

1947

PROCEEDINGS

OF THE

TWENTY-NINTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION
IN CANADA

HELD AT

OTTAWA, ONTARIO

AUGUST 28TH, 29TH, 30TH; SEPTEMBER 1ST, 2ND, 1947

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY
OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1947-48

Honorary President W. P. Fillmore, K.C., Winnipeg.
President W. P. J. O'Meara, K.C., Ottawa.
Vice-President J. Pitcairn Hogg, K.C., Victoria.
Treasurer J. P. Runciman, Regina.
Secretary L. R. MacTavish, K.C., Toronto.

LOCAL SECRETARIES

Alberta H. J. Wilson, K.C., Edmonton.
British Columbia J. Pitcairn Hogg, K.C., Victoria.
Manitoba G. S. Rutherford, Winnipeg.
New Brunswick His Honour Judge J. Bacon Dickson,
Fredericton.
Nova Scotia C. L. Beazley, K.C., Halifax.
Ontario Donald M. Treadgold, Toronto.
Prince Edward Island W. E. Bentley, K.C., Charlottetown.
Quebec Charles Coderre, K.C., Montreal.
Saskatchewan J. P. Runciman, Regina.
Canada W. P. J. O'Meara, K.C., Ottawa.

COMMISSIONERS AND REPRESENTATIVES OF THE
PROVINCES AND OF THE DOMINION

Alberta:

K. A. MCKENZIE, Assistant 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. DES BRISAY, K.C., 675 West Hastings St., Vancouver.

J. PITCAIRN HOGG, K.C., Legislative Counsel, Victoria.
(Commissioners appointed under the authority of the
statutes of British Columbia, 1918, c. 92).

Manitoba:

JOHN ALLEN, K.C., Winnipeg.

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

R. MURRAY FISHER, K.C., Deputy Provincial Secretary,
Winnipeg.

ANDREW MOFFAT, K.C., Deputy Attorney-General, Winnipeg.

G. S. RUTHERFORD, Legislative Counsel, Winnipeg.
(Commissioners appointed under the authority of the
Revised Statutes of Manitoba, 1940, c. 223, as
amended, 1945, c. 66).

New Brunswick:

HIS HONOUR JUDGE J. BACON DICKSON, Fredericton.

J. EDWARD HUGHES, B.Sc., Counsel, Attorney-General's
Department, Fredericton.

HON. MR. JUSTICE P. J. HUGHES, Fredericton.

E. B. MACLATCHY, K.C., Deputy Attorney-General,
Fredericton.

HORACE A. PORTER, K.C., Saint 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.
 ALEX. HART, Attorney-General's Department, Halifax.
 THOMAS D. MACDONALD, K.C., Deputy Attorney-General,
 Halifax.
 VINCENT C. MACDONALD, K.C., Dean, Dalhousie Law School,
 Halifax.
 J. B. MILNER, LL.B., Dalhousie Law School, Halifax.
 HENRY F. MUGGAH, Attorney-General's Department, 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., Legislative Counsel, Toronto.
 JOSEPH SEDGWICK, K.C., 80 Richmond St. West, Toronto.
 D. M. TREADGOLD, LL.B., Municipal Legislative Counsel,
 Toronto.
 (Commissioners appointed under the authority of the
 statutes of Ontario, c. 20).

Prince Edward Island:

W. E. BENTLEY, K.C., Charlottetown.
 W. E. DARBY, K.C., Summerside.
 GORDON R. HOLMES, Charlottetown.
 HON. F. A. LARGE, K.C., Attorney-General, Charlottetown.
 HON. MR. JUSTICE GEORGE J. TWEEDY, Charlottetown.

Quebec:

THOMAS R. KER, K.C., 360 St James St. West, Montreal.
 ANTOINE RIVARD, K.C., LL.L., 51 rue Des Jardins, Quebec.
 ALFRED TOURIGNY, K.C., 266 St. James Street, West,
 Montreal.

Saskatchewan:

E. C. LESLIE, K.C., 504 Broder Bldg., Regina.
~~J. D. MARTIN, K.C., McCallum Hill Bldg., Regina.~~
 J. P. RUNCIMAN, Legislative Counsel, Regina.
 J. L. SALTERIO, K.C., Deputy Attorney-General, Regina.

Canada:

- E. A. DRIEDGER, LL.B., Counsel, Department of Justice,
Ottawa.
- ROBERT FORSYTH, K.C., Senior Counsel, Department of
Justice, Ottawa.
- E. RUSSELL HOPKINS, Department of External Affairs,
Ottawa.
- W. P. J. O'Meara, K.C., Assistant Under Secretary of
State, Ottawa.

MEMBERS EX OFFICIO OF THE CONFERENCE

- Attorney-General of Alberta:* Hon. Lucien Maynard, K.C.
- Attorney-General of British Columbia:* Hon. Gordon S. Wismer, K.C.
- Attorney-General of Manitoba:* Hon. J. O. McLenaghan, K.C.
- Attorney-General of New Brunswick:* Hon. J. B. McNair, K.C.
- Attorney-General of Nova Scotia:* Hon. L. D. Currie, K.C.
- Attorney-General of Ontario:* Hon. Leslie E. Blackwell, K.C.
- Attorney-General of Prince Edward Island:* Hon. Frederick A.
Large, K.C.
- Attorney-General of Quebec:* Hon. Maurice Duplessis, K.C.
- Attorney-General of Saskatchewan:* Hon. J. W. Corman, K.C.

HISTORICAL NOTE

About thirty years have passed 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. The subsequent adoption by many of the state legislatures of these model statutes has 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, the practice being to meet during the five days preceding the annual meeting of the Canadian Bar Association, at or near the same place:

- 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, Saint 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.
- 1945. August 23-25, 27, 28, Montreal.
- 1946. August 22-24, 26, 27, Winnipeg.
- 1947. August 28-30, September 1, 2, Ottawa.

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. In 1941 both the Canadian Bar Association and the Conference held meetings, but 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 Government of Canada 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 the Bar of Quebec have attended each year, with the addition in 1946 and 1947 of a representative of the Government of Quebec.

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 Canada, representatives are appointed and

expenses provided for 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 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 are 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 39 of the Uniform Evidence Act dealing with microphotographic records and section 5 of the same Act, the effect of which is to abrogate the rule in *Russell v. Russell*, and the Uniform Regulations Act. In these instances the Conference felt it better to establish and recommend a uniform statute before any legislature 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 in 1944 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 encompass this field. At the 1944 meeting of the Conference in Niagara Falls this recommendation was acted upon and a section constituted for this purpose, to which most provinces and Canada appointed special representatives.

For a more comprehensive review of the history of the Conference and of uniformity of legislation the reader is directed to an article entitled "Uniformity of Legislation in Canada — An Outline" that appeared in the January, 1947, number of the *Canadian Bar Review*.

L.R.M.

TABLE OF

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

TITLE OF ACT	ADOPTED BY			
	Confer- ence	Alberta	B.C.	Man.
Assignment of Book Debts.....	1928	1929	....	1929
Bills of Sale.....	1928	1929	....	1929
Bulk Sales.	1920	1922	1921	1921
Commorientes...	1939	....	1939	1942
Conditional Sales.....	1922	....	1922	....
Contributory Negligence.	1924	1937*	1925	....
Corporation Securities Registration	1931	....	....	....
Defamation.....	1944	1947	....	1946
Devolution of Real Property.....	1927	1928	....	....
Evidence.....	1941	1947†'41,'42,'45†'42,'45'46†	....	....
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	....	'32,'46†
Married Women's Property.....	1943	....	....	1945
Partnership xx. . . . .	....	1899	1894	1897
Partnerships Registration.	1938	....	....	....
Reciprocal Enforcement of Judg- ments	1924	1925, am. 1935	1925	....
Reciprocal Enforcement of Main- tenance Orders.....	1946	1947	1946	1946
Regulations.	1943	....	....	1945†
Sale of Goods xx . . . . .	....	1898	1897	1896
Testators Family Maintenance	1945	1947†	....	1946
Warehousemen's Lien.	1921	1922	1922	1923
Warehouse Receipts...	1945	....	....	1946†
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.

N.B.	N.S.	ADOPTED BY					REMARKS
		Ont.	P.E.I.	Que.	Sask.	Canada	
1931	1931	1931	1931	....	1929	....	Am. '31
....	1930	....	1947	....	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	....	.....
1942†	1945†	'42,'45,'46†	1947†	....	'42, '45, '46,†'47	'42,'43†	Am. '44 & '45
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 & '44
....
1921	1911	1920	1920	....	1898	....	.....
....	....	....	....	....	1941†	....	Rev. '46
1925	....	1929	....	....	1924	....	Am. '25
....	....	....	....	....	1946\$	....	.....
....	....	1944‡	....	....	....	....	.....
1919	1910	1920	1919	....	1896	....	.....
....
1923	....	1924	1938	....	1922	....	.....
....	....	1946‡	....	....	....	....	.....
....	....	....	....	....	1931	....	.....

† In part.

\$ Provisions similar in effect are in force.

‡With slight modifications.

PROCEEDINGS

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

The following commissioners and representatives were present at the meeting:

Alberta:

MESSRS. MCKENZIE and WILSON.

British Columbia:

MESSRS. DES BRISAY and HOGG.

Manitoba:

MESSRS. ALLEN, FISHER, and RUTHERFORD.

New Brunswick:

HIS HONOUR JUDGE DICKSON, MESSRS. J. E. HUGHES
MACLATCHY and PORTER.

Nova Scotia:

MESSRS. HART, MILNER and MUGGAH.

Ontario:

HONOURABLE MR. JUSTICE BARLOW, MESSRS. MACTAVISH,
SEDGWICK and TREADGOLD.

Quebec:

MESSRS. KER, RIVARD and TOURIGNY.

Saskatchewan:

MESSRS. LESLIE, RUNCIMAN and SALTERIO.

Canada:

MESSRS. DRIEDGER, FORSYTH, HOPKINS and O'MEARA.

SUMMARY OF PROCEEDINGS

Statement of W. P. J. O'Meara, K.C., representing the Conference of Commissioners on Uniformity of Legislation in Canada, presented to the Thirtieth Annual Meeting of the Canadian Bar Association at Ottawa, Ontario, on Wednesday, September 3, 1947.

The twenty-ninth annual meeting of the Conference of Commissioners on Uniformity of Legislation in Canada was held in the Railway Committee Rooms of the Houses of Parliament, Ottawa, from the 28th August to the 2nd September, 1947, inclusive. Federal officials and representatives of each of the provinces of Canada attended this year's meeting. Twenty-nine commissioners were present, meetings being held in two sections dealing respectively with civil law and criminal law.

Again, as last year, it was gratifying to have the Bar of the Province of Quebec officially represented by three commissioners. The value of participation by lawyers trained in the French Civil Code, so fully appreciated by the Conference, was emphasized also by the Right Honourable Louis S. St. Laurent, K.C., when, together with the Right Honourable the Minister of Justice, Mr. J. L. Ilsley, K.C., he addressed the commissioners at the dinner tendered them by the Government of Canada on the opening night of the Conference. In addition to these two members of the Cabinet, the Conference, in plenary session, was formally welcomed to Ottawa by the Honourable the Secretary of State, Colonel Colin Gibson, K.C. The Conference also had the honour and the pleasure of an official visit from the Honourable Chief Justice McRuer, President of the Canadian Bar Association, who tendered us felicitations on your behalf. We were also pleased to have in attendance at our meeting one of our *ex officio* members, the Honourable J. O. McLenaghan, K.C., Attorney-General of Manitoba.

At this year's meeting a uniform Conditional Sales Act was approved by the Conference after detailed consideration. It will now be recommended to the respective provincial legislatures for enactment.

A re-draft of a uniform Mechanics' Lien Act was discussed in detail, being referred to the New Brunswick Commissioners for final report at the next meeting.

Work was done on the subjects of Extraordinary Remedies, Frustrated Contracts and Reciprocal Enforcement of Judgments. In each case progress was reported and further work assigned to provincial groups for report next year.

The report of the committee of the Conference on new business was received. The commissioners, in plenary session, unanimously resolved that the rules of drafting prepared by the commissioners some years ago should be revised and codified and that rules be prepared to make uniform the style of preparation and publication of statutes.

The traditional practice of the Conference was re-affirmed whereby matters may be brought to the attention of the commissioners by the Attorney-General of any province, by the Minister of Justice, or by the Canadian Bar Association, with a saving provision that in exceptional circumstances the Conference may, by resolution, add to its Agenda a subject of public importance not submitted through one of the above recognized channels.

The Conference adopted a recommendation submitted by the Section on Criminal Law requesting the Minister of Justice to take the necessary steps toward the appointment of a commission to recodify and revise the Criminal Code and related statutes and to make provision for the appointment of a liaison officer from each province to assist the commission in its work. This Section meanwhile continued its detailed study of various sections of the Criminal Code.

The following officers of the Conference were elected for the coming year:

<i>Honorary President</i>	W. P. Fillmore, K.C., Winnipeg. Past President of the Conference.
<i>President</i>	W. P. J. O'Meara, K.C., Assistant Under Secretary of State, Ottawa, Ontario.
<i>Vice President</i>	J. Pitcairn Hogg, K.C., Legislative Counsel, Victoria, British Columbia.
<i>Secretary</i>	L. R. MacTavish, K.C., Legislative Counsel, Toronto, Ontario.
<i>Treasurer</i>	J. P. Runciman, Legislative Counsel, Regina, Saskatchewan.

The chairman of the Uniform Law Section for the coming year will be Mr. W. P. J. O'Meara, K.C., and for the Section on Criminal Law, Mr. Antoine Rivard, K.C. Mr. L. R. MacTavish, K.C., will act as Secretary of the Uniform Law Section and Mr. R. Forsyth, K.C., Ottawa, for the Section on Criminal Law.

W. P. J. O'MEARA.

MINUTES OF THE OPENING PLENARY SESSION

(THURSDAY, AUGUST 28TH, 1947.)

10.00 a.m. — 11.00 a.m.

Opening.

The Conference assembled in the Railway Committee Room of the Commons, Parliament Buildings, Ottawa.

The President of the Conference, Mr. O'Meara, occupied the chair.

Mr. O'Meara introduced the Honourable Colin Gibson, K.C., Secretary of State for Canada, who welcomed the members to Ottawa.

Mr. O'Meara then outlined the work of the meeting as set out in the Agenda (Appendix A, page 38).

Minutes of Last Meeting.

The minutes of the 1946 meeting as printed in the 1946 Proceedings were taken as read and adopted.

President's Address.

Mr. O'Meara then delivered his presidential address (Appendix B, page 41.)

Treasurer's Report.

The report of the Treasurer, Mr. Runciman, was received and referred to Messrs. Hogg and Tourigny for audit and report (Appendix C, page 46).

Secretary's Report.

The report of the Secretary, Mr. MacTavish, was received and adopted (Appendix D, page 47).

Statement to the Canadian Bar Association.

Mr. O'Meara was appointed the representative of the Conference to make a statement to the Canadian Bar Association on the work of the Conference at this meeting.

Nominating Committee.

The President, the Chairman of the Criminal Section and the Secretary were requested to name a nominating committee. Subsequently it was announced that the Committee would consist of Messrs. Porter, Des Brisay, Rutherford and Tourigny.

Press Relations.

The matter of news releases to the Press was left to the discretion of the President and Secretary.

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 for out of the funds of the Conference.

Publication of Proceedings.

The following resolutions were adopted:

RESOLVED that the Secretary be requested to prepare a report of this meeting in the usual style, to have the report printed in pamphlet form as the 1947 Proceedings and to send copies thereof to the members of the Conference, the members of the Council of the Canadian Bar Association and those whose names appear on the mailing list.

RESOLVED that the Honourable Mr. Justice Barlow be requested to ascertain if the usual practice of printing the 1947 Proceedings of the Conference as an addendum to the year book of the Canadian Bar Association is satisfactory to the Bar Association; and that if it is, the Secretary be requested to make the necessary arrangements to that end.

Next Meeting.

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held during the five days, exclusive of Sunday, before the 1948 annual meeting of the Canadian Bar Association and at or near the same place.

Annual Grants.

The following resolution was adopted:

RESOLVED that the Treasurer be requested to communicate with each Local Secretary with a view to obtaining from each government a grant of \$75 for the support of the Conference during 1948.

MINUTES OF THE UNIFORM LAW SECTION

FIRST DAY

(THURSDAY, AUGUST 28TH, 1947.)

First Session

11.00 a.m. — 12.30 p.m.

Hours of Sittings.

The following resolution was adopted:

RESOLVED, subject to subsequent revision, that the hours of the sittings during the meeting be from 9.30 a.m. to 12.30 p.m. and from 2.30 p.m. to 4.30 p.m.

Reciprocal Enforcement of Judgments.

Mr. O'Meara, on behalf of the Dominion and Quebec Representatives and the Ontario Commissioners, made a verbal report on the draft Uniform Reciprocal Enforcement of Judgments Act.

The following resolution was adopted:

RESOLVED that the Model Act of 1924 respecting the reciprocal enforcement of judgments interprovincially and the Uniform Act of 1939 extending the principle to His Majesty's dominions outside Canada and to foreign states be referred back to the Representatives of Canada and Quebec and the Ontario Commissioners to prepare for submission to the next meeting a draft uniform Act in two parts, Part I dealing with the subject interprovincially and Part II extending the principle to His Majesty's dominions outside Canada and to foreign states.

Vital Statistics.

Messrs. Hughes and Treadgold were named as a committee to discuss the matter of a model Vital Statistics Act with Mr. Marshall and to report to this meeting.

Company Law.

Mr. O'Meara reported on the resolution appearing on page 25 of the 1946 Proceedings and stated that the Dominion-Provincial Committee on Uniform Company Law would be reconvened by the Secretary of State in the near future and that he had every hope that the Committee would proceed in due course to prepare a model Companies Act acceptable to all jurisdictions in Canada.

Second Session

2.30 p.m. — 4.30 p.m.

Extraordinary Remedies.

Mr. McKenzie presented the report of the Alberta Commissioners on the rules governing Extraordinary Remedies (Appendix E, page 49).

After discussion the following resolution was adopted:

RESOLVED that a detailed consideration of the draft uniform rules respecting extraordinary remedies (1946 Proceedings, page 61) be deferred until the next meeting and that in the meantime they be referred to the British Columbia Commissioners (Messrs. Des Brisay and Hogg, being constituted a joint committee representing the Uniform Law Section and the Criminal Law Section) and that the commissioners and representatives of each of the other provinces make a study of these rules and forward their views thereon to the Local Secretary for British Columbia on or before March 1st, 1948, to the end that the draft uniform rules submitted by the British Columbia Commissioners to next year's meeting may be in final form.

Frustrated Contracts.

The Honourable Mr. Justice Barlow presented the report of the Ontario Commissioners (Appendix F, page 51) on the draft Uniform Frustrated Contracts Act.

SECOND DAY

(FRIDAY, AUGUST 29TH, 1947.)

Third Session

9.30 a.m. — 12.30 p.m.

Frustrated Contracts—(continued).

Consideration was given to the draft Uniform Act (1946 Proceedings, page 77).

Fourth Session

2.30 p.m. — 4.30 p.m.

Frustrated Contracts—(concluded).

Upon completion of the consideration of the draft Uniform Act the following resolution was adopted:

RESOLVED that the draft Uniform Act, which follows the language of The Law Reform (Frustrated Contracts) Act, 1943, of the United Kingdom, be referred to the Ontario Commissioners to redraft in accordance with the rules of drafting of this Conference and in accordance with the principles as agreed upon at this meeting; that copies of such redraft be sent by the Local Secretary for Ontario to each of the other Local Secretaries for distribution by them to each member of this Section in their jurisdiction; and that such redraft be considered at the next meeting.

Mechanic' Lien.

Mr. Fisher presented the report of the Manitoba Commissioners on the draft Uniform Mechanics' Lien Act (Appendix G, page 55).

Consideration of the draft Uniform Act attached to the report was commenced.

THIRD DAY

(SATURDAY, AUGUST 30TH, 1947.)

Fifth Session

9.30 a.m. — 12.30 p.m.

Mechanics' Lien—(continued).

Consideration of the draft Uniform Act attached to the Manitoba report was continued.

Vital Statistics—(concluded).

Mr. Hughes presented the report of the committee consisting of himself and Mr. Treadgold appointed to confer with Mr. Marshall. Mr. Marshall, who was present, requested the assistance of the members of the Conference in drafting a model Uniform Vital Statistics Act, and outlined the position of the matter at the present time.

The following resolution was adopted:

RESOLVED that the members of this Conference that attend, as legislative counsel or otherwise, the meeting of registrars general to be called this autumn by the government of Canada for the purpose of preparing a model Uniform Vital Statistics Act be authorized to act in that regard as a committee of this Conference.

Sixth Session

2.30 p.m. — 4.30 p.m.

Mechanics' Lien—(continued).

Consideration of the draft Uniform Act attached to the Manitoba report was continued.

FOURTH DAY

(MONDAY, SEPTEMBER 1ST, 1947.)

Seventh Session

9.30 a.m. — 1.00 p.m.

Mechanics' Lien—(concluded).

Upon completion of the consideration of the draft Uniform Act attached to the Manitoba report (other than the procedural sections at the end thereof which were left to each province to study in the light of its own requirements), the following resolution was adopted:

RESOLVED that the draft Uniform Mechanics' Lien Act be referred to the New Brunswick Commissioners for the preparation of a further draft incorporating therein the amendments made at this meeting and such other amendments as they consider advisable; that copies of such further draft be sent by the Local Secretary for New Brunswick to each of the other Local Secretaries for distribution by them to each of the members of this Section in their jurisdiction; and that such further draft be considered at the next meeting.

Conditional Sales.

The report of Mr. Gray, for the Alberta Commissioners, was presented by Mr. Hogg (Appendix H, page 83).

Consideration of the draft Uniform Conditional Sales Act attached to the Alberta report was commenced.

The President of the Canadian Bar Association.

The President of the Canadian Bar Association attended the meeting, which was called into plenary session during his visit. Chief Justice McRuer spoke on the work of the Conference, and the cordial relationships between the Conference and the Bar Association and referred particularly to the important contribution being made by the Criminal Law Section of the Conference.

Mr. O'Meara expressed the thanks of the Conference to the President for his attendance.

Eighth Session

2.30 p.m. — 5.00 p.m.

Conditional Sales—(continued).

Consideration of the draft Uniform Conditional Sales Act attached to the Alberta report was continued.

Attorney-General of Manitoba.

The Honourable J. O. McLenaghan, K.C., Attorney-General of Manitoba, attended the meeting and extended his good wishes for the success of the meeting.

 FIFTH DAY

(TUESDAY, SEPTEMBER 2ND, 1947.)

Ninth Session

9.30 a.m. — 12.00 noon.

Conditional Sales—(concluded).

Upon completion of the consideration of the draft Uniform Conditional Sales Act the following resolution was adopted:

RESOLVED that the draft Uniform Conditional Sales Act be referred to the British Columbia Commissioners for incorporation therein of the amendments made at this meeting; that copies of the Act so amended be sent by the Local Secretary for British Columbia to the other Local Secretaries for distribution by them to the members of this Section in their jurisdictions; and that if such draft Uniform Act is not disapproved by two or more provinces by notice to the Secretary on or before the 30th day of November, it be recommended to the provincial legislatures for

NOTE:—Copies of the Act as so amended were sent by the British Columbia Commissioners to the Local Secretaries for distribution to the members on the 15th day of October, 1947. As no notices of disapproval were received by the Secretary, the draft Uniform Act (Appendix I, page 100) is accordingly recommended for enactment.

enactment. The draft as so amended is set out as Appendix I page 100.

Miscellaneous.

Several matters, namely, points in connection with Defamation, Testators' Family Maintenance, Evidence, and Bulk Sales that were added to the agenda at the request of an Attorney-General or a member of the Conference were considered.

The matter with respect to the Uniform Defamation Act was referred to the Alberta Commissioners for further consideration and report at the next meeting. The point raised in connection with the Uniform Bulk Sales Act was referred to the Saskatchewan Commissioners for further consideration and report next year. It was decided to take no action with respect to the other two matters and the Secretary was instructed to so advise the persons submitting them.

Assignment of Book Debts.

The following resolution was adopted:

RESOLVED that the Uniform Assignment of Book Debts Act adopted by the Conference in 1928 be referred to the Alberta Commissioners for revision and report at the next meeting.

New Business.

Mr. Fisher, who was requested to constitute a committee to consider new business, submitted the report of the committee (Appendix J, page 113).

The following resolution was adopted:

RESOLVED that recommendations 1, 2, 3, 4 and 6 be adopted, and with respect to No. 5, that the members of the Conference study the items listed with a view to making recommendations to the next meeting for additions to the agenda.

Report of Auditors.

Messrs. Hogg and Tourigny reported that they audited the Treasurer's books and found them to be correct. Therefore the Treasurer's Report (Appendix C, page 46) was adopted.

The Auditors also reported that they had audited the petty cash account of the Secretary and found it to be correct.

MINUTES OF THE CRIMINAL LAW SECTION

The following were present at the sessions of the Section:

John Allen, K.C., representing the Attorney-General of Manitoba;

Walter E. Darby, K.C., representing the Attorney-General of Prince Edward Island;

Campbell Des Brisay, K.C., representing the Attorney-General of British Columbia;

Robert Forsyth, K.C., representing the Attorney-General of Canada;

Alexander Hart, representing the Attorney-General of Nova Scotia;

E. B. MacLatchy, K.C., representing the Attorney-General of New Brunswick;

Magistrate J. C. Martin, Weyburn, Saskatchewan;

Antoine Rivard, K.C., representing the Attorney-General of Quebec;

J. L. Salterio, K.C., representing the Attorney-General of Saskatchewan;

Joseph Sedgwick, K.C., representing the Attorney-General of Ontario; and

H. J. Wilson, K.C., representing the Attorney-General of Alberta.

FIRST DAY

(THURSDAY, AUGUST 28TH, 1947.)

First Session

11.00 a.m. — 12.30 p.m.

Opening.

Mr. Rivard occupied the chair and Mr. Forsyth acted as Secretary.

Minutes.

The minutes of the previous meeting (1946 Proceedings, pages 28-37) were taken as read and adopted.

Juvenile Delinquency.

In connection with business arising out of the minutes, reference was made to a letter forwarded by Miss McMurray of Winnipeg with respect to juvenile delinquency. Mr. Sedgwick produced a resolution recently passed by the Women's Law Association, which he filed, dealing with the subject matter of Miss McMurray's letter. The meeting decided that a copy of the resolution should be sent to Miss McMurray in answer to her inquiry. It was also agreed that the subject matter of this resolution should be discussed further by the Section.

Nominating Committee.

The Chairman then appointed Messrs. Wilson and Sedgwick as the nominating committee of the Section.

Hours of Sitting.

It was agreed that the hours of sitting of the Section would be from 9.30 a.m. to 12.30 p.m. and from 2.00 p.m. to 5.00 p.m.

Attendance of the Minister of Justice.

The Secretary intimated that it was the intention of Mr. Ilsley to attend the meeting at 2.30 p.m. Discussion took place as to any matters which the meeting desired to take up with Mr. Ilsley. It was agreed that the question of the recodification and revision of the Code should be discussed with him.

Revision of the Code.

The following resolution was adopted:

RESOLVED that a commission be appointed to undertake a complete recodification of the criminal law and a revision of the Criminal Code and ancillary statutes and that a liaison officer be appointed on the recommendation of the Attorney-General for each Province to assist the commission in this work.

Non-support.

The minutes of the last meeting of the Criminal Law Section of the Canadian Bar Association were then read. In connection with business arising out of these minutes, Mr. Wilson submitted his report on section 242.

The following resolution was moved:

RESOLVED that section 242 of the Criminal Code be amended by striking out subsection 4 and substituting therefor the following:

4. Upon any prosecution under this section,
- (a) evidence that a man has cohabited with a woman or has in any way recognized her as being his wife shall be *prima facie* evidence that they are lawfully married;
 - (b) evidence that a man has in any way recognized children as being his children shall be *prima facie* evidence that they are his legitimate children;
 - (c) evidence that a man has left his wife, and has failed, for a period of any one month subsequent to the date of his so leaving, to make provision for her maintenance or for the maintenance of any child of his under the age of sixteen years, shall be *prima facie* evidence that he has omitted or neglected or refused without lawful excuse to provide necessaries under this section;
 - (d) evidence that a wife or child is receiving necessaries, or funds wherewith to purchase necessaries, from some person, persons or source other than the husband, or from the earnings of the wife or child, shall not be evidence that the wife or child is not in destitute or necessitous circumstances.

The resolution was discussed and paragraphs (a), (b) and (c) were approved. A number of the members were opposed to paragraph (d). It was agreed that the resolution should be brought up for further discussion later.

Second Offences.

Mr. Salterio then read a memorandum of the Saskatchewan Committee in respect of second offences.

Second Session

2.00 p.m. — 5.00 p.m.

Minister of Justice.

Mr. Ilsley entered the meeting and was introduced to each of the members. The resolution on section 242 of the Code was then read to Mr. Ilsley and all members expressed their views to the Minister. Mr. Ilsley's reply intimated the warmest sympathy for the subject matter.

Second Offences—(continued).

Discussion was then resumed of the Saskatchewan Report in respect of second offences. Magistrate Martin pointed out that

if all evidence sections in the Criminal Code were removed to the Canada Evidence Act there would still be Statutory Presumptions which would continue in the Code.

The meeting decided to adjourn the discussion of this matter until Saturday morning.

Lord's Day Act and Cock Fighting.

The Secretary then produced a letter from the Deputy Attorney-General of Quebec in which he asked for an amendment to the Lord's Day Act and also an amendment to section 543 of the Code in respect of cock fighting. The matter was referred to Mr. Sedgwick for report.

Complaints.

The Secretary then submitted a request from the Society on Cruelty to Animals of Quebec, which asked that the time for laying an information be increased from three to six months. This matter was referred to Mr. Des Brisay for report.

Spectators at Games.

The Secretary then presented a letter from the Manager of the Pacific Coast Exhibition in which he asked that some provision be made for the penalizing of spectators who obstruct games. The matter was referred to Mr. Hart for report.

Alternate Jurors.

The Secretary then presented a resolution of the Saskatchewan Committee in respect of alternate jurors. The matter was referred to Mr. Wilson for report.

Notice of Appeal.

The Secretary then presented a letter from W. A. Beggs, K.C., of Medicine Hat, asking that an amendment be made to section 1018(2) of the Code. The matter was referred to Mr. Wilson for report.

Murder.

The Secretary then referred to the recent amendment of section 260 of the Criminal Code and stated that the Deputy Attorney-General of Ontario had objected to this amendment. The following resolution was adopted:

RESOLVED that this Section observes that section 260 of the Code was amended at the last session of Parliament as follows:

- (d) If he uses or has upon his possession any weapon during or at the time of the commission or attempted commission by him of any of the offences in this section mentioned as the flight of the offender upon the commission or attempted commission thereof, and death ensues as a consequence of its use.

The amendment suggested by this Section was as follows:

- (d) If he uses any weapon for the purpose of facilitating the commission of any of the offences in this section mentioned or the flight of the offender upon the commission or attempted commission thereof and death results therefrom.

This Section observes that the amending section as enacted is wider than the one approved by this Section and probably goes further than was ever intended and this Section asserts its view that the result could best have been obtained by the passage of the amendment as drafted by this Section.

Agenda.

The question of the Agenda was then discussed. Mr. Hart reported that the Nova Scotia Committee was unable to report on Item 12. Mr. Wilson filed a report on Item 14 in regard to extraordinary remedies. It was suggested that the Chairmen of the Criminal Law Section and the Civil Law Section should confer in order to ascertain if the rules re Habeas Corpus in both civil and criminal matters could be made uniform.

Medical Examinations of Accused Persons.

Mr. Salterio referred to his report on the medical examination of accused persons. Considerable discussion took place in regard to this matter and it was decided to take no action.

It was suggested by Mr. Wilson that section 970 be amended to include a person suspected of being mentally ill. Mr. Wilson moved that the words "is or is suspected to be" be inserted in the fourth line. It was agreed that Mr. Wilson should reduce this matter to writing and place it in the hands of the Secretary.

SECOND DAY

(FRIDAY, AUGUST 29TH, 1947.)

Third Session

9.30 a.m. — 12.30 p.m.

Commencement of Sentences.

Mr. MacLatchy reported on the question of commencement of sentences particularly in reference to section 1019(2) of the Code.

Mr. Sedgwick expressed the opinion that the provision should be amended so that all time spent in gaol should count, but this view was not agreed to. The matter was referred back to the New Brunswick Committee for further study and report.

Insane Prisoners.

On motion of Mr. Wilson it was resolved that subsection 1 of section 970 of the Code should be amended by inserting after the word "is" in the fifth line thereof the words "or is suspected to be" so that the subsection should read:

1. The Lieutenant-Governor, upon evidence satisfactory to him that any person imprisoned in any prison other than a penitentiary for an offence, or imprisoned in safe custody charged with an offence, or imprisoned for not finding bail for good behaviour, or to keep the peace, is, or is suspected to be, insane, mentally ill, or mentally deficient, etc.

Summary Trial of Indictable Offences.

Mr. Allen presented a report of the Manitoba Committee on Part XVI. After considerable discussion and several minor amendments the draft of Part XVI as amended was approved.

Juvenile Offenders (Indictable Offences).

It was moved by Mr. Salterio and seconded by Mr. Wilson that Part XVII of the Code be repealed. It was contended that the Part was never used and is obsolete. After a general discussion on this matter the motion was carried.

Fourth Session

2.00 p.m. — 5.00 p.m.

Parts XV and XVI of the Code.

Certain further matters in connection with the Manitoba Report on Part XVI were discussed.

Mr. Des Brisay and Mr. Allen were instructed to prepare a redraft of sections 776 and 777 as appearing in the Manitoba report for insertion both in the Part XV and Part XVI as revised.

Mr. Salterio then pointed out that certain sections of the Code and especially subsection 4 of section 373 and subsection 2 of section 374 were inconsistent with the revised draft appearing as section 776 of the Manitoba report in that they provided that a summary offence which if committed a second time be treated as an indictable offence.

The following resolution was adopted:

RESOLVED that no provision in the Code should make an offence indictable because it has been previously committed as in subsection 4 of section 373 and subsection 2 of section 374.

THIRD DAY

(SATURDAY, AUGUST 30TH, 1947.)

Fifth Session

9.30 a.m. — 12.30 p.m.

Parts XV and XVI of the Code—(concluded).

It was moved by Mr. Wilson that all offences mentioned in section 773 with the possible exception of (c) (cc) and (d) be made summary convictions under Part XV and further consideration be given to whether or not these excepted offences, namely (c) (cc) and (d), and also the offence in paragraph (b) of section 777 should be made summary under Part XV. It was suggested that these offences might be made summary or indictable at the option of the Crown. It was further suggested that if these offences were made summary and moved to Part XV, a limitation of six months should be placed upon the penalty. This was approved.

Mr. Des Brisay and Mr. Allen then presented a revision of sections 776 and 777 as appearing in the redraft of Part XVI. This revision was approved and ordered to be inserted in the redraft of Part XV and Part XVI.

This concluded the revision of Part XVI. Mr. Allen was instructed to prepare a redraft with the amendments and submit the same to the Secretary for distribution among the members of the Committee.

Mr. Des Brisay then presented his report on Part XV. He read a letter from the Chief Justice of Prince Edward Island suggesting an amendment to section 749 whereby the appellant

should be required to state his grounds of appeal. If the appeal was from conviction only, and was so stated, considerable trouble could be saved so far as the calling of witnesses and other matters were concerned. Mr. Des Brisay and Mr. Martin were requested to prepare a draft amendment accordingly.

The draft of Part XV was then approved subject to the above amendment.

Automobiles.

Mr. MacLachy then stated that when an order is made forbidding the driving of a motor car under section 285 and an appeal is taken, the order against driving remains in force during the appeal. He suggested that any judge of the Court appealed to should be given power to suspend the order pending the appeal. This was agreed to and Mr. MacLachy was instructed to prepare a draft amendment and submit same for further consideration.

Jury Panels.

Mr. Wilson then suggested that the Code be amended to provide for cases in which a panel of jurors is reduced during a trial. The provisions of the Australian Code in this regard were referred to and generally approved. Mr. Wilson was asked to prepare a draft amendment accordingly.

Complaints—(concluded).

Mr. Des Brisay reported on a request from the Quebec Association for Cruelty to Animals asking that the time for filing a complaint be extended from three to six months. He advised against this amendment and his recommendation was approved.

Lord's Day Act and Cock Fighting—(concluded).

Mr. Sedgwick reported on the request of the Deputy Attorney-General of Quebec for an amendment to section 16 of the Lord's Day Act and also an amendment to subsection 2 of section 543 of the Criminal Code. The meeting did not approve of the suggested amendment to section 16 of the Lord's Day Act as it did not consider it advisable to extend this report to persons other than the Attorney-General himself.

Mr. Sedgwick then submitted that subsection 2 of section 543 of the Code should be amended by adding thereto "or shall be ordered to be destroyed as the Justices may direct". This was carried.

Spectators at Games—(concluded).

Mr. Hart reported on the request from the Manager of Pacific Exhibition that the Code be amended to create an offence in the case of persons who throw articles at games and thus impede the progress of these games. It was decided that section 222B as enacted in the latest amendments to the Criminal Code created an offence in such matters and that no further provision was necessary.

Notice of Appeal—(concluded).

Mr. MacLatchy reported on the letter from W. A. Begg, K.C., of Medicine Hat, suggesting an amendment to subsection 2 of section 1018 of the Code. It was decided that the provisions of section 1022 were sufficient to satisfy the objection raised by Mr. Begg and that no further amendment was necessary.

Jurors.

Mr. Wilson presented a draft amendment providing for cases in which a juror was discharged during the trial. This amendment was read and adopted as follows:

Where in the course of a trial any member of the jury dies or is discharged by the judge as being through illness, disqualification or other cause incapable of continuing to act, the jury shall nevertheless, subject to consent being given in writing by or on behalf of both the Crown Prosecutor and the accused and so long as the number of jurors is not reduced below ten, or in the Province of Alberta five, be considered as remaining for all the purpose of that trial properly constituted and the trial shall proceed and a verdict may be given accordingly.

Non-support—(concluded).

Mr. Wilson then presented the draft amendment to section 242. The Section approved of paragraphs (a), (b) and (c) except for the deletion of the words "under this section" in paragraph (c). The meeting disapproved paragraph (d).

FOURTH DAY

(MONDAY, SEPTEMBER 1ST, 1947.)

Sixth Session

9.30 a.m. — 12.30 p.m.

Automobiles—(concluded).

Mr. MacLatchy again brought up the question of providing for the suspension of any order made against driving under section 285 while an appeal is pending. Some discussion took place and the matter was referred back to Mr. MacLatchy for report at the next meeting.

Cautions.

Mr. Salterio then submitted the Saskatchewan report on the form of warning and the admission of statements by an accused. There was considerable disagreement with the Saskatchewan report and action was deferred.

Appeals to Supreme Court of Canada.

It was suggested that the grounds of appeal to the Supreme Court of Canada should be widened to allow an appeal on any point of law instead of cases of conflict only.

On motion of Mr. Sedgwick, the following resolution was adopted:

RESOLVED that subsection 1 of section 1025 of the Code should be repealed and the following substituted therefor:

1. Either the Attorney-General of the province or any person convicted of an indictable offence may appeal from the judgment of any court of appeal setting aside or affirming a conviction or dismissing an appeal against a judgment or verdict of acquittal in respect of an indictable offence, on any question of law, if leave to appeal is granted by a judge of the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced, or within such extended time thereafter as the judge to whom the application is made may for special reasons allow.

Admission of Statements.

Discussion took place on the report of the Saskatchewan Committee on the question of admission of statements by an accused.

Mr. Sedgwick proposed that section 685 of the Code be amended by adding thereto the following subsection:

This section shall not operate to render admissible evidence in proceedings under this Act statements made under compulsion of any statute other than this Act.

It was decided to circulate this amendment among the Attorneys-General for their comments.

Cautions—(concluded).

The question as to whether or not the statutory form of warning should be inserted in the Code was discussed. It was decided that no such form should be inserted in the Code.

Canada Evidence Act.

Mr. Salterio then referred to section 5 of the Canada Evidence Act and read the recommendations of the Saskatchewan Committee. The resolution of the Canadian Bar Association (page 144 of its proceedings for 1946) was read and was generally approved. The matter was referred to the Saskatchewan Committee for redrafting and presentation next year.

Accomplices.

The report of the Saskatchewan Committee on the corroboration of accomplices was submitted and after discussion it was decided to take no action.

Seventh Session

2.00 p.m. — 5.00 p.m.

Bail.

Mr. Salterio presented the Saskatchewan report on the Estreatment of Bail. As the members had not considered this report it was decided that copies of the report be sent to each member for consideration at the next meeting.

Penalty Provisions of the Code.

Mr. Salterio presented the report of the Saskatchewan Committee on the penalty sections of the Code. This report was not agreed to. It was suggested that there be a separate Part of the Criminal Code dealing exclusively with penalties and that this Part be divided into at least ten groups and that a penalty be established to which each offence would relate. The matter was referred back to the Saskatchewan Committee for further study and report.

Procedure in United States Federal Courts.

The criminal rules of procedure for the federal courts of the United States was then discussed and it was decided to take no action thereon.

Theft.

Mr. MacLachy reported on the revision of the theft section of the Code. He discussed the difference between forcible taking and embezzlement. The matter was referred back to the New Brunswick Committee for further study and report.

Report of Nominating Committee.

The nominating committee recommended that Mr. Rivard be re-elected as Chairman and Mr. Forsyth re-elected as Secretary. This was carried.

Canada Evidence Act—(concluded).

The report of the Saskatchewan Committee and also of the Nova Scotia Committee on amendments to the Canada Evidence Act was commented upon and it was decided to defer this matter to the next meeting.

Rule in McNaughton's case.

Mr. Hart reported that the Nova Scotia Committee was considering the rule in McNaughton's case and would report at the next meeting.

Identification of Criminals Act.

Mr. Salterio then read the report of the Saskatchewan Committee on the amendment of the Identification of Criminals Act. The matter was referred to Mr. Darby for report at the next meeting.

Summons duce tecum.

Mr. Salterio then presented a report suggesting revision of the summons *duce tecum*. It was decided to take no action on this matter.

Adjournment.

The meeting then adjourned to meet in plenary session with the Uniform Law Section of the Conference on Tuesday morning.

MINUTES OF THE CLOSING PLENARY SESSION

(TUESDAY, SEPTEMBER 2ND, 1947.)

12.00 noon — 12.30 p.m.

Report of Criminal Law Section.

Mr. Wilson, for the Criminal Law Section, made a verbal report on the work of this Section at this meeting and pointed out that the Section was honoured by the attendance of the Right Honourable J. L. Ilsley, K.C., Minister of Justice, at one of its sittings.

Mr. Wilson announced that Mr. Rivard had been re-elected as Chairman of the Section and Mr. Forsyth re-elected as Secretary.

The following resolution was adopted:

RESOLVED that the minutes of the Criminal Law Section be included in the 1947 Proceedings of the Conference.

Report of Nominating Committee.

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

<i>Honorary President</i>	W. P. Fillmore, K.C., Winnipeg.
<i>President</i>	W. P. J. O'Meara, K.C., Ottawa.
<i>Vice-President</i>	J. P. Hogg, K.C., Victoria.
<i>Secretary</i>	L. R. MacTavish, K.C., Toronto.
<i>Treasurer</i>	J. P. Runciman, Regina.

Appreciations.

The following resolution was adopted:

RESOLVED that the Conference greatly appreciated the courtesy and hospitality extended to its members during the Ottawa meeting by the Government of Canada, Mr. and Mrs. O'Meara, Dr. and Mrs. Coleman, and Messrs. Ker, Rivard and Tourigny; and that the Secretary be asked to send an appropriate letter of thanks to each.

Gratuities.

The following resolution was adopted:

RESOLVED that the Treasurer be authorized to issue a cheque for \$35 payable to Mr. O'Meara to be distributed as gratuities to those on the staff at the Parliament Buildings who were put to extra work by reason of this meeting.

Closing Remarks.

Mr. O'Meara addressed the members briefly and brought the meeting to an end.

APPENDIX A

A G E N D A

PART I

PLENARY SESSION

1. Opening of Meeting.
2. Approval of Minutes of Last Meeting.
3. President's Address.
4. Treasurer's Report.
5. Secretary's Report.
6. Appointment of Auditors.
7. Appointment of Representative to make Statement to the Canadian Bar Association.
8. Appointment of Nominating Committee.
9. Appointment of Press Representative.
10. Secretarial Assistance.
11. Publication of Proceedings.
12. Next Meeting.
13. Annual Grants.
14. Hours of Sitting.

PART II

UNIFORM LAW SECTION

1. Conditional Sales—Alberta Commissioners, or by delegation, British Columbia Commissioners (1946 Proceedings, page 21).
2. Extraordinary Remedies—Alberta Commissioners (1946 Proceedings, page 22).
3. Frustrated Contracts—Ontario Commissioners (1946 Proceedings, page 23.)
4. Mechanics' Liens—Manitoba Commissioners (1946 Proceedings, page 24).
5. Reciprocal Enforcement of Judgments—Dominion and Quebec Representatives and Ontario Commissioners (1946 Proceedings, page 21).
6. Defamation—Added to the Agenda at the request of the British Columbia Commissioners.
7. Testators' Family Maintenance—Added to the Agenda at the request of the Manitoba Commissioners.
8. New Business.

PART III

CRIMINAL LAW SECTION

1. Consideration of the Manitoba Report on the revision of Part XVI of the Criminal Code.
2. Consideration of the British Columbia Report on the revision of Part XV of the Criminal Code.
3. Consideration of the Ontario Report on the revision of Part XVIII of the Criminal Code.
4. Consideration of the Saskatchewan Report on the repeal of Part XVII of the Criminal Code.
5. Consideration of the Manitoba Report on the advisability of removing from the Criminal Code the sections dealing with evidence and placing the same in The Canada Evidence Act.
6. Consideration of the Saskatchewan Report on the revision of the penalty provisions of the Criminal Code and the advisability of consolidating the same into one penalty section.
7. Consideration of the Federal Rules of Criminal Procedure adopted by the U.S. Federal Courts.
8. Consideration of the New Brunswick Report on the revision of the theft sections of the Criminal Code.
9. Consideration of the Quebec Report on the revision of the gaming sections of the Criminal Code.
10. Consideration of the Nova Scotia Report on the revision of the forgery sections of the Criminal Code.
11. Consideration of the New Brunswick Report on the amendment to subsection 2 of section 1019 of the Criminal Code.
12. Consideration of Reports from the Nova Scotia and Saskatchewan Committees on the provisions of the Criminal Code respecting statements made by accused persons and the corroboration of accomplices.
13. Consideration of the Nova Scotia Report on estreatment of bail.
14. Consideration of the Alberta Report on extraordinary remedies.

15. Consideration of the Saskatchewan Report on the amendment of the Criminal Code to provide for medical examination of accused persons.
16. New Business.

PART IV

PLENARY SESSION

1. Report from the Criminal Law Section.
2. Appreciations, etc.
3. Report of Auditors.
4. Report of Nominating Committee.
5. Close of Meeting.

APPENDIX B

ADDRESS OF W. P. J. O'MEARA, K.C.,
PRESIDENT

To welcome the Commissioners on Uniformity of Legislation in Canada to an annual conference must always be a gratifying experience for your president. To me, this year, however, there is a very special satisfaction in greeting you for I am welcoming you to my home town. My fellow Dominion representatives on the Conference join me in expressing the earnest hope that your stay with us will be thoroughly enjoyable as well as completely fruitful. It will be our constant endeavour so long as you are here to make that wish come true.

Not infrequently there is a twinge of regret experienced at these meetings and this year is no exception although we may rejoice that the absences this year result from only two causes — promotions to higher office or retirement to well earned leisure. The grim reaper has not struck at us during the past year. Since last we met our good friend George Tweedy has been elevated to the Bench of the Supreme Court of Prince Edward Island. Our Vice President, Eric Silk, has been promoted to the status of Senior Solicitor and Counsel in the Department of the Attorney General for Ontario. Wilbur Jackett, who of recent years was one of the Dominion representatives, has been made Assistant Deputy Minister of Justice. It would seem that the new responsibilities of all three have militated against their continuance with their activities on the Uniformity Conference. Our felicitations on their promotions will go forward to them.

Bill Gray, whom we were accustomed to greet yearly, has, I understand, been superannuated. We may still hope to see him time from to time. Alex Blackwood also, I understand, has retired. I know that you will join me in good wishes to those who are no longer about the table and in welcoming the new faces, as well as in rejoicing in the presence of old familiar friends.

A very special welcome goes to the commissioners who join our body this year for the first time — Messrs. K. A. McKenzie, Edmonton; H. F. Muggah, A. Hart and J. B. Milner, all three of Halifax; W. E. Darby, K.C., Summerside, P.E.I.; D. M. Treadgold, Toronto; ~~G. C. Martin, K.C.~~, and E. C. Leslie, K.C., both of Regina, and E. A. Driedger, Ottawa.

Having thus disposed of those matters having to do with personnel it would perhaps be well for us to consider briefly the over-all purpose of our conference. Some of you gentlemen may not be aware that one of the objects for which the Canadian Bar Association was formed was to promote uniformity of legislation in Canada. To that end, the Association approved of the appointment by the various provinces of commissioners whose duty it became to seek the means of achieving that uniformity. The first conference of commissioners on uniformity of legislation in Canada was held in Montreal in September, 1918. We are now commencing the twenty-ninth annual meeting.

When, in 1921, 11-12 George V, Chap. 79, was enacted — An Act to incorporate The Canadian Bar Association — next in the recital of its purposes after the advancement of the science of jurisprudence, was the purpose to “promote the administration of justice and uniformity of legislation throughout Canada so far as is consistent with the preservation of the basic systems of law in the respective provinces”.

The achievement of that essential purpose of the Canadian Bar Association has been entrusted to this Conference since the inception of the project close to thirty years ago. Quietly and efficiently, with no fanfare of trumpets to herald their meetings and with little of applause or even of visible signs of appreciation to mark their achievements, uniform statutes have been prepared by the Conference on a wide range of subjects and many have been widely adopted. Uniform statutes prepared by the Conference are now in force in all provinces on legitimation and in all provinces except Quebec on life insurance, fire insurance, partnerships and sale of goods. Uniform Acts on assignment of book debts, commorientes and warehousemen's liens have been adopted in seven provinces, contributory negligence and evidence in six, intestate succession and reciprocal enforcement of judgments in five.

Many illustrious names also adorn our nominal role. A number still are in our midst, giants of the law, such as Isaac Pitblado, K.C., John D. Falconbridge, K.C., and Fred Mathers, K.C. Others have passed to immortality such as the late Sir James Aikins, the late Eugene Lafleur, K.C.; but I must not become tedious by a recital merely of great names. I am reminded of an anecdote told of a famous actor who, well past the allotted four score years and ten, still yearned to tread the boards as had been his wont and who ordinarily was somewhat difficult to restrain. Once he demanded of his physician to be shown the text of a new

play which he fondly believed was ready for his scrutiny. In desperation the good doctor handed him the city directory hoping that by granting the old Thespian's immediate whim he would avoid annoying him and that his attention would soon become distracted. Returning to the library more than an hour later, the doctor found the old gentleman still with the large directory clasped in his hands, running his index finger down the column, turning the page, running down the next column, turning the page, etc. He gazed at him spellbound for a moment and ventured to interrupt with the query "how do you find the plot?" "Ah, my good friend", came the deeply intoned reply, "I have not yet come to the plot but, great Jove, what a cast!"

So might we say, gentlemen, what a cast and what a task has been that of this Conference.

Let us not forget in that connection the time-honoured principle of "noblesse oblige". Because of the great opportunity for service which is ours and because of our distinguished background, great also is our responsibility.

True it is that we Commissioners receive no remuneration for these labours. Much of our work must necessarily be performed after regular working hours. It has become trite to say that the work of the Conference is insufficiently publicized. The Conference was precisely two years old when that thought was expressed in the following words of the first president: "Should not the Commissioners make the importance of their work in the public interest known to the people interested and claim from them, through their Governments, the needed assistance to facilitate and advance that work?" The president concluded his remarks upon that occasion with the prophetic words:

"In the making and consolidation of the law steady progress may not be satisfactory to restless classes, but is much more to be desired than impulsive plunging. The right direction is more important than the length of the stride. There is much pressing work to be done for the good of Canada, and it requires all citizens to do their share according to their several talents and capacities."

Gentlemen, we all know that disruptive forces are tirelessly at work in Canada today. The rule of law alone — aside from Christian faith — hold those forces in check. We have a wide land with many conflicting sectional interests. We believe in the theory on which our British North America Act is based whereby our provinces enact their own separate local laws respecting

property and civil rights. We believe that such a constitutional basis is completely compatible with the growth and maintenance of a strong national sentiment. Nevertheless we dare not ignore the disadvantages of our constitutional system, or disregard the remedies for faults that exist, or the preventive measures whereby their spread may be obviated.

During the late war, many phases of business were regulated by federal authority in the absence of uniform provincial regulation because, in the national emergency of war, the inefficiency resultant from locally divergent regulations with consequent uncertainty, duplication and even error, could not be tolerated. Today, rapidly expanding business is being confronted with divergencies among provincial laws in many matters of great concern to business and to our communities. Local points of view show honest differences; different provinces may be dealing concurrently with a common problem in different ways. Here lies the great opportunity for this Conference, equipped as it is, ready and willing to seek a common denominator when fractions of our nation tend to become factions.

To achieve what we conceive to be her destiny as a great young nation, Canada must achieve substantial uniformity throughout the provinces in matters affecting business, commerce and industry, from sea to sea. Only then, I confidently submit, can we reasonably expect that all should work together toward our common goal in that mutual understanding which alone begets success. To become a prosperous and happy nation, our component parts must comprise a harmonious whole. Much has been done to bring about uniformity of laws on many matters of vital concern to the businessmen of our provinces and thus of importance to all whose lives are touched at one point or another by the business of the country. Much still remains to be accomplished. This Conference, carrying out the precise terms of its constitution and the precise purpose for which it was founded, is the ready-made medium through which to reach that goal.

Therefore, I say to you, gentlemen, that it is not merely a privilege, rather it is a duty, for you Commissioners to carry back to your respective provinces the urgent plea that, in the interests of your province itself, in the interests of Canada, in the interests of all the people in all the provinces comprising Canada, the great and growing importance of seeking further uniformity of legislation, particularly in the commercial field, be recognized and propagated.

Let us not forget that our goal is uniformity of legislation throughout Canada "so far as is consistent with the preservation of the basic systems of law in the respective provinces".

We have delighted during the past few years in having our good friends from the Province of Quebec joining us in our deliberations, interpreting to us the devices whereby, under the Civil Code, results are achieved strikingly like those with which we in the common law provinces are familiar. If, by different routes, we can reach a uniform objective, we shall, as a nation, be the stronger for that incidental versatility.

If, in fulfilment of our constitutional purpose we can first show our fellow Canadians the importance of greater uniformity of legislation and then assist them by the preparation and presentation of draft uniform Acts on a steadily increasing variety of subjects of every-day applicability in the conduct of the nation's business, we shall have vindicated the hopes of our sponsors; we shall have justified our continuance as one of the most important agencies whereby the organized lawyers of Canada seek to assist the community; most of all we shall have done a substantial and lasting service to this land that we love.

APPENDIX C

TREASURER'S REPORT

FOR YEAR 1946-47

RECEIPTS

Cash in Bank August 17, 1946.....	\$868.94
Subscription from Government of Canada	50.00
Contributions from—	
Saskatchewan.....	50.00
Alberta.....	50.00
Manitoba.....	50.00
Ontario.....	50.00
British Columbia.....	50.00
New Brunswick.....	50.00
Prince Edward Island.....	50.00
Quebec.....	50.00
Nova Scotia.....	50.00
Bank interest.....	11.81

DISBURSEMENTS

Gratuities to employees at Court House, Winnipeg.....	20.00
Secretarial expenses.....	40.00
National Printers Limited, Ottawa.....	347.34
Noble Scott Company Limited, Toronto..	24.84
Commission and excise stamps on bank money orders.....	1.42
Exchange on cheques.....	.58
	<hr/>
	\$434.18
Balance—Cash in Bank.....	946.57
	<hr/>
	\$1,380.75 \$1,380.75

Regina, August 22, 1947.

J. P. RUNCIMAN,
Treasurer.

Audited and found correct,

Ottawa, August 29, 1947.

J. P. HOGG,
ALFRED TOURIGNY,
Auditors.

APPENDIX D

REPORT OF THE SECRETARY, 1947

There are a few matters on which it is my duty to report as Secretary.

Secretarial Assistance

At the last meeting the usual resolution was passed authorizing the Secretary to employ such secretarial assistance as might be required, to be paid for out of the funds of the Conference. Acting on this authority I employed a stenographer and a proof reader in my office at a cost of \$40, which is shown in the Treasurer's report. This is a bit less than similar expenditures in recent years. In addition, \$8.64 was paid from the Secretary's petty-cash account for a supply of letterhead stationery. I will be pleased if the auditors will check this account at this meeting, as it has not been audited for some time.

1946 Proceedings

Pursuant to the resolution in that behalf passed at the last meeting, I prepared a report of the proceedings of that meeting, which, as usual, was printed in book form and as an addendum to the year-book of the Canadian Bar Association.

During my tenure of this office several innovations have been introduced in the style of the annual volume of Proceedings in the interests of clarity and convenience, such as the addition of a table of contents, page references in the text to the appendices, in 1944 an alphabetical list of past and present members, recasting of the preface now called an historical note, additions to the sub-headings to indicate the continuation or conclusion of the discussion of a subject, and so on.

If silence is a sign of approval, then these intended improvements have been an unqualified success. However, speaking seriously, if any member has any further thoughts on the matter, I shall be glad to have them.

Also it would be appreciated if each of you would check the table of model statutes on pages 12-13 of the 1946 Proceedings and inform me of any changes that should be made as a result of legislation passed this year.

Copies of the book were distributed to the members and to those whose names appear on the mailing list. In this connection,

it would be helpful if the members would take occasion during the course of this meeting to look over the current mailing list, which I have here, with a view of making any desired deletions or additions, as I believe the list is not as up-to-date as it might be.

Publicity

It will be recalled that there is outstanding the matter of the joint publicity project to which the Canadian Bar Association contributed \$250 in 1945. The proposal was for the Conference to allocate a similar sum and to prepare, print and distribute a pamphlet on the work of the Conference to every lawyer in Canada accompanied by a letter from the President of the Bar Association. Owing to several factors which it is unnecessary to review at this time, it has been impossible to complete this undertaking. The matter was discussed by Mr. O'Meara and the Council of the Bar Association at its mid-winter meeting in Quebec last February with the result that the Bar Association has cut the strings, if any, attached to its contribution, so that the Conference is now free to use the money for its purposes in whatever way it sees fit. I suggest that the matter be reconsidered in the light of these developments.

Secretarial Letters

In accordance with your instructions last meeting, the several letters of sympathy, congratulations, appreciation and the like mentioned on pages 19, 25 and 26 of the 1946 Proceedings were sent.

Bar Review Article

At the request of the editor of the Canadian Bar Review, I prepared an article entitled "Uniformity of Legislation in Canada — An Outline", which appeared in the Review last January, and subsequently an off-print in pamphlet form was sent to each member.

Respectfully submitted.

L. R. MACTAVISH,
Secretary.

August, 1947.

APPENDIX E

REPORT OF THE ALBERTA COMMISSIONERS
RESPECTING EXTRAORDINARY REMEDIES

Draft uniform rules respecting extraordinary remedies were prepared and submitted to the 1946 Conference by the Alberta Commissioners. The report and draft uniform rules will be found in Appendix D of the 1946 Proceedings on page 61.

The criminal law aspects of the draft rules were referred to the Criminal Law Section of the Conference, which in turn, referred them to the Alberta Commissioners for study and report. The civil aspects of the draft rules were also referred to the Alberta Commissioners for study and report. (See 1946 Proceedings, page 22).

Extraordinary remedies are procedural. As a result of *In re Fred Storgoff Rex v. Storgoff* (1945) S.C.R. 526; (1945) 3 D.L.R. 673, the rule seems to be that the character (civil or criminal) of these extraordinary remedies is governed by the character of the proceedings out of which they arise. The *Storgoff* case held that habeas corpus procedure may be either civil or criminal, depending on the nature of the proceedings in which habeas corpus is sought.

Consequently there must be both civil rules and criminal rules relating to extraordinary remedies.

Under section 91(27) of The British North America Act, the Dominion has exclusive power to legislate in relation to "the criminal law . . . including the procedure in criminal matters". By section 576(b) of the Criminal Code, the Dominion gives power to every superior court of criminal jurisdiction to make rules "for regulating in criminal matters the pleading, practice and procedure in the court, including the subjects of mandamus, certiorari, habeas corpus, prohibition, quo warranto, bail and costs". But rules made under section 576 could not apply to applications for extraordinary remedies arising in civil proceedings.

Under section 92(14) of The British North America Act the province has exclusive power to legislate in relation to "The administration of justice in the province . . . including procedure in civil matters". In each province the authority empowered to make Rules of Court under The Judicature Act or corresponding Act should make rules relating to extraordinary remedies in civil proceedings.

There would appear to be no reason why the criminal rules made pursuant to section 576 of the Criminal Code should not be identical with the civil rules made pursuant to the appropriate provincial legislation, if the same set of rules is properly promulgated by both authorities. This, of course, would be very desirable.

It is suggested that the draft uniform rules submitted to the 1946 Conference be considered by a joint committee of the Uniform Law Section and the Criminal Law Section, and that the rules be sent by that committee to all members of the Conference. If the draft rules are not disapproved by two or more provinces by the 30th day of June, A.D. 1948, the committee may recommend the same to the members of the Conference for adoption.

It is to be noted that the draft uniform rules provide for an appeal to the Appellate Division of the Court (or Court of Appeal). In provinces where the Court of Appeal is a separate court, an amendment to section 576 of the Criminal Code will be required to provide for appeals in criminal matters for the reasons outlined in the 1946 report.

All of which is respectfully submitted.

Dated at Edmonton, this 20th day of August, 1947.

H. J. WILSON, K.C.,
K. A. MCKENZIE,
Alberta Commissioners.

APPENDIX F

REPORT OF THE ONTARIO COMMISSIONERS ON THE
UNIFORM FRUSTRATED CONTRACTS ACT

At the meeting of the Conference on Uniformity of Legislation held on Monday, the 26th of August, 1946, the following resolution was adopted:

“RESOLVED that the draft Uniform Frustrated Contracts Act attached to the 1946 Manitoba report be referred to the Ontario Commissioners for consideration and report to next year’s meeting, and that particular consideration be given as to whether subsection 5 of section 4 should remain in the draft.”

(For reference see 1945 Proceedings, pp. 27 and 188; and 1946 Proceedings, pp. 23 and 75).

The material which has been consulted, and which will be found useful in a study of the draft Frustrated Contracts Act, apart from the cases cited in the material, is as follows:

1. Halsbury’s Statutes, Vol. 36, p. 50.
2. Law Reform (Frustrated Contracts) Act, 1943, by Dr. Glanville L. Williams.
3. An article in Vol. 60 of the Law Quarterly Review, p. 160, by Arnold D. McNair.
4. An article in Vol. 61 of the Law Quarterly Review, p. 97, by H. C. Gutteridge.
5. An article in Vol. 62 of the Law Quarterly Review, pp. 180 to 184 by J. H. C. Morris.
6. Two articles by Dean John D. Falconbridge, in Vol. 23 of the Canadian Bar Review, at pp. 43 and 469, respectively.
7. Essays on the Conflict of Laws by John D. Falconbridge, at pp. 364, 367.

The draft Uniform Act of the Manitoba Commissioners is to be found at page 77 of the 1946 Proceedings. It appears unnecessary to repeat it here.

This draft Act follows very closely the English Act of 1943. While the wording of the English Act may, in some respects, be cumbersome, and perhaps somewhat lacking in clarity, we are of opinion that it would be unwise, by reason of the desirability of

having uniformity so far as possible between the English Act and our Uniform Act, to redraft it. Furthermore, if the English Act is followed, any decisions with respect to the same in the English Courts may be found very useful in our Courts. In this connection it might be well if the words and figures "subsections (1), (2) and (3)" and "subsections (1), (2), (3) and (4)" in subsections 4 and 5 respectively in section 3 of the Manitoba draft be struck out and the words "the foregoing provisions of this section" substituted in each instance to accord with the English Act.

Section 3, subsection 1 of the draft Act provides that the application of the Act shall be limited to "a contract governed by the law of the Province". This follows the English Act which uses the words "a contract governed by English Law".

After a careful consideration we are of opinion that these words should be retained in the draft.

Dean Falconbridge deals with this point very clearly and concisely at page 365 of his *Essays on Conflict of Laws*, as follows:

"If a court finds that the proper law of a contract is not English law, the provisions of the statute of 1943 are inapplicable. If the proper law is, for example, the law of Ontario, or the law of any other common law province of Canada in which the statute has not been adopted by provincial statute, or the law of Northern Ireland, then it is immaterial whether the forum is in any of these countries or is in England; a party may of course be entitled to the remedy established by the *Fibrosa* case, but the remedies provided for by the statute of 1943 will not be available. Conversely, if a court in any of these countries finds that the proper law of a contract is English law, the ampler remedies against unjust enrichment provided for by the statute of 1943 are available."

This statement with reference to the English Act is equally applicable in each province to the uniform Act. While Dr. Williams objects to the use of the words "a contract governed by English Law" we prefer to accept the argument of Dean Falconbridge, Arnold D. McNair, H. C. Gutteridge and J. H. C. Morris.

The Manitoba Commissioners suggest that an additional subsection, numbered (1A) be added to section 3.

If we accept the interpretation of subsection (1) of section 3 as set out in the quotation from Dean Falconbridge, cited above,

it not only becomes unnecessary to include subsection (1A) but such a subsection might be held to narrow the application of subsection (1) of section 3.

At page 78 of the 1946 Proceedings, the Manitoba Commissioners suggest an alternative subsection (4) to section 3. Clause (a) of alternative subsection (4) covers the matters now appearing in subsection (4). Clause (b) of alternative subsection (4) is as follows:

“deduct from the amount of the expenses so incurred the value of any benefit (other than a payment of money to which subsection (2) applies) obtained by the person incurring the expenses as a result of the performance, or partial performance, by him of his obligations under the contract.”

A careful consideration of subsection (3) of section 3, and especially the following words:

“Where any party to the contract has . . . obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case”

appears to us to cover what has been attempted by clause (b) of alternative subsection (4). Furthermore, subsection (4) of section 3 merely is intended to clarify, for the assistance of the Court, what expenses are to be taken into account. We are, therefore, of opinion that alternative subsection (4) is quite unnecessary.

Subsection (5) of section 4 of the draft Act follows the English Act. In this subsection certain matters are excepted from the application of the Act. We can see no satisfactory reason for making these exceptions. In many instances the exceptions would result in a real hardship, which would be avoided if the Act were applicable. As the law now stands, prepaid freight cannot be recovered even though the vessel fails to complete the voyage owing to impossibility, e.g. loss of vessel and cargo. The reason given by the Law Revision Committee for making this exception is that “since the rule relating thereto although frequently criticized has become so firmly fixed that it would be undesirable to do so,” that is, to change it.

At page 55, Vol. 36 of Halsbury's Statutes of England, 1943, appears the following:

“The reason for this provision is that there have long been established as part of the general maritime law the two principles that advance freight is not repayable even though ship and cargo be lost before delivery can be effected, and, secondly, that unless otherwise agreed, freight (other than advance freight) is only payable if the contract is completely performed. Any alteration which affected this would involve substantial modification of present insurance practice which seemed unnecessary and undesirable.”

Under clause (b) of subsection (5) of section 4 the Act does not apply to contracts of insurance save as provided by subsection (5) of section 3.

The main reason given for this is that if the law were made applicable, it would cause uncertainty in the matter, and that it is undesirable to alter the principles of insurance law; also that there is no general complaint about it by people who insure, and that the actuarial calculations of insurance companies are based upon it. This does not seem to us to be a satisfactory reason for failing to change the law, when, in our opinion the present law often-times does work a hardship.

Clause (c) of subsection (5) of section 4 appears to say that the Act does not apply to any contract for the sale of specific goods that perish, whether the risk passed to the buyer before the date of the perishing or not. This undoubtedly would cause hardship in many cases.

This matter is dealt with at some length by Dr. Williams, and he concludes that this restriction on the scope of the Act would result in hardship.

Dean Falconbridge, Gutteridge, McNair and Morris all agree that these restrictions ought not to appear in the Act.

It appears to us to be unnecessary to enlarge on these matters further. They are all dealt with at length in Dr. Williams' book, at pages 72 to 90, and in some of the other authorities listed on the first page of this report.

We are therefore of opinion that the draft Act, as drafted by the Manitoba Commissioners, without subsection (1A) of section 3 and without the alternative subsection (4) of section 3, and deleting subsection (5) of section 4, should be adopted.

F. H. BARLOW,
L. R. MACTAVISH,
D. M. TREADGOLD.

APPENDIX G

REPORT OF THE MANITOBA COMMISSIONERS ON
THE UNIFORM MECHANICS' LIEN ACT

At the 1946 session of the Conference the following resolution was passed:

“RESOLVED, that the draft Uniform Mechanics' Lien Act be referred back to the Manitoba Commissioners for completion of the draft and for further consideration in the light of the discussions at this meeting and any mailed comments that may be received by the Manitoba Commissioners; and that the Manitoba Commissioners report thereon at the next meeting”.

The Manitoba Commissioners now present a further draft, this time of a complete statute.

A number of changes have been made in the nineteen sections included in the 1946 draft. Some of these were made as a result of the discussions in 1946, others have been made because in our judgment they effected improvements.

The only comments received by mail were from Mr. R. Wherry and from Mr. A. S. Marriott, Assistant Master of the Supreme Court of Ontario forwarded through Mr. Wherry.

Mr. Wherry's point was that the right to begin an ordinary action for the debt concurrently with a mechanics' lien action for the same debt, should be secured.

We suggest that this point is covered by subsection (1) of section 31 of the draft. We are informed that under the Manitoba practice such an action would probably be stayed pending the outcome of the mechanics' lien action; and moneys garnisheed in the first-mentioned action would be called in to be accounted for in the mechanics' lien action.

Mr. Marriott's comment arose out of the decision in *Howard v. Herod* 41 O.W.N. 198. We have attempted to deal with the point in subsection (3) of section 53 of the present draft.

Under the present statutes of Ontario and New Brunswick a lien need not be registered if, before the time for registration expires an action in which the lien may be enforced is begun. We have taken the view that there should be registration if the lien is to be preserved, and in the draft submitted we have followed the statutes of the western provinces and required registration within the time limited.

Under the Alberta and Saskatchewan Acts a registered lien does not expire, even although the lienholder does not bring action, unless a person having an interest causes the lienholder to be served with a notice to begin action. We have in this draft followed the provisions in other provinces requiring an action to be begun within a time limited if the lien is to survive.

In dealing with discharges of lien, we have made it clear in subsection (2) of section 30 that the discharge of lien need acknowledge payment of only part of the amount claimed in the lien, if such is the fact.

Subsection (2) of section 26 of the present Ontario Act and subsection (2) of section 27 of the present Alberta Act we found it difficult to interpret, since it is not clear to us how the lienholder who has negotiated a promissory note could still be the holder of it. Therefore in subsection (2) of section 31 of the draft now submitted we have chosen to follow the provisions of subsection (2) of section 26 of the present Manitoba Act and a similar provision in the New Brunswick Act.

There are in several of the provincial Acts provisions of a more or less local character which provinces enacting the Uniform Act may desire to incorporate.

With regard to the enforcement or procedural sections, beginning with section 33 of this draft, we realize that there may be considerable diversity in procedure in the several provinces and uniformity is probably neither attainable nor necessary. To complete the draft therefore we have simply adopted, in large measure, the present Manitoba provisions, incorporating however, certain provisions that are found elsewhere in the existing Act, but which we felt more properly belonged to the procedural sections.

Finally we would suggest that at the close of this Conference the draft be submitted to the commissioners of another province for further review.

All of which is respectfully submitted.

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

Manitoba Commissioners.

THE UNIFORM MECHANICS' LIEN ACT

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

SHORT TITLE

1. This Act may be cited as "The Mechanics' Lien Act".

INTERPRETATION

2. In this Act,—

- (a) "contractor" means a person contracting with, or employed directly by, the owner or his agent to do work or to furnish material for any of the purposes mentioned in this Act, but does not include a labourer;
- (b) "court" means the County Court of the district in which the property affected by the lien is situated;
- (c) "highway" includes any road, road allowance, street, lane, thoroughfare, bridge, subway, pier, ferry, square, and public place, appropriated to the public use;
- (d) "improvement" includes anything constructed, erected, built, placed, dug or drilled on or in land except a thing that is not attached to, or intended to be or become part of, the realty;
- (e) "judge" means a judge of the court;
- (f) "labourer" means a person employed for wages in any kind of labour whether employed under a contract of service or not;
- (g) "lienholder" means a person entitled to a lien under this act;
- (h) "material" includes every kind of movable property, and without restricting the generality of the foregoing, includes machinery;
(Query: Is definition of "material" required?)
- (i) "owner" means a person having an estate or interest in land upon, or in respect of, which work is done or material is furnished at his request, express or implied, and
 - (i) upon his credit, or
 - (ii) upon his behalf, or
 - (iii) with his privity and consent, or
 - (iv) for his direct benefit,

and all persons claiming under him whose rights are acquired after the beginning of the work or the furnishing of the material in respect of which a lien is claimed;

(j) "person" includes a body corporate or politic, a firm, partnership or association;

(k) "proper registry office", when used with reference to, or in respect of, the registration, recording, filing, discharging or vacating, of any claim of lien or other instrument or document, or of any dealing, relating to or affecting any land, means the registry office of the district in which the land is situated and includes a land titles office;

(Note: This paragraph may be altered to suit the requirements of each province.)

(l) "registrar" includes a district registrar;

(Note for Conference: Paragraphs (l) and (m) will have to be varied in each province as may be necessary.)

(m) "registry office" includes a land titles office;

(n) "sub-contractor" means a person not contracting with or employed directly by the owner or his agent for the doing of any work, but contracting with, or employed by, a contractor, or under him by another sub-contractor, but does not include a labourer;

(o) "wages" means money earned by a labourer for work done, whether by time or piece work or otherwise;

(p) "work" includes the doing of work and the performance of services upon, or in respect of, any improvement, and also includes the breaking of any land or the clearing thereof of timber or scrub.

(N.B., 2; Ont., 1; Man., 2; Sask., 2; Alta., 2; B.C., 2.)

3. This Act shall not apply to a highway or to any work done or caused to be done thereon by a municipality.

(N.B., 3; Ont., 2; Alta., 3; B.C., 3.)

(Note for Conference: If the Interpretation Act of each province does not contain a sufficiently inclusive definition of "municipality" such additional or other words or expressions as may be requisite may be substituted for the word "municipality" in section 3 or a definition of "municipality" may be included in section 2. This section may be omitted in provinces where the title to highways is vested in the Crown).

MECHANICS' LIEN

4. (1) A person who,—

- (a) does, or causes to be done, any work upon, or in respect of, an improvement; or
- (b) furnishes any material to be used in an improvement;

for an owner, contractor, or sub-contractor, shall by virtue thereof, and subject as herein otherwise provided, have a lien for wages and the price of the work or material, as the case may be, or for so much thereof as remains owing to him, upon the estate or interest of the owner in the improvement and in the land occupied or benefitted thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the material is furnished, as such estate or interest exists at the time the lien arises, or at any time during its subsistence.

(N.B., 6(1); Ont., 5(1); Man., 4(1), 5(1); Sask., 4(1), 7(1); Alta., 6(1); B.C., 6, 7.)

(2) Save as herein provided, the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor.

(N.B., 10; Ont., 9; Man., 7; Sask., 9; Alta., 13(1); B.C., 8.)

(3) Save as herein provided, where the lien is claimed by any person other than the contractor, the amount for which it may be enforced shall be limited to the amount owing to the contractor for whom, or for whose sub-contractor, the work or service has been done or the materials have been furnished.

(N.B., 11; Ont., 10; Man., 8; Sask., 10; Alta., 13(2).)

(4) No lien shall be registered if the amount of the claim or joined claims is less than twenty dollars.

(Man., 4(1); Sask., 17(3); Alta., 18(7); B.C., 21.)

(5) Material shall be deemed to be furnished to be used within the meaning of this Act when it is delivered either on the land upon which it is to be used, or on such land or in such place in the immediate vicinity thereof as is designated by the owner or his agent, or by the contractor or sub-contractor.

(N.B., 6(1); Ont., 5(1); Alta., 6(2).)

(6) Where material furnished to be used as set out in subsection (1) is incorporated in an improvement, the lien shall attach as herein provided, notwithstanding that the material may not have been delivered in strict accordance with subsection (5).

(N.B., 6(2); Ont., 5(2); Alta., 6(3).)

5. No agreement shall deprive any person not a party thereto and otherwise entitled to a lien under this Act of the benefit of the lien.

(N.B., 5; Ont., 4; Man., 3; Sask., 6; Alta., 5.)

6. Every agreement, oral or written, express or implied, by any labourer that this Act shall not apply or that the remedies provided by it shall not be available for his benefit, shall be null and void.

(N.B., 4(1); Ont., 3(1); Sask., 3; Alta., 4(1); B.C., 4(1).)

7. (1) A payment made for the purpose of defeating or impairing a claim for a lien under this Act shall for that purpose be null and void.

(Sask., 15.)

(2) A conveyance, mortgage, or charge, of or on land given in payment of or as security for, a lien upon that land arising under this Act, whether given before or after the lien arises, shall, as against any other person entitled under this Act to a lien on the same land, be deemed to be fraudulent and void.

(Ont., 13(3).)

8. The lien shall arise on the date of the beginning of the work or the furnishing of the first material.

(Ont., 7(3) (a); Man., 4(2); Alta., 7.)

9. (1) The lien shall have priority over all judgments, executions, attachments, garnishments, and receiving orders, recovered, issued or made, after the lien arises.

(N.B., 14(1); Ont., 13(1); Man., 11(1); Sask., 13(1).)

(2) The lien, upon registration, shall, subject to subsection (3), have priority over all claims under conveyances, mortgages and other charges, and agreements for sale of land, registered or unregistered made by the owner after the lien arises.

(3) A mortgage that is registered after the lien arises, shall have priority over a lien for material furnished to the extent of any payments or advances made thereunder before the person making such payments or advances has received notice in writing of the lien from the lienholder.

(N.B., 14(1); Ont., 13(1); Man., 11(1); Sask., 13(1); Alta., 11(1).)

(4) Where land upon, or in respect of, which the work is done or material furnished, is encumbered by a mortgage or other charge registered before a lien arises, the mortgage or other charge shall,—

- (a) have priority over the lien for moneys owing under the mortgage or charge at the time the lien arises, but only to the extent of the value of the land at that time; and
- (b) have priority over a lien for material furnished to the extent of any payments or advances made thereunder after the lien arises but before the person making the payments or advances has received notice in writing of the lien from the lienholder.

(N.B., 8(3); Ont., 7(3); Man., 5(3); Alta., 11(1) (2); B.C., 9(2).)

(5) Where the owner has an estate or interest in the land as purchaser under an agreement for sale and the purchase money, or part thereof, is unpaid, the vendor shall have priority over the lien only to the extent of the value of the land at the time the lien arose.

(N.B., 8(4); Ont., 7(4); Man., 11(2); Sask., 13(2); Alta., 11(3).)

10. (1) Except as otherwise provided herein, no lienholder shall have any priority over, or preference to, another lienholder; and except as otherwise provided herein, all lienholders shall rank *pari passu* for the amounts for which their liens may respectively be enforced; and the proceeds of any sale shall, except as aforesaid, be distributed among the lienholders *pro rata*.

(N.B., 14(2); Ont., 13(2); Man., 11(3); Sask., 13(3).)

(2) A lien for wages shall, for all purposes under this Act and to the extent of _____ days wages, have priority over liens not for wages; and all liens for wages shall rank *pari passu*.

(N.B., 15(1); Ont., 14(1); Man., 12(1); Sask., 14(1); Alta., 17(1).)

(Note for Conference: It is intended that the above subsection shall give liens for wages priority on whatever amount is retained by the owner or is realized on a sale of the property, even if more than 20% or 15%.)

(3) Every device by an owner, contractor, or sub-contractor adopted to defeat the priority given by this Act to a labourer for his wages shall be null and void.

(N.B., 15(5); Ont., 14(5); Man., 12(5); Sask., 14(5); Alta., 17(5); B.C., 18.)

11. Where at the request of the husband of a married woman, work is done or material is furnished upon or in respect of her land, or of land in which she has an interest or an inchoate right of dower, the husband shall, for the purposes of this Act, be conclusively presumed to be acting as her agent, as well as for himself, in respect of such part of the work as is done, or of the material as is furnished, before the person doing the work or furnishing the material has notice to the contrary; and likewise and to

the same extent a wife under similar circumstances shall be conclusively presumed to be acting as the agent of her husband as well as for herself for the purposes of this Act.

(N.B., 7; Ont., 6; Sask., 5; Alta., 9; B.C., 5.)

12. (1) Where the estate or interest upon which the lien attaches is leasehold, if the lessor consents thereto in writing, his estate or interest shall also be subject to the lien.

(N.B., 8(1); Ont., 7(1); Man., 5(2); Sask., 7(2); Alta., 10(1).)

(2) No forfeiture or attempted forfeiture of a lease on the part of a lessor, or cancellation or attempted cancellation of a lease, except for non-payment of rent, shall deprive any person otherwise entitled to a lien under this Act of the benefit of the lien; and that person may pay any rent due or accruing due and the amount so paid may be added to his claim.

(N.B., 8(2); Ont., 7(2); Alta., 10(2).)

13. Where any property upon which a lien arises is wholly or partly destroyed by fire any money received or receivable by an owner or by a prior mortgagee or chargee, by reason of insurance thereon, shall take the place of the property so destroyed and shall, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection (4) of section 9, be subject to the claims of all persons for liens to the same extent as if the moneys were realized by a sale of the property in an action to enforce a lien.

(N.B., 9; Ont., 8; Sask., 8; Alta., 12; B.C., 12.)

14. (1) During the existence of a lien no part of any material affected thereby shall be removed to the prejudice of the lien.

(N.B., 16(1); Ont., 15(1); Man., 13(1); Sask., 16(1); Alta., 18(1); B.C., 17.)

(2) Material actually delivered to be used for the purpose set out in section 4 shall be subject to a lien in favour of the person furnishing it until it is placed in the improvement, and it shall not be subject to execution or other process to enforce any debt other than for the purchase money thereof due to the person furnishing the same.

(N.B., 16(2); Ont., 15(2); Man., 13(3); Sask., 16(3); Alta., 18(2).)

15. (1) An owner liable upon a contract under or by virtue of which a lien may arise shall, as the work is done, or the material is furnished, under the contract, deduct from any payments to be made by him and retain from the contractor for a period of thirty days after the completion or abandonment of the contract, an amount equal to twenty per centum of the value of the work

done and of the material furnished to be used, irrespective of whether the contract provides for partial payments, or payment on completion of the contract.

(N.B., 12(1); Ont., 11(1); Man., 9(1); Sask., 11(1); Alta., 14(1).)

(2) The value mentioned in subsection (1) shall be calculated on the basis of the contract price, or, if there is no specific contract price, then on the basis of the actual value of the work and material.

(N.B., 12(1); Ont., 11(1); Man., 9(1); Sask., 11(1); Alta., 14(1).)

(3) Where the contract price or actual value of the work and material exceeds fifteen thousand dollars, the amount to be retained shall, except as hereafter mentioned, be equal to fifteen per centum, instead of twenty per centum, of the value of the work and materials calculated as aforesaid; but shall not be less than the sum required to be retained pursuant to subsection (1) where the contract price or actual value is fifteen thousand dollars.

(N.B., 12(2); Ont., 11(2); Man., 9(1); Alta., 14(2).)

(4) Every lien shall be a charge upon the amount directed, by this section, to be retained in favour of the lienholders who have done work or furnished material for,—

- (a) the contractor to whom the moneys so required to be retained are respectively payable by the owner; or
- (b) his sub-contractor.

(N.B., 12(3); Ont., 11(3); Man., 9(2); Sask., 11(1); Alta., 14(3).)

(5) All payments up to the amount directed to be retained by subsection (1) or subsection (3), as the case may be, made in good faith by an owner to a contractor, before notice in writing of the lien is given by the person claiming the lien to the owner, shall operate as a discharge *pro tanto* of the lien.

(N.B., 12(4); Ont., 11(4); Man., 9(3); Sask., 11(2); Alta., 14(4).)

(6) Where a contractor makes default in completing his contract, the amount required to be retained under this section shall not, as against a lienholder, be applied by the owner to the completion of the contract or for any other purpose.

(N.B., 15(4); Ont., 14(4); Man., 12(4); Sask., 14(4); Alta., 17(4).)

16. (1) Where a lienholder gives notice in writing of his lien to the owner, stating the amount for which the lien is claimed, the owner shall retain from the amount payable to the contractor under whom the lien is derived the amount stated in the notice in addition to the amount retained under section 15.

REGISTRATION OF LIEN

20. (1) A claim of lien upon, in respect of, or affecting, any land or interest therein may be registered in the proper registry office.

(N.B., 17(1); Ont., 16(1); Man., 14(1); Sask., 17(1); Alta., 19(1); B.C., 19(1).)

(2) A claim of lien shall state,—

(a) the several names and addresses of

(i) the lienholder;

(ii) the owner, or the person whom the lienholder or his agent believes to be the owner, of the property to be charged; and

(iii) the person for whom, and upon whose credit, the work was or is to be done or the material was or is to be furnished;

(b) the date upon which the last work was done or the last material furnished; or, where the claim is registered before the work or furnishing of material is completed, the time or period within which the same is to be done or furnished;

(c) a short description of the work done or to be done or of the material furnished or to be furnished;

(d) the sum claimed as due or to become due;

(e) a description sufficient for registration of the land or interest therein to be charged; and

(f) the date of expiry of the period of credit, if any, given by the lienholder.

(N.B., 17(1); Ont., 16(1); Man., 15(1); Sask., 17(1); Alta., 19(1); B.C., 19(1).)

(3) A claim of lien may be made in one of the Forms Nos. 1 to 3 set out in the Schedule, and shall be made and registered in duplicate; and shall be verified by the affidavit of the lienholder or of his agent or assignee having personal knowledge of the matters required to be verified, and may be made in Form No. 4 set out in the Schedule.

(N.B., 17(1) (2); Ont., 16(1) (2); Man., 15(2); Sask., 17(2); Alta., 19(1) (2); B.C., 19(1) (2).)

(4) Where an affidavit of verification is made by an agent or assignee, it shall state that he has a personal knowledge of the matters required to be verified.

(N.B., 17(2); Ont., 16(2); Man., 14(2); Sask., 17(2); Alta., 19(4); B.C., 19(2).)

(5) Every claim of lien shall show an address for service on the lienholder; at or to which address, after registration of the claim, services to be made or notices to be mailed under this Act, on or to the lienholder, may be made or mailed.

(Man., 14(3).)

(6) A lienholder may at any time change his address for service by notifying the registrar in writing of the same; and thereupon the registrar shall note the change of address upon the claim of lien.

(Sask., 17(4).)

(7) When it is desired to register a claim of lien against a railway, it shall be sufficient description of the land of the railway company to describe it as the land of the railway company; and every such claim may be registered in the registry office of every district within which the lien is claimed to have arisen.

(N.B., 17(3); Ont., 16(3); Alta., 20.)

21. (1) A claim of lien may include claims against any number of properties.

(N.B., 18(1); Ont., 17(1); Man., 16; Sask., 18.)

(2) Any number of persons claiming liens upon the same property may unite in making a claim; but each lien shall be verified as provided in section 20.

(N.B., 18(1); Ont., 17(1); Man., 16; Sask., 18.)

22. (1) Substantial compliance with sections 20 and 21 shall be sufficient; and no lien shall be invalidated by failure to comply with any requirement of those sections unless, in the opinion of the judge who tries an action, the owner, contractor, sub-contractor, mortgagee, or some other person, is prejudiced thereby, and then only to the extent to which he is so prejudiced.

(2) Nothing in this section shall dispense with registration of a claim of lien.

(N.B., 19; Ont., 18; Man., 17; Sask., 19; Alta., 21; B.C., 20.)

(3) Where, in the opinion of the judge, some person has been prejudiced by failure on the part of the lienholder or his agent to comply strictly with one or more of the provisions of sections 20 and 21, the judge may allow all such amendments to be made as are required to comply with those sections and to permit the action to be tried without prejudice to any person.

(B.C., 20.)

23. (1) The registrar, upon payment of the proper fee, shall register the claim of lien, describing it as a "Mechanic's Lien", and it shall appear as an encumbrance against the land,

or the estate or interest in land, therein described.

(2) The fee payable on registration of a claim of lien shall be as follows:

For registration of a claim of lien for wages. .25 cents

For registration of any other claim of lien...\$1.00

(N.B., 20; Ont., 19; Man., 18; Sask., 20.)

24. (1) A claim of lien for wages may be registered at any time before the expiration of thirty days from the doing of the last works for which the wages are owing and the lien is claimed.

(N.B., 22; Ont., 21; Man., 20; Sask., 23; Alta., 22; B.C., 19.)

(2) A claim of lien for material may be registered at any time before the expiration of thirty days from the furnishing of the last material so furnished.

(3) A claim of lien for services may be registered at any time before the expiration of thirty days from the completion of the services.

(4) A claim of lien by a contractor or sub-contractor may, in cases not otherwise provided for, be registered at any time before the expiration of thirty days from the completion or abandonment of the contract as the case may be.

(5) Where a contract is under the supervision of an architect, engineer, or other person, upon whose certificates payments are to be made, a claim of lien by the contractor may be registered within the time mentioned in subsection (4), or within seven days after the architect, engineer, or other person, has given, or has, upon application in writing to him by the contractor, refused or neglected for three days after such application to give, a final certificate.

(N.B., 22(5); Ont., 21(5); Sask., 23(5).)

25. Every lien in respect of which a claim is not registered shall cease to exist on the expiration of the time herein limited for the registration thereof.

(N.B., 23; Ont., 22(1); Man., 21; Sask., 24; Alta., 24(1); B.C., 19(1).)

26. Where a claim of lien is registered, the lienholder shall be deemed a purchaser *pro tanto*.

(N.B., 21; Ont., 20; Man., 19; Sask., 22.)

27. Every lien in respect of which a claim has been registered shall cease to exist,—

(a) on the expiration of (days) (years) from,

(i) the completion of the contract, or

(ii) the furnishing of the last material, or

- (iii) the completion of the services or the doing of the last work, or
- (iv) the expiry of the period of credit, where such a period is mentioned in the claim registered; or
- (b) in cases to which subsection (5) of section 24 refers, on the expiration of (days) (years) from the registration of the claim;

unless, in the meantime, an action is begun in which the lien may be enforced and a certificate of *lis pendens* in respect thereof issued from the court in Form No. 5 set out in the Schedule, is registered in the proper registry office.

(N.B., 24; Ont., 23; Man., 22; Sask., 25; Alta., 24; B.C., 23.)

28. (1) Any person having or claiming any right, title, or interest, in or to any property in respect of which a claim of lien is registered may, at any time after thirty days have expired since the registration of the claim, require the registrar to notify the lienholder, by sending to him by mail as hereinafter provided, a notice in writing that, unless an action in which the lien may be enforced, is begun and a certificate of *lis pendens* to that effect is registered in the proper registry office within thirty days from the date of the mailing of the notice, the lien shall cease to exist.

(2) The notice mentioned in subsection (1) shall be in Form No. 6 set out in the Schedule, and shall be sent by registered mail, with postage prepaid, addressed to the lienholder at the address for service shown in the claim of lien.

(3) If such a certificate is not registered within the time limited in subsection (1), the lien shall cease to exist; and the registrar shall vacate the registration of the claim of lien unless, before the expiration of the said period of thirty days, an order of a judge of the court extending the time for beginning the action is registered in the registry office.

(Man., 23 (2) (3).)

(4) Where a certificate is registered as provided in subsection (1), a certificate of the clerk of the court in which the action is begun

- (a) that the action has been discontinued; or
- (b) that, in so far as the land affected by the lien involved in the action is concerned, the action has been dismissed or otherwise finally disposed of, that no appeal therefrom has been entered, and that the time limited for such an appeal has expired,

may be registered; and when registered such a certificate shall discharge every lien sought to be enforced in the action and the

registrar shall vacate the registration of every claim of lien and *lis pendens* registered with respect thereto.

(Man., 23(4); Sask., 25(2).)

(5) Where a lien in respect of which a claim is registered has ceased to exist as provided in section 27, any person having any right, title, or interest, in or to any property affected thereby may apply, *ex parti*, to the registrar in writing, signed by him or his duly authorized agent, to vacate the registration; and, upon being satisfied as to the facts, the registrar may vacate the registration.

(N.B., 26(6); Ont., 25(5).)

29. A lien may be assigned by an instrument in writing; and, if not assigned, shall upon the death of the lienholder pass to his personal representative.

(N.B., 25; Ont., 24; Man., 24; Sask., 26, 27; B.C., 22.)

30. (1) A lien may be discharged by a certificate of discharge in Form No. 7 set out in the Schedule, signed by the lienholder, or by his agent duly authorized in writing, verified by affidavit, and registered.

(2) Where the amount claimed by the lienholder, or any part thereof, has been paid, the certificate of discharge shall acknowledge receipt of the amount so paid.

(3) The certificate of discharge shall be numbered and entered by the registrar in the same manner as other instruments; and the fee shall be the same as that for registration of the claim of lien so discharged.

(N.B., 26(1) (2) (3); Ont., 25(1) (2) (3); Man., 25(1); Sask., 28(1).)

31. (1) Subject to subsection (3), the taking of security for, or the acceptance of a promissory note or bill of exchange for, or the taking of any other acknowledgement of, the amount of a claim of lien or any part thereof, or the extension of the time for the payment thereof, or the taking of proceedings for the recovery, or the recovery, of a personal judgment therefor, shall not merge, waive, pay, satisfy, prejudice, or destroy, a lien unless the lienholder agrees in writing that it shall have that effect.

(2) Where a promissory note, bill of exchange, or other security, taken or accepted as mentioned in subsection (1), is discounted or negotiated by the lienholder, the discounting or negotiation shall not merge, waive, pay, satisfy, prejudice, or destroy, the lien; but the lienholder shall retain the lien for the

benefit of the holder of the promissory note, bill of exchange, or other security.

(N.B., 27(1) (2); Ont., 26(1) (2); Man., 26(1) (2); Sask., 29; Alta., 27(1) (2); B.C., 38.)

(3) Subject to subsection (4), where a lienholder extends the time for payment of indebtedness in respect of which he has registered a claim of lien against any property, subsection (1) shall not apply either to the lien or otherwise to the case, unless the lienholder begins an action to enforce the lien and registers a certificate of *lis pendens* within the time herein prescribed; but, in such case, he shall take no further proceedings in the action until the expiration of the period by which the time is extended.

(N.B., 27(3); Ont., 26(4); Man., 26(2); B.C., 38.)

(4) Where a lienholder gives an extension of time as mentioned in subsection (3), if any other person begins an action to enforce a lien against the same property, the lienholder may, in such action, prove and obtain payment of the amount of the indebtedness as if no extension had been given.

(N.B., 28; Ont., 27; Man., 26(2); B.C., 38.)

32. (1) A lienholder may, in writing, at any time demand of the owner or his agent,—

- (a) the terms of the agreement, whether written or oral, with the contractor in respect of which the work has been, or is to be, performed or the material has been, or is to be, furnished; and
- (b) the state of the accounts between the owner and the contractor, including the amount already paid under the agreement and the amount due and unpaid thereunder.

(2) If the owner or his agent,—

- (a) refuses or neglects, at the time the demand is made or within a reasonable time thereafter, to inform the lienholder
 - (i) of the terms of the agreement if it is in writing by production thereof for his inspection, or if it is not in writing by a written statement of the terms, and
 - (ii) of the amount already paid and the amount due and unpaid thereunder; or
- (b) intentionally or knowingly falsely state the terms of the agreement or the amount already paid or the amount due and unpaid thereunder;

and if the lienholder sustains loss by reason of the refusal or neglect or false statement, the owner shall be liable to him for the amount of the loss in an action therefor, or in any action for the enforcement of a lien, and section 44 shall apply. (See section 39 of present Manitoba Act).

(N.B., 29(1); Ont., 28(1); Man., 27(1); Sask., 30; Alta., 29(1).)

(3) A lienholder may, in writing, at any time demand of a mortgagee or unpaid vendor or of the agent of either of them,—

- (a) the terms of any mortgage on, or agreement for the sale of, the land in respect of which the work has been, or is to be, performed or the material has been, or is to be, furnished; and
- (b) a statement showing the amount advanced on the mortgage and the amount owing on the mortgage or the agreement.

(4) If the mortgagee or vendor, or the agent,—

- (a) refuses or neglects, at the time the demand is made or within a reasonable time thereafter, to inform the lienholder,
 - (i) of the terms of the mortgage or agreement for sale, and
 - (ii) of the amount advanced on the mortgage and the amount owing on the mortgage or the agreement, as the case may be; or
- (b) intentionally or knowingly falsely states the terms of the mortgage or agreement or the amount advanced on the mortgage or owing on the mortgage or the agreement,

and if the lienholder sustains loss by reason of the refusal or neglect or false statement, the mortgagee or vendor shall be liable to him for the amount of the loss in an action therefor, or in any action for the enforcement of a lien, and section 44 shall apply. (See section 39 of present Manitoba Act.)

(N.B., 29(2); Ont., 28(2); Alta., 29(2).)

(5) A lienholder may, in writing, at any time demand of a contractor or sub-contractor,—

- (a) the terms of any agreement, whether written or oral, with the owner, contractor, or sub-contractor, to which the person of whom the demand is made is a party, in respect of which agreement the work has been, or is to be, performed or the material has been, or is to be, furnished; and

- (b) the state of the accounts between the owner and the contractor, or between the contractor and any one or more sub-contractors, or between any sub-contractor and any other sub-contractor, including the amount already paid on any agreement and the amount due and unpaid thereunder.
- (6) If the contractor or sub-contractor of whom the demand is made,—
 - (a) refuses or neglects, at the time the demand is made or within a reasonable time thereafter, to inform the lienholder,
 - (i) of the terms of the agreement if it is in writing, by production thereof for his inspection, or if it is not in writing, by a written statement of the terms, and
 - (ii) of the amount already paid and the amount due and unpaid thereunder; or
 - (b) intentionally or knowingly falsely state the terms of the agreement or the amount already paid or the amount due and unpaid thereunder,

and if the lienholder sustains loss by reason of the refusal or neglect or false statement, the contractor or sub-contractor shall be liable to him for the amount of the loss in an action therefor, or in any action for the enforcement of a lien, and section 44 shall apply.

(N.B., 29(3).)

ENFORCEMENT OF LIEN

33. A lien whatever the amount thereof, may be enforced by action in the County Court of the County Court district in which the property affected by the lien is situated, according to the ordinary procedure of that court, except where the same is varied by this Act.

(Man., 28.)

34. On application of any party, and on grounds shown by affidavit, a judge may make an order for the transmission to the judge or clerk of any other County Court in any other County Court district in the province of the papers relating to any action, suit, petition, matter or proceeding; and upon an order being made such action, suit, petition, matter or proceeding shall become and be an action, suit, petition, matter or proceeding in the court to the clerk or judge of which such papers have been so ordered to be transmitted, as if originally entered or instituted therein.

(Man., 29.)

35. A writ of summons shall not be issued, but the action shall be commenced by filing in the office of the court a statement of claim, entitled in the court and cause, giving in plain and ordinary language the grounds and particulars of the claim.

(Man., 30.)

36. The statement of claim and every copy thereof served shall contain or have endorsed upon it a notice giving the name and address of the solicitor who issued it or of the plaintiff, if issued by the plaintiff in person, and the office in which and the time within which the statement of defence is to be filed.

(Man., 31.)

37. (1) A defendant may, within sixteen days after being served with the statement of claim, file in the office of the court a statement of defence, entitled in the court and cause, showing clearly and concisely the nature of his defence, and serve on the plaintiff or his solicitor a copy thereof, and if he fails to do so he shall, unless otherwise ordered by a judge, be precluded from disputing the plaintiff's claim and right to a lien, and the plaintiff shall have the right to sign interlocutory judgment against the defendant in a manner similar to the signing of that judgment in an action in the Court of King's Bench.

(2) The defendant may, in a proper case, be allowed in to defend by order of the judge upon such terms as he shall think just.

(Man., 32.)

38. The statement of defence, and the copy thereof served, shall contain or have endorsed upon it a notice giving the name and address of the solicitor who files it, or of the defendant if filed by the defendant in person.

(Man., 33.)

39. It shall not be necessary to make any other lienholder a party defendant to the action, but every lienholder served with the notice of trial shall for all purposes be treated as if he were a party to the action.

(Man., 34.)

40. Any number of lienholders claiming liens on the same property may join in an action, and any action brought by a lienholder or person claiming a lien shall be taken to be brought on behalf of all other lienholders on the property in question.

(Man., 35.)

41. After the filing and service of the statement of defence, or after the time for filing and serving the statement of defence,

if none is filed and served, upon application to a judge by any party to the action, he shall give an appointment, fixing a time and place for the trial of the action, which time may be the date of the ordinary sittings of the court or otherwise.

(Man., 36.)

42. The party obtaining the appointment shall, at least eight clear days before the day fixed for the trial (unless the judge directs that a shorter notice may be given), serve a notice of trial, which may be according to Form No. 8 set out in the Schedule, upon the solicitors for the parties who appear by solicitors, and on all lienholders known to him who have registered their liens as required by this Act, and on all other persons having any registered charges, encumbrances or claims on the property affected by the lien, who are not parties or who, being parties, appear personally in the action; and the service shall be personal, unless otherwise directed by the judge, who may, in lieu of personal service, direct in what manner the notice of trial may be served.

(Man., 37.)

43. Every lienholder not already a plaintiff in the action shall, within six days after being served with the notice of trial, file in the office of the Court a statement showing the grounds and particulars of his claim, and, if he fails to do so, he shall, unless otherwise ordered by the judge, be precluded from asserting his lien.

(Man., 38.)

44. (1) On the day fixed for the trial, or on any other day to which the trial may be adjourned, the judge shall proceed to try the action, and all questions which arise therein or which are necessary to be tried, to dispose of the action completely and to adjust the rights and liabilities of the persons appearing before him or upon whom the notice of trial has been served.

(2) At the trial the judge shall take all accounts, make all enquiries, give all directions, and do all things, necessary to try and otherwise finally dispose of the action and of all matters, questions and accounts arising in the action or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action or who have been served with the notice of trial, and shall embody all the results in the judgment.

(Man., 39.)

45. (1) The judge may, in the judgment, order that the estate or interest charged with the lien may be sold, and may direct

the sale to take place at any time after judgment, allowing, however, a reasonable time for advertising the sale.

(2) The judge may also direct the sale of any materials and authorize the removal thereof.

(Man., 40; N.B., 16(3); Ont., 15(3); Man., 13(2); Sask., 16(2); Alta., 18(3).)

46. (1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action, and the judge shall make a report on the sale and therein direct to whom the moneys in court shall be paid, and may add to the claim of the person conducting the sale his actual disbursements incurred in connection therewith; and, where sufficient to satisfy the judgment and costs is not realized from the sale, he shall certify the total amount of the deficiency and the proportion thereof falling upon each person entitled to recover, and the persons by the judgment adjudged to pay the same.

(2) The judge may make all necessary orders for the completion of the sale, and for vesting the property in the purchaser.

(Man., 41.)

47. Every judgment in favor of lienholders shall adjudge that the person or persons personally liable for the amount of the judgment shall pay any deficiency which may remain after sale of the property adjudged to be sold; and, in any case where on such sale sufficient to satisfy the judgment and costs is not realized therefrom, the deficiency may be recovered against the property of such person by the usual process of the court.

(Man., 43.)

48. Where any claimant fails for any reason to establish a valid lien, he may nevertheless recover in the action a personal judgment against any party to the action for such sum or sums as may appear to be due to him and which he might recover in an action in contract against such party.

(Man., 43.)

49. A lienholder, who has not proved his claim at the trial, may, on application to the judge who tried the action and on such terms as to costs and otherwise as may be just, be let in to prove his claim at any time before the amount realized in the action has been distributed; and, where such claim is proved and allowed, the judge shall amend the judgment so as to include such claim therein.

(Man., 44.)

50. Where more than one action is brought to realize liens in respect of the same property, a judge may, on the application of any party to any one of such actions, or on the application of any other person interested, consolidate the actions into one action, and may give the conduct of the consolidated action to any plaintiff in his discretion.

(Man., 45.)

51. The judge, on the application of any lienholder entitled to the benefit of the action, may make an order giving the lienholder the carriage of the proceedings, and the lienholder shall thereafter for all purposes be deemed to be the plaintiff in the action.

(Man., 46.)

52. A judge may apportion equitably against any number of properties the amounts included in any claim or claims of lien under subsection (1) of section 21.

(N.B., 18(2); Ont., 17(2).)

53. (1) A judge on a summary application or at the time of the trial may receive security for, or payment into court of, the amount claimed in a registered claim of lien together with such costs as the judge may fix; and may thereupon vacate the registration of the claim of lien.

(2) A judge may vacate the registration of a claim of lien upon any other proper grounds.

(N.B., 26(4); Ont., 25(4); Man., 25(2) (3); Sask., 28(2) (3).)

(3) Moneys so paid into court, or any bond or other security so given,

(a) shall take the place of the property against which the claim of lien was registered; and

(b) subject to subsection (4), and notwithstanding that no certificate has been filed as required by section 27, shall be subject to the claim of every person who has registered a lien and, before the time limited by section 27 has expired, has begun an action,

to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien.

(4) The amount found by the judge to be owing to the person the registration of whose claim of lien has been vacated under this section, shall be a first charge upon the money, bond, or security, so paid in or given.

(N.B., 26(5); Ont., 28(4) (a).)

54. A judge may, on a summary application, at any time before or after an action is begun for the enforcement of a lien, make an order requiring the owner or his agent, the mortgagee or his agent, the unpaid vendor or his agent, or the contractor or sub-contractor, as the case may be, of whom the demand is made under section 32, to produce, and allow any lienholder to inspect, any such agreement, mortgage, or agreement for sale; and may make such order as to the cost of the application and order as he may deem just.

(N.B., 29(4); Ont., 28(3); Man., 27(2); Sask., 31; Alta., 29(3).)

55. In actions where the total amount of the claims of the plaintiff and all other persons claiming liens is one hundred dollars or less, the judgment at the trial shall be final, binding and without appeal, except that, upon application within fourteen days after judgment is pronounced, the judge who tried the action may grant a new trial.

(Man., 47.)

APPEAL

56. (1) In actions, where the total amount of the claims of the plaintiff and all other persons claiming liens exceeds one hundred dollars, any person affected by the judgment may appeal therefrom to the Court of Appeal, whose judgment shall be final and binding, and no appeal shall lie therefrom.

(2) The procedure on the appeal shall be the same as in ordinary cases of appeal from the Country Court.

(Man., 48.)

COSTS

57. The costs of the action awarded by the judge trying the action shall not exceed in the aggregate an amount equal to twenty-five per cent. of the amount of the judgment, besides actual disbursements, and shall be in addition to the amount of the judgment, and shall be apportioned and borne as the judge may direct.

(Man., 49.)

58. Where costs are awarded against the plaintiff or other persons claiming liens; the costs shall not exceed in the aggregate an amount equal to twenty-five per cent. of the claim of the plaintiff and other claimants, besides actual disbursements, and shall be apportioned and borne as the judge may direct.

(Man., 50.)

59. Counsel fees shall not be deemed disbursements under sections 57 and 58.

(Man., 51.)

60. If the least expensive course is not taken by a party under this Act, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken.

(Man., 52.)

61. Notwithstanding anything contained in "The County Courts Act," the costs of and incidental to all actions, applications and orders commenced or made under this Act shall be in the discretion of the judge, subject always to the limitations provided for by sections 57, 58 and 59.

(Man., 53.)

62. Where a lien is discharged or vacated under section 30 or section 53 or when in an action judgment is given in favor of or against a claim for a lien, the judge may allow a reasonable amount for costs of drawing and registering the lien or for vacating the registration thereof.

(Man., 54.)

63. No fees shall be payable on any cheques or proceedings to pay money into court or obtain money out of court in respect of a claim of lien, but sufficient postage stamps to prepay a return registered letter shall be enclosed with every requisition for cheques.

(Man., 55.)

TRIAL BY REFEREE IN

64. In a action brought in the County Court of a judge may refer the action to the referee in chambers of the Court of Kings' Bench, who thereupon shall have the same powers and jurisdiction to hear and dispose of the action and all matters and questions therein involved as a judge would have under this Act, and his judgment shall be subject to the same right of appeal, but the action shall continue to be an action in the County Court, and the proceedings shall be intituled and taken therein, and in all other respects such proceedings shall be the same as if the action had not been so referred.

(Man., 56.)

PROCEDURE

65. In any case not satisfactorily covered by the procedure provided for by this Act or by the ordinary procedure of the County Court, the practice and procedure of the Court of King's Bench may be adopted and applied.

(Man., 57.)

FORMS

66. The forms set out in the Schedule hereto, or forms similar or to the like effect, may be adopted in all proceedings under this Act.

(Man., 58.)

CONSTRUCTION OF ACT

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

68. This Act shall come into force on assent.

SCHEDULE OF FORMS

FORM No. 1.
(Section 20 (3).)

CLAIM OF LIEN

A.B. (name of claimant), of (here state residence of claimant), (if so, as assignee of, stating name and residence of assignor), under "The Mechanics' Lien Act," claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed) in the undermentioned land in respect of the following work (service or materials), that is to say (here give a short description of the nature of the work done or materials furnished, and for which the lien is claimed), which work (or service) was (or is to be) done (or materials were furnished) for (here state the name and residence of the person upon whose credit the work is done or materials furnished), on or before the day of , 19 .

The amount claimed as due (or to become due) is the sum of \$.

The following is a description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

When credit has been given insert: The said work was done (or materials were furnished) on credit, and the period of credit agreed to expired (or will expire) on the day of , 19 .

Dated at , this day of , 19 .

(Signature of Claimant.)

R.S.M., c. 129, Sch., Form 1.

FORM No. 2
(Section 20 (3).)

CLAIM OF LIEN FOR WAGES

A.B. (name of claimant), of (here state residence of claimant), (if so, as assignee of, stating name and residence of assignor), under "The Mechanics' Lien Act," claims a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land, in respect of day's work performed thereon while in the employment of (here state the name and residence of the person upon whose credit the work was done) on or before the day of , 19 .

The amount claimed as due is the sum of \$.

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at _____, this _____ day of _____, 19 ____.

(Signature of Claimant.)

R.S.M., c. 129, Sch., Form 2.

FORM No. 3

(Section 20 (3).)

CLAIM OF LIEN FOR WAGES BY SEVERAL CLAIMANTS

The following persons, under "The Mechanics' Lien Act," claim a lien upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land in respect of wages for labor performed thereon while in the employment of (here state name and residence or names and residences of employers of the several persons claiming the liens).

A.B., of (residence) \$ _____ for _____ days' wages.

C.D., of (residence) \$ _____ for _____ days' wages.

E.F., of (residence) \$ _____ for _____ days' wages.

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at _____, this _____ day of _____, 19 ____.

(Signatures of the several Claimants.)

R.S.M., c. 129, Sch., Form 3.

FORM No. 4

(Section 20 (3) (4).)

AFFIDAVIT VERIFYING CLAIM

I, A.B., named in the above (or annexed) claim, do make oath that the said claim is true.

Or, we, A.B., and C.D., named in the above (or annexed) claim, do make oath, and each for himself saith that the said claim, so far as relates to him, is true.

(Where affidavit is made by agent or assignee, a clause must be added to the following effect: I have full knowledge of the facts set forth in the above (or annexed) claim.)

Sworn before me at _____, in _____ of _____, this _____ day of _____, 19 ____.

Or the said A.B. and C.D. were severally sworn before me at _____ in the _____ of _____, this _____ day of _____, 19 ____.

Or the said A.B. was sworn before me at _____ in the _____ of _____ this _____ day of _____, 19 ____.

R.S.M., c. 129, Sch., Form 4.

FORM No. 5
(Section 27.)

CERTIFICATE OF LIS PENDENS
(Style of Court and Cause.)

I certify that the above-named plaintiff has commenced an action in the above court to enforce against the following land (describing it) a claim to a mechanics' lien for \$

Dated at _____, this _____ day of _____, 19 ____.
(Seal.) Clerk.

R.S.M., c. 129, Sch., Form 5.

FORM No. 6
(Section 28(2).)

NOTICE

To

Under the provisions of "The Mechanics' Lien Act" I hereby notify you that the claim for lien filed by you on the _____ day of _____ 19 ____, against the following lands namely _____ shall cease to exist unless an action to realize such claim for lien or in which such claim may be realized is commenced and a certificate to that effect (which certificate shall be in Form No. 5 of the Schedule to the said Act, signed by the clerk of the said court in which the action is commenced) is registered in this office within thirty days from the date of the mailing of this notice, or unless within such thirty days you leave with me an order of a judge of the County Court extending the time for commencing such action.

Dated at _____ this _____ day of _____ 19 ____.
Registrar.

R.S.M., c. 129, Sch., Form 6.

FORM No. 7
(Section 30 (1).)

CERTIFICATE OF DISCHARGE

In the Matter of "The Mechanics' Lien Act"

I, _____ of the _____ in the Province of _____ do hereby acknowledge to have received from _____ the sum of _____ dollars (\$ _____) in full discharge of my Mechanics' Lien as a _____ upon the following land and premises (insert legal description of land _____ which Mechanics' Lien bears date the _____ day of _____ A.D. 19 ____, and was registered in the _____ Office for the _____ of _____ on the _____ day of _____ A.D. 19 ____, at _____ minutes past _____ o'clock _____ noon as No. _____ Dated this _____ day of _____ A.D. 19 ____.

Witness
Canada
Province of
To Wit

I, _____ of the _____ of _____ in the Province of _____

make oath and say:

1. That I was personally present and did see the within (or annexed) written receipt and Discharge of Lien signed by _____ of the parties thereto.
 2. That I know the said _____, and that of the full age of twenty-one years
 3. That the said instrument was executed at the _____ of _____ in the Province of _____
 4. That I am a subscribing witness to the said Instrument
- Sworn before me at the _____ of _____ in the Province of _____ this _____ day of _____ A.D. 19 _____ .

A
in and for the Province of _____

FORM No. 8
(Section 42)

NOTICE OF TRIAL
(Style of Court and Cause.)

Take notice that this action will be tried at the Court House in the _____ of _____, on the _____ day of _____, by a judge of this Court; and at such time and place the said judge will proceed to try this action and all questions which arise in or which are necessary to be tried to completely dispose of the same and to adjust the rights and liabilities of the persons appearing before him, or upon whom this notice of trial has been served, and at such trial he will take all accounts, make all enquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions and accounts arising therein, and will give all necessary relief to all parties.

And further take notice that, if you do not appear at the trial and prove your claim (if any) or prove your defence (if any) to the action, the proceedings will be taken in your absence and you may be deprived of all benefit of the proceedings and your rights disposed of in your absence.

This is a mechanics' lien action brought by the above-named plaintiff against the above-named defendants to enforce a mechanics' lien against the following lands: (set out description of lands)

This notice is served by, etc.

APPENDIX H

REPORT OF THE ALBERTA COMMISSIONERS ON
THE UNIFORM CONDITIONAL SALES ACT

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." Pursuant to that resolution, the Alberta Commissioners made a report (1944 Proceedings, page 47).

The following resolution was passed at the 1944 meeting (Proceedings, page 24): "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."

The Alberta Commissioners reported to the 1945 Conference with a draft Uniform Act (1945 Proceedings at page 119 and 125). This draft Act was partially considered at the 1945 meeting and was referred back to the Alberta Commissioners for further consideration (1945 Proceedings, page 26).

The Alberta Commissioners made a further report on this Act to the 1946 meeting (1946 Proceedings, page 41), and presented a draft Uniform Act with a few changes from the Act presented at the 1945 meeting. This draft Act was considered by the 1946 meeting clause by clause and a considerable number of changes were recommended. The following resolutions were passed which will be found in the 1946 Proceedings at page 21:

"Resolved that the draft Uniform Conditional Sales Act be referred back to the Alberta Commissioners for the preparation of a further draft incorporating therein the amendments made at this meeting; that sufficient copies of such further draft be sent by the Alberta Commissioners to each local secretary for distribution to each member and that such further draft be considered at the next meeting.

"Resolved that in the event of the retirement of Mr. Gray before the next meeting of the Conference, the matter of the preparation, distribution and presentation of the further draft of the Uniform Conditional Sales Act referred to in the above resolution be delegated by Mr. Gray to Mr. Hogg."

The undersigned has not yet retired and has therefore had the opportunity of completing the draft Uniform Act by incor-

porating therein the amendments made at the 1946 meeting. However, as I do not expect to attend the 1947 meeting of the Conference, I have asked Mr. Hogg to present the revised draft to the Conference in accordance with the above resolution.

In addition to the changes that were recommended at the 1946 meeting, what is now subsection (16) of section 18 has been redrafted in accordance with a recommendation of the Conference that the provisions contained in it should be broken up.

With regard to section 11, it will be noted that there are two alternative draft sections incorporated. The first one incorporates changes recommended by the Conference. The second one was, as far as my recollection goes, presented as an alternative by Mr. Fillmore, but my notes do not indicate which of these two drafts was adopted by the Conference. For that reason both have been included.

Dated this 16th day of May, A.D. 1947.

W. S. GRAY,
For the Alberta Commissioners.

AN ACT TO MAKE UNIFORM THE LAW RESPECTING
CONDITIONAL SALES OF GOODS

(Assented to , 19)

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 Conditional Sales Act".

INTERPRETATION

2. In this Act,—
 - (a) "Buyer" means the person who buys or hires goods by a conditional sale, or any successor in interest of such person;
 - (b) "Conditional sale" means,
 - (i) a contract for the sale of goods under which possession is or is to be delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition, or
 - (ii) a contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon compliance with the terms of the contract;
 - (c) "Creditors" means creditors of the buyer, whether execution creditors or not, who become creditors before the registration of a conditional sale, or before the registration of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under The Bankruptcy Act, and a liquidator of a company under The Winding-up Act of Canada or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed;

- (d) "Goods" means all chattels personal other than things in action or money, and includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale, or under the contract of sale;
- (e) "Proper officer" means the officer in whose office bills of sale and chattel mortgages are required to be registered in any registration district; (to be adapted according to provincial requirements)
- (f) "Registration district" means the registration district for bills of sale and chattel mortgages; (to be adapted according to provincial requirements)
- (g) "Seller" means the person who sells or lets to hire goods by a conditional sale, or any successor in interest of such person.

(Uniform Act, 1922 Proceedings, with addition of a definition of "creditors".)

WHEN PROVISION AS TO PROPERTY IN GOODS REMAINING IN THE SELLER IS VOID

3. Where possession of goods of the value of fifteen dollars or over has been delivered to a buyer under a conditional sale, unless the requirements of this Act are complied with, every provision contained therein whereby the property in the goods remains in the seller shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith for valuable consideration and without notice, and as against creditors of the buyer, and the buyer shall, notwithstanding such provision, be deemed as against such persons to be the owner of the goods.

(Uniform Act, section 3(1), changed as a result of the introduction of a definition of "creditors" in section 2, and by the limitation as to value of the goods in line 1.)

REQUIREMENTS AS TO REGISTRATION, ETC.

4. (1) A conditional sale of the value of fifteen dollars or over shall be evidenced by a writing signed prior to or at the time of or within ten days after delivery of the goods by the buyer or his agent giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount of the purchase price remaining unpaid or the terms and conditions of the hiring; and the writing or a true copy thereof shall, within thirty days after it has been signed, be filed with the proper officer of the registration district in which the buyer resided at the time of the making of the conditional sale, or, in

case his residence is outside the Province, of the district in which the goods are delivered.

(Uniform Act as amended 1930 Proceedings, page 87, and 1933, page 17.)

(2) Where the buyer resides in one registration district and the goods are delivered to him in another, an original of the writing or a true copy thereof shall be filed in the district in which the delivery is made as well as in that of the buyer's residence.

(Uniform Act as amended 1933 Proceedings, page 17.)

(3) Where the buyer removes the goods into another district, an original of the writing or a true copy thereof shall, within twenty days after such removal has come to the knowledge of the seller, be filed in the district into which the goods are removed.

(Uniform Act as amended 1933 Proceedings, page 17.)

(4) In case the buyer is a corporation, the residence of that buyer shall for all purposes of this section be deemed to be at the place where the principal place of business of the corporation in the Province is situated (or at the registered office of the corporation, as the case may require).

MANUFACTURED GOODS

5. (1) Subject to the provisions of section 6, where a conditional sale is made of manufactured goods of the value of fifteen dollars or more,—

- (a) if, at the time of the delivery thereof to the buyer, the goods have the name of the manufacturer or vendor painted, printed, or stamped thereon, or plainly attached thereto by a plate or similar device;
- (b) if the manufacturer, being the seller of the goods, or other vendor, keeps an office in the Province of where inquiry may be made and information procured concerning the sale of the goods; and
- (c) if the vendor is a dealer in manufactured goods;

registration of the conditional sale shall not be required.

(2) If a manufacturer or vendor who keeps an office as mentioned in paragraph (b) of subsection (1) fails to furnish to any applicant therefor a statement of the amount, if any, paid for the goods and the balance remaining unpaid thereon, within five days after receiving the application, he shall not thereafter be entitled to rely upon the provisions of subsection (1).

MOTOR VEHICLES

6. (1) Where the subject of a conditional sale is a motor vehicle within the meaning of The _____ Act, the writing evidencing the sale or a true copy thereof shall, within thirty days from the time of the actual delivery of the vehicle, be filed in the office of the _____ in (name of capital city).

(2) The provisions of section 4 as to filing shall not apply to any such sale.

(Note: This section to be made applicable also to aircraft according to Provincial requirements).

BRINGING GOODS INTO PROVINCE

7. (1) Where goods of the value of fifteen dollars or over are permanently removed into the province and the goods are subject to an agreement made or executed outside the province which provides that the right of property therein, or right of possession thereof, in whole or in part, shall remain in the seller notwithstanding that the actual possession of the goods passes to the buyer, then unless,—

- (a) the agreement contains such a description of the goods that the same may be readily and easily known and distinguished; and
- (b) a copy of the agreement is filed in the office of the registration clerk of the district into which the goods and chattels are removed, within thirty days after the seller has received notice of the place to which the goods have been permanently removed,

the seller shall not be permitted to set up any right of property in, or right of possession of, the goods as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration and without notice, or as against creditors of the buyer, and the buyer shall, notwithstanding such agreement, be deemed as against such persons, to be the owner of the goods.

(2) Where the subject of the agreement is a motor vehicle, a copy of the agreement shall be filed in the place provided by section 6.

8. Where a contract has been made outside the province with reference to goods not then in the province, by which, under the law governing the contract, the seller has, upon default in payment of the price or insolvency of the buyer, a right of reven-

dication, or a preference for the price of the goods sold, or a right to a dissolution of the sale and to resume possession of the goods notwithstanding the possession of the buyer, if the goods are brought into the province, the seller, except in the case of an agreement which complies with the terms of section 7 and is registered as thereby required, shall not be entitled to set up the right of revendication, the preference for the price, or the right of a dissolution of the sale and to resume possession of the goods, as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration and without notice, or as against creditors of the buyer, and the buyer shall notwithstanding such contract, be deemed as against such persons to be the owner of the goods.

RENEWAL STATEMENTS

9. (1) Where a conditional sale has been filed in accordance with the requirements of section 4, 6, 7 or 8, a renewal statement and affidavit in respect thereof shall be filed in accordance with the requirements of this section within three years from the first date on which the original or copy was so filed.

(2) The renewal statement shall set out the interest of the seller in the goods comprised in the conditional sale and the amount still owing for principal and interest under the conditional sale and of all payments made on account thereof, and shall be accompanied by an affidavit of the seller or of some one of them stating that the statement is true and that the conditional sale has not been kept in force for any fraudulent purpose or to defeat, delay or prejudice the creditors of the buyer.

(3) The renewal statement accompanied by the affidavit shall be filed,—

- (a) as regards the goods still situate in that registration district, in the office of the proper officer of the registration district in which the conditional sale or copy thereof was filed in accordance with the provisions of section 4, 7 or 8;
- (b) in the office of _____ in _____ in which the conditional sale or copy thereof was filed in accordance with the provisions of section 6;
- (c) in case of the permanent removal of any of the goods comprised in the conditional sale and the filing of a copy of the conditional sale pursuant to subsection (3) of section 4 in the office of the proper officer of the

registration district in which the copy of the conditional sale was so filed.

(4) A further renewal statement accompanied by an affidavit shall likewise be filed in accordance with subsections (2) and (3) within the period of three years from the filing of the first renewal statement, and thereafter within each succeeding period of three years from the filing of the last preceding renewal statement.

(5) If any mistake is made in the renewal statement, the seller may after the discovery of the mistake, file an amended statement and affidavit referring to the former statement and clearly pointing out the mistake therein and correcting it.

(6) If before the filing of such amended statement and affidavit any person has in good faith made an advance of money or given any valuable consideration to the buyer or has incurred any costs in proceedings taken relying on the accuracy of the renewal statement as first filed, the conditional sale as to the amount so advanced or the valuable consideration given or costs incurred by such person shall, as against that creditor, purchaser, or mortgagee, stand good only for the amount stated in the renewal statement as first filed.

RECTIFICATION OF OMISSION TO FILE, ETC.

10. A judge of the Supreme Court or a judge of the District Court having jurisdiction in the district within which the original or copy of any writing, agreement, statement or affidavit is required to be filed pursuant to any of the provisions of this Act, upon being satisfied that the omission to file the same within the prescribed time or that any omission or mis-statement in any such writing, agreement, statement or affidavit was accidental or due to inadvertence or impossibility in fact, may in his discretion order that the omission or mis-statement be rectified in the register or may extend the time for filing, subject to the rights of third persons accrued by reason of the omission or mis-statement, and subject further to such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit to direct.

(Alta., s. 10; Sask., s. 13; B.C., s. 8a; Ont., s. 3b (5) as to renewal statements.)

SALES TO TRADERS

11. Where a seller of goods expressly or impliedly consents that the buyer may sell them in the ordinary course of business, and the buyer so sells the goods, the property in the goods shall

pass to the purchaser from the buyer notwithstanding the other provisions of this Act.

(Uniform Act, 1922 Proceedings, s. 4.)

OR

11. Where a person who has bought or agreed to buy goods under a conditional sale contract is a dealer in that class of goods or similar goods and obtains possession of the goods or the documents of title to the goods with the consent of the seller, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof, in the ordinary course of business, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

DELIVERY OF COPY OF CONDITIONAL SALE TO BUYER

12. The seller shall deliver a copy of the conditional sale to the buyer within twenty days after the execution thereof, and if after request, he neglects or refuses to do so a Judge of the County (or District) Court having jurisdiction in the county (or district) in which the buyer resided when the contract was made may, on summary application, make an order for the delivery of such copy.

(Uniform Act, s. 5; Ont., s. 3.)

INDEX-BOOK

13. The proper officer shall make an entry of every conditional sale or renewal statement of which a copy is filed in his office under this Act in an index-book to be kept for that purpose.

(Uniform Act, s. 5; Ont., s. 4.)

DEFECTS, ERRORS AND OMISSIONS

14. (1) An error of a clerical nature or in an immaterial or non-essential part of the copy of the conditional sale which does not mislead, shall not invalidate the filing or destroy the effect of it.

(Uniform Act, s. 7; B.C., s. 8; Ont., s. 5.)

(2) A defect or irregularity in the execution, or attestation of a conditional sale or in a copy thereof, or in a renewal statement shall not invalidate the same, nor shall any defect, irregularity, or

omission in the affidavit accompanying a renewal statement as provided by section 9 invalidate any provision of the conditional sale or the filing thereof or of a copy or of the renewal statement, unless in the opinion of the Court or Judge before whom the matter is heard such defect, irregularity or omission has actually misled or is likely to mislead some person whose interests are affected by the conditional sale.

(Uniform Act, s. 7; Ont., s. 5; B.C., s. 8(2).)

SELLER'S DUTY TO FURNISH PARTICULARS

15. (1) The seller shall, within five days after the receipt of a request from any person proposing to purchase the goods or from any actual or intending creditor of the buyer or from any other interested person, accompanied by a sufficient amount in money or postage stamps to pay the postage on a reply by registered letter, furnish particulars of the amount remaining due to the seller and the terms of payment, and in default he shall be liable, on summary conviction, to a penalty not exceeding fifty dollars.

(2) The person making the request shall give a name and post-office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter, postage prepaid, deposited in a post-office within the prescribed time addressed to the name and post-office address so given.

(Uniform Act, s. 8; Ont., s. 6.)

REDEMPTION AND RESALE WHERE SELLER RETAKES POSSESSION

16. (1) Where the seller retakes possession of the goods pursuant to any condition in the contract, he shall retain them for twenty days, and the buyer may redeem the same within that period by paying or tendering to the seller the amount then due on the contract price, together with the actual costs and expenses of taking and keeping possession, or by performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and expenses; and thereupon the seller shall deliver up to the buyer possession of the goods so redeemed.

(2) Where the goods are not redeemed within the period of twenty days, and subject to the giving of the notice of sale prescribed by this section, the seller may sell the goods, either by private sale or at public auction, at any time after the expiration of that period.

(3) If the price of the goods exceeds thirty dollars and the seller intends to look to the buyer for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intention to sell has been given to the buyer.

(4) The notice shall contain,—

- (a) a brief description of the goods;
- (b) an itemized statement of the balance then due on the contract price and the actual costs and expenses of taking and keeping possession up to the time of the notice;
- (c) a demand that the amount as stated in the notice shall be paid on or before a day mentioned, not less than five days from the delivery of the notice, if it is personally delivered, or not less than seven days from the mailing of the notice, if it is sent by mail; and
- (d) a statement that, unless the amount as stated in the notice is paid within the time mentioned, the goods will be sold either by private sale or at public auction.

(5) The notice may be given by personal delivery to the buyer or by mailing it by prepaid registered mail addressed to the buyer at his last-known address.

(6) The notice may be given during the twenty days mentioned in subsection (1).

(7) This section shall apply notwithstanding any agreement to the contrary.

(Uniform Act, s. 10; Ont., s. 7; B.C., s. 11; Man., 1946, c. 31, s. 1.)

(Note: This section to be adapted to Provincial requirements. For instance, Alberta has special provisions relating to seizure and sale in The Seizures Act, R.S.A. 1942, Chapter 143, which require seizures to be made through the sheriff's office, and in certain circumstances a judge's order before sale. British Columbia has special provisions dealing with redemption and resale where the conditional sale relates to a motor vehicle.)

MEMORANDUM OF SATISFACTION

17. (1) Upon payment or tender of the amount due in respect of the goods or performance of the conditions of the sale, and upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall sign and deliver to the person demanding it a memorandum in writing stating that his claims against the goods are satisfied, and such memorandum shall be accompanied by an affidavit of execution of an attesting witness, and may on payment of the prescribed fee be filed.

(2) If for ten days after receipt of such demand the seller unreasonably fails to mail or deliver the required memorandum, he shall be liable for all damages suffered by the person demanding it in consequence of the default.

(3) Upon filing the memorandum the proper officer with whom the writing evidencing the conditional sale agreement or copy thereof is filed under the provisions of section 4 shall enter satisfaction upon the writing or copy so filed.

(Uniform Act, s. 11, as amended 1933 Proceedings, p. 18; Alta., s. 18; Ont., s. 11; B.C., s. 12; Sask., s. 6.)

GOODS AFFIXED TO REALTY

18. (1) In this section,—

- (a) “Affixed”, as applied to goods, means erected upon or fixed or annexed to land in such a manner and under such circumstances as to constitute fixtures;
- (b) “Building” includes any structure, erection, mine or work built, erected, or constructed on or in any land;
- (c) “Building materials” includes goods that become so incorporated or built into a building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and thereby cause substantial damage to the building apart from the value of the goods removed; but shall not include goods that are severable from the land merely by unscrewing, unbolting, unclamping, uncoupling, or some similar method of disconnection; and shall not include machinery installed in a building for use in the carrying on of any industry, where the only substantial damage, apart from the value of the machinery removed, that would necessarily be caused to the building in removing the machinery therefrom, is that arising from the removal or destruction of the bed or casing on or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery;
- (d) “Goods” means all chattels personal capable of being affixed to land.

(2) This section shall not apply in respect of building materials, and shall cease to apply in respect of any goods otherwise within the scope of this section upon their becoming affixed to land in such a manner as to constitute building materials.

(3) Subject to the provisions of this section, and notwithstanding the provisions of The Land Registry Act where possession of goods has been delivered to the buyer, and where the goods have been affixed to land, they shall remain subject to the rights of the seller as fully as they were before being affixed.

(4) In addition to compliance with the provisions of section 4, and not later than twenty days after the commencement of the affixing of the goods to the land, there shall be filed in the office of the land registration district within which the land is situate a notice in Form 1, setting out,—

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods by which they may be readily and easily known and distinguished;
- (d) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring; and
- (e) a description of the land to which the goods are affixed or are to be affixed, sufficient for the purpose of identification in the office.

(5) The notice shall be signed by the seller or his agent, either before or after the goods are affixed to the land.

(6) There shall be attached to the notice a copy of the writing evidencing the conditional sale agreement, together with an affidavit of the seller or his agent in Form 2 verifying the notice.

(7) Upon the deposit of the notice and affidavit in the office accompanied by the payment of the prescribed fee, the Registrar shall file the notice and make a reference to it by entry in the proper register upon the certificate of title of the parcel of land to which the notice relates; or, if the title has not been registered, the Registrar shall file the notice and make an entry of its particulars in an index to be kept in his office, to be known as the "Conditional Sales Index".

(8) The filing of a notice in the office pursuant to this section shall be deemed actual notice of the existence and of the provisions of the conditional sale agreement to which the notice relates to every person who is an owner of the land described in the notice or any interest in the land, or who is a purchaser, lessee, mortgagee, or other encumbrancer of the land or any interest in the land, whether or not he is registered in the books of the office as such owner, purchaser, lessee, mortgagee, encumbrancer, or caveator, and whether or not

he became such owner, purchaser, lessee, mortgagee, encumbrancer or caveator before or after the filing of the notice.

(9) The seller shall not be entitled to retake possession of or to remove from the land the goods so affixed unless he has given to each person who appears by the records of the office to have an interest in the land, a notice in writing of his intention to retake possession of and to remove the goods, and each person so notified fails to pay the amount due and payable on the goods for a period of twenty days after the giving of the notice to him, or for such longer period as any Judge of the County (or District) Court may fix on cause shown to his satisfaction.

(10) The notice required by subsection (9) shall be signed by the seller or his agent and shall set out the name and address of the seller, the name and address of the buyer, a description of the goods, the total amount owing and the amount presently due and payable on them, and a description of the land to which the goods are affixed; and shall contain a demand that the amount so due and payable shall be paid on or before a day mentioned, not less than twenty days after the giving of the notice pursuant to subsection (9), and a statement of the intention to take possession of and to remove the goods unless the amount due and payable thereon is paid within the time mentioned.

(11) The notice to any person for the purposes of this section may be given by the delivery of the notice to him personally or by mailing it by prepaid registered mail addressed to him at his last known address, and where the notice is so mailed it shall be deemed to be given to the person to whom it is addressed at the time when it should reach its destination in the ordinary course of mail.

(12) The notice may in any case be given by such form of substituted service as any Judge of the County (or District) Court may direct. (To be adapted according to Provincial requirements)

(13) Each person having any interest in the land, whether registered or not, shall have the right as against the seller to pay the amount so due and payable within the time mentioned in the notice; and thereupon the goods shall, subject to any remaining rights of the seller under the conditional sale, remain affixed to the land.

(14) Where a person having an interest in the land pays the amount due and payable under the conditional sale contract he

shall be entitled to demand and receive from the seller an assignment of the conditional sale contract.

(15) The seller on becoming entitled to take possession of and to remove the goods from the land shall exercise his right of removal in such a manner as will cause no greater damage or injury to the land or to the other personal property situate thereon, or put the owner, lessee, or occupier of the land to any greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

(16) The Registrar in whose office a notice has been filed under the provisions of this section shall cancel the entry of the same on the certificate of title or in the conditional sales register, as the case may be,—

- (a) upon payment of the prescribed fee; and
- (b) upon receipt of a certificate of discharge in Form 3 signed by the seller and accompanied by an affidavit of execution of an attesting witness or signed by the agent of the seller and accompanied by an affidavit of the agent verifying his signature and stating that he is the duly authorized agent of the seller in that behalf; or
- (c) where a memorandum of satisfaction has been filed pursuant to section 17, upon receipt of a copy thereof certified by the proper officer in whose office the memorandum was filed.

(Note: To be adapted provincially)

(17) In case of a partial discharge, the form of the certificate may be varied accordingly; and the Registrar shall, on payment of the prescribed fee, cancel the entry in respect only of the goods and land to which the partial discharge extends.

(18) Cancellation of the entry may also be made by the Registrar in any case, upon the application of the registered owner of the land, if after such notice to the seller as the Registrar may direct, the seller fails to show cause to the satisfaction of the Registrar why the entry should not be cancelled.

(19) Upon the cancellation in whole or in part by the Registrar of the entry of a notice pursuant to subsection (16) the provisions of subsections (3) and (8) shall cease to apply in respect of the goods and land to which the cancellation extends.

(Uniform Act, s. 12, as amended Proceedings 1934, p. 46; B.C., s. 13)

ASSIGNMENT

19. A valid assignment of a conditional sale contract shall transfer the assignor's rights of property in the goods therein comprised, his right of seizure, removal, and sale, and all other rights which he possesses for enforcement of the security.

(Uniform Act, s. 13.)

EVIDENCE

20. A copy of an instrument filed under this Act purporting to be certified by the proper officer shall be received as prima facie evidence of the contents of the original instrument and of its execution according to the purport of the copy and the officer's certificate shall also be prima facie evidence of the date and hour of filing.

(Uniform Act, s. 14.)

(Note: This section will not be necessary if a Provincial Evidence Act covers it.)

FEES

21. For services under this Act the proper officer shall be entitled to such fees as may be fixed by the Lieutenant Governor in Council.

(Note: To be adapted to Provincial requirements.)

CONSTRUCTION OF ACT

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

(Uniform Act, s. 16)

COMING INTO FORCE

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

(Note: To be adapted to Provincial requirements.)

SCHEDULE

FORM 1

NOTICE OF CONDITIONAL SALE AGREEMENT.

(Section 18 (4).)

Notice is hereby given pursuant to section 18 of The Conditional Sales Act respecting a certain conditional sale agreement referred to in writing duly signed for filing pursuant to the provisions of section 4 of that Act, of which writing a true copy is attached hereto.

The following are the facts with respect to the said conditional sale agreement:

- (a) The name and address of the seller are,—
- (b) The name and address of the buyer are,—
- (c) The following is a description of the goods,—
- (d) The amount now unpaid on account of the purchase price (or under the terms and conditions of the hiring) is,—
- (e) The following is a description of the land to which the goods are affixed or are to be affixed,—

Dated this _____ day of _____, 19 .

(Signature of buyer, or seller, or agent)

Witness

FORM 2

AFFIDAVIT VERIFYING NOTICE.

(Section 18 (4).)

I, _____ of _____
(occupation), make oath and say:

1. I am the seller named in the notice hereto annexed (or I am the duly authorized agent in that behalf of the seller named in the notice hereto annexed, and I have a full knowledge of the facts set out therein).
2. The statement of facts set out in the said notice is true and correct.

(Signature)

Sworn before me, etc.

FORM 3

CERTIFICATE OF DISCHARGE

(Section 15 (16).)

I hereby certify that the conditional sale agreement of which a notice dated the _____ day of _____, 19 _____, was filed under the provisions of section 18 of The Conditional Sales Act in the Office at _____ in the Province of _____ as No. _____, against the following described land,—

is wholly discharged (or is discharged in part as follows (here state the description of goods in respect of which conditional sale agreement is discharged, and the description of the land to which those goods are affixed.))

Dated this _____ day of _____, 19 .

(Signature)

Witness

APPENDIX I

AN ACT TO MAKE UNIFORM THE LAW RESPECTING
CONDITIONAL SALES OF GOODS

(Assented to , 19)

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 Conditional Sales Act."

Interpretation.

2. In this Act,—

(a) "buyer" means the person who buys or hires goods by a conditional sale, or any successor in interest of such person:

(b) "conditional sale" means:—

(i) a contract for the sale of goods under which possession is or is to be delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition; or

(ii) a contract for the hiring of goods by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon compliance with the terms of the contract:

(c) "creditor" means a creditor of the buyer, whether an execution creditor or not, who becomes a creditor before the registration of a conditional sale, or before the registration of a renewal statement, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the "Bankruptcy Act" (Canada), and a liquidator of a company under the "Winding-up Act" (Canada) or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed:

(d) "goods" means all chattels personal other than things in action or money, and includes emblements, industrial

growing crops, and things attached to or forming part of the land, that are agreed to be severed before sale, or under the contract of sale:

- (e) "proper officer" means the officer in whose office bills of sale are required to be registered in any registration district (to be adapted according to provincial requirements):
- (f) "registration district" means the registration district for bills of sale (to be adapted according to provincial requirements):
- (g) "seller" means the person who sells or lets to hire goods by a conditional sale, or any successor in interest of such person.

3. Where possession of goods of the value of fifteen dollars or more has been delivered to a buyer under a conditional sale, unless the requirements of this Act are complied with, every provision contained therein whereby the property in the goods remains in the seller shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith for valuable consideration and without notice, and as against creditors of the buyer, and the buyer shall, notwithstanding such provision, be deemed as against such persons to be the owner of the goods.

When Provision as to Property in Goods remaining in the Seller is Void.

4. (1) A conditional sale of goods of the value of fifteen dollars or more shall be evidenced by a writing signed prior to or at the time of or within ten days after delivery of the goods by the buyer or his agent giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount of the purchase price remaining unpaid or the terms and conditions of the hiring; and the writing or a true copy thereof shall within thirty days after it has been signed be filed with the proper officer of the registration district in which the buyer resided at the time of the making of the conditional sale, or, in case his residence is outside the Province, of the district in which the goods are delivered.

Requirements as to Registration, etc.

(2) Where the buyer resides in one registration district and the goods are delivered to him in another, an original of the writing or a true copy thereof shall be filed in the district in which the delivery is made as well as in that of the buyer's residence.

Filing in certain cases.

(3) Where the buyer removes the goods or any of them into another district, an original of the writing or a copy thereof shall, within twenty days after such removal has come to the knowledge

Filing where goods removed

of the seller, be filed in the district into which the goods or some of them are removed.

Residence of corporation buyer.

(4) Where the buyer is a corporation, its residence shall for all purposes of this section be deemed to be at the place where the principal place of business of the corporation in the Province is situated (or at the registered office of the corporation, as the case may require).

Manufactured goods — Filing not necessary in certain cases.

5. (1) Subject to section 6, where a conditional sale of manufactured goods of the value of fifteen dollars or more is made by the manufacturer thereof and

- (a) at the time of the delivery thereof to the buyer, the goods have the name of the manufacturer plainly painted, printed, stamped or otherwise inscribed thereon, or plainly attached thereto by a plate or similar device; and
- (b) the manufacturer keeps an office in the Province where inquiry may be made and information procured concerning the sale of the goods;

registration of the conditional sale is not required.

Manufacturer to furnish certain information on request.

(2) If a manufacturer who keeps an office as mentioned in clause (b) of subsection (1) fails to furnish to an applicant a statement of the amount, if any, paid for the goods and the balance remaining unpaid within five days after receiving the application he shall not thereafter be entitled to rely upon subsection (1).

Filing in case of motor-vehicles.

6. (1) Where the subject of a conditional sale is a motor-vehicle within the meaning of the Act, the writing evidencing the sale or a copy thereof shall, within thirty days from the time of the actual delivery of the vehicle, be filed in the office of the _____ in _____ (name of capital city).

Section 4 not applicable.

(2) The provisions of section 4 as to filing do not apply to any such sale.

Filing in case of goods brought into Province.

7. (1) Where goods of the value of fifteen dollars or more are permanently removed into the Province and the goods are subject to an agreement made or executed outside the Province that provides that the right of property therein, or right of possession thereof, in whole or in part, shall remain in the seller notwithstanding that the actual possession of the goods passes to the buyer, then unless,

- (a) the agreement contains such a description of the goods that they may be readily and easily known and distinguished; and

- (b) a copy of the agreement is filed with the proper officer of the registration district into which the goods are removed, within thirty days after the seller has received notice of the place to which the goods have been permanently removed,

the seller shall not be permitted to set up any right of property in, or right of possession of, the goods as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration and without notice, or as against creditors of the buyer, and the buyer shall, notwithstanding such agreement, be deemed as against such persons to be the owner of the goods.

(2) Where the subject of the agreement is a motor-vehicle, ^{Motor-vehicle brought into Province.} a copy of the agreement shall be filed in the place specified in section 6.

8. Where,—

^{Failure to comply with s. 7.}

- (a) a contract has been made outside the province with reference to goods not then in the province, by which, under the law governing the contract, the seller has, upon default in payment of the price or the insolvency of the buyer, a right of revendication, or a preference for the price of the goods sold, or a right to a dissolution of the sale and to resume possession of the goods notwithstanding the possession of the buyer; and
- (b) the goods are brought into the province, the seller, except in the case of an agreement that complies with section 7 and is filed as thereby required, shall not be entitled to set up the right or revendication, the preference for the price, or the right to a dissolution of the sale and to resume possession of the goods, as against a subsequent purchaser or mortgagee claiming from or under the buyer in good faith for valuable consideration and without notice, or as against a creditor of the buyer, and the buyer shall notwithstanding such contract, be deemed as against such persons to be the owner of the goods.

9. (1) Where a conditional sale has been filed in accordance with section 4, 6, 7 or 8, a renewal statement and affidavit in respect thereof shall be filed in accordance with this section within three years after the first date on which the original or copy was so filed. ^{Renewal Statements.}

Contents thereof.

(2) The renewal statement shall set out the interest of the seller in the goods comprised in the conditional sale and the amount still owing for principal and interest under the conditional sale and of all payments made on account thereof, and shall be accompanied by an affidavit of the seller or his agent stating that the statement is true and that the conditional sale has not been kept in force for any fraudulent purpose or to defeat, delay or prejudice the creditors of the buyer.

Place of filing.

(3) The renewal statement accompanied by the affidavit shall be filed as follows:—

(a) in the case of goods still situate in the registration district in which the writing or the agreement evidencing the conditional sale or a copy thereof was filed as provided in section 4, 7, or 8,—

with the proper officer of that registration district;

(b) in the case of a motor-vehicle,—
in the office of the in
(name of capital city);

(c) in case any of the goods comprised in the conditional sale have been removed and an original or a copy of the writing evidencing the conditional sale has been filed pursuant to subsection (3) of section 4, as regards the goods so removed,—

with the proper officer of the registration district in which the copy of the conditional sale was so filed.

Further renewal statement.

(4) A further renewal statement accompanied by an affidavit shall likewise be filed in accordance with subsections (2) and (3) within the period of three years from the filing of the first renewal statement, and thereafter within each succeeding period of three years from the filing of the last preceding renewal statement.

Mistake in renewal statement.

(5) Where a mistake is made in the renewal statement, the seller may file an amended statement and affidavit referring to the former statement and clearly pointing out the mistake therein and correcting it.

Protection of person who relies on inaccurate renewal statement.

(6) If before the filing of such amended statement and affidavit any person has in good faith made an advance of money or given valuable consideration to the buyer or has incurred costs in proceedings taken relying on the accuracy of the renewal statement as first filed, the conditional sale as to the amount so advanced or the valuable consideration given or costs incurred by such person shall, as against him stand good only for the amount stated in the renewal statement as first filed.

10. A judge of the Supreme Court or a judge of the District Court having jurisdiction in a district within which the original or a copy of any writing, agreement, statement or affidavit is required to be filed pursuant to any of the provisions of this Act, upon being satisfied that the omission to file the same within the prescribed time or that any omission or mis-statement in any such writing, agreement, statement or affidavit was accidental or due to inadvertence or impossibility in fact, may in his discretion order that the omission or mis-statement be rectified in the register or may extend the time for filing, subject to the rights of third persons accrued by reason of the omission or mis-statement, and subject further to such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit to direct.

Rectification of omission to file.

11. Where a seller of goods expressly or impliedly consents that the buyer may sell them in the ordinary course of business, and the buyer so sells the goods, the property in the goods shall pass to the purchaser from the buyer notwithstanding the other provisions of this Act.

Sales to traders

12. The seller shall deliver a copy of the conditional sale to the buyer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so a Judge of the County (or District) Court having jurisdiction in the county (or district) in which the buyer resided when the contract was made may, on summary application, make an order for the delivery of such copy.

Delivery of copy of Conditional Sale to buyer.

13. The proper officer shall make an entry of every conditional sale or renewal statement of which a copy is filed in his office under this Act in an index-book to be kept for that purpose.

Index-Book.

14. (1) An error of a clerical nature or in an immaterial or non-essential part of the copy of the conditional sale that does not mislead, shall not invalidate the filing or destroy the effect of it.

Immaterial errors.

(2) A defect or irregularity in the execution or attestation of a conditional sale or in a copy thereof, or in a renewal statement shall not invalidate the same, nor shall any defect, irregularity, or omission in the affidavit accompanying a renewal statement as provided by section 9 invalidate any provision of the conditional sale or the filing of the original writing or of a copy thereof or of the renewal statement, unless in the opinion of the Court or Judge before whom the matter is heard such defect, irregularity or

Defect in execution etc

omission has actually misled or is likely to mislead a person whose interests are affected by the conditional sale.

Seller's duty to
furnish partic-
ulars.

15. (1) The seller shall, within five days after the receipt of a request from a person proposing to purchase the goods or from any actual or intending creditor of the buyer or from any other interested person, accompanied by a sufficient amount in money or postage stamps to pay the postage on a reply by registered letter, furnish particulars of the amount remaining due to the seller and the terms of payment, and in default he is liable, on summary conviction, to a penalty not exceeding fifty dollars.

(2) The person making the request shall give a name and post-office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter, postage prepaid, deposited in a post office within the prescribed time addressed to the name and post-office address so given.

Redemption
and Resale
where seller
retakes posses-
sion.

16. (1) Where the seller retakes possession of the goods pursuant to any condition in the contract, he shall retain them for twenty days, and the buyer may redeem them within that period by paying or tendering to the seller the amount then due on the contract price, together with the actual costs and expenses of taking and keeping possession, or by performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and expenses; and thereupon the seller shall deliver up to the buyer possession of the goods so redeemed.

(2) Where the goods are not redeemed within the period of twenty days, subject to the giving of the notice of sale prescribed by this section, the seller may sell the goods, either by private sale or at public auction, at any time after the expiration of that period.

(3) If the price of the goods exceeds thirty dollars and the seller intends to look to the buyer or any guarantor of the buyer for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intention to sell has been given to the buyer and to the guarantor.

(4) The notice shall contain,—

- (a) a brief description of the goods;
- (b) an itemized statement of the amount then due on the contract price and the actual costs and expenses of taking and keeping possession up to the time of the notice;
- (c) a demand that the amount as stated in the notice shall be paid on or before a day mentioned, not less than five

days after the delivery of the notice, if it is personally delivered, or not less than seven days after the mailing of the notice, if it is sent by mail; and

(d) a statement that, unless the amount as stated in the notice is paid within the time mentioned, the goods will be sold either by private sale or at public auction.

(5) The notice may be given by personal delivery to the buyer or by mailing it by registered mail addressed to the buyer at his last-known address.

(6) The notice may be given during the twenty days mentioned in subsection (1).

(7) This section applies notwithstanding any agreement to the contrary.

17. (1) Upon payment or tender of the amount due in respect of the goods or performance of the conditions of the sale, and upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall sign and deliver to the person demanding it a memorandum in writing stating that his claims against the goods are satisfied, and such memorandum shall be accompanied by an affidavit of execution of an attesting witness, and may on payment of the prescribed fee be filed. **Memorandum of satisfaction.**

(2) If for ten days after receipt of such demand the seller unreasonably fails to mail or deliver the required memorandum, he shall be liable for the damages suffered by the person demanding it in consequence of the default.

(3) Upon filing the memorandum the proper officer with whom the writing evidencing the conditional sale agreement or copy thereof is filed under section 4 shall endorse upon the writing or copy a statement that a memorandum of satisfaction has been filed.

18. (1) In this section,—

- (a) "Affixed," as applied to goods, means erected upon or fixed or annexed to land in such a manner and under such circumstances as to constitute them fixtures:
- (b) "Building" includes any structure, erection, mine or work built, erected, or constructed on or in any land:
- (c) "Building materials" includes goods that become so incorporated or built into a building that their removal therefrom would necessarily involve the removal or destruction of some other part of the building and there-

**Goods affixed to
realty.**

by cause substantial damage to the building apart from the value of the goods removed; but shall not include goods that are severable from the land merely by unscrewing, unbolting, unclamping, uncoupling, or some similar method of disconnection; and shall not include machinery installed in a building for use in the carrying on of any industry, where the only substantial damage, apart from the value of the machinery removed, that would necessarily be caused to the building in removing the machinery therefrom, is that arising from the removal or destruction of the bed or casing or in which the machinery is set and the making or enlargement of an opening in the walls of the building sufficient for the removal of the machinery:

(d) "Goods" means all chattels personal capable of being affixed to land.

(2) This section does not apply in respect of building materials, and will cease to apply in respect of any goods otherwise within the scope of this section upon their becoming affixed to land in such a manner as to constitute building materials.

(3) Subject to this section, and notwithstanding The Land Registry Act where possession of goods is delivered to the buyer, and the goods are affixed to land, they remain subject to the rights of the seller as fully as they were before being affixed.

(4) In addition to compliance with section 4, and not later than twenty days after the commencement of the affixing of the goods to the land, the seller or his agent shall sign and file in the office of the land registration district within which the land is situate a notice in Form 1, setting out,—

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods by which they may be readily and easily known and distinguished;
- (d) a description of the land to which the goods are or are to be affixed, sufficient for the purpose of identification in the office; and
- (e) the amount unpaid on account of the purchase price or under the terms and conditions of the hiring.

(5) There shall be attached to the notice a copy of the writing evidencing the conditional sale agreement, together with an affidavit of the seller or his agent in Form 2 verifying the notice.

(6) Upon the deposit of the notice and affidavit in the office accompanied by the payment of the prescribed fee, the Registrar shall file the notice and make a reference to it by entry in the proper register upon the certificate of title of the parcel of land to which the notice relates; or, if the title has not been registered the Registrar shall file the notice and make an entry of its particulars in an index to be kept in his office, to be known as the "Conditional Sales Index."

(7) The filing of a notice in the office pursuant to this section shall be deemed actual notice of the existence of the conditional sale agreement and of the provisions thereof to every person who is an owner of the land described in the notice or any interest in the land, or who is a purchaser, lessee, mortgagee, or other encumbrancer of the land or any interest in the land.

(8) The seller shall not be entitled to retake possession of the goods so affixed, or to remove them from the land, unless he has given to each person who appears by the records of the office to have an interest in the land, a notice in writing of his intention to retake possession of and to remove the goods, and unless each person so notified fails to pay the amount due and payable on the goods for a period of twenty days after the giving of the notice to him or for such longer period as any Judge of the County (or District) Court may fix on cause shown to his satisfaction.

(9) The notice specified in subsection (8) shall be signed by the seller or his agent and shall set out,—

- (a) the name and address of the seller;
- (b) the name and address of the buyer;
- (c) a description of the goods;
- (d) a description of the land to which the goods are affixed; and
- (e) the total amount owing and the amount presently due and payable on them;

and shall contain a demand that the amount so due and payable shall be paid on or before a day mentioned, not less than twenty days after the giving of the notice pursuant to subsection (8), and a statement of the intention to take possession of and to remove the goods unless the amount due and payable thereon is paid within the time mentioned.

(10) Notice to any person for the purposes of this section may be given by the delivery of the notice to him personally or

by mailing it by registered mail addressed to him at his last known address, and where the notice is so mailed it shall be deemed to be given to the person to whom it is addressed at the time when it should reach its destination in the ordinary course of mail.

(11) The notice in any case may be given by such form of substituted service as a Judge of the County (or District) Court may direct.

(12) Each person having an interest in the land, whether registered or not, shall have the right as against the seller to pay the amount so due and payable within the time mentioned in the notice; and thereupon the goods shall, subject to any remaining rights of the seller under the conditional sale, remain affixed to the land.

(13) Where a person, other than the buyer, having an interest in the land pays the amount due and payable under the conditional sale contract he shall be entitled to demand and receive from the seller an assignment of the conditional sale contract.

(14) The seller on becoming entitled to remove the goods from the land shall exercise his right of removal in such a manner as will cause no greater damage or injury to the land or to the other personal property situate thereon, or put the owner, lessee, or occupier of the land to any greater inconvenience than is necessarily incidental to the work of effecting the removal of the goods.

(15) The Registrar in whose office a notice has been filed under this section shall cancel the entry of the same on the certificate of title or in the conditional sales register, as the case may be,—

- (a) upon payment of the prescribed fee; and
- (b) upon receipt of a certificate of discharge in Form 3 signed by the seller and accompanied by an affidavit of execution of an attesting witness or signed by the agent of the seller and accompanied by an affidavit of the agent verifying his signature and stating that he is the duly authorized agent of the seller; or
- (c) where a memorandum of satisfaction has been filed pursuant to section 17, upon receipt of a copy thereof certified by the proper officer in whose office the memorandum was filed.

(16) In case of a partial discharge, the form of the certificate may be varied accordingly; and the Registrar shall, on payment of the prescribed fee, cancel the entry in respect only of the goods and land to which the partial discharge extends.

(17) The Registrar may cancel the entry upon the application of the registered owner of the land, if after such notice to the seller as the Registrar directs, the seller fails to show cause to the satisfaction of the Registrar why the entry should not be cancelled.

(18) Upon the cancellation in whole or in part by the Registrar of the entry of a notice pursuant to subsection (15), subsections (3) and (7) shall cease to apply in respect of the goods and land to which the cancellation extends.

19. A valid assignment of a conditional sale shall transfer ^{Assignment.} the assignor's rights of property in the goods therein comprised and all rights that he possesses for enforcement of the security.

20. A copy of an instrument filed under this Act purporting ^{Evidence.} to be certified by the proper officer shall be received in evidence as prima facie proof of the contents of the original instrument and of its execution according to the purport of the copy and the officer's certificate shall also be prima facie proof of the date and hour of filing.

21. The Lieutenant-Governor in Council may fix the fees ^{Fees.} payable for the purposes of this Act.

22. This Act shall be so interpreted and construed as to ^{Construction of} effect its general purpose of making uniform the law of the ^{Act.} Provinces that enact it.

23. This Act shall come into force on the day upon which ^{Coming into} it is assented to. ^{Force.}

SCHEDULE

FORM 1

NOTICE OF CONDITIONAL SALE AGREEMENT

(Section 18 (4).)

Notice is hereby given pursuant to section 18 of The Conditional Sales Act respecting a certain conditional sale agreement referred to in a writing duly signed for filing pursuant to section 4 of that Act, of which writing a true copy is attached hereto.

The following are the facts with respect to the said conditional sale agreement:

- (a) The name and address of the seller are,—
- (b) The name and address of the buyer are,—
- (c) The following is a description of the goods,—
- (d) The amount now unpaid on account of the purchase price (or under the terms and conditions of the hiring) is,—
- (e) The following is a description of the land to which the goods are or are to be affixed,—

Dated this _____ day of _____, 19 _____.

(Signature of seller or agent)

Witness

FORM 2
AFFIDAVIT VERIFYING NOTICE
(Section 18 (4))

I, _____ of _____
(occupation), make oath and say:
1. I am the seller named in the notice hereto annexed (or I am the duly
authorized agent of the seller named in the notice hereto annexed, and I
have a full knowledge of the facts set out therein).
2. The statement of facts set out in the said notice is true and correct.

(Signature)

Sworn before me, etc.

FORM 3
CERTIFICATE OF DISCHARGE
(Section 18 (15))

I hereby certify that the conditional sale agreement of which a notice
dated the _____ day of _____, 19____, was filed under
section 18 of The Conditional Sales Act in the _____ Office at
_____ in the Province of _____ as No. _____
against the following described land, _____ is wholly dis-
charged (or is discharged in part as follows (here state the description of the
goods in respect of which the conditional sale agreement is discharged, and
the description of the land to which the goods are affixed.))
Dated this _____ day of _____, 19____.

(Signature)

Witness

APPENDIX J
NEW BUSINESS

Your Committee on New Business submits the following recommendations:

1. The Conference should not undertake subject matters not referred to it by either the Minister of Justice, an Attorney General, the Canadian Bar Association or by resolution of the Conference. Should any matters be referred to the Conference between meetings, the President and Secretary be authorized to assign the matter to a member or members for report at the next meeting.
2. The Department of Justice and each Legislative Counsel report to the next meeting of this Conference reasons why legislation recommended by the Conference has not yet been enacted in their respective jurisdictions and suggest any steps the Conference might take to have such legislation enacted.
3. The Saskatchewan Commissioners be requested to revise the Rules of Drafting and report to the next meeting of this Conference their recommendations as to the printing and distribution of additional copies thereof.
4. The Ontario Commissioners be requested to prepare rules governing the preparation, form and contents of annual and consolidated volumes of statutes and report to the next meeting of this Conference their recommendations as to the methods of having such rules, when approved by this Conference, adopted across Canada.
5. This Conference considered the advisability of preparing uniform legislation on the following subject matters:
 - (a) adoption
 - (b) solemnization of marriage
 - (c) trustee investments
 - (d) disposal of unclaimed goods by bailees
 - (e) instalment purchases
 - (f) rules determining residence where provincial or municipal liability involved
 - (g) presumption of death,

and, in the event of the Conference approving any of these

subject matters, they be referred to Committees to report to the next meeting of this Conference.

6. That the Secretary of this Conference advise the Minister of Justice, each Attorney General, and the Canadian Bar Association that this Conference is prepared to consider such additional subject matters as may be referred to it.

Respectfully submitted,

F. H. BARLOW,
T. R. KER,
J. P. RUNCIMAN,
R. M. FISHER.

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