part XV of the Criminal Code where a person is sentenced to gaol and appeals from the sentence, provision should be made authorizing a cash deposit in lieu

of entering into recognizances with two sureties and that Mr. Forsyth prepare such an amendment for submission to this meeting of the Section.

Appeals from Summary Convictions.

The following resolution was adopted:

RESOLVED that the period of ten days allowed to lodge an appeal from a summary conviction which may be extended by a judge for another twenty days should be changed to thirty days in the first instance without power of extension, and that Mr. Forsyth prepare such an amendment for submission to this meeting of the Section.

Part XV of Code.

The following resolution was adopted:

RESOLVED that the matter of the revision of Part XV of the Criminal Code be referred to Mr. DesBrisay and the British Columbia Provincial Committee for study and report to the next meeting of the Section.

FOURTH DAY

Monday, August 28th, 1944.

Nominating Committee's Report.

The report of the Nominating Committee, which was presented by the Honourable Mr. Large, was received and adopted. The report recommended the following:

Chairman.... ....H. J. Wilson, K.C., Edmonton.
Secretary.. .....Robert Forsyth, K.C., Ottawa.

Amendments.

The various amendments which were delegated to members of the Section to prepare for submission to this meeting were received.

The following resolutions were adoped:

RESOLVED that the following amendments to the Criminal Code be attached to the minutes (Appendix P):

1. Section 242(4) (c)—Non Support. (Mr. Allen).
2. Section 690—Bail after Committal for Trial. (Mr. Sedgwick)
3 Section 698—Bail after Committal for Trial. (Mr. Sedgwick).

4. Section 750(b)—Appeals from Summary Convictions. (Mr. Forsyth).
5. Section 750(c)—Bail on Appeal. (Mr. Forsyth).
6. Section 752—Appeals. (Mr. Wilson).
7. Section 757—Appeals. (Mr. Blackwood).
8. Section 762—Bail on Appeal. (Mr. Forsyth).
9. Section 827—Elections. (Mr. Wilson).
10. Section 951(3)—Motor Manslaughter. (Mr. Wilson).
11. Section 1023—Appeals to Supreme Court of Canada. (Messrs. Blackwood and Rivard).
12. Secton 1025(3)—Appeals to Supreme Court of Canada. (Messrs. Blackwood and Rivard).
13. Section 1035A—Part Payment of Fines. (Messrs. Des-Brisay and Sedgwick).

RESOLVED that the following amendment to the Juvenile Delinquents Act be attached to the minutes (Appendix Q):

1. Section 37—Appeals. (Mr. Wilson).

RESOLVED that all proposed amendments as set out in Appendices P and Q to these minutes be submitted to the Minister of Justice for his consideration and that he be requested to consult the Attorney General of each province with respect thereto.

Report of Proceedings.

The following resolution was adopted:

RESOLVED that the minutes of the proceedings of the Section be printed in the annual volume of Proceedings of the Conference.

Adjournment.

The Chairman then adjourned the meeting and directed the members to join the sitting of the Conference at Osgoode Hall on the following morning at 10.00 a.m.

APPENDICES

APPENDIX A

AGENDA

PART I

GENERAL

1. Approval of minutes of last meeting.
2. President's remarks.
3. Treasurer's report.
4. Appointment of auditors.
5. Report of auditors.
6. Consideration of proposed new constitution.
7. Appointment of representative (*or* representatives) to make statement to Canadian Bar Association.
8. Appointment of nomination committee to nominate certain officers.
9. Report of nomination committee.
10. Hours of sitting.
11. Next meeting.
12. Secretarial assistance.
13. Report of proceedings.
14. Annual grants.
15. Public relations—pamphlet "Uniformity—Coast to Coast" and other publicity.
16. Appointment of press representative (*or* representatives).
17. Stenographic services.

PART II

UNIFORM LAW SECTION

1. Appointment of nomination committee for nomination of certain officers.
2. Report of nomination committee.
3. Conditional Sales Act—Alberta Commissioners (1943 Proceedings, pages 26 and 27).
4. Evidence Act (Section 38)—Ontario Commissioners (1943 Proceedings, page 18).
5. Extraordinary remedies—Alberta Commissioners (1943 Proceedings, page 27).
6. Family Dependents—Manitoba Commissioners (1943 Proceedings, page 27).
7. Libel and Slander Act—Saskatchewan Commissioners (1943 Proceedings, page 21).

8. Limitations Act—Alberta Commissioners (1943 Proceedings, page 24).
9. Mechanics' Liens—Manitoba Commissioners (1943 Proceedings, page 27).
10. Motor vehicle encumbrances — New Brunswick Commissioners (1943 Proceedings, page 25).
11. Partnership registration — New Brunswick Commissioners (1943 Proceedings, pages 25 and 26).
12. Reciprocal Enforcement of Judgments—Dominion representatives and Quebec representatives (1943 Proceedings, page 23).
13. Service of process by mail—British Columbia Commissioners (1943 Proceedings, page 25).
14. Soldiers' divorces — Ontario Commissioners (1943 Proceedings, pages 24 and 25).
15. Warehouse Receipts Act — British Columbia Commissioners (1943 Proceedings, pages 23 and 24).

PART III

CRIMINAL LAW SECTION

1. Introductory remarks by Chairman, Criminal Justice Section of the Canadian Bar Association.
2. Appointment of nomination committee for nomination of certain officers.
3. Report of nomination committee.
4. Formation of Regional Committees for each Province—discussion of recommendation contained in Interim Report of Canadian Bar Association—members of sub-committee to be chairmen of Regional Committees for each Province.
5. Revision of Part XVI of the Criminal Code, particularly amendment to permit magistrate to summarily try offences against section 236 of the Criminal Code.
6. Revision of Part XVIII of the Criminal Code.
7. Consideration of proposed amendment to permit part-payment of a fine imposed so that it shall operate to reduce the number of days imprisonment imposed in proportion to the amount of the fine imposed.
8. Proposed amendment to make the provisions of section 1012 et seq. (respecting appeals from convictions on indictment) applicable to the decision of a county or district court judge on an appeal under Part XV of the Criminal Code.

9. Proposed amendment to section 951 (3) of the Criminal Code to make it clear that it applies to a case of a trial by a judge alone as well as to trial by a jury.

10. Proposed amendment to section 226 (b) (ii) that the words:

> "but the provisions of this sub-paragraph shall not apply to any house, room or place while occupied and used by an incorporated bona fide social club or branch thereof if the whole or any portion of the stakes or bets or other proceeds at or from such games is not either directly or indirectly paid to the person keeping such house, room or place and no fee in excess of ten cents per hour or fifty cents per day is charged to the players for the right or privilege of participating in such games nor while occasionally being used by charitable or religious organizations for playing games therein for which a direct fee is charged to the players if the proceeds are to be used for the benefit of any charitable or religious object",

be struck out.

11. Proposed amendment to section 827 to permit the judge to dispense with the production of the depositions when he has sufficient information as to the charges laid.

12. Proposed amendment to the Criminal Code to provide a uniform and statutory warning to an accused person before a statement, confession or admission is taken from him by a police officer.

APPENDIX B

CORRIGENDA — 1943 PROCEEDINGS

(a) Pages 10 and 11 — "The Married Women's Property Act" and "The Regulations Act" should be added. See pages 19 and 20 for approval.

(b) Page 15. The name "Mr. G. H. Aikin, K.C." should read "Mr. G. H. Aikins, K.C."

(c) Page 21. The letters "draftis" in the eighth line should be spaced to read "draft is".

(d) Page 23. The resolution re the Sale of Goods Act should read : "Resolved that the report of the Manitoba Commissioners on suggested amendments to the Sale of Goods Act be adopted and . . . . "

(e) Page 35. The word "Council" in the fourth line should read "Counsel".

(f) Page 74. The word and figures "page 00" in the last line should read "pages 19 and 20".

APPENDIX C

DRAFT CONSTITUTION

1. The Conference of Commissioners on Uniformity of Legislation in Canada shall hereafter be known as The Canadian Conference on Statute Law, herein referred to as the Conference.

2. (1) The Conference shall be divided into two sections to be known as the Uniform Law Division and the Criminal Law Division.

(2) Except as herein otherwise provided each division shall function independently and with regard to matters within its jurisdiction shall act in the name of the Conference.

3. (1) The object of the Uniform Law Division shall be to promote uniformity and improvement in the statute law, other than the criminal law, throughout Canada or in the provinces in which uniformity may be found practicable.

(2) The object of the Criminal Law Division shall be to promote the improvement of the procedural and substantive provisions of the criminal law.

4. (1) The Uniform Law Division shall prepare such model statutes as may be deemed advisable for adoption by the provincial Legislatures or the Parliament of Canada or both and shall make appropriate recommendations in that regard.

(2) The Criminal Law Division shall prepare such draft amendments to the Criminal Code(Canada) and other statutes relating to the criminal law as may be deemed advisable and shall make appropriate recommendations in that regard.

5. The Conference shall be composed of commissioners or representatives appointed under statutory or executive authority by the governments of Canada and the provinces thereof, or in the absence thereof in any province by the governing body of the legal profession in such province.

6. The appointment of any member may be limited to membership in either division but any such limitation shall not affect the voting or other rights of such member at a meeting of the full Conference.

7. The Minister of Justice for Canada and the Attorney-General for each Province shall be members *ex officio* of the Conference.

8. The members of the Conference shall meet annually at such time and place as may be fixed by the president.

9. The officers of the Conference shall be elected and appointed annually and shall be,—

(a) (i) president,
(ii) secretary, and
(iii) treasurer
to be elected by the full Conference;

(b) (i) vice-president, Uniform Law Division, and
(ii) secretary, Uniform Law Division,
to be elected by the Uniform Law Division;

(c) (i) vice-president, Criminal Law Division, and
(ii) secretary, Criminal Law Division
to be elected by the Criminal Law Division, and

(d) a local secretary of the commissioners or representatives of each Province and of Canada to be appointed by such commissioners or representatives.

10. The president shall act as chairman of meetings of the full Conference and of the division in which he participates.

11. The president shall have authority to:—

(a) fix the time and place of the meetings of the Conference;

(b) appoint such committees as he may deem proper; and

(c) fill vacancies in the offices of the Conference or in any committee as they may occur between meetings.

APPENDIX D

CONDITIONAL SALES ACT

REPORT OF THE ALBERTA COMMISSIONERS

At the 1943 meeting of the Conference the following resolution was passed: "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."

The Uniform Act was adopted by British Columbia in 1922, by New Brunswick in 1927, by Nova Scotia in 1930 and by Prince Edward Island in 1934, but has not been adopted by Alberta, Manitoba, Ontario or Saskatchewan.

I have not inquired particularly from the Quebec Commissioners as to why the Act has not been adopted in that Province as I assumed in view of the provisions of the Civil Code that Quebec would not desire the enactment of the Conditional Sales Act.

I have made inquiries from Ontario, Manitoba and Saskatchewan as to why those Provinces have not adopted the Uniform Act.

Mr. Silk wrote me as follows:

> "I believe you will find that our Act was passed before the Uniform Act and as our machinery had already been set up and much case law established under the Ontario Act, it is perhaps only natural that the change has not been made. A few years ago I submitted the Uniform Act to counsel for one of the finance companies and I recall that he considered it would not be as workable or satisfactory as our present Ontario Act although I do not recall the details of his reasoning. If the opportunity presents itself before our next meeting I shall endeavour to obtain more information for you, but I do not anticipate I shall have much spare time."

As to Manitoba, it appears that that Province has no Act at all corresponding to the Conditional Sales Act in the other Provinces, and in explanation of this Mr. Rutherford wrote as follows:

> "During all the time I have been in practice in Manitoba I have always understood that there was strong opposition

in many quarters to the enactment of a Conditional Sales Act that would require registration of lien notes, etc. I have often heard the subject discussed among lawyers and while many would be in favour of such proposal there are others who would not like it.

"I am given to understand that a proposal to enact the Uniform Conditional Sales Act, or at any rate a statute requiring registration of conditional sales, was brought forward some years ago and that very strong opposition developed. I am told that this opposition was chiefly on the part of organizations which are sellers of goods on conditional sale in a large way. I understand that they felt that registration with consequent publicity would adversely affect their business. It was also argued that there was no particular difficulty arising under the present legislation. Whether it was these reasons or other reasons that influenced the government at the time I do not know, but apparently the proposal was not viewed with favour and the matter was dropped."

Mr. Runciman in reporting for Saskatchewan wrote as follows:

"Since 1907 our Act has contained a provision dispensing with registration, 'in the case of a sale or bailment of manufactured goods, of the value of $15 or over, which, at the time of the actual delivery thereof to the buyer or bailee, have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device'.

"That provision appears to be a distinct departure of the principle of the Uniform Act, which requires registration in all cases.

"As far as I know this is the reason, or at least the main reason, why the Uniform Act has not been adopted in Saskatchewan."

As to Alberta, although the Uniform Act was passed in 1922, no action has been taken by this Province to adopt the Uniform Act. I have been unable to ascertain what view Dr. Scott, the former Legislative Counsel, or the late Mr. Smith who succeeded Dr. Scott, had with regard to this Act. The Alberta Act has been amended about a dozen times since 1922. Features have been introduced in the Act which are not in the Uniform Act and the Alberta Commissioners are of opinion that the present Alberta Act is an improvement on the Uniform Act in this way, that there

are many features which are deemed important to a Conditional Sales Act which do not appear in the Uniform Act. For instance, the Uniform Act does not provide for renewal statements being filed showing the amount due from time to time, nor is there any provision for an affidavit by a vendor of the goods.

There are also provisions in the Alberta Act dealing with the removal of goods from one registration district to another providing for re-registration being dispensed with if the seller or bailor of the goods, before delivery of possession, prints, stamps, paints or otherwise permanently marks on the goods, words setting out that the goods are the property of the seller or bailor until paid for, with certain other particulars.

The Alberta Act also has a provision similar to that referred to by Mr. Runciman as being in the Saskatchewan Act. There does not appear to be in the Uniform Act any provision for curing omissions such as failure to register within the period required. There is such a provision in the Alberta Act providing for an order of the judge extending the time for registration subject to any claims that may have attached in the meantime.

There are also in the Alberta Act special provisions dealing with the right to recover by action the amount owing under a conditional sale agreement.

As stated above, British Columbia adopted the Uniform Act in 1922, but there have since then been many amendments to the British Columbia Act. Provision has been made for triennial renewal statements and elaborate provisions have been made with respect to chattels attached to real property. Special provisions are made with respect to sales of motor vehicles.

A consideration of the terms of the Uniform Act and the Acts of the other Provinces leads us to come to the conclusion that the Uniform Act does not contain many provisions which many of the Provinces have considered essential in such legislation, and it does not seem probable that any Province would now adopt it without a great many additions.

All of which is respectfully submitted.

W. S. GRAY,

H. J. WILSON.

Alberta Commissioners.

APPENDIX E1

EVIDENCE ACT—SECTION 38
MEMORANDUM OF THE ONTARIO COMMISSIONERS

At the twenty-second annual meeting of the Conference held in Quebec City in 1939, discussion was had on what was referred to as the 1936 draft of the Uniform Evidence Act (1939 Proceedings, page 33). Attention was given to the submission of the Canadian Bankers Association pointing out the advantages to bankers of photographic records and recommending a section to effect this purpose (1939 Proceedings, Appendix H). The provision recommended read as follows:

> 29. (7) A print, whether enlarged or not, from any photographic film of,
>
> (a) any entry in any book or record kept by any bank and destroyed, lost or delivered to a customer after such film was taken shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded,
>
> (b) any bill of exchange, promissory note, cheque, receipt or original instrument or document held by a bank and destroyed, lost or delivered to a customer after such film was taken shall in all legal proceedings be received in evidence for all purposes for which the original would have been received,
>
> upon proof that while such book, record, bill of exchange, promissory note, cheque, receipt, original instrument or document was in the custody or control of the bank the photographic film was taken thereof in order to keep a permanent record thereof and that the object photographed was subsequently destroyed by or in the presence of one or more of the employees of the bank or was lost or was delivered to a customer; and all required proof may be given by any one or more of the employees of the bank having knowledge of the taking of the photographic film, of such destruction, loss, or delivery to a customer, or of the making of the print as the case may be, and may be given orally or by affidavit sworn in any part of Canada before any notary public; provided that where any person having knowledge of such

destruction, loss or delivery, or of the taking of such film is not resident in the city, town or place in which the court before which such proof is offered is sitting, or is no longer in the employ of the bank or is too ill to attend court or is dead, proof of such film having been taken and of such destruction, loss or delivery may be made by a notarial copy of an affidavit by such person sworn as above required.

After discussion (1939 Proceedings, pages 33, 34 and 35) it was resolved that the 1936 draft Uniform Evidence Act be referred to the Dominion representatives for the preparation of a new draft in accordance with the instructions of the Conference which included instructions to incorporate in the new draft a section along the lines suggested in the memorandum of the Canadian Bankers Association, that it be widened to cover government records and that the wording be changed in order to cover all photographic reproductions.

As the 1940 annual meeting of the Conference was cancelled this matter was next dealt with at the 1941 meeting in Toronto where Mr. O'Meara on behalf of the Dominion representatives presented a report and a new draft Uniform Evidence Act (1941 Proceedings, page 62), which was considered at length at this meeting (1941 Proceedings, pages 18, 19, 20 and 22). The section in question appeared in this draft as section 38 and was based upon but substantially different from that suggested by the Canadian Bankers Association in 1939. On the fifth day of the meeting the Dominion representatives reported back to the Conference certain sections, including section 38, which they had been requested earlier in the meeting to redraft. Mr. A. W. Rogers, K.C., Secretary of the Canadian Bankers Association, and a former member of the Conference, attended in order to assist in the consideration of the provision relating to microphotographic records.

After discussion, the usual resolution (1941 Proceedings-page 22) was adopted, namely, that the draft Uniform Evidence Act be referred back to the Dominion representatives for incor, poration of the amendments made at that meeting, that copies be sent to the members and that if the revised draft was not disapproved of by two or more provinces by the 31st day of January, 1942, it be recommended to the Parliament of Canada and the provincial Legislatures for enactment.

Copies of the revised draft were duly sent out and no disapprovals received. Consequently, the draft Act was recom-

mended for enactment as of January 31st, 1942. Section 38 of this draft read:

38. (1) In this section

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

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

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

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

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

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

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

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

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

(3) Proof of compliance with the conditions prescribed by this section may be given by any one or more of the employees of the bank, department, commission, board or branch having knowledge of the taking of the photographic film, of such destruction, loss or delivery to a customer, or of the making of the print as the case may be, either orally or by affidavit sworn in any part of Canada before any notary public.

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

The Act including section 38 as set out above was enacted at the ensuing sessions of the Legislatures of the Provinces of British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island. At the ensuing session of the Parliament of Canada a section similar to section 38 was introduced but it was extended to apply to railway companies, telephone companies, insurance companies and a number of other types of organizations (1942 Proceedings, pages 57 to 60).

At the 1942 meeting in Windsor two suggestions, brought forward by the New Brunswick Commissioners (1942 Proceedings, page 55 and 56), were considered. Firstly, that subsection 3 of section 38 be altered to read:

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

This was suggested as desirable because while one of the conditions to be proven in subsection 2 is that the film was taken in order to keep a permanent record thereof, the matters to be proven as itemized in subsection 3 as adopted did not include proof that the film was taken in order to keep a permanent record thereof. Secondly, that a new subsection 3a be inserted:

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

This was suggested on the ground that there was some question as to whether the affidavit contemplated would be receivable in evidence in the absence of a special statutory provision. No action was taken by the Conference with regard to the first suggestion but a resolution was adopted to amend subsection 3 in accordance with the second suggestion (1942 Proceedings, page 19).

This meeting also considered a memorandum prepared by The Canadian Life Insurance Officers Association advocating revision and extention of the section with a view to rendering it in line with the revised form in which it was adopted by the Parliament of Canada. This memorandum was supported by letters from J. A. Walker, K.C., General Solicitor, Canadian Pacific Railway Company, R. H. M. Temple, K.C., General Counsel, Canadian National Railways, A. W. Rogers, K.C., Secretary, Canadian Bankers Association, Pierre Beullac, K.C.,

General Counsel, The Bell Telephone Company of Canada, Norman A. White, Assistant Secretary, The Dominion Mortgage and Investments Association, and C. S. Hamilton, President, The Trust Companies Association of Ontario (1942 Proceedings, pages 57 to 66).

Following discussion a resolution was adopted approving the principle of extending the scope of section 38 in line with the revised form in which it was adopted by the Parliament of Canada and referring the matter to the Ontario Commissioners for study and report the following year (1942 Proceedings, page 20).

The two reports submitted by the Ontario Commissioners at the meeting in Winnipeg last year (1943 Proceedings, pages 36 to 56) are too fresh in mind to require elaboration. It will be sufficient to mention the admitted difficulties of the problem and the lengthy discussions and amendments of the suggested draft section. This draft extended the principle of the original section 38 to all persons in the widest sense of the word as it was considered impossible to arbitrarily draw a line which would include, for example, certain types of corporations and exclude others. The principle of a wide extension was however adopted by the Conference and the draft section referred back to the Ontario Commissioners for incorporation therein of the amendments made at the meeting and a resolution was passed that copies of the section as revised be sent to the members and that if it was not disapproved by two or more provinces by January 31st, 1944, it be recommended to the Parliament of Canada and the provincial Legislatures for enactment. The section 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 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 later 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 the 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.

Copies of this draft were sent to the members of the Conference on September 24th, 1943. The Quebec representatives and the Ontario Commissioners were of opinion that the section should be further considered at the next meeing of the Conference. This disapproval has had the effect of nullifying the recommendation for enactment.

The opinion of the Quebec representatives was based in part upon the views of L. P. Pigeon, K.C., Law Clerk of the Legislative Assembly of the Province of Quebec, as contained in his letter of October 13th, 1943, which for convenience is herein set out:

> "The Deputy Attorney General has sent me the re-draft of section 38 of the Evidence Act prepared by the Conference of Commissioners on Uniformity of Legislation in Canada, dated September 24th, 1943.
>
> I have no instructions to comment officially on this document. However, in view of past correspondence, I am taking the liberty of writing to you personally on this subject.
>
> Seeing that 'person' is now defined in a very wide sense, why is it deemed necessary to specifically mention the Bank of Canada and other banks? It seems to me that if 'person' was defined so as to include 'government', it would greatly simplify the wording of subsection 2 and would not create any dificulty in view of the wording of subsection 4. In sub-paragraph (a) of subsection 2, 'similar objects' would, it seems to me, convey the same meaning as 'objects of the same or a similar class.'
>
> It is obvious that subsection 3 does not contemplate the destruction of a document while it is still current. However, if the object was in fact destroyed while current, subsection 3 would not apply because the destruction would not occur within a period of six years from the date when it ceased to be current. It, therefore, appears to me that instead of 'within a period of six years from', you should have 'less than six years after' or 'before the expiry of six years from'.
>
> The obvious intention of sub-paragraph (b) of subsection 3 being to prevent the destruction of a document when its genuineness is known to be doubtful, it seems to me that the notice should not be required to be in writing. Otherwise, in the cases in which the section would otherwise

apply, the person will almost invariably have destroyed the document before receiving a notice in writing.

The words, 'whether enlarged or not' are, in my opinion, useless. Would it not be necessary to replace, in the end, the words, 'by a person who destroyed the object' by the words 'by the person having custody or control of the object at the time of destruction' because it is perfectly obvious that in sub-paragraph (b) of section 2, the person who destroyed the object means the very individual who does it and this individual will usually be an employee of the person really interested.

Even this will not, it seems to me, make subsection 3 really effective because it would not apply to the case where a document is destroyed by a depositary or mandatary; the depositary or mandatary would be the person having custody or control at the time of destruction and the person who should be debarred from tendering the photographic copy in evidence should be the real owner. Furthermore, this subsection 3 relates only to the case of destruction of the document. It seems to me that the most serious difficulties arise not when the document is destroyed, but when it is delivered to another person.

I should be glad to know if consideration has been given to the consequence of receiving in evidence a photographic copy of a document which was not destroyed but delivered to another person after being photographed. In this case, a person dealing with the person to whom the document has been delivered may well treat the destruction of the document as complete protection against future claims; for instance, it is an established practice when paying a note to be satisfied to receive the document without any other evidence of payment and subsequently to destroy it.

I shall not discuss the inconvenience of the discretionary nature of the new subsection 3 because I imagine the only answer is that the question was deemed so complex as to require this solution."

The Ontario Commissioners, having regard to the points raised by Mr. Pigeon and further points which reconsideration of the provision have raised, respectfully submit the following draft to the Conference for consideration. Inasmuch as the section is of great importance, it is felt that no effort should be spared to ensure that it will be adopted in the best form possible.

38. (1) In this section,—

(a) "person" includes,

(i) the government of Canada and of any province of Canada and any department, commission, board or branch of any such government;

(ii) a corporation; and

(iii) the heirs, executors, administrators or other legal representatives of a person; and

(b) "photographic film" includes any photographic plate, microphotographic film and photostatic negative and "photograph" shall have a corresponding meaning.

(2) Where 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 person—,

(a) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof; and

(b) is destroyed by or in the presence of the person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

a print from the photographic film shall be admissible in evidence in all cases and for all purposes for which the object photographed would have been admissible.

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration 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 later date, the court may refuse to admit in evidence a print from a photographic film of the object.

(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection 3 shall not apply.

(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 before a notary public and unless the court otherwise orders, a notarial copy of any such affidavit shall be admissible in evidence in lieu of the original affidavit.

APPENDIX E2

THE EVIDENCE ACT—SECTION 38

38. (1) In this section,—

(*a*) "person" includes,

(i) the government of Canada and of any province of Canada and any department, commission, board or branch of any such government;

(ii) a corporation; and

(iii) the heirs, executors, administrators or other legal representatives of a person; and

(*b*) "photographic film" includes any photographic plate, microphotographic film and photostatic negative and "photograph" shall have a corresponding meaning.

(2) Where 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 person,—

(*a*) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof; and

(*b*) is destroyed by or in the presence of the person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

a print from the photographic film shall be admissible in evidence in all cases and for all purposes for which the object photographed would have been admissible.

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration of six years from,—

(*a*) the date when in the ordinary course of business either 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 later date, the court may refuse to admit in evidence under this section a print from a photographic film of the object.

(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection 3 shall not apply.

(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 before a notary public and unless the court otherwise orders, a notarial copy of any such affidavit shall be admissible in evidence in lieu of the original affidavit.

APPENDIX F1

SERVICE OF PROCESS BY MAIL
REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the meeting of the Conference held in August, 1943, 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."

Service by registered mail would appear to be simple, easy, speedy and inexpensive. In the case of a person of fixed residence but in a remote town the advantages are particularly obvious. In such a case personal service often involves many expensive and fruitless trips before service is finally effected.

But in the case of service by registered mail is it certain that the person intended to be served will actually receive the document to be served?

One of the British Columbia representatives interviewed the Postmaster at Victoria. The Postmaster said that in his opinion, based on the almost total lack of complaints received at the Post-office the instances where registered mail fails to reach the addressee are almost negligible. He pointed out that under post-office practice or regulations a registered letter may be marked "Deliver to the addressee only." A postman will not deliver a letter so marked to any person other than the addressee. A registered letter may also be marked "Return in days." In such case the letter if not delivered within the specified time will be returned to the sender.

Alberta adopted the principle of service by registered mail in Small Debts Courts in 1918. It is said that that method of service was generally used by the profession and worked well. After twenty years of experience in the Small Debts Courts the principle was extended to the other Courts where it has worked equally well. Defendants themselves prefer to be served by mail rather than to have a bailiff hunting around and inquiring for their whereabouts.

In Saskatchewan service by registered mail was introduced in 1940 in the District Courts. It was limited to cases where the defendant is resident in Saskatchewan. In 1944, it was extended to cases where the defendant is resident in any part of Canada.

In Manitoba in the County Court of Winnipeg, where the amount sued for does not exceed one hundred dollars, and in all

other County Courts where the amount involved does not exceed fifty dollars, service by mail is permitted.

In Ontario, in the case of an offence against a Provincial statute, service is made by unregistered mail. If the person summoned (being a resident of Ontario) does not appear the hearing is not proceeded with but another summons is issued and served personally. In the event of a conviction the person summoned pays the cost of the personal service. Where the person summoned is not resident in Ontario service by mail is deemed to be good service. Attached hereto is a copy of a letter from the Chief Constable of Toronto.

Service by mail is not authorized by law in England. On the other hand in Scotland service by registered mail has been in use for more than fifty years in all civil courts and has given satisfaction. The envelope containing the paper to be served is endorsed to the following effect:

"This envelope contains a summons to the Court. If not delivered within days it is to be returned to the Registrar at ."

The Dominion Commissioners made reference to a pamphlet entitled "Growth of Legal-Aid Work in the United States." (1936.)

The following is a quotation from that pamphlet:—

> "This notice (the equivalent of a summons in a small debt case) is sent by registered mail, return receipt requested. If the postman (who knows most of the persons in this district) cannot make delivery, then the court may order other process. In the Boston district in 1931 only 3 notices were refused and only 72 were returned because the defendant could not be located. In fact, service by mail works so well that the Cleveland court, which has used it longest, has discarded registereed mail and uses the ordinary mail not merely in small cases but as the regular method of service in all municipal-court cases."

If the Conference is of the opinion that uniform legislation is desirable the British Columbia representatives suggest that the draft legislation prepared by the Dominion Commissioners, which is to be found on page 123 of the 1943 Proceedings, is suitable subject to this qualification that in some jurisdictions there may be rules relating to service generally that are readily applicable to personal service but that would be difficult or impossible to apply where service is made by mail. Any such rule would have to be modified or excluded.

If it is desired to take advantage of the Post-office regulations above referred to the proposed legislation might be amended so as to read as follows:—

"(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 a true copy thereof (or a certified or sealed copy thereof or as the case may be) by registered and prepaid mail endorsed as follows:—

'Deliver to addressee only. If not delivered within days return to (name and address of sender or name and address of court)'; 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 the affidavit of service which may be in the following form:

AFFIDAVIT OF SERVICE

(Style of Cause)

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

(1) The address of the above named defendant is ....

(2) I did on the .. .. .. .day of. ...., 19 ., serve the above named defendant with (describe the document to be served) hereunto annexed and marked Exhibit A by enclosing such (describe the document to be served) in an envelope addressed to the defendant at the said address and endorsed as follows:—'Deliver to addressee only. If not delivered within .. ..days return to (name and address of sender or name and address of court), and by posting the same by registered and prepaid mail in the post-office at .. ..

(3) 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, the date of receipt being..... .....,

Sworn before me etc.. . . . .

(2) Any document that 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."

"R. L. MAITLAND",
"A. C. DESBRISAY",
"J. PITCAIRN HOGG",
British Columbia Representatives

POLICE DEPARTMENT

Toronto, Canada
August 11th, 1944.

The Legislative Counsel,
Department of the Attorney-General,
Victoria, B.C.

Dear Sir:

As requested in your letter of August 9th we wish to advise that in approximately 90% of the cases the person summoned appears as a result of the service by mail. In approximately 10% of the cases summonses are reissued for personal service. We might mention that in settling the figure at 90% this is in our opinion quite conservative because in quite a number of cases the non-appearance as a result of service by mail is not the fault of the person summoned but rather due to errors in name or address as a result of information received when the summons is originally issued.

We are very well pleased with the way the service of summonses by mail is working out, and as time goes on and people become more familiar with the system, exclusive of errors in address, etc., we believe the percentage of cases in which the person summoned appears as a result of the service by mail will gradually increase. We think the system of service of summonses by mail marks a distinct step forward in the handling of summonses.

Yours very truly,

"D. C. DRAPER,"
Chief Constable.

APPENDIX F2

NOTE: It is intended that this provision be inserted in appropriate statutes and rules. Changes necessary to fit the context should be made.

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 or other person to be served by sending to him a true copy thereof (or a certified or sealed copy thereof or as the case may be) by registered post in an envelope upon which there is written "Deliver to addressee only. If not delivered within . . . . . days return to (address of sender)"; and the service shall be deemed to be sufficient if the post-office receipt therefor purporting to be signed by the defendant or other person to be served is produced as an exhibit to the affidavit of service which may be in the form set out in the Schedule.

2. A document that has been served under this section shall be deemed to have been served on the day of the date of the receipt that purports to be signed by the person to be served.

SCHEDULE

AFFIDAVIT OF SERVICE

(Style of Cause)

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

I did on the .....day of..... 19 ..., send to the above named defendant (or as the case may be) by registered post a true copy of (description of document to be served) hereunto annexed and marked exhibit A in an envelope addressed to him at..... ..and upon which there was written:— "Deliver to adressee only. If not delivered within . ..day return to (address of sender)", and hereunto annexed and marked Exhibit B is the post office receipt of the defendant therefor.

SWORN before me . ...

APPENDIX G1

WAREHOUSE RECEIPTS ACT
REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

The 1943 Conference passed a resolution that the report of the British Columbia Commissioners and the draft Act be referred back 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.

The Report of the British Columbia Commissioners submitted in 1943, together with draft Act is to be found in the 1943 Proceedings commencing page 101.

It is the view of the British Columbia Commissioners that the draft Act will, if adopted, be practical in its working and of benefit to business.

The Uniform Warehouse Receipts Act (United States) was first recommended by the Conference for the United States in 1906 and amended in 1922. It has been adopted in all jurisdictions except Hawaii and South Carolina.

Warehouse receipts are in the Provinces below mentioned documents of title for the purposes of and to the extent provided by the Acts following:—

ALBERTA ..... "The Factors Act"
R.S. 1940 Ch. 70.

NEW BRUNSWICK ..... "The Factors Act"
R.S. 1927 Ch. 154

NOVA SCOTIA ..... "The Factors Act"
R.S. 1923, Ch. 203.

ONTARIO ..... "The Factors Act"
R.S. 1937, Ch. 185.
"The Mercantile Law Amendment Act."
R.S. 1937, Ch. 178, Sec. 8-14.

PRINCE EDWARD ISLAND .. "The Factors Act", 1940, Ch. 27

QUEBEC.....Civil Code—Ch. Fifth, Articles 1735 to 1754.
"Bill of Lading and Warehouse Receipt Act."
R.S. 1941, Ch. 333.

SASKATCHEWAN.....'The Factors Act"
R.S. 1940, Ch. 282.

Warehouse Receipts are also documents of title for the purposes provided in the "Bank Act." The various Factors Acts provide that a warehouse receipt in the hands of a mercantile agent shall in respect of dealings by him with the goods or the receipt, be a document of title.

Under the provisions of the Mercantile Law Amendment Act of Ontario, Sections 8 to 14 inclusive, warehouse receipts are documents of title and the Act provides that they may be transferred by endorsement as collateral security for any debt owing by the owner of or other person entitled to receive the goods included in a warehouse receipt. Section 14 provides that a warehouse receipt for crude petroleum issued by an incorporated company carrying on the business of warehousing shall be transferable by endorsement and if endorsed in blank, by delivery and every endorsement or transfer by delivery shall transfer all right of property and possession of the petroleum mentioned in the warehouse receipt.

The "Bank Act" 1934, Ch. 24, Sections 86 and 87 provide that a Bank may acquire and hold warehouse receipts as collateral security for the payment of any debt incurred in its favour or as security for any liability incurred by it for any person in the course of its banking business. Any warehouse receipts so acquired vests in the Bank all the right and title to the warehouse receipt and to the goods covered thereby of the previous holder or owner thereof.

Quebec Civil Code, Chapter Fifth, heading of which is "Of Brokers, Factors and other Commercial Agents," articles 1735 to 1754, contains provisions substantially the same as the provisions of the "Factors' Acts."

The "Bill of Lading and Warehouse Receipt Act" (Quebec) provides for the transfer by endorsement as collateral security of warehouse receipts, bills of lading, etc. There does not seem to be any enactment in the Province of Quebec whereby warehouse receipts are made negotiable documents of title generally.

The "Canada Grain Act" provides for the licensing of grain elevators or warehouses and declares same to be works for the general benefit of Canada. Warehouse receipts issued for grain are not expressly made documents of title under the Act. It would seem desirable to expect from the provisions of the Uniform Act warehouse receipts issued by elevators or warehouses licensed under the "Canada Grain Act."

We do not think it desirable to set out the forms of receipts in the Act. Our view is that the regulations of warehousemen is a matter for each province. Different conditions prevailing in each will no doubt require different regulations and the form of receipt that is desirable may very well vary. Our view is that it is sufficient to indicate, as has been done by the draft Act, certain information that receipts must contain. The form of receipt is a detail that, in our view, is unnecessary for inclusion in the Uniform Act.

The question arises as to whether or not warehousemen who issue negotiable warehouse receipts should be licensed and bonded. It would seem again that this is a matter for each Province. The "Canada Grain Act" requires elevators to be licensed and bonded. Similar provisions exist in various of the States in respect of grain storage warehouses, and warehouses which store other agricultural products. We have been unable to ascertain that warehousemen carrying on a general business are required to be bonded. The Secretary of the National Conference of Commissioners on Uniform State Laws informs us that the Uniform Warehouse Receipts Act adopted by their conference does not make provision for licensing and bonding of warehousemen.

In our 1943 Report we drew attention to the effect of Sections 24 and 28. The latter section particularly has the effect of giving to the holder for value of a negotiable receipt, title to the goods represented thereby notwithstanding that the person from whom he purchased it did not have a good title. If the Conference were disposed to recommend the Act, it should give careful consideration to the question of whether or not the provisions of this Act should go further than the existing law. The holder for value of a Bill of Lading has no better title than that of his predecessor. The Uniform Warehouse Receipts Act, as adopted in the State of Washington, does not go so far as Section 28 of our draft Act. The Washington Act contains the following provisions:—

> "Sec. 3633. When Negotiation Not Impaired by Fraud, Mistake or Duress.

> The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequenty negotiated, paid value therefor without notice of the breach of duty, or fraud, mistake or duress."

It will be noted that the effect of this provision is to protect the holder for value against the owner who entrusted possession or custody of a receipt to someone else even though induced by fraud, mistake or duress.

We are informed that the above quoted provision was that originally recommended by the United States Conference, but that the Conference in 1922 approved an amendment, the effect of which is to substitute for the above quoted provision a provision identical with Section 28 of our draft Act. The Conference at the same time approved an amendment to the Section in the Uniform Act providing as to "who may negotiate a receipt." The Section is No 40 in the Uniform Act and is Section 3626 in the State of Washington Act .

The amendment reads as follows:

> "A negotiable receipt may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of such person, or if at the time of negotiation the receipt is in such form that it may be negotiated by delivery."

It would seem that the 1922 amendments have not been adopted in all of the States—e.g. State of Washington.

We propose the following amendments to the Draft Act:

Section 23. Delete from the first sentence the words "subject to the terms of any agreement with the transferor."

Section 24. Substitute the word "transfer" for the word "assign" wherever it appears in subsection (a).

Section 29. Delete the word "first" where it occurs in the second last line and substitute therefor the word "previous."

If the Conference should decide to retain Section 28 of the Draft Act, then it would seem desirable to amend Section 21 by

striking out the first two lines thereof and substituting therefor the following:—

"(1) A negotiable instrument may be negotiated by delivery by any person in possession of the same, however such possession may have been acquired, in either of the following cases."

We enclose with the Report a pamphlet containing the "Warehouse Receipts Act" of the State of Washington and other Statutes. The Warehouse Receipts Act is found at page 28.

We may say that the British Columbia Commissioners are not in agreement on the inclusion of Section 28.

Respectfully submitted,

"R. L. MAITLAND"
"J. PITCAIRN HOGG"
"A. C. DESBRISAY"
British Columbia Commissioners

August 12th, 1944.

APPENDIX G2

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:

Short title.

1.—This Act may be cited as The Warehouse Receipts Act.

Interpretation of expressions.

2.—In this Act,

(*a*) "action" includes counterclaim and set-off;

(*b*) "fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

(*c*) "goods" includes all chattels personal other than things in action and money;

(*d*) "holder", as applied to a 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 a person named therein as the person to whom the goods are to be delivered or his assignee;

(*e*) "negotiable receipt" means a receipt in which it is stated that the goods therein specified will be delivered to bearer or to the order of a named person;

(*f*) "non-negotiable receipt" means a receipt in which it is stated that the goods therein specified will be delivered to the depositor or to another named person;

(*g*) "purchaser" includes mortgagee and pledgee;

(*h*) "receipt" means a warehouse receipt;

(*i*) "to purchase" includes to take as mortgagee or as pledgee;

(*j*) "warehouse receipt" means an acknowledgment in writing by a warehouseman of the receipt for storage of goods not his own;

(*k*) "warehouseman" means a person who receives goods for storage for reward.

Form of receipts.

3.—(1) A receipt 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 another named person, or

(ii) that the goods will be delivered to bearer or to the order of a 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; and

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

(2) Where a warehouseman omits from a negotiable receipt any of the particulars set forth in sub-section (1) he shall be liable for damage caused by the omission.

(3) No receipt shall by reason of the omission of any of the particulars set forth in sub-section (1) be deemed not to be a warehouse receipt.

(4) 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 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 circumstances.

Negotiable and non-negotiable receipts.

4.—Words in a negotiable receipt limiting its negotiability shall be void.

Marking of duplicate receipts.

5.—(1) 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."

Liability when not so marked.

(2) A warehouseman shall be liable for all damage caused by his failure to observe the provisions of sub-section (1) to any person who purchases the subsequent receipt for valuable consideration, believing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Effect of duplicate receipts

(3) 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.

Marking of non-negotiable receipts.

6.—(1) A warehouseman who issues a non-negotiable receipt shall cause to be plainly marked upon its face the words "non-negotiable" or "not negotiable."

Failure to mark

(2) Where a warehouseman fails to comply with sub-section (1), 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.

Duty to deliver

7.—(1) A warehouseman in the absence of lawful excuse, shall deliver the goods referred to therein:

(*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,

(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,

(ii) surrendering the receipt, and

(iii) acknowledging in writing the delivery of the goods.

Failure to deliver.

(2) Where a warehouseman refuses or fails to deliver the goods in compliance with sub-section (1), 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.

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

Negotiable receipts must be cancelled on delivery of goods.

9.—(1) Except as provided in section 19, 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, for failure to deliver the goods, to any one who purchases the receipt in good faith and for valuable consideration, whether he acquired title to the receipt before or after delivery of the goods by the warehouseman.

Negotiable receipts to be marked on delivery of part of goods.

(2) Except as provided in section 19, where a warehouseman delivers part of the goods for which he has issued a negotiable receipt and fails either to take up and cancel the receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable, for failure to deliver all the goods specified in the receipt, to any one who purchases the receipt in good faith and for valuable consideration, whether the purchaser acquired title to the receipt before or after the delivery of any portion of the goods.

Lost or destroyed receipts

10.—Where a negotiable receipt has been lost or destroyed a judge of the Court upon application after notice to the warehouseman by the person lawfully entitled to possession of the goods may upon satisfactory proof of such loss or destruction order the delivery of the goods upon the giving of a bond with sufficient sureties to be approved in accordance with the practice of the court to indemnify the warehouseman against any liability, cost or expense he may be under or be put to by reason of the original receipt remaining outstanding; and the warehouseman shall be entitled to his costs of the application.

Warehouseman has reasonable time to determine validity of claims

11.—Where a warehouseman has information that a person other than the holder of a receipt claims to be the owner of or entitled to the goods he may refuse to deliver the goods until he has had a reasonable time not exceeding ten days, to ascertain the validity of the adverse claim or to commence interpleader proceedings.

Conclusiveness of negotiable receipt.

12.—A 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.

Description of goods in receipt

13.—Where goods are described in a receipt merely by a statement,

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

(*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) the 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.

Liability for care of goods

14.—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 circumtances.

Co-mingled goods and warehouse-man's liability therefor

15.—Where authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade; and in that case the holder 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.

Attachment or levy upon goods for which a negotiable receipt has been issued.

16.—Where 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 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.

17.—Where 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 hazardou goods.

18.—(1) Where goods are of a perishable nature, or by keeping will deteriorate greatly in value, or injure other property, the warehouseman may give such notice as is reasonable and possible under the circumstances 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, requiring him to satisfy the lien upon the goods, and to remove them from the the warehouse, and on the failure of such person to satisfy the lien and remove the goods within the time specified in the notice, the warehouseman may sell the goods at public or private sale without advertising.

(2) The notice referred to in sub-section (1) may be given by sending it by 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.

(3) 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.

(4) The warehouseman shall from the proceeds of any sale made pursuant to this section, satisfy his lien and shall hold the balance in trust for the holder of the receipt.

Effect of Sale

19.—Where 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 18, the warehouseman shall not be liable for failure to deliver the goods to the holder of the receipt.

Negotiation of negotiable receipts by delivery and by indorsement.

20.—(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 indorsee 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 that

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 that person.

(4) An indorsement pursuant to sub-section (3) may be in blank, to bearer or to a named person and if the indorsement is to a named person, the receipt may be again negotiated by indorsement in blank, to bearer or to another named person and subsequent negotiation may be made in like manner.

Transfer receipts.

21.—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.

Rights of person to whom a receipt has been transferred

22.—(1) A person to whom a non-negotiable receipt is transferred acquires, as against the transferor,

(*a*) the title to the goods, and

(*b*) the right to deposit with the warehouseman the transfer or a duplicate thereof.

(2) Upon deposit pursuant to clause (*b*) of sub-section (1), the transferree acquires the benefit of the obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

(3) Prior to deposit pursuant to clause (*b*) of sub-section (1) 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 deposit with the warehouseman by another person of another transfer from the transferor.

Rights of a person to whom a receipt has been negotiated.

23.—A person to whom a negotiable receipt is duly negotiated acquires

(*a*) such title to the goods as the person negotiating the receipt to him had or had ability to transfer 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 receipt had or had ability to transfer to a purchaser in the 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.

24.—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 and the negotiation shall take effect as of the time when the indorsement is made.

Warranties on sale of receipt.

25.—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 no knowledge of any 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

26.—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 fulfil their respective obligations.

When negotiation not impaired by fraud mistake or duress.

27.—The validity of the negotiation of a 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 induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor without notice of the breach of duty, or fraud, mistake or duress.

Subsequent negotiation.

28.—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 a previous purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Negotiation defeats vendor's lien.

29.—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of a 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 and the warehouseman shall not deliver the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

Application to existing receipts.

30.—The provisions of this Act do not apply to receipts made and delivered prior to..... .

Construction.

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

APPENDIX H1

LIBEL AND SLANDER.
REPORT OF THE SASKATCHEWAN COMMISSIONERS

The following resolution was passed at the 1943 meeting of the Conference:

> 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.

Your Commissioners accordingly submit herewith a redraft of the Act, in which have been incorporated the amendments made at last year's meeting.

Several provisions have been redrawn with a view to giving effect to the instructions of the Conference, particularly with regard to defamation by broadcasting.

Respectfully submitted,

D. J. THOM,

J. P. RUNCIMAN.

Regina, June 30, 1944.

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:

SHORT TITLE

Short title.

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

INTERPRETATION

Interpretation "broadcasting"

2.—In this Act:

(a) "broadcasting "means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;

NOTE:—Conference instructed insertion of this definition. Taken from The Radio Act (Canada).

"defamation".

(b) "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 by broadcasting or in any other manner that is not permanent;

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

NOTE:—As altered and passed at 1943 meeting.

"newspaper"

(c) "newspaper" means a paper containing public news, intelligence or occurrances, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;

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

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

NOTE:—Paragraph (c) was referred back for further consideration. The following words, which appeared at the end of the paragraph, have been ommitted, namely:

"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."

(d) "public meeting" means a 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; "public meeting". 51 & 52 Vict. c. 64, s 4.

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

NOTE:—As altered and passed at 1943 meeting.

ACTIONS FOR DEFAMATION.

3.—An action shall lie for defamation and in an action for defamation, where defamation is proved, damage shall be presumed. Presumption of damage

NOTE:—As altered and passed at 1943 meeting.

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.

NOTE:—As passed at 1943 meeting.

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.

NOTE:—As passed at 1943 meeting.

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 Payment into court by way of amends

of liability, and such payment shall have the same effect as payment into court in other cases.

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

NOTE:—See note after section 9.

General or special verdict.

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.

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

NOTE:—See note after section 9.

Consolidation of actions for same defamation.

51 & 52 Vict. c. 64, 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 substantially 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.

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

NOTE:—See note after section 9.

Assessment of damages and apportionment of damages and costs in consolidated action.

9.—(1) 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.

51 & 52 Vict. c 64, s 5

(2) 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.

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

NOTE:—Sections 6 to 9 were referred back for further consideration. It was suggested that, if the matters therein dealt with are covered by Rules of Court, the provisions should be deleted and that, if only partly covered by Rules of Court, the provisions not covered should be retained.

It should be observed that these provisions now appear in the Acts of most of the provinces. Seven provinces have section 6; six provinces have section 7 and five provinces have sections 8 and 9. These provisions have been on the various statute books for many years.

It therefore appears that retention of these provisions will probably result in a greater degree of uniformity than will result if the provisions are omitted from the uniform Act.

Liability of owner and operator of broadcasting station.

10.—(1) The owner and the operator of a broadcasting station from which defamatory matter is broadcasted shall be liable to an action for damages where the person by whom the defamatory matter was broadcasted was engaged or authorized by the operator to broadcast such matter, or where the operator was negligent in not preventing the broadcasting of such matter.

NOTE:—This subsection was left over for further consideration and has been redrawn.

(2) Subsection 1 shall not affect the liability of a person by whom defamatory matter is broadcasted.

NOTE:—Redrawn.

NOTE:—Sections 11 and 12 of the 1943 draft were deleted at 1943 meeting.

PRIVILEGED PUBLICATIONS

Certain report and other publications privileged

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

11.—(1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, 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 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.

NOTE:—This is section 13(1) of 1943 draft. The amendments made at the 1943 meeting have been incorporated, and the provision has been further altered to include reports published by broadcasting.

(2) The publication in a newspaper or by broadcasting, at the request of any Government department, bureau or office or public officer, of any report, bulletin, notice or other document issued for the information of the public shall be privileged, unless it is proved that the publication was made maliciously.

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

NOTE:—This is section 13(2) of 1943 draft, redrawn in more concise form and to include publication by broadcasting.

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

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

NOTE:—As altered and passed at 1943 meeting.

(4) If in an action for defamation published in a newspaper the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff, the protection afforded by this section shall not be available as a defence unless the defendant shows that he has done so.

Alta. s. 10(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).

NOTE:—See note after subsection (5)

(5) If in an action for defamation published by broadcasting the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff, the protection aflorded by this section shall not be available as a defence unless the defendant shows that he has done so, from the broadcasting stations **from**

which the alleged defamatory matter was broadcasted, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcasted or as near as possible to that time.

NOTE:—Subsections (4) and (5) replace section 13(4) of 1943 draft. Redrawn to include broadcasting.

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

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

NOTE:—This is section 13 (5) of 1943 draft, as altered and passed at 1943 meeting.

Reports of proceedings in court privileged

12.—(1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court shall be absolutely privileged if:

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

(a) the report contains no comment;

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

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

NOTE:—See note after subsection (2).

(2) Subsection (1) shall not apply where:

1. in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so.

2. in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcasted, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcasted or as near as possible to that time.

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

NOTE:—Subsections (1) and (2) replace section 14(1) of 1943 draft, which has been redrawn to include reports published by broadcasting.

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

Alta. s. 11(2).

NOTE:—This is section 14(2) of 1943 draft, as passed at 1943 meeting.

NEWSPAPERS AND BROADCASTING STATIONS

Limitation of actions.

13.—An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, for defamation contained in the newspaper or broadcasted from the station shall be commenced within six 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 or from the same station within a period of one year before the commencement of the action.

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

NOTE:—This is section 15 of 1943 draft, redrawn to include actions for defamation published by broadcasting and including amendment made at 1943 meeting.

Notice of action.

14.—(1) No action shall lie unless the plaintiff has, within three months 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 any other newspaper or where the defamatory matter was broadcasted, fourteen clear days' notice in writing of his intention to bring an action, specifying the language complained of.

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

NOTE:—This is section 16(1) of 1943 draft, redrawn to include actions for defamation published by broadcasting, and including amendments made at 1943 meeting.

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

Alta. s. 8(1); N.B. s. 4; Ont. s. 15.

NOTE:—This is section 16(2) of 1943 draft. Passed at 1943 meeting.

15.—The action shall be tried in the county (*or* judicial district) where the chief officer of the newspaper or of the owner or operator of the broadcasting station is situated, 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, and may impose such terms as to the payment of witness fees and otherwise as the court deems proper. Place of trial.

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

NOTE:—This is section 17 of 1943 draft, as amended at 1943 meeting, altered to include actions for defamation published by broadcasting.

16.—(1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcasted without actual malice and without gross neligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant: Evidence in mitigation of damages.

(a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or 6 & 7 Vict. c. 96, s. 2

(b) broadcasted such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcasted, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcasted or as near as possible to that time.

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.

NOTE:—This is section 18(1) of 1943 draft, redrawn to include actions for defamation published by broadcasting and to provide for retraction in in addition to apology.

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought.

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

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

NOTE;—This is section 18(2) of 1943 draft. Passed at 1943 meeting.

When plaintiff to recover special damage only.

17.—(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 either

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

(f) where the alleged defamatory matter was broadcasted, that the retraction and apology were broadcasted from the broadcasting stations from which the alleged defamatory matter was broadcasted, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcasted; or as near as possible to that time.

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

NOTE:—This is section 19(1) of 1943 draft, redrawn to include actions for defamation published by broadcasting and to provide for apology in addition to retraction.

(2) Subsection (1) shall not apply to the case of defamation against any candidate for public office unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election.

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

NOTE:—This is section 19(2) of 1943 draft, altered in consequence of changes in subsection (1).

NOTE:—Sections 20 and 21 of 1943 draft were deleted at 1943 meeting.

Non-application of sections 13, 14 and 17

18.—(1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of sections 13, 14 and 17 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. 14(2); Man. s. 16; N.B. s. 11 (in part); Ont. s. 14(1); Sask., s. 16(1).

NOTE:—This is section 22(1) of 1943 draft, passed at 1943 meeting. Slightly redrawn.

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

NOTE:—This is section 22(2) of 1943 draft, as passed at 1943 meeting.

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station by its call number, alleges that defamation against him has been broadcasted from the station and requests the name and address of the owner or the operator of the station, or the names and addresses of the owner and the operator of the station, sectons 13, 14 and 17 shall not apply with respect to an action by such person against such owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first mentioned registered letter is received at the broadcasting station.

NOTE:—This is a new provision, extending the application of the section to owners and operators of broadcasting stations.

NOTE:—Sections 23 and 24 of 1943 draft were deleted at 1943 meeting.

MISCELLANEOUS

Construction.

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

NOTE:—This is section 25 of 1943 draft.

NOTE:—Section 26 of 1943 draft was deleted at 1943 meeting.

Repeal.

20.—The following enactments are hereby repealed:

Coming into force.

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

~~APPENDIX H2~~

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:

Short title.

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

Interpretation

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

"broadcasting"

(a) "broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;

"defamation"

(b) "defamation" means libel or slander;

"newspaper".

(c) "newspaper" means a paper containing public news, intelligence or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;

44 & 45 Vict. c. 60 s 1

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

"public meeting".

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

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

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

Presumption of damage.

3.—An action lies for defamation and in an action for defamation, where defamation is proved, damage shall be presumed.

Allegations of plaintiff.

4.—The plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading 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 pleading shall be sufficient.

15 & 16 Vict. c. 76 s 61.

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

Apology in mitigation of damages.

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 the

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

defamation before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had an opportunity.

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.

Payment into court by way of amends.

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 the payment shall have the same effect as payment into court in other cases.

Alta. s. 9; 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.

General or special verdict.

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.

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

Consolidation of actions for same defamation.

8.—Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially 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 in consolidated action.

9.—(1) 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.

(2) 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).

Certain reports and other publications privileged.

10.—(1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, 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 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. 51 & 52 Vict. c. 64 s. 4.

(2) The publication in a newspaper or by broadcasting, at the request of any Government department, bureau or office or public officer, of any report, bulletin, notice or other document issued for the information of the public shall be privileged, unless it is proved that the publication was made maliciously.

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

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

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

(4) Subsections (1) and (2) shall not apply where:

(a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

Alta. s. 10(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).

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

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

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

Reports of proceedings *in court* privileged

51 & 52 Vict c 64 s. 3

11.—(1) A fair and accurate report, published in a newspaper or by broadcasting, 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 that are the subject matter of the report, or within thirty days thereafter; and

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

(2) Subsection (1) shall not apply where:

(a) in the case of publication in a newspaper, the plaintiff shows that the defendant has been requested to insert in the newspapers a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so; or

(b) in the case of publication by broadcasting, the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff and the defendant fails to show that he has done so, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

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

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

Alta. s. 11(2).

Application of sections 13 to 18.

12.—Sections 13 to 18 shall apply only to actions for defamation against the proprietor or publisher of a newspaper or the owner or operator of a broadcasting station or an officer, servant or employee thereof in respect of defamatory matter published in such newspaper or from such broadcasting station.

Notice of action.

13.—(1) No action shall lie unless the plaintiff has, within three months 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 any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the language complained of.

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); N.B.s. 4; Ont. s. 15.

Limitation of actions.

14.—An action against the proprietor or publisher of a newspaper, or the owner or operator of a broadcasting station, for defamation contained in the newspaper or broadcast from the station shall be commenced within six 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 or from the same station within a period of one year before the commencement of the action.

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

Place of trial.

15.—The action shall be tried in the county (*or* judicial district) where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated, 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, and may impose such terms as to payment of witness fees and otherwise as the court deems proper.

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

Evidence in mitigation of damages

16.—(1) The defendant may prove in mitigation of damages that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, the defendant:

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

(a) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or

(b) broadcast such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

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.

51 & 52 Vict. c. 64, s 6

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of 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.

17.—(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; and

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

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

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

(e)—(i) where the alleged defamatory matter was published in a newspaper, that a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter; or

(ii) where the alleged defamatory matter was broadcast, that the retraction and apology were broadcast from broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

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 unless the retraction and apology are made editorially in the newspaper in a conspicuous manner or broadcast, as the case may require, at least five days before the election.

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

18.—(1) No defendant in an action for defamation published in a newspaper shall be entitled to the benefit of sections 13, 14 and 17 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. Non-application of sections 13, 14 and 17.

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

(3) Where a person, by registered letter containing his address and addressed to a broadcsating station, alleges that

defamation against him has been broadcast from the station and requests the name and address of the owner or the operator of the station, or the names and addresses of the owner and the operator of the station, sections 13, 14 and 17 shall not apply with respect to an action by such person against such owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first mentioned registered letter is received at the broadcasting station.

Construction

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

Repeal.

20.—The following enactments are hereby repealed:

Coming into force.

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

APPENDIX J

CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICE OF THE TREASURER

TREASURER'S REPORT

FOR YEAR 1943-1944

RECEIPTS		
Cash in Bank August 5th, 1943	$ 934.71	
Contributions from—		
Saskatchewan	50.00	
Manitoba	50.00	
Alberta	50.00	
Ontario	50.00	
British Columbia	50.00	
New Brunswick	50.00	
Prince Edward Island	50.00	
Nova Scotia	50.00	
Subscription from the Department of the Secretary of State of Canada	50.00	
Bank Interest	13.17	
DISBURSEMENTS		
Secretarial Expenses (Voucher A)		$ 50.00
Noble Scott Company Limited (Voucher B)		192.74
Noble Scott Company Limited (Voucher C)		15.66
National Printers Limited (Voucher D)		344.75
Exchange on cheques from Alberta, New Brunswick, Prince Edward Island and Nova Scotia (See Bank Book)		.60
		$603.75
To Balance—Cash in Bank		794.13
	$1,397.88	$1,397.88

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

Ottawa, August 15th, 1944.

Audited and found Correct.

J. P. HOGG,
L. R. MACTAVISH,
Auditors.

Niagara Falls, August 26, 1944.

APPENDIX K1

LIMITATION OF ACTIONS ACT
REPORT OF THE ALBERTA COMMISSIONERS

The Alberta Commissioners made certain recommendations as to the amendmant of the Uniform Limitation of Actions Act in their 1943 report found at page 112 of the 1943 Proceedings. The recommendations contained in Parts A, B and C of the report were adopted and referred back to the Alberta Commissioners for the drafting of the amendments recommended and adopted (1943 Proceedings at page 24).

The proposed amendments have been drafted and are attached hereto. The Uniform Act will be found in the 1931 Proceedings at page 38.

Respectfully submitted,

W. S. GREY,

H. J. WILSON,

Alberta Commissioners.

AN ACT TO AMEND THE LIMITATION OF ACTIONS ACT

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

1.—The Limitation of Actions Act, being Chapter of the Revised Statutes of , 19 , is hereby amended as to section 7 by striking out the same and by substituting therefor the following:

"7 (1) Whenever any person who is or would have been but for the effluxion of time liable to an action on a judgment or order for the payment of money or 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 creditor in writing signed by the debtor or his agent, to pay the judgment or other indebtedness; or

(b) gives a written acknowledgment of the judgment or other indebtedness signed by the debtor or his agent to his creditor or the agent of the creditor; or

(c) makes a part payment on account of the principal of the judgment or other indebtedness or interest thereon to his creditor or the agent of the creditor—

then an action to recover any such judgment or other indebtedness may be brought within six years from the date of the promise, acknowledgment or part payment, as the case may be, notwithstanding that the action would otherwise be barred under the provisions of this Act.

"(2) A written acknowledgment of a judgment or other indebtedness or a part payment on account of the principal of the judgment or other indebtedness 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."

NOTE:—The opinion has been expressed that section 7 of The Uniform Act does not apply to judgments. In 1942 section 7 of the Alberta Act was amended by including the words "on a judgment or order for the payment of money". The above proposed new section goes further by substituting the words "judgment or other indebtedness" for "debt" where that word occurs in subsections(1) and (2) of the section.

2.—The said Act is further amended by striking out the heading "Charges on Land, Legacies, Etc." where the same occurs immediately before section 12 of Part II thereof, and by substituting therefor the following: "Charges on Land, etc."

NOTE:—See note after section 3.

3.—The said Act is further amended as to section 12 by striking out the same and by substituting therefor the following:

"12. (1) No proceedings shall be taken to recover any rent charge or any sum of money secured by any mortgage or otherwise charged upon or payable out of any land or rent charge but within years next after a present right to recover the same accrued to some person capable of giving a discharge therefor or a release thereof, unless prior to the expiry of such years some part of the rent charge or sum of money or some interest thereon has been paid by a person bound or entitled to make a payment thereof, or his agent in that behalf, to a person entitled to receive the same, or his agent, or some acknowledgment in writing of the right to such rent charge or sum of money signed by any person so bound or entitled, or his agent in that behalf, has been given to a person entitled to receive the same, or his agent, and in such case no action shall be brought but within years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one was made or given.

"(2) In the case of a reversionary interest in land, no right to recover the sum of money charged thereon shall be deemed to accrue until the interest has fallen into possession."

NOTE:—The change made by section 3 is the omission of reference in section 12 of The Uniform Act to actions to recover legacies and personal estate of a person dying intestate. These provisions are transferred to Part V of the Act, "Trusts and Trustees", as section 35 and now include claims under a will as well as under an intestacy. This section follows generally the wording of section 20 of the English Act, Chapter 21 of 1939.

4.—The said Act is further amended by striking out section 15 thereof.

NOTE:—Section 15 of The Uniform Act is also moved by the proposed amendments to Part V and appears below as subsections (2) and (3) of

section 36 of the Act. In re Jordison (1922), 1 Ch. 440, 481, Younger L.J. said that section 10 of The Real Property Limitation Act, 1874 (Section 15 of The Uniform Act) is, in effect, a proviso to section 25 of the 1833 Act (Section 36 of The Uniform Act).

5.—The said Act is further amended by striking out sections 34 and 35, and by substituting therefor 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) 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.

"(3) 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 by 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.

"(4) 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."

"35. Subject to the provisions of subsection (1) 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 such estate, whether under a will or an intestacy, shall be brought after the expiration of 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."

NOTE:—Sections 34 and 35 of the Uniform Act have been replaced by the new section 34 which follows section 19 of the English Act which is of the same effect and appears to be clear and more concise. The definition of "trustee" in section 35 of the Uniform Act is retained. Section 34 of the Uniform Act has been omitted as no longer necessary, and the new section 35 is part of section 12 of the Uniform Act.

6.—The said Act is further amended as to section 36 by adding immediately at the end thereof the following new subsections:

"(2) 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 within which the same would be recoverable if there were not any such trust.

"(3) Subsection (2) of this section shall not operate so as to affect any claim of a cestui que trust against his trustee for property held on an express trust."

NOTE:—These subsections are section 15 of the Uniform Act.

7.—The said Act is further amended by adding immediately after section 38 thereof the following new section:

"38a—(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."

NOTE:—The new section 38a dealing with the extinguishment of title to chattels is a copy of section 3 of The English Act of 1939.

8.—This Act shall come into force on the day upon which it is assented to.

APPENDIX K2

AN ACT TO AMEND THE LIMITATION OF ACTIONS ACT

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

1. The Limitation of Actions Act, being Chapter of the Revised Statutes of , 19 , is hereby amended as to section 7 by striking out the same and substituting therefor the following:

"7. (1) Where a person who is or, but for the effluxion of time, would be liable to an action on a judgment or on an order for the payment of money or 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 creditor in writing signed by the debtor or his agent to pay the judgment or order for payment or debt;

(b) gives a written acknowledgment of the judgment or order for payment or debt signed by the debtor or his agent to his creditor or the agent of the creditor; or

(*c*) makes a part payment on account of the principal of the judgment or order for payment or debt or interest thereon to his creditor or the agent of the creditors

then, subject to paragraph (i) of subsection (1) of section 3, the action may be brought within six years from the date of the promise, acknowledgment or part payment, as the case may be, notwithstanding that the action would otherwise be barred under the provisions of this Act.

"(2) A written acknowledgment of a judgment or order for payment or debt or a part payment on account of the principal of the judgment or order for payment or 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"

2. The said Act is further amended by striking out the heading "Charges on Land, Legacies, Etc." where the same

occurs immediatey before section 12 of Part II thereof, and by substituting therefor the following: "Charges on Land, etc."

3. The said Act is further amended as to section 12 by striking out the same and by substituting therefor the following:

"12. (1) No proceedings shall be taken to recover any rent charge or any sum of money secured by any mortgage or otherwise charged upon or payable out of any land or rent charge but within ten years next after a present right to recover the same accrued to some person capable of giving a discharge therefor or a release thereof, unless prior to the expiry of such ten years some part of the rent charge or sum of money or some interest thereon has been paid by a person bound or entitled to make a payment thereof, or his agent in that behalf, to a person entitled to receive the same, or his agent, or some acknowledgment in writing of the right to such rent charge or sum of money signed by any person so bound or entitled, or his agent in that behalf, has been given to a person entitled to receive the same, or his agent, and in such case no action shall be brought but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one was made or given.

"(2) In the case of a reversionary interest in land, no right to recover the sum of money charged thereon shall be deemed to accrue until the interest has fallen into possession."

4. The said Act is further amended by striking out section 15 thereof.

5. The said Act is further amended by striking out sections 34 and 35, and by substituting therefor the following:

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

"(2) 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.

"(3) 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, but the right of action shall be deemed not to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest falls into possession.

"(4) 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."

"35. Subject to the provisions of subsection (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 such estate, whether under a will or an intestacy, shall be brought after the expiration of ten 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."

6. The said Act is further amended as to section 36 by adding immediately at the end thereof the following new subsections:

"(2) 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 within which the same would be recoverable if there were not any such trust.

"(3) Subsection (2) shall not operate so as to affect any claim of a cestui que trust against his trustee for property held on an express trust."

7. The said Act is further amended by adding immediately after section 38 thereof the following new section:

"38a. (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."

8. This Act shall come into force on the day upon which it is assented to.

APPENDIX L

EXTRAORDINARY REMEDIES.
REPORT OF THE ALBERTA COMMISSIONERS.

At the 1943 Conference Mr. Hogg referred to the matter of extraordinary remedies such as habeas corpus, certiorari, quo warranto and so forth as being hopelessly confused and inadequate and suggested that this matter should receive the consideration of the Conference. 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 Commissoners for study and report next year."

It is regretted that the Alberta Commissioners have not had time to make a thorough study of the Crown Rules of each Province, and of necessity this report will deal with them in a general way and will be confined to the remedies of certiorari and habeas corpus.

Taking the Provinces from west to east the following general observations may be made with regard to these Rules:

BRITISH COLUMBIA.

In this Province the Rules in force are transcripts of the English Rules of 1886 and would seem to be rather antiquated and out of date insofar as simplicity is concerned. For instance, Rule 28 reads as follows:

> "28. Every application for a writ of certiorari shall, except in vacation, be made by motion for an order nisi to show cause, and in vacation to a Judge at Chambers for a summons to show cause: Provided that where, from special circumstances, the Court or Judge may be of opinion that the writ should issue forthwith, the order may be made absolute, or an order be made in the first instance, either ex parte or otherwise, as the Court or Judge may direct."

It will be seen from the above that the writ of certiorari is still maintained together with a provision for an order nisi. With regard to habeas corpus, the old practice of an application for a writ of habeas corpus is still used. An application is first made for an order for a writ, which order may or may not be granted ex parte and subsequently a writ of habeas corpus may be issued and the matter dealt with on the return of the writ.

ALBERTA.

In this Province Rule 862 reads as follows:

"862. In all cases in which it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by notice of motion in the first instance instead of by certiorari or by rule or by order nisi."

The notice of motion must be endorsed with a notice addressed to the magistrate, or as the case may be, requiring him to return to the Clerk of the Supreme Court the conviction, information, etc. The whole matter is dealt with on return of the notice of motion which is to be served at least seven days before the return day thereof. By Rule 878 no writ of habeas corpus is required but an order may be made to the like effect which shall have the same effect as a writ would have. Here, as in certiorari, the matter is disposed of on the return of a notice of motion. Rule 880 reads as follows:

"880. The notice of motion for prohibition, certiorari, quo warranto, mandamus or habeas corpus shall be returnable before a judge of the Supreme Court or the Appellate Division."

Rule 881 reads as follows:

"881. When the motion is made to a judge an appeal shall lie from his order to the Appellate Division of the court by leave of the judge or of the Appellate Division, but subject to such right of appeal his decision shall be final."

It will be noted that this latter rule does away with the practice of applying to one judge after another for an order of habeas corpus.

SASKATCHEWAN.

In Saskatchewan the writ of certiorari may still be applied for (See Rule 11 of the Crown Practice Rules), but authority is given to a judge on an application for certiorari to quash a conviction without the actual issue of a writ of certiorari. With regard to habeas corpus, which is dealt with in Rules 38 to 42 of the Crown Practice Rules, the writ of habeas corpus is still retained although provision is made in Rule 42 for the court or a judge directing an order to be drawn up for the prisoner's discharge instead of waiting for the return of the writ. I would suppose that the practice authorized by this rule is taken advantage of, and it would seem that the preservation of the writ of habeas corpus is not necessary.

MANITOBA.

In this Province the King's Bench Act, Chapter 44, R.S.M. 1940, contains in section 93 provisions which are practically the the same as those contained in the Manitoba Rules 862 to 867. I notice that although the Statute provides for a notice of motion, Manitoba Rule 556 reads as follows:

"556. Mandamus, prohibition, and certiorari may be granted on a summary application by way of originating notice."

I presume the result is that either a notice of motion or an originating notice may be used. Rule 557 abolishes writs in case of mandamus, prohibition and certiorari. As to habeas corpus, Rule 182 (h) provides for the disposition in chambers of applications for, and on the return of, a writ of habeas corpus, so that apparently the writ is retained in practice insofar as habeas corpus is concerned. The King's Bench Act provides that nothing in the Act affects the procedure in criminal matters, and the Rules of Practice have a similar provision. We have been unable to find in the Rules of Court any rules specifically applying to criminal matters, which presumably should be made under the authority of the Criminal Code.

ONTARIO.

Under Ontario Rules 622 and 623 it is provided that certiorari may be granted upon a summary application by originating notice and that no writ of certiorari shall be issued, but all necessary provisions shall be made in the judgment or order. As to habeas corpus, Rule 207, sub-section (1) provides for the disposition in chambers of applications for, and on the return of, a writ of habeas corpus. These rules appear to be the only rules dealing with certiorari and habeas corpus, and the practice as to certiorari seems to have been simplified by a provision for dealing with it on originating notice, but the writ of habeas corpus is still retained.

NEW BRUNSWICK.

In this Province the writ of certiorari is still in use according to Order 62, Rule 1 of the Rules of Court. This rule provides that it shall not be necessary on an application for a writ to take out an order nisi, but the Court is given power in the first instance to make an order absolute for the writ to issue. The procedure involves two applications to the Court instead of one as in some of the other Provinces. As to habeas corpus, this is dealt with by Statute, Chapter 137, R.S.N.B. 1927. The writ

of habeas corpus is still retained under this legislation, but provision is made in section 4 for dispensing with it upon sufficient cause being shown to a judge. In such cases, the judge may, instead of granting his fiat for a writ of habeas corpus, by order in writing require the keeper of the gaol to make a return showing the cause of detention, etc. It is provided by section 5 that this return shall have the same effect as the return of a writ, and the judge may on such return being made, proceed to examine into the legality of the imprisonment and may by order in writing require the immediate discharge of the prisoner. This alternative procedure if allowed by the judge, appears to be quite direct and simple and in line with the procedure in some of the other Provinces where an application may be made on notice.

PRINCE EDWARD ISLAND.

The subject of certiorari is dealt with by Statute, The Habeas Corpus and Certiorari Act, Chapter 6 of the Statutes of 1939, as amended by Chapter 3 of 1941. The writ of certiorari is still retained and provision is made for an application for a writ by notice of motion which must be accompanied by an affidavit of the applicant setting forth the special cause or grounds on which the application is based. The said Act, in dealing with habeas corpus, provides a simple procedure similar to that referred to above as being in force in New Brunswick. The judge on application may by order in writing require the keeper of a gaol to make a return to him, and this return is to have the same effect as a return to a writ of habeas corpus. The only objection to this procedure would seem to be that two applications to a judge are necessary whereas in some Provinces only one application is required. Rules have been made by the judges of the Supreme Court relating to certiorari proceedings under the provisions of the Criminal Code. Under these rules a writ of certiorari is provided which may be applied for on notice of motion accompanied by an affidavit setting forth the special cause or grounds on which the application is based. It is provided by Rule 5 that no writ of certiorari should be allowed if the defendant has appealed from his conviction or order against it. Provisions relating to habeas corpus contained in the Statute above referred to are made to apply to an application for habeas corpus under the Criminal Code.

. . . . .

We have not available at the time of preparing this report the Crown Rules of Quebec and Nova Scotia, and with respect

to the other Provinces dealt with, our report is made subject to correction as to any errors or omissions which may appear herein.

W. S. GRAY,

H. J. WILSON,

Alberta Commissioners.

APPENDIX M

PARTNERSHIP REGISTRATION ACT
REPORT OF THE NEW BRUNSWICK COMMISSIONERS

The following Resolution was adopted at the 1943 meeting of the Conference:

> 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.

Your Commissioners have decided that it is not practicable to amend The Partnership Registration Act by 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 and that the amendments to The Partnership Registration Act necessary to obtain the desired results would be so extensive as to justify the drafting of a whole new Partnership Registration Act.

Your Commissioners also considered the advisability of preparing a separate Act dealing with the control of partnership and trade names, but decided against such course as it seemed that the logical place to deal with this subject is in The Partnership Registration Act.

Your Commissioners have decided to submit this report and to ascertain whether or not the Conference deems it advisable to go on with the preparation of a new Partnership Registration Act at this time.

Respectfully submitted,

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

Fredericton, N.B.
August 15th, 1944.

APPENDIX N1

PROTECTION OF FAMILY DEPENDANTS
REPORT OF THE MANITOBA COMMISSIONERS

The following resolution was adopted at the 1943 Conference:

> " RESOLVED that the matter of family dependants 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."

In the autumn of 1941 and the spring of 1942 a committee of the Manitoba Bar Association drafted a bill for presentation to the Legislature of Manitoba relating to the above mentioned subject. Very many cases were examined by the committee, a large number of meetings were held and a great deal of work was done. The Manitoba Commissioners do not feel able to make any improvement on this bill and have therefore adopted it for presentation to the Conference. The only changes made have been a few minor ones in some places where it was thought that some change might be made in the drafting to make the language conform to the drafting rules adopted by the Conference. No change has been made in principle.

Mr. H. S. Scarth, K.C., formerly President of the Manitoba Bar Association, who had a great deal to do with the drafting of the bill, has been kind enough to furnish the Manitoba Commissioners with certain information and explanatory material. The remainder of this report, therefore, is based largely on this information and material furnished by Mr. Scarth.

Mr. Scarth was also kind enough to indicate the sections of other Acts that were followed in drafting the sections of this bill. This has also been indicated in the draft bill now submitted.

The most important section of the bill is, of course, subsection (1) of section 3. This section is to a large extent a copy of the New Zealand subsection (1) of section 33. It is to be noted, however, that in the draft bill now submitted the word "dependant" has been defined and also the word "child"; and furthermore, to simplify procedure and reduce costs, provision has been made for applications to a judge in chambers.

It will be noted that subsection (1) of section 33 of the New Zealand Act differs from the Saskatchewan Act in that it does not limit dependants (so far as children are concerned) to children of a testator under twenty-one years of age, or to a

child of a testator over that age who, by reason of mental or physical disability, is unable to earn a livelihood. The Manitoba Commissioners understand that this point was very fully discussed by the committee of the Manitoba Bar Association and that the section as drafted was finally adopted for the following reasons:

(*a*) By following the New Zealand Act we would have the benefit of a large number of the decisions in the New Zealand courts, and two cases which went to the Privy Council.

(*b*) The cases mentioned have defined the objects of the Act and have not narrowed the definition of "dependants" in the same manner as in Saskatchewan; and they leave it open to the judge in exceptional cases to exercise his discretion where a hardship would result by restricting the section to the narrow limits as defined by the Saskatchewan and Ontario Acts in regard to the definition of "dependants".

In this connection reference should be made to *Allardice* v. *Allardice* (1910) N.Z.R., C.A., p. 959, where the objects of the Act are defined as follows:

" (1) The Act is something more than a Statute to extend the provisions in the Destitute Persons Act.

(2) The Act is not a Statute to empower the Court to make a new will for a testator.

(3) The Act allows the Court to alter a testator's disposition of his property only so far as is necessary to provide for the proper maintenance and support of the wife, husband or children, where adequate provision has not been made for their proper maintenance and support by the Testator.

(4) In the case of the widow at all events, if not in the case of the widower, the Court will make more ample provision than in the case of children, if the children are physically and mentally able to maintain and support themselves."

This was approved in the Privy Council (1911) A.C. 730. See also *Boesch* v. *Perpetual Trustees* (1938) A.C. (P.C.) 463.

Pulling v. *Public Trustee* (1922) N.Z.R. 1022. See also criticisms of English Act, on the ground that it is too rigid, in *Law Journal*, Volume 88, page 37.

The committee of the Manitoba Bar Association also advise that subsection (4) of section 3 arose out of criticism appearing in the *Law Journal*, drawing attention to the fact that the Inheritance Act of England does not provide for partial intestacy.

It is also to be noted that subsection (2) of section 3 which together with subsections (1) and (2) of section 6, provide for suspensive orders (referred to in the New Zealand cases and in the article of Mannie Brown in the CANADIAN BAR REVIEW issues of April and June, 1940, (vol. 18, pages 261 and 449) as "suspensory orders") arose from the cases of:—

Welch v. *Mulock* (1924) N.Z.R. 673;

In re Birch (1929) N.Z.R. 463;

In re Collins (1927) N.Z.R. 746.

The Manitoba Bar Association committee changed the word "suspensory" to "suspensive", feeling that the latter was the better word to use.

The Manitoba Commissioners are advised that in preparing the draft the Manitoba Bar Association committee followed particularly the following statutes:

"The Family Protection Act", New Zealand, 1908, Part 2.

"The Testator's Family Maintenance and Guardianship of Infants Act", New South Wales, 1916.

"The Dependants' Relief Act", chapter 214, Revised Statutes of Ontario, 1937.

"The Dependants' Relief Act", Saskatchewan, 1940, c. 36.

"The Inheritance (Family Provision) Act of 1938", England, 1 & 2 Geo. VI.

The two articles by Mannie Brown in the CANADIAN BAR REVIEW, vol. 18, above mentioned, cover nearly all of the leading cases. The Canadian cases considered were:

Walker v. *McDermott* (1931) Supreme Court Reports, 94.

Barker v. *Westminster* (1941) 3 W.W.R., 473.

In re Shaw Estate (1942) 1 W.W.R. 613, and on appeal (1942) 1 W.W.R. 818.

The following cases and articles relative to this subject may also be noted:

In re Shadforth Estate (1943) 1 W.W.R. 793.

Catnull v. *Watts* (1943) All England Vol. 2, p. 115.

In re Mays (1943) 3 W.W.R. 479 (Alta.).

Pugh v. *Pugh* (1943) All England, Vol. 2, p. 361.

Dillon v. *Public Trustee* (1941) 3 W.W.R. 865;
(1941) All E.R. 284.

White v. *Midland* (1941) All E.R. 236.

Re Testators Family Maintenance Act (1941) 56 B.C.R. 178;
(1941) 1 W.W.R. 356;
(1941) 2 D.L.R. 71.

In re Herron Estate (1941) 3 W.W.R. 877.

In re Gill Estate (1941) 3 W.W.R. 888.

Murokami v. *Henderson* (1942) 1 W.W.R. 654 (footnote).

Re Thomson (1942) 1 D.L.R. 125.

Styler v. *Griffith* (1942) All E.R. 201;
(1942) L.R. 1 Ch. 387.

Shaw v. *Toronto General Trusts Co.* (1943) 2 W.W.R. 567.

Plumb v. *Royal Trust Co.* (1943) 3 W.W.R. 513.

Shaw v. *Regina* (1944) 1 W.W.R. 433.

In re Dickinson Estate (1944) 2 W.W.R. 1.

Articles CANADIAN BAR REVIEW, vol. 19, pp. 539 and 603;
vol. 20, pp. 73 and 324;
vol. 22, p. 95.

All of which is respectfully submitted,

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

Winnipeg, Manitoba,
July 20, 1944.

APPENDIX N2

AN ACT TO AUTHORIZE PROVISION FOR THE MAINTENANCE OF CERTAIN DEPENDANTS OF TESTATORS

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 Testator's Family Maintenance Act"*.

2. In this Act,

(*a*) "child" includes a child lawfully adopted by the testator, and also a child of the testator *en ventre sa mere* at the date of the testator's death; Imp. sec. 5.

(*b*) "dependant" means the wife, husband or child of the testator; N.S. sec. 33(1). See Imp. Act sec. 1(1) and Ont. sec. 1(b).

(*c*) "executor" includes an administrator with the will annexed;

(*d*) "judge" means a judge of . . . . .

3.—(1) Where a person (hereinafter called the testator) dies leaving a will, and without making therein adequate provision for the proper maintenance and support of his dependants, or any of them, a judge on application by or on behalf of such dependants, or any of them, may, in his discretion and taking into consideration all the circumstances of the case, order that such provision as he deems adequate shall be made out of the estate of the testator for the proper maintenance and support of the dependants, or any of them. N.Z. sec. 33(1).

(2) The judge may make suspensory orders. New. See *Welch* v. *Mulock* (1924) N.Z.R. 673; *In re Birch* (1929) N.Z.L.R. 463; CAN. BAR REVIEW, Vol. 18, p. 461.

(3) The judge may refuse to make an order in favour of any person if his character or conduct is such as, in the opinion of the judge, to disentitle him to the benefit of an order under this Act. N.Z. sec. 33(2).

(4) Notwithstanding the provisions of *"The Devolution of Estates Act"* (Manitoba), where a testator dies intestate as to part of his estate, a judge may make an order affecting that

part of his estate in respect of which he died intestate in the same manner as if the will had provided for distribution of that part as on an intestacy. See Sask. Sec. 2(3); Ont. Sec. 2(1); Imp. sec. 1(1).

4. An application under this Act may be made by originating notice of motion. New.

5. The judge in making an order for maintenance and support of a dependant, may impose such conditions and restrictions as he deems fit; and may, in his discretion, make an order charging the whole or any portion of the estate, in such proportion and in such manner as to him seems proper, with payment of an allowance sufficient to provide such maintenance and support. Sask. sec. 8(1); N.Z. sec. 33(1); see Ont. sec. 2(1).

6.—(1) The provision for maintenance and support ordered by the judge may be out of the income or the corpus of the estate of the testator, and may be by way of

(*a*) an amount payable annually or otherwise;

(*b*) a lump sum to be paid or held in trust; or

(*c*) certain property to be transferred or assigned, either absolutely or in trust or for life, or for a term of years to or for the benefit of the dependant,

as the judge deems fit.

(2) Where a transfer of property is ordered, the judge may give all necessary and proper directions for the execution of the transfer either by the executor or such other person as the judge may direct, or may grant a vesting order. Sask. sec. 8(3).

7.—(1) Where a judge has ordered payments, or has ordered a lump sum to be invested for the benefit of a dependant, or has made any other provision for the future maintenance and support of a dependant, the judge may

(*a*) enquire whether at any subsequent date, the party benefitted by the order has become possessed of, or entitled to, any provision for his proper maintenance or support;

(*b*) enquire into the adequacy of such provision; and

(*c*) discharge, vary or suspend the order, or make such other order as is just in the circumstances. N.Z. sec. 33(13). See *In re Birch* (1929) N.Z.L.R. 463; *Welch* v. *Mulock* (1924) N.Z.L.R. 673; *In re Collins* (1927) N.Z.L.R. 746.

(2) Where a suspensory order has been made, a judge at any subsequent date may order,—

(*a*) payments to be made to a dependant; or

(*b*) the increase, decrease or variation of any payments being made to a dependant. New.

8. A judge may at any time,—

(*a*) fix a periodic payment or lump sum to be paid by any legatee or devisee to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested;

(*b*) relieve such portion from further liability; and

(*c*) direct,—

(i) in what manner such periodic payment shall be secured; and

(ii) to whom such lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable. N.Z. sec. 33(6).

9. Where an application is made and notice thereof is served on the executor or trustee of the estate of the testator, he shall not, after service of the notice upon him, proceed with the distribution of the estate until the court has disposed of the application; and the estate, or such portion thereof as is comprised in, or affected by, the application shall be held subject to the provisions of any order that may be made. Sask. sec. 15.

10. The judge may accept such evidence as he deems proper of the testator's reasons as far as ascertainable, for making the dispositions made by his will, or for not making provision or further provision as the case may be, for a dependant, including any statement in writing signed by the testator and dated; and in estimating the weight, if any, to be attached to such statement, the judge shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement. Sask. sec. 8(6); Imp. sec. 1(7).

11. The incidence of any provision for maintenance and support ordered shall, unless the judge otherwise determines, fall rateably upon the whole estate of the testator, or, in cases where the authority of the judge does not extend to the whole estate, then to that part to which the authority of the judge

does or can be made to extend; and the judge may relieve any part of the testator's estate from the incidence of the order. Sask. sec. 10; N.Z. sec. 33(4) (5).

12.—(1) Where an order is made under this Act, then for the purposes of enactments relating to succession duties the will shall be deemed to have had effect from the testator's death as if it had been executed with such variations as may be necessary to give effect to the provisions of the order. Sask. sec. 13(1); N.Z. sec. 34(1), (2).

(2) The judge may give such further directions as he deems fit for the purpose of giving effect to the order, but no larger part of the estate shall be set aside or appropriated than is sufficient at the date of the order to produce by the income therefrom the required amount. Sask. sec. 13(2).

(3) A certified copy of every order made under this Act shall be filed with the registrar of the court out of which the letters probate or letters of administration with the will annexed issued, and a memorandum of the order shall be endorsed on or annexed to the copy of the original letters probate or letters of administration with the will annexed in the custody of the registrar. Sask. sec. 13(3).

13.—(1) Subject to subsections 2 and 3, no application for an order under section 3 may be made except within six months from the grant of probate of the will or of administration with the will annexed.

(2) Where an application is made on behalf of any dependant it may be treated by the judge as an application on behalf of all persons who might apply. N.Z. sec. 33(7).

(3) A judge may, if he deems it just, allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. Sask. sec. 14.

14. A dependant for whom provision is made pursuant to this Act shall not anticipate the same; and no mortgage, charge or assignment of any kind of or over such provision, made before the order of the judge, shall be of any force, validity or effect. Sask. sec. 16; N.Z. sec. 33(12).

15. An appeal shall lie to the Court of Appeal (Manitoba) from any order made under this Act. New.

(This section may be dropped in provinces where not required).

16. An order or direction made under this Act may be enforced against the estate of the testator in the same way and by the same means as any other judgment or order of the court against the estate may be enforced; and a judge may make such order or direction or interim order or direction as may be necessary to secure to the dependant out of the estate the benefit to which he is found to be entitled. Sask. sec. 20.

17.—(1) No order shall be made that has the effect of reducing the interest of a husband or wife in the estate of a testator to an amount that, in the opinion of the judge, is less than the share to which the husband or wife would have been entitled under the provisions of *"The Dower Act"* (Manitoba), should he or she elect to take under the provisions of that Act. New.

(2) The benefits given the husband or wife of a testator by an order under this section shall be in lieu of the share given him or her under *"The Dower Act"*, and thereafter he or she, except as to a life estate in the homestead, shall have no rights under *"The Dower Act"*. New.

(NOTE: The provinces will vary as required).

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

19. This Act shall come into force on assent.

APPENDIX O

CENTRAL REGISTRATION OF ENCUMBRANCES AFFECTING MOTOR VEHICLES
REPORT OF THE NEW BRUNSWICK COMMISSIONERS

The following resolution was adopted at the 1943 meeting of the Conference:

> "Resolved that the matter of preparing draft sections providing for the central registration of encumbrances affecting motor vehicles with or without local registration of encumbrances be referred to the New Brunswick commissioners for the preparation of draft sections and a report next year."

Your commissioners have carefully considered the alternative of preparing a new Act pertaining to Motor-Vehicles only but have decided unanimously that it is preferable to amend the Acts which would be affected such as the Conditional Sales Act and the Bills of Sale Act. We now submit draft sections amending these two Acts.

We would also point out that each Province may have to pass an amendment to their Motor-Vehicle Act or other pertinent Act authorizing and instructing the setting up of the central registry provided for in these amendments.

Respectfully submitted,

PETER J. HUGHES
J. BACON DICKSON
HORACE A. PORTER.

Fredericton, N.B., August 5th, 1944.

AN ACT TO AMEND THE "CONDITIONAL SALES ACT"

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 "Conditional Sales Act Amendment Act, 1944."

2.—Section 3 of the "Conditional Sales Act," being chapter of the Statutes of is amended by adding thereto the following subsection—

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

(a) The writing or true copy thereof shall be filed with The Registrar of Motor-Vehicles for the Province at irrespective of the residence of the buyer or the place at which the goods were delivered or to which they are removed;

(b) In case the conditional sale also comprises goods other than motor-vehicles, the writing or a true copy of such writing shall, in addition to being filed with the Registrar of Motor-Vehicles under Clause (a) be filed with the proper officer of each registration district in which it would except for this subsection be required to be filed under the other provisions of this section in respect of the other goods so comprised therein;

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

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

NOTE:—It may be necessary for each Province to also amend its Motor-Vehicle Act so as to place upon the Registrar of Motor Vehicles the burden of keeping an index of these encumbrances as well as of the Vehicles themselves.

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

AN ACT TO AMEND THE "BILLS OF SALE ACT"

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 "Bills of Sale Act Amendment Act, 1944."

2.—Section 6 of the "Bills of Sale Act," being chapter of the Statutes of is amended by adding thereto the following subsection:—

4. (a) In this subsection:—

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

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

(B. C. Chap. 23, Sec. 13(1))

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

(i) The bill of sale, or a true copy thereof, shall within the period of thirty days after the making thereof next ensuing, be registered by the filing of the said bill of sale or a true copy thereof, as the case may be, together with such affidavits and documents as are by this Act required in respect of registration generally, in the office of the Registrar of Motor Vehicles in the City of instead of in the office of the proper officer of the registration district in which the chattels are situated;

(ii) In case the bill of sale comprises also personal chattels other than motor-vehicles it shall in addition to the registration required by clause (i) be registered within

the period, in the manner, and in the office or offices in which it would except for this section be required to be registered under this Act in respect of the other personal chattels so comprised therein.

(B. C.—Chap. 23, Sec. 13(2)a-b).

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

(B. C.—Chap. 23, Sec. 13(3)).

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

(B. C.—Chap. 23, Sec. 13(4)).

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

NOTE:—I have not followed the wording of the British Columbia Act, Chapter 23, Section 13 2 (a) where it deals with the bills of sale covering more than one motor-vehicle. To me it seems that a document must be executed at some definite time regardless of what the contents of that document may be and therefore I see no force to the final words of the clause above referred to.

APPENDIX P

PROPOSED AMENDMENTS TO THE CRIMINAL CODE

1. That clause *c* of subsection 4 of section 242 of the Code be re-enacted as follows:

(*c*) evidence that a man has left his wife, and has failed to make provision for her maintenance, for a period of any one month subsequent to the date of his so leaving or for the maintenance for a like period of any child of his, under the age of sixteen years, shall be *prima facie* evidence of, and that he has, omitted or neglected or refused without lawful excuse to provide necessaries under this section.

2. That section 690 of the Code be re-enacted as follows:

690. If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall

(*a*) commit him for trial by a warrant of commitment which may be in form 22 or to like effect; or

(*b*) remand him for trial and admit him to bail under the provisions of section six hundred and ninety-six.

3. That subsection 1 of section 698 of the Code be amended by inserting after the words "county court" in the fifth line the words "or a magistrate as defined by section seven hundred and seventy-one" and by inserting after the word "judge" in the thirteenth line the words "or magistrate", so that the said subsection will read:

698. In case of any offence other than treason or an offence punishable with death, or an offence under any of the sections, seventy-six to eighty-six inclusive, where the accused has been finally committed as herein provided, any judge of any superior or county court, or a magistrate as defined by section seven hundred and seventy-one, having jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into a recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a

warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge or magistrate directing the admitting the accused to bail.

4. That clause *b* of section 750 of the Code be re-enacted as follows:

(*b*) The applicant shall give notice of his intention to appeal by filing in the office of the clerk, or in the province of Alberta in the office, in the judicial or sub-judicial district in which the cause of the information or complaint arose, of the clerk or deputy clerk, of the court appealed to a notice in writing setting forth with reasonable certainty the conviction or order appealed against and the notice shall be served upon the respondent and the justice who tried the case, or, in the alternative, upon such person or persons as a judge of the court appealed to shall direct, and such service and filing shall be within thirty days of the making of the conviction or order complained of, or in the Northwest Territories within such further time not exceeding an additional thirty days, as a judge of the court appealed to may see fit to fix either before or after the expiration of the said thirty days.

5. That clause *c* of section 750 of the Code be amended by inserting after the word "court" in the twelfth line the words "or enter into a recognizance so conditioned and make such cash deposit in lieu of sureties as the justice may determine", so that the clause will read:

(*c*) The appellant, if the appeal is from a conviction or order adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall within the time limited for filing a notice of intention to appeal, enter into a recognizance in form fifty-one with two sufficient sureties before a county judge, clerk of the peace or justice for the county in which such conviction or order has been made, conditioned personally to appear at the said court and try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court or enter into a recognizance so conditioned and make such cash deposit in lieu of sureties as the justice may determine; or if the appeal is from a conviction or order whereby a penalty or sum of money is adjudged to be paid, the appellant shall

within the time limited for filing the notice of intention to appeal, in cases in which imprisonment upon default of payment is directed either remain in custody until the holding of the court to which the appeal is given, or enter into a recognizance in form fifty-one with two sufficient sureties as hereinbefore set out, or deposit with the justice making the conviction or order an amount sufficient to cover the sum so adjudged to be paid, together with such further amount as such justice deems sufficient to cover the costs of the appeal; and, in cases in which imprisonment in default of payment is not directed, enter into a recognizance in form fifty-one with two sufficient sureties as hereinbefore set out, or deposit with such justice an amount sufficient to cover the sum so adjudged to be paid together with such further amount as such justice deems sufficient to cover the costs of the appeal; and upon such recognizance being entered into or deposit made the justice before whom such recognizance is entered into or deposit made shall liberate such person if in custody.

6.—That section 752 of the Code be re-enacted as follows:

752. Notwithstanding anything to the contrary contained in this Part, the Appellant or Respondent may appeal to the Court of Appeal as defined in section one thousand and twelve against any decision of the court made under the provisions of section seven hundred and fifty-two with leave of the Court of Appeal or a judge thereof on any ground which involves a question of law alone.

2. That the provisions of sections one thousand and twelve to one thousand and twenty-one, both inclusive, shall *mutatis mutandis* in so far as the same are applicable, apply to an appeal under this section.

3. The decision of the Court of Appeal shall have the same effect and may be enforced in the same manner as if it had been made by a justice at the hearing.

7.—That subsection 1 of section 757 of the Code be amended by inserting after the word "order" in the second line the words "and all other material in his possession in connection with the case", so that the said subsection will read:

757. Every justice before whom any person is summarily tried, shall transmit the conviction or order and all

other material in his possession in connection with the case to the Court to which the appeal is by this Part given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the Court.

8.—That section 762 of the Code be amended by inserting after the word "same" in the ninth line the words "or make such cash deposit for the said purpose as the justice shall determine," so that the section will read:

762. The appellant at the time of making such application, and before a case is stated and delivered to him by the justice, shall, in every instance, enter into a recognizance before such justice or some other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conconditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same or make such cash deposit for the said purpose, as the justice shall determine; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to.

9.—That section 827 of the Code be amended by striking out the words "having first obtained the depositions on which the prisoner was so committed, if any", in the first and second lines so that the said section exclusive of the clauses, will read:

827. The judge, or the prosecuting officer, as the case may be, shall state to the prisoner,

. . . . . .

10.—That subsection 3 of section 951 of the Code be amended by inserting after the word "jury" in the second line the words; "and in the provinces of Alberta and Saskatchewan, a judge having jurisdiction and sitting without a jury" and by striking out the words "they are" in the said second line, so that the said subsection will read:

3. Upon a charge of manslaughter arising out of the operation of a motor vehicle the jury, and in the provinces of Alberta and Saskatchewan, a judge having jurisdiction and sitting without a jury, if satisfied that the accused is not guilty of manslaughter but is

guilty of an offence under subsection six of section two hundred and eighty-five may find him guilty of that offence, and such conviction shall be a bar to further prosecution for any offense arising out of the same facts.

11. and **12.**—That section 1023 of the Code be amended by inserting as a new subsection 1A the provisions of subsection 3 of section 1025 and that the said section 1025 be amended by striking out subsection 3.

13.—That the Code be amended by adding thereto the following section:

1035A. Where a term of imprisonment is imposed by any court in respect of the non-payment of any sum of money, that term shall, upon payment of a part of such sum, be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days in the term as the sum paid bears to the sum in respect of non-payment of which the imprisonment is imposed; provided that, in reckoning the number of days by which any term of imprisonment would be reduced under this section, the first day of imprisonment shall not be taken into account.

2. Payment may be made to the person having lawful custody of the prisoner, or to such other person as the Attorney-General of the province where the prisoner was convicted may direct.

3. No amount tendered in part payment of the said sum shall be accepted unless it is the amount required to secure one day's reduction of the sentence, or some multiple thereof; and when a warrant of distress or commitment has been issued, no part payment shall be accepted until the fee, if any, payable for such warrant has been discharged.

4. The person to whom payment is made shall pay the money so received forthwith to the registrar of the Superior Court or clerk of the court of the county in which the conviction was made or to such other person as the Attorney-General of the province in which the prisoner was convicted may direct.

5. The person to whom payment is made shall upon receipt thereof immediately determine the number of days by which the term of imprisonment is reduced, and forthwith, in case a warrant of distress or commit-

ment has been issued, notify the appropriate police officer or warden or governor of the prison, as the case may require, of such payment and reduction.

6. Unless the order adjudging the payment of the whole sum otherwise directs, the amount received shall be applied, firstly, towards the payment in full or in part of any costs which may have been ordered to be paid by the prisoner; secondly, towards the payment in full or in part of any damages or compensation which may have been ordered to be paid by the prisoner; and thirdly, towards payment of any fine.

APPENDIX Q

PROPOSED AMENDMENT TO THE JUVENILE DELINQUENTS ACT

1.—That subsection 1 of section 37 of the *Juvenile Delinquents Act* be amended by adding after the words "the Juvenile Court" in the third line the words "or a magistrate", so that the said subsection will read:

37. A Supreme Court judge may, in his discretion, on special grounds, grant special leave to appeal from any decision of the Juvenile Court or a magistrate. In any case where such leave is granted the procedure upon such appeal shall be such as is provided in the case of a conviction on indictment, and sections one thousand and twelve and one thousand and twenty-one, both inclusive of the Criminal Code shall *mutatis mutandis* apply to such appeal, save that the appeal shall be to a Supreme Court judge instead of to the Court of Appeal, with a further right of appeal to the Court of Appeal by special leave of that Court.

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