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PROCEEDINGS

OF THE

THIRTY-FIRST ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

**UNIFORMITY OF LEGISLATION
IN CANADA**

HELD AT

CALGARY, ALBERTA

AUGUST 23RD, 24TH, 25TH, 26TH AND 27TH, 1949

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY
OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1949-50

Honorary President. J. Pitcairn Hogg, K.C., Victoria.
President. Hon. Antoine Rivard, K.C., Quebec.
1st Vice-President. Horace A. Porter, K.C., Saint John.
2nd Vice-President. Clifford R. Magone, K.C., Toronto.
Treasurer. G. S. Rutherford, K.C., Winnipeg.
Secretary. L. R. MacTavish, K.C., Toronto.

LOCAL SECRETARIES

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

COMMISSIONERS AND REPRESENTATIVES OF THE
PROVINCES AND OF THE DOMINION

Alberta:

K. A. MCKENZIE, Acting 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).

Canada:

E. A. DRIEDGER, LL.B., Counsel, Department of Justice,
Ottawa.

HIS HONOUR JUDGE ROBERT FORSYTH, Toronto.

E. RUSSELL HOPKINS, Department of External Affairs,
Ottawa.

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

Manitoba:

JOHN ALLEN, K.C., Legal Adviser to the Attorney-General,
Winnipeg.

IVAN J. R. DEACON, Lombard Bldg., Winnipeg.

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

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

G. S. RUTHERFORD, K.C., 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.

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.

J. A. Y. MACDONALD, Deputy Attorney-General, 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.

C. R. MAGONE, K.C., Deputy Attorney-General, Toronto.

D. M. TREADGOLD, LL.B., Municipal Legislative Counsel,
Toronto.

(Commissioners appointed under the authority of the
statutes of Ontario, 1918, c. 20, s. 65).

Prince Edward Island:

HON. F. A. LARGE, K.C., Attorney-General, Charlottetown.

N. W. LOWTHER, K.C., Charlottetown.

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

Quebec:

ROGER BISSON, K.C., Three Rivers.

THOMAS R. KER, K.C., 360 St. James St. West, Montreal.

ANTOINE RIVARD, K.C., M.L.A., 51 rue Des Jardins, Quebec.

Saskatchewan:

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

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 Canada: Hon. Stuart S. Garson, 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. Dana Porter, 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

More than thirty years have passed since the Canadian Bar Association recommended that each provincial government 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 and uniform statutes. The subsequent adoption by many of the state legislatures of these 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 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.
- 1948. August 24-28, Montreal.
- 1949. August 23-27, Calgary.

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 since 1946 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 from each jurisdiction are representative of the various branches of the legal profession, that is, 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 which may or may not, as it wishes, act upon the recommendations of the Conference.

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. At the annual meetings of the Conference, 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 carried on by correspondence among the members of the executive and the local secretaries. Matters for the consideration of the Conference may be brought forward by a member, the Minister of Justice, the Attorney-General of any province or the Canadian Bar Association.

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 for enactment. Examples of this practice are the Survivorship Act, section 39 of the Uniform Evidence Act dealing with photographic records and section 5 of the same Act, the effect of which is to abrogate the rule in *Russell v. Russell*, the Uniform Regulations Act and the Uniform Frustrated Contracts 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 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 all 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, issue of the *Canadian Bar Review*, at pages 36 to 52. This article, together with the Rules of Drafting adopted by the Conference in 1948, was re-published in pamphlet form early in 1949. Copies are available upon request to the Secretary.

L.R.M.

TABLE OF

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

TITLE OF ACT	Confer- ence	ADOPTED BY		
		Alberta	B.C.	Man.
Assignment of Book Debts.	1928	1929	....	1929
Bills of Sale	1928	1929	....	1929
Bulk Sales	1920	1922	1921	1921
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	....	....	....
—re Photographic Records	1944	1947	1945	1945
<i>Russell v. Russell.</i>	1945	1947	1947	1946
Fire Insurance Policy	1924	1926	1925	1925
Foreign Affidavits	1938	....	....	....
Foreign Judgments	1933	....	....	....
Frustrated Contracts.	1948	1949	....	1949
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 . . . . .	....	1899°	1894°	1897°
Partnerships Registration	1938	....	....	....
Reciprocal Enforcement of Judgments.	1924	1925, am. 1935	1925	....
Reciprocal Enforcement of Maintenance Orders.	1946	1947	1946	1946
Regulations.	1943	....	....	1945†
Sale of Goods. . . . .	....	1898°	1897°	1896°
Survivorship	1939	1948	1939	1942
Testators Family Maintenance	1945	1947†	....	1946
Vital Statistics.	1949	....	....	....
Warehousemen's Lien.	1921	1922	1922	1923
Warehouse Receipts.	1945	1949	....	1946†
Wills.	1929	....	....	1936

* Adopted as revised.

° Substantially same form as Imperial Act (*see* 1942 Proceedings, p. 18).

MODEL STATUTES

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

N.B.	N.S.	Ont.	ADOPTED BY			Sask.	Canada	REMARKS
			P.E.I.	Que.				
1931	1931	1931	1931	....	1929	....	Am. '31
....	1930	....	1947	....	1929	....	Am. '31 & '32
1927	....	....	1933	....	....	....	Am. '25, '39 & '49
1927	1930	....	1934	....	....	....	Rev. '47
1925	1926	....	1938*	....	1944	....	Rev. '34 & '35
....	1933	1932	1949	....	1932	....	....
....	....	....	1949	....	....	....	Am. '48 & '49
1934†	....	....	....	....	1928	....	....
....	....	....	....	....	....	....	Am. '44 & '45
1946	1945	1945	1947	....	1945	1942§	....
....	1946	1946	1946	....	1946	....	....
1931	1930	1924	1933	....	1925	....	Stat. cond. 17 not adopted.
....	
....	....	....	....	....	1934	....	....
1949	....	1949	1949	....	....	....	....
....	....	....	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
....	
....	1949	1948†	....	....	1946§	....	....
....	....	1944†	....	....	....	....	....
1919°	1910°	1920°	1919°	....	1896°	....	....
1940	1941	1940	1940	....	1942	....	Am. '49
....	
....	
1923	....	1924	1938	....	1922	....	....
1947	....	1946†	....	....	....	....	....
....	....	....	....	....	1931	....	....

x As part of Evidence Act.

† In part.

\$ Provisions similar in effect are in force.

§ With slight modification.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, AUGUST 23RD, 1949)

10 a.m. — 11 a.m.

Opening.

The Conference assembled in the Court House at Calgary.

The President, Mr. Hogg, acted as chairman and outlined the work of the meeting as set out in the Agenda (Appendix A, page 28).

Minutes of Last Meeting.

The following resolution was adopted:

RESOLVED that the minutes of the last meeting as printed in the 1948 Proceedings be taken as read and adopted.

Treasurer's Report.

The Treasurer, Mr. Runciman, presented his report (Appendix B, page 31). Messrs. Hughes and Treadgold were appointed auditors and the report was referred to them for audit and report.

Secretary's Report.

The Secretary, Mr. MacTavish, presented his report (Appendix C, page 33), which was adopted.

Statement to Canadian Bar Association.

The following resolution was adopted:

RESOLVED that the President from time to time be the representative of the Conference to make a statement to the Canadian Bar Association at its annual meetings on the work of the Conference.

Nominating Committee.

The President was requested to name a nominating committee of four persons to make recommendations as to the officers of the Conference for 1949-50. Subsequently it was announced that the committee would consist of Messrs. Des Brisay, Deacon, Ker and Porter.

Press Representative.

The following resolution was adopted:

RESOLVED that the local secretary for the jurisdiction in which any annual meeting is held, in concert with the President and the Secretary, act as liaison officer between the Conference and the local press.

Secretarial Assistance.

The following resolution was adopted:

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

Publication of Proceedings.

The following resolution was 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 1949 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 of the Conference; and that the Secretary be requested to make the usual arrangements to have the 1949 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

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 1950 annual meeting of the Canadian Bar Association and at or near the same place, but should this for any reason prove impracticable, the decision as to the place of the meeting may be made by a majority of the officers of the Conference.

Annual Grants.

The following resolution was adopted:

RESOLVED that the Treasurer be requested to communicate at an appropriate time each year with each local secretary with a view to obtaining from each government a grant of \$75 for the support of the Conference.

MINUTES OF THE UNIFORM LAW SECTION

The following commissioners and representatives were present:

Alberta:

MR. MCKENZIE.

British Columbia:

MESSRS. DES BRISAY and HOGG.

Canada:

MR. O'MEARA.

Manitoba:

MESSRS. DEACON, FISHER and RUTHERFORD.

New Brunswick:

MESSRS. HUGHES and PORTER.

Nova Scotia:

MR. MILNER.

Ontario:

HONOURABLE MR. JUSTICE BARLOW, MESSRS. MACTAVISH,
TREADGOLD and ROBERT WHERRY.

Prince Edward Island:

MR. LOWTHER.

Quebec:

MESSRS. BISSON and KER.

Saskatchewan:

MESSRS. LESLIE, RUNCIMAN and HAROLD WADGE.

FIRST DAY

(TUESDAY, AUGUST 23RD, 1949)

First Session

11 a.m. — 12 noon.

Hours of Sitting.

The following resolution was adopted:

RESOLVED that the hours of the sittings during this meeting
be from 9 a.m. to 12 noon and from 2 p.m. to 5 p.m.

Commorientes.

The report of the Nova Scotia Commissioners on the Uniform Commorientes Act was presented by Mr. Milner (Appendix D, page 35).

After consideration of the recommendations of the Nova Scotia Commissioners as contained in the report the following resolutions were adopted:

RESOLVED that the long title of the Uniform Commorientes Act as it appears at page 63 of the 1939 Proceedings be amended by striking out the words "*in Common Disasters*".

RESOLVED that the short title of the Uniform Commorientes Act as it appears at page 63 of the 1939 Proceedings be amended by striking out the word "Commorientes" and substituting the word "Survivorship".

RESOLVED that the Uniform Commorientes Act as it appears at page 63 of the 1939 Proceedings be amended by adding the words "at the same time or" after the word "die" in line one of subsection 1 of section 2 and after the word "die" in line three of subsection 3 of section 2 in order to carry out the intended meaning of the original.

RESOLVED that the Uniform Commorientes Act as it appears at page 63 of the 1939 Proceedings be amended by striking out the word "further" in the fourth line of subsection 3 of section 2 as being superfluous.

The Uniform Commorientes Act, as amended in accordance with the above resolutions, is set out for convenience as Appendix E, page 43.

Second Session

2 p.m. — 5 p.m.

Vital Statistics.

The report of the Committee on Vital Statistics (Messrs. Hughes, Rutherford and Treadgold) was presented by Mr. Treadgold (Appendix F, page 44).

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

SECOND DAY

(WEDNESDAY, AUGUST 24TH, 1949)

Third Session

9 a.m. — 12 noon.

Defamation.

Mr. Oscar Lundell of Lawson, Lundell and Lawson, Barristers, of Vancouver, appeared on behalf of the Canadian Daily Newspapers' Association and made submissions respecting sections 12 and 15 of the Uniform Defamation Act as set out at page 96 of the 1948 Proceedings.

Mr. Lundell withdrew and consideration was given to the submissions made orally and as set out in his brief.

Final disposition of the points in question was deferred until the Saturday morning sitting.

Vital Statistics — (continued).

Consideration of the draft Act appended to the report of the Committee on Vital Statistics was continued.

Fourth Session

2 p.m. — 5 p.m.

Conference Policy and Practice.

Mr. Fisher presented his report on Conference Policy and Practice (Appendix H, page 71).

After consideration of the report the following resolutions were adopted:

RESOLVED that the Uniform Acts dealing with commercial paper, namely, The Bills of Sale Act, The Conditional Sales Act, The Assignment of Book Debts Act and The Bulk Sales Act be referred to the New Brunswick Commissioners for correlation and revision and that when this work is approved by the Conference the said Acts be re-published in convenient form.

RESOLVED that the matter of the re-publication in convenient, up-to-date form of the Acts recommended by the Conference be referred to the Saskatchewan Commissioners.

RESOLVED that Mr. Treadgold be assigned the duty of checking all provincial statutes each year for the purpose of ascertaining whether any amendments were made to any of the Uniform Acts recommended by the Conference and that he make an annual report to the Conference as to the results of his search.

RESOLVED that Mr. Milner be assigned the duty of checking the law reports each year for the purpose of ascertaining whether any judicial decisions were reported that might suggest the advisability of amendments to Uniform Acts recommended by the Conference and that he make an annual report to the Conference as to the results of the search.

THIRD DAY

(THURSDAY, AUGUST 25TH, 1949)

Fifth Session

9 a.m. — 12 noon.

Visitors.

S. H. McCuaig, K.C., President of the Canadian Bar Association, and H. S. Patterson, K.C., President of the Law Society of Alberta, attended the session and addressed the members of the Conference.

Vital Statistics — (continued).

Consideration of the draft Act attached to the report of the Committee on Vital Statistics was continued.

Sixth Session

2 p.m. — 5 p.m.

Vital Statistics — (concluded).

Consideration of the draft Act attached to the report of the Committee of Vital Statistics was concluded.

The following resolution was adopted.

RESOLVED that the draft Act attached to the report of the Committee on Vital Statistics be referred to Mr. Treadgold for incorporation therein of the amendments made at this meeting; that one copy of the Uniform Vital Statistics Act as so amended (Appendix G, page 46) be sent by the local secretary for Ontario to each of the other local secretaries; and that if such draft Uniform Vital Statistics Act is not disapproved by two or more jurisdictions by notice to the Secretary on or before the 30th day of November, 1949, it be adopted by the Conference as a Uniform Act and recommended for enactment.

Assignment of Book Debts.

The report of the Manitoba Commissioners on the Uniform Assignment of Book Debts Act was presented by Mr. Deacon. (Appendix I, page 79).

Consideration of the amendments recommended in the report of the Manitoba Commissioners was commenced.

FOURTH DAY

(FRIDAY, AUGUST 26TH, 1949)

Seventh Session

9 a.m. — 12 noon.

Assignment of Book Debts — (concluded).

Consideration of the amendments recommended in the report of the Manitoba Commissioners was concluded.

The following resolutions were adopted:

RESOLVED that the Uniform Assignment of Book Debts Act be referred to the Manitoba Commissioners for incorporation therein of the amendments adopted at this meeting; that copies of the Uniform Assignment of Book Debts Act as so amended be sent by the local secretary for Manitoba to each of the other local secretaries for distribution by them to the members of the Uniform Law Section in their jurisdictions; and that if the Act as so amended is not disapproved by two or more jurisdictions by notice to the Secretary on or before the 30th day of November, 1949, it be recommended for enactment in the provinces that have not yet adopted it, or in the alternative, that the amendments made this year be recommended for enactment in those provinces that have adopted the Uniform Act.

RESOLVED that the Uniform Assignment of Book Debts Act, in addition to the matters covered by the first resolution, be amended by striking out the word "day" wherever it occurs in the expression "day, hour and minute" and substituting therefor in each instance the word "date", so that the expression wherever it occurs in the Act will read "date, hour and minute".

NOTE:—As copies of the Act as amended at the 1949 annual meeting were not distributed pursuant to the main resolution set out above, the recommendations as to enactments are withheld until the 1950 annual meeting.

Bulk Sales.

The Report of the Saskatchewan Commissioners on the Uniform Bulk Sales Act was presented by Mr. Leslie (Appendix J, page 83).

Upon completion of the consideration of the report the following resolution was adopted:

RESOLVED that clause *c* of section 2 of the Uniform Bulk Sales Act (as set out at pages 31 to 36 of the 1920 Proceedings and at pages 335 to 341 of the 1920 Year Book of the Canadian Bar Association) be amended to read:

(c) "Stock" shall mean:

- (a) stock of goods, wares, merchandise and chattels ordinarily the subject of trade and commerce;
- (b) the goods, wares, merchandise or chattels in which any person trades, or that he produces or that are outputs of, or with which he carries on, any business, trade or occupation,

and that section 3 of the said Act be amended by adding thereto the following clause:

- (d) Proprietors of hotels, rooming houses, restaurants, motor vehicle service stations, oil and gasoline stations and machine shops.

NOTE:—The Uniform Bulk Sales Act as amended to date is not printed in these Proceedings because of the pending report of the New Brunswick Commissioners on the correlation and revision of all Uniform Acts dealing with commercial paper.

Intestate Succession.

The memorandum on the Uniform Intestate Succession Act was presented by Mr. Runciman (Appendix K, page 85).

Consideration was given to the recommendations contained in the memorandum.

The following resolution was adopted:

RESOLVED that the matters raised in Mr. Runciman's memorandum be referred back to the Saskatchewan Commissioners for further consideration and report to next year's meeting, regard being had to the views expressed at this meeting.

Eighth Session

2 p.m. — 5 p.m.

Actions Against the Crown.

The report of the Manitoba Commissioners as to actions against the Crown and the draft Uniform Crown Liabilities Act was presented by Mr. Allen (Appendix L, page 97).

The draft Act mentioned in the report was presented to the meeting but was not considered section by section. However a preliminary discussion took place with respect to certain general principles of importance and the policy of the Conference with respect to these matters was agreed upon and the following resolutions adopted:

RESOLVED that the principles of the Crown Proceedings Act, 1947 (Imperial 10 & 11 Geo. VI, chapter 44) as to discovery set out in section 28 thereof, shall be followed in the draft Uniform Act.

RESOLVED that the draft Uniform Act shall not contain any requirements as to the giving of notice before commencing action against the Crown.

RESOLVED that the principles of the Crown Proceedings Act, 1947, as to limitations, set out in subsection 2 of section 30 thereof, shall be followed in the draft Uniform Act.

Upon completion of the consideration of the above principles the following resolution was adopted:

RESOLVED that the matter of Actions against the Crown be referred back to the Manitoba Commissioners for the preparation of a draft Uniform Act containing the procedure to be followed in actions against the Crown rather than a complete code of the procedures to be followed in actions by and against the Crown; that in the preparation of the draft Act the principles settled at this meeting be followed; and that the draft Act be prepared for distribution before and consideration at the 1950 annual meeting of the Conference.

FIFTH DAY

(SATURDAY, AUGUST 27TH, 1949)

Ninth Session

9 a.m. — 12 noon.

Defamation — (concluded)

Upon the completion of the consideration of the two points raised by Mr. Lundell on behalf of the Canadian Daily Newspapers' Association the following resolution was adopted:

RESOLVED that section 12 of the Uniform Defamation Act as set out at page 96 of the 1948 Proceedings be struck out and the following substituted therefor:

12. Sections 10 and 11 apply to every headline or caption in a newspaper that relates to any report therein.

Bills of Sale.

A verbal report on behalf of the New Brunswick Commissioners was made by Mr. Hughes, who pointed out that the matters in issue in New Brunswick had been satisfactorily settled. It was therefore decided to drop the item from the Agenda.

Evidence.

This matter (re section 6 of the Uniform Evidence Act), which was added to the Agenda at the request of the Attorney-General of Alberta, was spoken to by Mr. McKenzie.

The following resolution was adopted:

RESOLVED that the matter raised by the Attorney-General of Alberta in respect of section 6 of the Uniform Evidence Act be referred to the Alberta Commissioners for consideration and report to the 1950 meeting of the Conference.

Residence.

The report of the Federal Representatives on the proposed Uniform Residence Act was presented by Mr. O'Meara (Appendix M, page 98).

The report was adopted.

Reciprocal Enforcement of Judgments.

Mr. O'Meara for the Federal and Quebec Representatives and the Ontario Commissioners, made a verbal report.

It was agreed to allow the resolution on page 17 of the 1948 Proceedings to stand in the expectation that sufficient progress can be made to allow a report to be made at the 1950 meeting.

Mechanics' Liens.

In view of the difference of opinion on many points in connection with the proposed Uniform Mechanics' Lien Act, it was agreed to drop this item from the Agenda *pro tem*. The following resolution was adopted:

RESOLVED that the thanks of the Conference be tendered to the Manitoba and New Brunswick Commissioners for their efforts in connection with the preparation of successive drafts of the proposed Uniform Mechanics' Lien Act; and that the current draft be included in an appendix to this year's Proceedings (Appendix N, page 100).

Extraordinary Remedies and Administrative Procedures.

The following resolution was adopted:

RESOLVED that the reports on the general legislative reform of the control of administrative procedures (Item No. 17 on the Agenda) and Extraordinary Remedies (Item No. 10 on the Agenda) be tabled and that consideration of them be deferred until the subject matter is brought up again by a member of the Conference, an Attorney General or the Canadian Bar Association.

Matters Left on Agenda.

Time did not permit consideration of these matters on the Agenda: No. 9 (a) — Birth Certificates; No. 11 — Highway Traffic and Vehicles, and No. 18 — Cemetery Plots.

It was agreed that consideration of these matters should be deferred until the next annual meeting.

MINUTES OF THE CRIMINAL LAW SECTION

The following members were in attendance:

COL. ERIC PEPLER, K.C., Deputy Attorney General, representing British Columbia;

H. J. WILSON, K.C., Deputy Attorney General, representing Alberta;

J. L. SALTERIO, K.C., Deputy Attorney General, representing Saskatchewan;

ANDREW A. MOFFAT, K.C., Deputy Attorney General, and JOHN ALLEN, K.C., representing Manitoba;

C. R. MAGONE, K.C., Deputy Attorney General, representing Ontario;

HON. ANTOINE RIVARD, K.C., representing Quebec;

H. W. HICKMAN, representing New Brunswick;

H. F. MUGGAH, representing Nova Scotia;

K. M. MARTIN, K.C., representing Prince Edward Island;

H. P. CARTER, K.C., representing Newfoundland;

HIS HONOUR JUDGE ROBERT FORSYTH, Secretary;

T. D. MACDONALD, K.C., representing the Department of Justice, Canada.

The Honourable Mr. Rivard acted as chairman and His Honour Judge Forsyth acted as secretary.

On the 24th and 25th of August the Criminal Law Section held a joint meeting with the Criminal Code Revision Committee and discussed informally a number of topics including the gaming and lottery sections of the *Criminal Code*, grand juries, Part XVI of the *Criminal Code*, and many other matters.

On the afternoon of August 25th the Criminal Law Section held a formal meeting for the purpose of considering the question as to whether or not the Section should be continued in view of the work being done by the Criminal Code Revision Committee. It was decided that the current revision of the Criminal Code made the existence of the Criminal Law Section even more necessary and desirable than was formerly the case and that the Criminal Law Section should be continued permanently.

The retiring chairman, the Honourable Antoine Rivard, K.C., and the retiring secretary, Judge Robert Forsyth, were tendered sincere votes of thanks for their splendid work in connection with the Criminal Law Section.

C. R. Magone, K.C. and T. D. MacDonald, K.C. were elected chairman and secretary, respectively, for the ensuing year.

The meeting then adjourned to reconvene for the closing plenary session of the Conference.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, AUGUST 27TH, 1949)

11.30 a.m. — 12 noon.

Report of Criminal Law Section.

The Honourable Mr. Rivard, for the Criminal Law Section, made a verbal report on the work of the Section at this meeting, pointing out that all provinces and Canada had been represented, including Newfoundland.

It was announced that Mr. C. R. Magone had been elected as chairman of the Section and Mr. T. D. MacDonald elected as secretary.

Appreciations.

The following resolution was unanimously adopted:

RESOLVED that the members of the Conference in attendance at the Calgary meeting wish the Secretary to convey their thanks to Mr. H. S. McCuaig, K.C. and Mrs. McCuaig, Mr. H. J. Wilson, K.C. and Mrs. Wilson, Mr. G. W. H. Millican, K.C. and Mrs. Millican, and the Quebec representatives, the Honourable Antoine Rivard, K.C., Mr. Roger Bisson, K.C. and Mr. Thomas R. Ker, K.C., for their many kindnesses and the hospitality extended by them to the members of the Conference during the Calgary meeting.

Newfoundland.

The following resolution was adopted:

RESOLVED that the Secretary be instructed to take such steps as may be appropriate to acquaint the Attorney-General of Newfoundland with the work and objects of the Conference, to receive his consent to his becoming a member *ex officio* of the Conference, and to invite him to name one or more representatives of Newfoundland to attend and participate in the annual meetings of the Conference as members thereof.

Report of Auditors.

The auditors reported that they had examined the books of the Treasurer and had certified them as being correct and in order.

Report of Nominating Committee.

The report of the nominating committee was presented by Mr. Porter. It recommended the following officers for the year 1949-50:

Honorary President.....J. Pitcairn Hogg, K.C.
President.....Hon. Antoine Rivard, K.C.
1st Vice-President.....Horace A. Porter, K.C.
2nd Vice-President.....C. R. Magone, K.C.
Treasurer.....G. S. Rutherford, K.C.
Secretary.....L. R. MacTavish, K.C.

The report was adopted and those named declared elected.

Close of Meeting.

Mr. Hogg, before closing the meeting, called on the Honourable Antoine Rivard, K.C., President-elect of the Conference, to address the meeting (Appendix O, page 126).

APPENDIX A

(See page 14)

AGENDA

PART I

PLENARY SESSION

1. Opening of Meeting.
2. 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.

PART II

UNIFORM LAW SECTION

1. Hours of Sitting and Order of Precedence of Business.
2. Actions against the Crown — Manitoba Commissioners (1948 Proceedings, page 25).
3. Assignment of Book Debts — Manitoba Commissioners (1948 Proceedings, page 20).
4. Bills of Sale — New Brunswick Commissioners (1948 Proceedings, page 25).
5. Bulk Sales — Saskatchewan Commissioners (1948 Proceedings, page 20).
6. Conference Policy and Practice with respect to Recommended Uniform Acts — Mr. Fisher (1948 Proceedings, pages 24 and 25).
7. Commorientes — Nova Scotia Commissioners (1948 Proceedings, page 25).

8. Defamation — Added to the Agenda at the request of the Attorney General of Manitoba.
9. Evidence — (a) Re Birth Certificates, Proof Outside Issuing Jurisdiction—New Brunswick Commissioners (1948 Proceedings, page 25).
(b) Re Section 6 of Uniform Act (*Russell vs. Russell*)—Added to the Agenda at the request of the Attorney General of Alberta.
10. Extraordinary Remedies — British Columbia Commissioners (1948 Proceedings, page 24).
11. Highway Traffic and Vehicles — Ontario, British Columbia, Nova Scotia, Alberta, Manitoba and New Brunswick Commissioners (1948 Proceedings, page 25).
12. Intestate Succession — Mr. Runciman (1948 Proceedings, pages 25 and 26).
13. Mechanics' Liens — New Brunswick Commissioners (1948 Proceedings, page 24).
14. Reciprocal Enforcement of Judgments — Dominion and Quebec Representatives and Ontario Commissioners (1948 Proceedings, page 17).
15. Residence — Dominion Representatives (1948 Proceedings, pages 21 and 22).
16. Vital Statistics — Special Committee composed of Messrs. Hughes, Rutherford and Treadgold (1948 Proceedings, page 21).
17. General Legislative Reform of the Control of Administrative Procedure. Reports from each Province and Canada — Added to the Agenda at the request of the Canadian Bar Association.
18. Cemetery Plots. Provision by will for upkeep — Added to the Agenda at the request of the Attorney General of Manitoba.

PART III

CRIMINAL LAW SECTION

Representatives of the Attorneys General of the Provinces will meet with the Criminal Law Revision Committee for the purpose of discussing desirable changes in the Criminal Code.

The principal topic that will be discussed is the elimination of the differences in the field of criminal law now existing among the Provinces.

PART IV

PLENARY SESSION

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

APPENDIX B

(See page 14)

TREASURER'S REPORT
FOR YEAR 1948-49

RECEIPTS

Cash in Bank August 20, 1948	\$1,081.63
Cash on hand August 20, 1948	75.00
	<hr/>
	\$1,156.63
Subscription from Government of Canada.	75.00
Contributions from—	
Saskatchewan	75.00
Nova Scotia	75.00
Manitoba	75.00
Alberta	75.00
Ontario	75.00
British Columbia	75.00
New Brunswick	75.00
Prince Edward Island	75.00
Quebec	75.00
Bank Interest	11.03
	<hr/>
	\$1,917.66

DISBURSEMENTS

Gratuities to employees at Purvis Hall, Montreal (1948 meeting)	\$40.00
Secretarial expenses	50.00
Noble Scott Co. Ltd., Printers, Toronto	10.80
" " " " " "	24.30
National Printers Ltd., Ottawa	472.88
" " " "	368.28
Commission and excise stamps on bank drafts and money orders	2.95
Exchange on cheques . . . . .	.40
	<hr/>
	\$969.61

Cash in Bank August 22, 1949.....	873.05
Cash on hand.....	75.00
	<hr/>
	\$1,917.66 \$1,917.66

Regina,
August 22, 1949.

J. P. RUNCIMAN,
Treasurer.

Audited and found correct,

Calgary, August 26, 1949.

J. EDWARD HUGHES,
D. M. TREADGOLD,

Auditors.

APPENDIX C

(See page 14)

SECRETARY'S REPORT

1948 Proceedings.

The report of the Proceedings of last year's annual meeting held in Montreal was prepared and printed and more than four hundred copies distributed to the members of the Conference, members of the Council of the Canadian Bar Association, law libraries and others.

In accordance with custom the 1948 Proceedings were also published as an addendum to the year book of the Canadian Bar Association.

Secretarial Assistance.

The cost of secretarial assistance during the year 1948-49 was \$50.00 as shown in the Treasurer's report. This was \$10.00 more than in the previous year but was justified by reason of the additional work done by the staff in my office in connection with the publication of the special pamphlet containing the Rules of Drafting.

Rules of Drafting.

The Rules of Drafting as approved at last year's meeting, together with certain supplemental material that I prepared along the lines suggested at the Montreal meeting, were published in the October 1948 issue of the *Canadian Bar Review* at page 1231. This material formed the basis for the special pamphlet approved last year which was published a few months ago.

Although I was authorized to have one thousand copies printed the Executive considered it advisable that this number should be doubled as the printing of the additional copies could be done comparatively cheaply, and was justified by the demand. To date approximately eight hundred copies have been distributed with new requests coming in almost daily.

Minister of Justice.

I am pleased to report that the Honourable Stuart S. Garson, K.C., Minister of Justice and Attorney General for Canada in a

letter to me dated January 27th, 1949, consented to become a member *ex officio* of the Conference.

Newfoundland.

As this is the first meeting of this Conference to be held since Newfoundland became a province of Canada, I suggest that at this meeting appropriate action be taken to extend a cordial invitation to Newfoundland to join the Conference and through commissioners or representatives to take part in our work. We are of course happy to see Mr. H. P. Carter, K.C., present here as a representative of the Attorney General's Department of Newfoundland in connection with the revision of the Criminal Code.

Agenda.

Perhaps you will permit me to close this report with an observation that applies solely to the Uniform Law Section.

It would appear that the Agenda has now grown far too long and far too diverse to be dealt with adequately at one meeting, and I think that experience illustrates the fact that the Agenda ought not to contain more items than can be dealt with conveniently at one meeting.

I therefore suggest that at the appropriate time consideration be given to reducing the Agenda substantially.

L. R. MACTAVISH,
Secretary.

APPENDIX D

(See page 17)

COMMORIENTES

REPORT OF NOVA SCOTIA COMMISSIONERS

Terms of Reference:

At the 1948 meeting in Montreal, the Conference assigned to the Nova Scotia Commissioners consideration of an amendment to the Uniform Commorientes Act adopted by the Conference in 1939 (1939 Proceedings, page 63) and now in force in most provinces, in the light of *Hickman v. Peacy* (1945) A. C. 304 (1948 Proceedings, page 25).

The operative section is section 2:

2.—(1) Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, subject to subsections (2) and (3), for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.

(2) The provisions of this section shall be read and construed subject to the provisions of section 175 of The Insurance Act (Ontario) and of section 36 of The Wills Act (Ontario).

(3) Where a testator and a person who, if he had survived the testator, would have been a beneficiary of property under the will, die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in case that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be.

The decision on *Hickman v. Peacy* cast doubt on the interpretation of the word "uncertain" in the phrase "Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others . . .". Does this language

cover the case where two or more persons die at the same time, as time is measured in law rather than in science or philosophy? The Commissioners have recommended amending the Uniform Act by adding the words "at the same time or" between the words "die" and "in" in the phrase quoted wherever it appears in the Act so that it reads: "Where two or more persons die *at the same time or* in circumstances rendering it uncertain which of them survived the other or others."

Problems Considered but not Mentioned in Terms of Reference:

When reviewing the Uniform Act, the Commissioners also noted three other matters that needed some consideration, and brief mention is made of these after detailed consideration of the assigned task. The three additional matters are:

- (1) the discrepancy between the long title of the Uniform Act and the operative words of section 2 (1) and (3);
- (2) the uncertainty whether or not the words "and the will contains further provisions for the disposition of the property" in section 2 (3) refer to the passing of a lapsed gift to a residuary legatee by operation of law and without express provision for it in the will; and
- (3) the relation of the Uniform Life Insurance Act to the Uniform Commorientes Act.

The Effect of Hickman v. Peacy:

The relevant facts of *Hickman v. Peacy* were that while five persons sheltered in a small basement of a house in London on September 14, 1940, a German high explosive bomb penetrated to the basement and exploded. All five persons were killed and their bodies mutilated. It became necessary for purposes of the succession to property to decide which of the five persons survived the other or others. The language of section 184 of the Law of Property Act, 1925, was considered. It is substantially the same as section 2 (1) of our Uniform Commorientes Act, which was copied from section 184 with one deletion (1937 Proceedings, page 62). Cohen J., held that the section applied but the deaths were not proved to have been simultaneous and that the deceased must be presumed to have died in order of seniority. The Court of Appeal (Lord Green, M.R. and Goddard, L.J., Luxmoore, L.J. dissenting (1944) Ch. 138) held that the deaths were simultaneous and reversed the trial judge's decision. In the House of Lords, Lord Macmillan, Lord Porter and Lord Simonds held

(Viscount Simon, L.C., and Lord Wright dissenting) that the language of section 184 covered both simultaneous deaths and consecutive deaths where the order was uncertain, and applied the presumption of the section.

The only other decisions on section 184 in England are *Re Howard* (1944) p. 39, *Re Mercer* (1944) 1 All E.R. 759, *Re Pringle* (1946) Ch. 124, *Re Bate* (1947) 2 All E.R. 418, which deal with the time of death, and *Re Cohn* (1945) 1 Ch. 5, which deals with a conflict problem and holds that section 184 is a part of the substantive law of succession in England and not a rule of evidence. There is only one reported Canadian case on the Uniform Act, *Re Law* (1946) 2 D.L.R. 378. It does not raise an issue relevant to this part of the report, but it is considered later.

There is nothing to be gained by analysing these cases, save to point out that in *Re Howard* and *Re Pringle* trial judges decided that persons killed in bombing disasters were killed simultaneously (in *Re Pringle* the decision was on the words of a will: "In the event of the simultaneous death of the aforesaid. . . ." but the opinions of the Law Lords in *Hickman v. Peacy* on section 184 were discussed) and in *Re Mercer* and *Re Bate* trial judges held the time of death to be uncertain in cases where reasonable doubt was to be inferred from the facts. Neither case was one of a direct hit from a bomb.

It is clear that the majority of the House of Lords held, in *Hickman v. Peacy*, that section 184 covers simultaneous deaths, although in the course of the case four judges, Lord Greene, M.R., Goddard, L.J., Viscount Simon, L.C., and Lord Wright (rather imposing names) held that section 184 did not cover simultaneous death and that simultaneous death could be proved at law and had been in this case. Five judges held otherwise; but two, Cohen, J., and Luxmoore, L.J., both thought section 184 did not cover simultaneous deaths, although the facts of the present case did not prove simultaneity. Only the three majority law lords held section 184 covered simultaneous deaths.

Despite this arresting division of judicial opinion, if the Uniform Act were identical with section 184, *Hickman v. Peacy* might be taken as an authoritative decision that the Uniform Act covered simultaneous deaths. But there is a major difference between section 184 and the Uniform Act. For section 2 (3) of the Uniform Act adds a clause not to be found in the Law of Property Act, 1925, and in that clause although the words "die in circumstances rendering it uncertain" in the third line (1939

Proceedings, page 63) are the same as in section 2 (1), where they are repeated in the seventh line they are preceded by the words "at the same time as the testator or". The words "at the same time as the testator or" appear again in the tenth line of section 2 (3). Since there is express provision for simultaneous deaths in a later clause of section 2, many judges would not hesitate to say that the omission of this express provision in the first clause is intentional and consequently section 2 (1) does not cover simultaneous deaths. So long as this judicial behaviour may be reasonably expected, it is wrong to regard *Hickman v. Peacy* as of much authority.

It is clear from the able memorandum supporting the first draft of the Uniform Act (1937 Proceedings, page 55) that the Act was intended to cover simultaneous deaths. The authors of that memorandum say (at page 60): "Accordingly a presumption of survivorship in accordance with the usual probabilities of life is more conducive to an equitable result than no presumption or a presumption of simultaneous death for although the cases indicate that there is no presumption at all, the final result appears to be the same in fact as though the presumption were in favour of simultaneous death." In their proposed section for what is now section 2 (3) the authors did not insert the words "at the same time as the testator or". They evidently felt that the English section they copied covered simultaneous deaths. There must have been some discussion about section 2 (3) of the first draft bill, for in the second bill section 2 (3) is redrafted pursuant to a resolution of the Committee, but the words "at the same time as the testator or" were not added. They appear first in the draft (1938 Proceedings, page 39) submitted by the Ontario Commissioners after the 1938 meeting of the Conference. It is thought that the explanation for the different wording in section 2 (3) lies in the fact that draftsmen of wills take the extra precaution and the authors of the draft Uniform Act simply used the common language of wills. The result, none the less, particularly since the judges will not refer openly to the published proceedings, is that the first subsection is ambiguous.

Accordingly, the Commissioners recommend that the Uniform Commorientes Act as it appears at page 63 of the 1939 Proceedings be amended by adding the words "at the same time or" after the word "die" in line one of section 2 (1) and after the word "die" in line three of section 2 (3) in order to carry out the intended meaning of the original.

The Discrepancy Between the Long Title and the Operative Sections:

The long title of the Uniform Act is "An Act Respecting Survivorship in Common Disasters". The operative words in section 2 (1) are "Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others . . .". Quite obviously the words of section 2 (1) would cover two deaths occurring each in a different place and from a different cause, and the following quotation from the judgment of Goddard, L.J., in *Re Grovesnor* (the Court of Appeal decision of *Hickman v. Peacy*, reported in 1944, Ch. 138, quoting from pp. 151-2) would indicate a similar view was taken by the English Courts:

"Now the matter to be remedied was, in my opinion, the law laid down in the above case (*Wing v. Angrave* 8 H.L.C. 183), that there was no presumption arising from age or sex as to survivorship among two or more persons. If title depended on one surviving another that fact had to be proved and that it might be impossible to establish it did not entitle the Court to presume, which really means to guess, either that the elder or the stronger survived the younger or weaker, or that they died at the same time. This rule applied in all cases, not only when the deaths were occasioned by one and the same cause. It applied where two persons in the same ship were swept off by the same wave and drowned, and also to the case instanced by one of their Lordships of a wife dying in this country after her husband had sailed on a ship which was never heard of again. In some cases no doubt it could be proved that one survived the other, if only for a very short space of time; in others it could not. Accordingly, this section was passed. . . ."

It will be noticed that this reading of the Uniform Act gives it a much broader effect than section 44 of the Uniform Life Insurance Act (1923 Proceedings, page 41) from which the inspiration for the long title seems to have been drawn. Section 44 provides for the case "Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster . . .". (It is interesting to observe that the problem of *Hickman v. Peacy* could hardly arise under the wording of section 44.)

Now it is a well known rule of interpretation that where a judge finds the words of a section ambiguous he may refer to the long title for assistance. If he did so in the case of the Uniform Commorientes Act he would almost certainly solve the

problem by restricting the application of section 2 (1) to common disasters. It may be said that section 2 (1) admits of no ambiguity, but after reading the judgments of *Hickman v. Peacy* that opinion can be advanced with less confidence. In any event, a more accurate long title would seem desirable. The Commissioners accordingly recommend that the long title be changed to "An Act Respecting Survivorship".

The Uncertainty of the Words of Section 2 (3):

Section 2 (3) provides in part that where a testator and beneficiary die in circumstances rendering it uncertain which of them survived the other, and the will contains further provisions for the disposition of the property in that case then the will takes effect as if the event provided against had happened. The problem that may arise here is simply that under the ordinary rules of interpretation of wills, if a specific gift lapses, and there is a residuary gift to another, the specific gift goes to the residuary legatee. This happens not because the will contains "further provisions for the disposition of the property" but because the "law" says so. Yet there is the possibility that the "law" having said that much, might go on to say that the legal rule operates as a "further provision" within the meaning of section 2 (3). To remove this latest ambiguity, the Commissioners recommend amending section 2 (3) by deleting the word "further" where it appears in line four and by substituting for it the word "express" (1939 Proceedings, page 63). The word "further" seems superfluous whether section 2 (3) is amended or not.

The Relation of the Uniform Life Insurance Act to the Uniform Commorientes Act:

Section 2 (2) of the Uniform Commorientes Act provides that the section is to be read and construed "subject to the provisions of section 175 of The Insurance Act (Ontario)". The Uniform Life Insurance section provides: "Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiary or beneficiaries died first." The only reported Canadian case on the Uniform Commorientes Act is *Re Law* (1946) 2 D.L.R. 378, ably commented on by Professor Kennedy in (1946) 24 Can. Bar Rev. 720. The facts were that Mr. and Mrs. Law were drowned when their boat capsized. There was uncertainty which of them survived the other, so that the Uni-

form Act applied, but it had to be read and construed subject to the Uniform Life Insurance section. Mr. Law had insurance policies payable to his wife as named beneficiary. Under the Insurance Act (B.C.) Mrs. Law was deemed to have died first so the money was payable to the estate of Mr. Law under another provision of the Act. Under the Commorientes Act (B.C.) Mrs. Law, as the younger, survived her husband and as Mr. Law died intestate, she was entitled to share in the estate. Macfarlane, J., held, however, that the life insurance section governed the *final* disposition of the money, and not merely the *immediate* disposition of the money by insurance company. He said:

“I think that by necessary intendment, the insurance moneys under these provisions go to the estate of the husband as insurance moneys, and are there to be dealt with on the basis of the presumption that the wife died first. I do not think that I can accept as reasonable, the construction that in respect of the same thing, a presumption is declared to have effect at one moment and a moment later to be set aside by another when the first presumption is declared to be the prevailing one in respect of that subject matter.”

The learned judge held it to be the same subject matter because he considered that the insurance moneys did not lose their colour as insurance moneys when they were received by the estate of Mr. Law. He was led to this conclusion by reference to section 104, which restricts the insured in dealing with preferred beneficiaries, but, with respect, section 108 (4) (d) would seem to be the only section in the Act affected by section 123. The Life Insurance Act does not deal with the disposition of the assets of the estate of the insured after they have been collected by the executor or administrator, but merely provides that where a preferred beneficiary dies before the maturity of the contract his share shall in certain circumstances be paid to the estate of the insured. What happens to the money after that must be governed by the insured's will, or, if there is no will, by the law applicable on intestacy. Section 123 is of no help to the administrator here, because no matter when a beneficiary of an insurance policy may have died, the administrator of an estate is concerned only to pay out the assets of the estate according to law governing succession of property. The Life Insurance Act primarily governs the contract of insurance. It does not govern succession to any property except that specifically covered by the Act, and full effect has been given to the Act when the money is paid by the

insurer to Mr. Law's estate rather than to Mrs. Law or her estate. The Commorientes Act clearly governs all succession save what is expressly excepted, i.e., the payment of money by the insurer under the contract.

The Uniform Life Insurance Act might be improved by clarifying the point by amending section 44 (1923 Proceedings, page 41) by adding the words "for the purposes of the payment of insurance money by the insurer under this Act" after the words "presumed that", so that the section reads: "Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that for the purposes of the payment of insurance money by the insurer under this Act the beneficiary or beneficiaries died first."

However, since the Conference has relinquished its jurisdiction in matters of insurance, no recommendation is made. On the other hand, no recommendation is warranted in the Uniform Commorientes Act.

J. B. MILNER,
HENRY F. MUGGAH,
Nova Scotia Commissioners.

APPENDIX E

(See page 17)

AN ACT RESPECTING SURVIVORSHIP

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

1. This Act may be cited as "The Survivorship Act". Short title.
2. (1) Where two or more persons die at the same time Order of death presumed.
or in circumstances rendering it uncertain which of them sur-
vived the other or others, such deaths shall, subject to subsec-
tions (2) and (3), for all purposes affecting the title to property,
be presumed to have occurred in the order of seniority, and
accordingly the younger shall be deemed to have survived the
older.
(2) The provisions of this section shall be read and con- Exceptions to presumption
---as to certain statutes,
strued subject to the provisions of section 175 of The Insurance
Act (Ontario) and of section 36 of The Wills Act (Ontario).
(3) Where a testator and a person who, if he had survived as to provision
in will.
the testator, would have been a beneficiary of property under
the will, die at the same time or in circumstances rendering it
uncertain which of them survived the other, and the will con-
tains provisions for the disposition of the property in case that
person had not survived the testator or died at the same time
as the testator or in circumstances rendering it uncertain which
survived the other, then for the purpose of that disposition the
will shall take effect as if that person had not survived the testa-
tor or died at the same time as the testator or in circumstances
rendering it uncertain which survived the other as the case
may be.
3. This Act shall be so interpreted and construed as to Uniform interpretation.
effect its general purpose of making uniform the law of those
provinces which enact it.
4. This Act shall come into force on the _____ day Coming into force.
of _____, 19 _____.

APPENDIX F

*(See page 17)*VITAL STATISTICS
REPORT OF COMMITTEE

At the 1948 meeting of the Conference, the undersigned were appointed as a committee "to meet in Ottawa later this year for the purpose of finalizing the form of the draft Uniform Vital Statistics Act for presentation to the Conference in 1949" (1948 Proceedings, page 21).

The Committee met members of the staff of the Dominion Bureau of Statistics in Ottawa from November 28th to December 2nd, 1948. Consideration was given to the representations made by the Dominion-Provincial Vital Statistics Council arising from their 1948 meeting with reference to the original draft, and the attached draft was then prepared.

This Act is primarily administrative by nature and consequently most of our work has been directed toward correlating and putting into legislative language the views of the administrative officials of the Dominion and the provinces who deal with the registration of vital statistics and the compilation of statistical data therefrom. Certain matters have arisen, however, that are entirely of a legal nature and we feel that the attention of the Conference should be drawn to the sections dealing with the registration of births, with the issue and evidential value of certificates, certified copies and photographic prints, with legitimation by subsequent marriage, and with appeals.

The matter of the registration of the birth of a child of a married woman has been particularly vexatious. The administrative officials take the position that they should obtain true statements and are, generally, willing to take the word of the mother that her husband is not the father. On the other hand as lawyers we feel that the common law presumption of legitimacy cannot be so lightly discarded. In considering this matter it should be remembered that one of the services given to the public by this Act is that certificates, etc., are made admissible as *prima facie* evidence in courts. To accept the views of the administrative officials would be to allow an unsworn statement of the mother to make her child illegitimate as such statement would, when incorporated in a certified copy or photographic print of the registration come before the court as *prima facie*

evidence of the illegitimacy of the child. This would be in conflict with one of the fundamental principles of our law.

The provisions of subsections 4 and 5 of section 4 and section 6 represent an attempt to reconcile the views of three groups, viz., (i) the administrative officials; (ii) those who believe that no statement on a registration should be permitted to affect the common law presumption of legitimacy; and (iii) those who feel that a middle course should be followed, i.e., that if the matter is taken to a court, the court may permit a registration of a child born to a married woman which will in effect indicate that the child is illegitimate.

We should say here that this draft is not acceptable to all the administrative officials, but we feel that this is strictly a legal matter and that we would be evading our responsibilities if the draft permitted an unsworn statement to illegitimate a child when the general law presumes such a child to be legitimate.

It is recommended that this draft, if possible, be dealt with finally at the 1949 meeting, as several provinces that have for some time intended to enact a new Vital Statistics Act are waiting until the Uniform Act is available.

J. EDWARD HUGHES,
G. S. RUTHERFORD,
D. M. TREADGOLD,

Special Committee.

NOTE:—The draft Act attached to the report is not printed in these Proceedings. The Act as amended at the meeting and as recommended for enactment appears as Appendix G.

APPENDIX G

(See page 19)

AN ACT RESPECTING THE REGISTRATION OF
BIRTHS, MARRIAGES, DEATHS AND
OTHER VITAL EVENTS.

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

SHORT TITLE

- Short title. **1.** This Act may be cited as "The Vital Statistics Act".

INTERPRETATION

- Interpretation, **2.** In this Act,
- "birth"; (a) "birth" means the birth of a foetus which after complete
separation from the mother shows any sign of life;
- "burial
permit"; (b) "burial permit" means a permit to bury, cremate, remove
or otherwise dispose of a dead body;
- "cemetery"; (c) "cemetery" means land set apart or used as a place for
the interment or other disposal of dead bodies, and in-
cludes a vault, mausoleum and crematorium;
- "cemetery
owner"; (d) "cemetery owner" includes the manager, superintendent,
caretaker or other person in charge of a cemetery;
- "certificate" (e) "certificate" means a certified extract of the prescribed
particulars of a registration filed in the office of the
Director;
- "cremation"; (f) "cremation" means disposal of a dead body by incinera-
tion in a crematorium as provided by the Cemetery
Act;
- "Director"; (g) "Director" means the Director of Vital Statistics pro-
vided for under this Act;
- "division
registrar"; (h) "division registrar" means a division registrar appointed
under this Act;
- "error"; (i) "error" means incorrect information, and includes omis-
sion of information;
- "funeral
director"; (j) "funeral director" means any person who takes charge
of a dead body for the purpose of burial, cremation or
other disposition;

- (k) "incapable" means unable because of death, illness, absence from the province, or otherwise; ^{"incapable";}
- (l) "Indian" means an Indian within the meaning of the Indian Act (Canada), but does not include an enfranchised Indian; ^{"Indian";}
- (m) "inspector" means an inspector of vital statistics provided for under this Act; ^{"inspector";}
- (n) "married woman" includes a woman who, within the period of gestation prior to the birth of the child in respect of whose birth an application for registration is made under this Act, was lawfully married; ^{"married woman";}
- (o) "medical practitioner" means a medical practitioner registered under the Medical Act; ^{"medical practitioner";}
- (NOTE:—In most provinces the expression "legally qualified medical practitioner" is defined in the Interpretation Act or the Medical Act. In such provinces this definition will be unnecessary, and that expression should be substituted wherever "medical practitioner" appears in this Act.)
- (p) "Minister" means the Minister to whom the administration of this Act is assigned; ^{"Minister";}
- (q) "municipality" (to be defined by each province in accordance with its own requirements); ^{"municipality";}
- (r) "occupier" means the person occupying any dwelling, and includes the person having the management or charge of any public or private institution where persons are cared for or confined, and the proprietor, manager, keeper or other person in charge of an hotel, inn, apartment, lodging-house or other dwelling or accommodation; ^{"occupier";}
- (s) "prescribed" means prescribed by this Act or the regulations; ^{"prescribed";}
- (t) "registration division" means a registration division established under section 25; ^{"registration division";}
- (u) "state" means any state or territory of the United States of America and includes the District of Columbia; ^{"state";}
- (v) "stillbirth" means the birth of a foetus, after at least twenty-eight weeks pregnancy, which after complete separation from the mother does not show any sign of life. ^{"stillbirth".}

REGISTRATION OF BIRTHS AND STILLBIRTHS

BIRTHS

3. Every person who assists at the birth of a child in the province shall, within . . . hours thereafter, deliver or mail to the ^{Notice of birth.}

division registrar of the registration division in which the birth occurs a notice of the birth in the prescribed form.

Registration
of births.

4. (1) The birth of every child born in the province shall be registered as provided herein.

Statement
respecting
birth.

(2) Within days after the day of the birth of a child in the province,

- (a) the mother of the child;
- (b) if the mother is incapable, the father of the child;
- (c) if the mother and the father are incapable, the person standing in the place of the parents of the child;
- (d) if there is no person to whom clause (a), (b) or (c) applies, the person required to give notice of the birth under section 3; or
- (e) if there is no person to whom clause (a), (b), (c) or (d) applies, the occupier of the premises in which the child is born, if he has knowledge of the birth,

shall complete and deliver or mail a statement in the prescribed form respecting the birth to the division registrar of the registration division in which the birth occurs, but the Director may accept the statement of the father although the mother is not incapable.

Exception.

(3) The father of an illegitimate child shall not be required to comply with subsection (2).

Plural births.

(4) If more than one child is delivered during a single confinement, a separate statement for each child shall be completed and delivered or mailed as provided in subsection (2), and in each statement the number of children born during the confinement and the number of the child in the order of birth shall be given.

Child of
married
woman.

(5) Except as provided in subsection (6), the birth of a child of a married woman shall be registered showing the surname of the husband as the surname of the child, and the particulars of the husband shall be given as those of the father of the child.

Idem.

(6) Where a child is born to a married woman, if she files with the division registrar a statutory declaration that at the time of the conception she was living separate and apart from her husband, and that her husband is not the father of the child, no particulars as to the father shall be given in the statement required under subsection (2) unless the mother and a person acknowledging himself to be the father jointly so request in

writing, in which case the particulars of the person so acknowledging may be given as the particulars of the father, or the birth may be registered showing the surname of the person so acknowledging as the surname of the child, or both; and, if the request is made after the registration of the birth, the Director may amend the registration in accordance with the request by making the necessary notation thereon.

(7) Except as provided in subsection (8), the registration of the birth of a child of an unmarried woman shall show the surname of the mother as the surname of the child, and no particulars as to the father shall be given. Child of unmarried woman.

(8) Where an unmarried woman who is the mother of a child and a person acknowledging himself to be the father jointly so request in writing, the particulars of the person so acknowledging may be given as the particulars of the father, or the birth may be registered showing the surname of the person so acknowledging as the surname of the child, or both; and, if the request is made after the registration of the birth, the Director may amend the registration in accordance with the request by making the necessary notation thereon. Idem.

(9) If the division registrar is not satisfied as to the truth and sufficiency of the statement, he shall refer the matter to the Director who, in order to obtain such additional evidence as may be necessary, may require the attendance at his office of the person who signed the statement, or of any other person, and may examine him respecting any matter pertaining to the registration of the birth. Additional evidence required by Director.

(10) If the statement is not completed and delivered or mailed in the manner and within the time herein provided, every person upon whom the duty of completing and delivering or mailing the statement is imposed shall remain liable to perform that duty notwithstanding the expiration of the time provided, and shall, in respect of each successive period of . . . days thereafter during which he neglects or fails to complete and deliver or mail the statement, be guilty of a violation of this Act. Continuing liability to complete statement.

(11) Upon the receipt, within one year from the day of the birth of a statement in the prescribed form respecting the birth, the division registrar, if he is satisfied as to the truth and sufficiency thereof, shall register the birth by signing the statement, and thereupon the statement shall constitute the registration of the birth. Registration of birth by division registrar.

Registration
of birth by
Director.

5. When a birth is not registered within one year from the day of the birth, or the division registrar has referred the matter to the Director under subsection (9) of section 4, if application for the registration thereof is made by any person to the Director in the prescribed form, verified by statutory declaration and accompanied by the prescribed fee and by a statement in the prescribed form respecting the birth and such other evidence as may be prescribed, the Director, if he is satisfied as to the truth and sufficiency of the matters stated in the application and that the application is made in good faith, shall register the birth by signing the statement, and thereupon the statement shall constitute the registration of the birth.

Registration
of child
legitimated by
subsequent
marriage.

6. (1) Where a child is legitimated by the intermarriage of his parents subsequent to his birth, then upon the parents,

- (a) completing and certifying the statement required under subsection (2) of section 4;
- (b) delivering the statement, together with such evidence as to the legitimation as is required by the regulations, to the Director; and
- (c) paying the prescribed fee,

the Director shall,

- (d) register the birth as if the parents had been married to each other at the time of the birth; and
- (e) make a notation on the statement that the registration was made under this section,

and the statement shall constitute the registration of the birth.

Idem.

(2) Upon proof that one of the parents is dead or mentally incapable, the application may be made by the other parent.

Idem.

(3) Where the birth has been registered under subsection (8) of section 4, the application may be made by the child.

Original
registration to
be withdrawn.

(4) Where the birth has been registered before the marriage, the original registration shall be withdrawn from the registration files and shall be kept in a separate file and sealed.

Statement
respecting
birth of
foundling.

7. (1) Where a new-born child is found deserted, the person who finds the child, and any person in whose charge the child may be, shall give to the division registrar of the registration division in which the child is found, within seven days after the finding or taking charge of the child, such information as he may possess as to the particulars required to be registered concerning the birth of the child.

(2) The division registrar, upon receipt of such information ^{Duties of division registrar.} regarding the birth of the child, and upon being satisfied that every reasonable effort has been made to identify the child without success shall,

- (a) require the person who found or has charge of the child to complete a statutory declaration concerning the facts of the finding of the child and to complete, so far as the person is able, a statement in the prescribed form required under subsection (2) of section 4;
- (b) cause the child to be examined by the local medical officer of health or a medical practitioner with a view to determining as nearly as possible the date of the birth of the child, and require the examiner to make a statutory declaration setting forth the facts as determined by the examination; and
- (c) make a detailed report of the case and transmit to the Director the evidence regarding the birth of the child.

(3) A medical practitioner shall be paid out of the Consolidated Revenue Fund the prescribed fee for an examination made by him under subsection (2). ^{Fee.}

(4) The Director, upon receipt of the report and the evidence mentioned in subsection (2), shall review the case and, if he is satisfied as to the correctness and sufficiency of the matters stated, shall register the birth; and the registration shall, subject as herein provided, establish for the child a date of birth, a place of birth and a surname and given name. ^{Registration of birth of foundling.}

(5) The Director, upon registering a birth under this section, shall transmit forthwith to the (Superintendent of Child Welfare) a copy of all documents respecting the child filed pursuant to this section. ^{Copy of documents to be transmitted to}

(6) If, subsequent to the registration of a birth under this section, the identity of the child is established to the satisfaction of the Director or further information with respect thereto is received by him, he shall, ^{Subsequent establishment of identity}

- (a) cancel, add to, or correct the registration of the birth made under this section; and
- (b) where necessary, cause a new registration in accordance with the actual facts of the birth to be made and filed in substitution for the registration first made under this section,

and the Director shall thereupon make a notation of any cancellation on the registration first made, and no certificate shall thereafter be issued in respect thereof.

Date of new registration

(7) Where a new registration of the birth of a child made is under subsection (6), the date of registration shall be as shown on the registration first made.

Notification to . . .

(8) The Director shall notify the (Superintendent of Child Welfare) forthwith of any action taken under subsection (6).

Certificate to be cancelled.

(9) Where a person has received a certificate issued in respect of the registration of the birth of a child made under subsection (4), if the registration is cancelled under subsection (6), he shall deliver the certificate to the Director for cancellation if the Director so requires.

Alteration or addition of given names by Director.

8. (1) Except in a case to which section 21 applies, where the birth of a child has been registered, and,

- (a) the given name under which the child was registered is changed; or
- (b) the child was registered without a given name,

both parents, the surviving parent, the guardian of the child, the person procuring the name to be changed or given, or the child after he has attained the age of twenty-one years, may deliver to the Director an application setting forth the particulars of the change or of the name given, accompanied by a statutory declaration completed by the applicant, and,

- (c) a baptismal certificate, showing the given name under which the child was baptized; or
- (d) if a baptismal certificate is not procurable, such other documentary evidence as is satisfactory to the Director,

and the Director, upon being satisfied that the application is made in good faith and upon payment of the prescribed fee, shall make a notation of the change in the registration of the birth.

Time limit for alteration or addition.

(2) No alteration of or addition to a given name shall be made under this section in any registration of a birth unless the name of the child was changed or the name was given to the child within . . . years next after the day of the birth.

(NOTE:—Some provinces may desire to delete subsection (2).)

Statutory limitation of alteration or addition. Changes to be shown on certificate.

(3) No alteration of or addition to a given name shall be made in a registration of a birth, except as provided herein.

(4) Any birth certificate issued after the making of a notation pursuant to this section shall be prepared as if the registra-

tion had been made containing the changed or new given name at the time of registration.

STILLBIRTHS

9. (1) Every stillbirth in the province shall be registered ^{Registration of stillbirths.} as provided herein.

(2) Where a stillbirth occurs, the person who would have ^{Statement respecting stillbirth.} been responsible for the registration thereof as provided in section 4, if it had been a birth, shall complete and deliver to the funeral director a statement in the prescribed form respecting the stillbirth.

(3) The medical practitioner in attendance at a stillbirth, ^{Medical certificate.} or, where there is no medical practitioner in attendance, a medical practitioner or a coroner shall complete the medical certificate included in the prescribed form showing the cause of the stillbirth and shall deliver it to the funeral director.

(4) Upon receipt of the statement, the funeral director shall ^{Duty of funeral director.} complete the statement setting forth the proposed date and place of burial, cremation or other disposition of the body and shall deliver the statement to the division registrar of the registration division in which the stillbirth occurred.

(5) Upon receipt of the statement the division registrar, ^{Registration of stillbirth.} if he is satisfied as to the truth and sufficiency thereof, shall register the stillbirth by signing the statement, and thereupon the statement shall constitute the registration of the stillbirth.

(6) Upon the registration of a stillbirth, the division registrar ^{Burial permit.} shall forthwith prepare and deliver to the person requiring them for the purpose of the burial, cremation or other disposition of the body of the stillborn child,

- (a) an acknowledgment that the stillbirth is registered; and
- (b) a burial permit.

(7) Subject to this section, sections 3 to 5 and 14 to 19 shall ^{Application of ss. 3-5, 14-19.} apply *mutatis mutandis* to stillbirths.

REGISTRATION OF ADOPTIONS

10. (1) Upon receipt of a certified copy of an order of ^{Registration of adoptions.} adoption transmitted under (The Adoption Act), the Director shall register the adoption by endorsing his signature on the copy and thereupon the copy shall constitute the registration of the adoption.

Notation of adoption on birth registration.

(2) Where, at the time of the registration of the adoption or at any time thereafter, there is in the office of the Director a registration of the birth of the person adopted, the Director, upon production of evidence satisfactory to him of the identity of the person, shall cause a notation of the adoption and of any change of name consequent thereon to be made on the registration of the birth, and shall cause a notation of the registration of the birth to be made on the registration of the adoption.

Registration of adoption order of another jurisdiction.

(3) Where a person is adopted pursuant to an order, judgment or decree of adoption made by a court of competent jurisdiction in another province, state or country, the Director,

(a) upon receipt of a certified copy of the order, judgment or decree; and

(b) upon production of evidence satisfactory to him of the identity of the person,

shall, if there is in his office a registration of the birth of that person, register the adoption in the manner prescribed by subsection (1) and shall make the notations required by subsection (2).

Adoption of person born outside the province.

(4) Where a person born outside the province is adopted under (The Adoption Act), the Director, upon receipt of a certified copy of the order of adoption, shall transmit a certified copy of the order to the person having charge of the registration of births in the province, state or country in which the person was born.

Certificate after adoption.

(5) Where a notation of adoption and of a change of name consequent thereon has been made on a registration of birth, any birth certificate issued thereafter shall be issued as if the registration had been made in the name as changed.

(NOTE:—In provinces which do not have a provision in The Adoption Act or in similar legislation requiring that a certified copy of every adoption order be forwarded to the Director by the court, an additional subsection so requiring should be inserted as subsection 1 and the present subsection 1 should be amended by striking out “transmitted under The Adoption Act”.)

REGISTRATION OF MARRIAGES

Registration of marriages.

11. (1) Every marriage solemnized in the province shall be registered as provided herein.

Statement respecting marriage.

(2) Every person authorized by law to solemnize marriage in the province shall, immediately after he solemnizes a marriage, prepare a statement in the prescribed form respecting the marriage, which statement shall be signed by,

- (a) each of the parties to the marriage;
- (b) at least two (adult) witnesses to the marriage; and
- (c) the person by whom the marriage was solemnized.

(3) The person by whom the marriage was solemnized shall, ^{Time for registration.} within two days after the day of the marriage, deliver or mail the completed statement to the division registrar of the registration division in which the marriage was solemnized.

(4) Upon the receipt within one year from the day of a ^{Registration of marriage by division registrar.} marriage of a completed statement in the prescribed form respecting the marriage, the division registrar, if he is satisfied as to the truth and sufficiency thereof, shall register the marriage by signing the statement, and thereupon the statement shall constitute the registration of the marriage.

12. When a marriage is not registered within one year from ^{Registration of marriage by Director.} the day of the marriage, if application for registration thereof is made by any person to the Director in the prescribed form, verified by statutory declaration and accompanied by the prescribed fee and by a statement in the prescribed form respecting the marriage and such other evidence as may be prescribed, the Director, if he is satisfied as to the truth and sufficiency of the matters stated in the application and that the application is made in good faith, shall register the marriage by signing the statement, and thereupon the statement shall constitute the registration of the marriage.

REGISTRATION OF DIVORCES AND DECREES OF NULLITY OF MARRIAGE

13. (1) Upon receipt of a statement in the prescribed form ^{Registration of divorces and nullities.} respecting the dissolution or annulment of a marriage, the Director shall register the dissolution or annulment by signing the statement, and thereupon the statement shall constitute the registration of the dissolution or annulment.

(2) Where, at the time of the registration of the dissolution ^{Notation of divorces or nullities.} or annulment or at any time thereafter, there is in the office of the Director a registration of the marriage dissolved or annulled, the Director, upon production of evidence satisfactory to him as to the identity of the persons, shall cause a notation of the dissolution or annulment to be made on the registration of the marriage, and shall cause a notation of the registration of the marriage to be endorsed on the registration of the dissolution or annulment.

Registration of divorce or nullity outside the province of marriage solemnized in the province.

(3) Where a marriage is dissolved or annulled by an order, judgment or decree made by a court of competent jurisdiction in another province, or by an Act of the Parliament of Canada, the Director,

- (a) upon receipt of a certified copy of the order, judgment, decree, or Act; and
- (b) upon production of evidence satisfactory to him of the identity of the persons, together with a statement in the prescribed form,

shall, if there is in his office a registration of the marriage, register the dissolution or annulment in the manner prescribed by subsection (1) and shall make the notations required by subsection (2).

Certificate after divorce.

(4) Every marriage certificate issued after the making of a notation pursuant to this section shall contain a copy of the notation.

Marriage performed in another province.

(5) Where a marriage solemnized in another province is dissolved or annulled in (name of province), the Director upon receipt of the statement respecting the dissolution or annulment shall transmit a certified copy of the order, judgment or decree to the person having charge of registration of marriages in the province in which the marriage was solemnized.

(NOTE:—In provinces that do not have a provision in The Judicature Act or in similar legislation requiring that a statement respecting each dissolution or annulment of marriage be forwarded to the Director by the court, an additional subsection so requiring should be inserted as subsection 1 and the other subsections should be re-numbered accordingly. In provinces that do not receive a "statement" apt words should be inserted to describe the nature of the document used for the registration.)

REGISTRATION OF DEATHS

Registration of deaths.

14. (1) The death of every person who dies in the province shall be registered as provided herein.

Personal particulars of the deceased.

(2) The personal particulars of the deceased person shall, upon the request of the funeral director, be completed in the prescribed form and delivered to the funeral director,

- (a) by the nearest relative of the deceased present at the death or in attendance at the last illness of the deceased;
- (b) if no such relative is available, by any relative of the deceased residing or being within the registration division;
- (c) if no relative is available, by any adult person present at the death;

- (d) by any other adult person having knowledge of the facts;
- (e) by the occupier of the house in which the death occurred;
or
- (f) by the coroner who has been notified of the death and has made an inquiry or held an inquest regarding the death.

(3) The medical practitioner who was last in attendance ^{Certification by medical practitioner or coroner.} during the last illness of the deceased, or the coroner who conducts an inquest on the body or an inquiry into the circumstances of the death, shall forthwith after the death, inquest or inquiry, as the case may be, complete and sign a medical certificate in the prescribed form, stating therein the cause of death according to the International List of Causes of Death, as last revised by the International Commission assembled for that purpose, and shall forthwith cause the medical certificate to be delivered to the funeral director.

(4) Where a death occurs without medical attendance, ^{or Death without medical attendance.} where the medical practitioner mentioned in subsection (3) is not available to complete the medical certificate, and where there is no reason to believe that the death was the result of any of the circumstances set forth in subsection (5), the funeral director shall forthwith notify a coroner having jurisdiction or the local medical health officer, or a medical practitioner designated by the coroner or by the medical health officer, shall thereupon inquire into the facts and shall complete the medical certificate in accordance with subsection (3).

(5) Subject to subsection (2) of section 17 where there is ^{Deaths by violence or misadventure.} reason to believe that a person has died,

- (a) as a result of violence or misadventure;
- (b) by unlawful means;
- (c) as a result of negligence or misconduct on the part of others; or
- (d) under circumstances that require investigation,

no acknowledgment of registration of the death and no burial permit shall be issued by the division registrar unless,

- (e) the body has been examined by the coroner and inquiry has been made into the circumstances of the death, as provided by the Coroner's Act;
- (f) the coroner has signed the medical certificate of the cause of death in accordance with subsection (3); and

(g) the other provisions of this Act respecting the registration of the death have been complied with.

(NOTE:—Subsection (5) may require redrafting in some provinces to conform with the local Coroners Act).

Duty of
funeral
director.

(6) Upon receipt of the personal particulars respecting the deceased and of the medical certificate, the funeral director shall complete the statement in the prescribed form, and shall forthwith deliver the completed statement to the division registrar of the registration division in which the death occurred, or if the place of death is not known, to the division registrar of the registration division in which the body was found.

Registration
of death by
division
registrar.

15. (1) Upon the receipt within one year from the day of a death of a statement in the prescribed form respecting the death, the division registrar, if he is satisfied as to the truth and sufficiency thereof, shall register the death by signing the statement, and thereupon the statement shall constitute the registration of the death.

Statement
received by
registrar of
another
division.

(2) Where it is impracticable to deliver the statement respecting a death to the proper division registrar, the statement may be delivered to the nearest division registrar, who, upon receipt of the prescribed fee, shall,

- (a) register the death by signing the statement and issue an acknowledgment of the registration of the death and a burial permit; and
- (b) forward the registration forthwith to the proper division registrar.

Registration
of death by
Director.

16. When a death is not registered within one year from the day of the death, or where the division registrar refuses to register a death, if application for registration thereof is made by any person to the Director in the prescribed form verified by statutory declaration, and accompanied by the prescribed fee and by a statement in the prescribed form respecting the death and such other evidence as may be prescribed, the Director, if he is satisfied as to the truth and sufficiency of the matters stated in the application and that the application is made in good faith, shall register the death by signing the statement, and thereupon the statement shall constitute the registration of the death.

Notice of
registration
of death.

17. (1) Upon the registration of a death under subsection (1) of section 15, the division registrar shall prepare and issue to the funeral director,

- (a) an acknowledgment that the death is registered; and
- (b) a burial permit.

(2) When a person dies under any of the circumstances referred to in subsection (5) of section 14, if it is impossible for the coroner to complete a medical certificate, the division registrar, upon the coroner releasing the body for burial, shall issue a burial permit and the coroner shall, within two days of his determining the cause of death, or of the completion of his investigation, deliver or mail to the division registrar a medical certificate.

Issuance of
notice on
coroner's
warrant.

(3) No person shall,

- (a) bury or otherwise dispose of the body of any person who dies in the province;
- (b) except temporarily for the purpose of preparing the body for burial, remove it from the registration division in which the death occurred or the body was found; or
- (c) conduct or take part in a funeral or religious service in connection with the burial or other disposition of the body,

Registration
before burial
or other
disposition.

unless,

- (d) the death is registered as provided herein;
- (e) an acknowledgement of the registration of the death and a burial permit has been obtained from the division registrar; and
- (f) the person conducting the funeral or religious service is in possession of the burial permit.

(4) Where the body of any person is to be removed by a common carrier to the place of burial or other disposition, the removal shall not take place unless the prescribed copies of the burial permit have been affixed to the outside of the casket.

Removal of
body.

(5) The funeral director at the place of burial or other disposition shall,

Duties of
funeral
director.

- (a) remove any copies of the burial permit affixed to the outside of the casket;
- (b) deliver the prescribed copy of the burial permit to the person conducting the funeral or religious service; and
- (c) deliver the prescribed copy of the burial permit to the cemetery owner.

Death outside
the province.

(6) Where a death occurs outside the province and the burial or other disposition of the body is to take place in the province, a burial permit or such other document as is prescribed under the law of the province or country in which the death occurs, signed by the division registrar or other proper officer, shall be sufficient authority for the burial or other disposition of the body.

No burial
allowed with-
out notice of
registration
of death.

18. (1) No cemetery owner shall permit the burial or cremation of a dead body in the cemetery, unless the funeral director or the person officiating at the burial has delivered to him the prescribed copy of the burial permit.

Returns of
burials and
cremations.

(2) Every cemetery owner shall, at the end of each calendar month, transmit to the Director a return in the prescribed form of the burials and cremations that took place during that month in the cemetery.

(NOTE:—Certain provinces may not require a return in which case the words “the copies of the burial permits received by him under subsection (1) in respect of” will be substituted for the words “a return in the prescribed form of”.)

REGISTRATION OF BIRTHS AND DEATHS OCCURRING ON THE HIGH SEAS

Births and
deaths on
high seas.

19. Upon receipt from the Minister of Transport of information transmitted under the Canada Shipping Act, 1934, respecting the birth of a child or the death of a person on board a ship whose port of registry is within the province, the Director, if he is satisfied as to the truth and sufficiency of the particulars received, shall register the birth or death.

CHURCH RECORDS

Filing of
church records
of baptisms,
marriages or
burials.

20. Where registers or records of baptisms, marriages or burials kept by any church or religious body in the province are now on file or are hereafter with the approval of the Director placed on file in the office of the Director, the registers or records shall be preserved and shall remain in the custody of the Director as part of the records of his office.

CHANGE OF NAME

Notation to
be made by
Director.

21. (1) Where the name of a person is changed under (The Change of Name Act) or under a statute of another province, the Director, on production to him of proof of the change and evidence satisfactory to him as to the identity of the person,

- (a) if the birth or marriage of the person is registered in the province, shall cause a notation of the change to be made on the registration thereof; and
- (b) if the change was made under (The Change of Name Act), and the person was born or married outside the province, shall transmit to the officer in charge of the registration of births and marriages in the province in which the person was born or married a copy of the proof of the change of name produced to the Director.

(2) Every birth or marriage certificate issued after the making of a notation under this section shall be issued as if the registration had been made in the name as changed. ^{Certificate after change of name.}

FRAUDULENT REGISTRATIONS AND CERTIFICATES

22. (1) On written application by any person and after notice to and hearing of all persons interested, or where the holding of a hearing is not possible, on receipt of a statutory declaration or such other evidence satisfactory to the Director as may be adduced by any person interested, the Director, if he is satisfied that a registration was fraudulently or improperly made, may order that a notation be made on the registration to that effect and order that every certificate issued in respect of that registration be delivered to him for cancellation. ^{Cancellation of registration and birth certificates.}

(2) Where a notation has been made under subsection (1), no certificate shall be issued thereafter in respect of the registration. ^{Certificate.}

(3) On written application by any person and after notice to and hearing of all persons interested, or where the holding of a hearing is not possible, on receipt of a statutory declaration or such other evidence satisfactory to the Director as may be adduced by any person interested, the Director, if he is satisfied that a certificate was obtained or is being used for fraudulent or improper purposes, may make an order requiring the delivery to him of that certificate. ^{Certificates fraudulently or improperly obtained or used.}

(4) A person who has in his possession or under his control a certificate in respect of which an order has been made under subsection (1) or (3) shall forthwith, upon receipt of the order, deliver the certificate to the Director, who shall preserve it in a permanent file together with the order and all documents relating thereto. ^{Certificate to be delivered to Director.}

CORRECTIONS OF ERRORS IN REGISTRATIONS

Corrections by division registrar.

23. (1) If, while the registration of a birth, stillbirth, marriage or death is in the possession of a division registrar, it is reported to him that an error exists in the registration, he shall inquire into the matter and if he is satisfied that an error has been made he may correct the error according to the facts by making a notation of the correction on the registration without altering the original entry.

Correction by personal appearance.

(2) If the person who furnished the information contained in the registration to be corrected appears in person, the division registrar may permit correction by altering the original entry.

Correction by Director.

(3) If, after a registration has been received or made by the Director, it is reported to him that an error exists in the registration, the Director shall inquire into the matter and, upon the production of evidence satisfactory to him verified by statutory declaration, he may correct the error by making a notation of the correction on the registration without altering the original entry.

Certificate from registration after correction.

(4) If, after the correction of an error, application is made for a certificate, the certificate shall be prepared as if the registration had been made containing correct particulars at the time of registration.

ADMINISTRATION

Division of Vital Statistics.

24. (1) There shall be a division (of the Department of) to be known as the Division of Vital Statistics.

Director of Vital Statistics.

(2) The Lieutenant-Governor in Council may appoint a Director of Vital Statistics who shall (under the control of the Minister) be responsible for the administration of this Act and for the direction and supervision of the Division of Vital Statistics and shall perform such other duties as may be prescribed by the regulations.

Acting Director of Vital Statistics.

(3) The Lieutenant-Governor in Council may appoint an Acting Director of Vital Statistics, who may exercise the powers and perform the duties of the Director.

Inspectors of vital statistics.

(4) The Lieutenant-Governor in Council may appoint an inspector or inspectors of vital statistics for the purposes of this Act, who shall perform such duties as may be prescribed by the regulations.

(NOTE:—The words in brackets in subsections (1) and (2) may be used where the Division of Vital Statistics is a division of a department of the Government.)

25. (1) The province shall for the purposes of this Act be divided into registration divisions. Registration divisions.

(2) The Lieutenant-Governor in Council may establish the boundaries of the registration divisions and may from time to time extend, reduce, subdivide or abolish any registration division or merge it in whole or in part with one or more registration divisions. Boundaries of registration divisions.

(3) Every order made under subsection (2) shall be published in the Gazette and shall take effect on and from a day to be fixed by the order. Publication and effect of orders.

26. The Lieutenant-Governor in Council may appoint a division registrar for each registration division. Appointment of division registrar.

27. A division registrar may, with the approval of the Director, appoint in writing one or more deputy division registrars who may exercise the powers and perform the duties of the division registrar. Appointment of deputy division registrars.

28. Every division registrar shall, under the supervision and direction of the Director and in accordance with the regulations, enforce this Act in his registration division and shall make an immediate report to the Director of any violation of this Act of which he has knowledge. Enforcement of Act by division registrar.

29. (This section to deal with the remuneration of division registrars in accordance with the practice and desire of each province.) Remuneration of division registrar.

(NOTE:—The provisions of sections 24-29 dealing with administration will be altered to suit provincial requirements.)

SEARCHES

30. (1) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that the information is not to be used for an unlawful or improper purpose, have a search made by the Director, Searches of registrations and church records.

(a) for the registration in his office of any birth, stillbirth, marriage, death, adoption, change of name, or dissolution or annulment of marriage; or

(b) for the record of any baptism, marriage or burial placed on file in the office of the Director under section 20.

(2) The Director shall make a report on the search which shall state whether or not the birth, stillbirth, marriage, death, Report on search.

adoption, change of name, or dissolution or annulment of marriage, baptism or burial is registered or recorded and, if registered, shall state the registration number thereof, and shall contain no further information.

ISSUANCE OF CERTIFICATES AND COPIES

Birth
certificate.

31. (1) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that it is not to be used for an unlawful or improper purpose, obtain a certificate in the prescribed form in respect of the registration of the birth of any person, which certificate shall contain the following particulars only of the registration:

- (a) the name of the person;
- (b) the date of birth;
- (c) the place of birth;
- (d) the sex of the person;
- (e) the date of registration; and
- (f) the serial number of the registration.

Certified copy
or photographic
print of
registration of
birth.

(2) A certified copy or photographic print of the registration of a birth may be issued only,

- (a) to a person who requires it to comply with The Adoption Act;
- (b) to an officer of the Crown in right of the province who requires it for use in the discharge of his official duties; or
- (c) to a person upon the authority in writing of the Minister or upon the order of a judge of a court,

and only upon application in the prescribed form and upon payment of the prescribed fee.

Marriage
certificate.

(3) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that it is not to be used for an unlawful or improper purpose, obtain a certificate in the prescribed form in respect of the registration of a marriage, which certificate shall contain the following particulars only of the registration:

- (a) the names of the parties to the marriage;
- (b) the date of the marriage;
- (c) the place where the marriage was solemnized;
- (d) the date of registration; and

(e) the serial number of the registration.

(4) A certified copy or photographic print of the registration of a marriage, may be issued only,

Certified copy or photographic print of registration of marriage.

(a) to a party to the marriage;

(b) to a person upon the authority in writing of the Minister;
or

(c) to a person upon the order of a judge of a court,

and only upon application in the prescribed form and upon payment of the prescribed fee.

(5) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that it is not to be used for an unlawful or improper purpose and subject to subsection (6), obtain a certificate in the prescribed form in respect of the registration of a death.

Death certificate.

(6) No certificate issued in respect of the registration of a death shall be issued in such a manner as to disclose the cause of death as certified on the medical certificate, except,

Cause of death to be disclosed only in special cases.

(a) upon the authority in writing of the Minister; or

(b) upon the order of a judge of a court.

(7) A certified copy or photographic print of the registration of a death, may be issued only,

Certified copy or photographic print of registration of death.

(a) to a person upon the authority in writing of the Minister;
or

(b) to a person upon the order of a judge of a court,

and only upon application in the prescribed form and upon payment of the prescribed fee.

(8) Any person, upon applying in the prescribed form and paying the prescribed fee, may, with the approval of the Director and subject to the same limitations as those respecting certified copies and photographic prints set out in subsections (2), (4) and (7), obtain a certificate in the prescribed form in respect of the record of a baptism, marriage or burial placed on file under section 20.

Certificates from church records.

(9) No certificate, certified copy or photographic print shall be issued under this Act in respect of the registration of an adoption, change of name, or dissolution or annulment of marriage.

No certificate of adoption, change of name, divorce or nullity of marriage.

32. (1) Every certificate, certified copy or photographic print, issued under section 31, shall be issued by the Director,

Certificates to be issued only by Director.

and no person other than a person herein authorized to do so shall issue any document that purports to be issued under this Act.

Signature
of Director.

(2) Where the signature of the Director (or any person appointed by the Lieutenant-Governor in Council pursuant to subsection (3) of section 24) is required for any purposes of this Act, the signature may be written, engraved, lithographed or reproduced by any other mode of reproducing words in visible form.

Certificate
valid after
change of
Director.

(3) Every document issued under this Act under the signature of the Director (or of any person appointed by the Lieutenant-Governor in Council pursuant to subsection (3) of section 24) shall be and remain valid, notwithstanding that the Director (or the person so appointed) has ceased to hold office before the issue of the certificate.

Certificates
as evidence.

33. (1) Every certificate purporting to be issued under section 31 shall be admissible in any court in the province as *prima facie* evidence of the facts certified to be recorded, and every certified copy or photographic print purporting to be issued under section 31 shall be so admissible as *prima facie* evidence of the facts recorded therein; and it shall not be necessary to prove the signature or official position of the person by whom the certificate or certified copy purports to be signed.

Exception.

(2) Notwithstanding the provisions of subsection (1) or of any other Act, no birth certificate and no certified copy or photographic print of a registration of birth or stillbirth, purporting to be issued under section 31, shall be admissible in evidence to affect a presumption of legitimacy.

Appeal from
refusal of
Director to
register.

34. (1) Where an application for the registration of a birth, stillbirth, marriage or death is refused by the Director, if, within one year of the refusal, an application is made to a judge of the . . . Court, the judge upon being satisfied that the application is made in good faith and as to the truth and sufficiency of the evidence adduced on the application, and having regard to the standards respecting delayed registration set forth in the regulations for the guidance of the Director, may make an order requiring the Director to accept the application and register the birth, stillbirth, marriage or death.

Director to
comply with
order.

(2) The clerk of the court shall forthwith send a copy of the order to the Director who shall comply with the order and attach the copy to the registration.

(3) Where an application for a certificate or a search in respect of the registration of a birth, stillbirth, marriage or death is refused by the Director, if, within one year of the refusal, application is made to a judge of the . . . Court, the judge, upon being satisfied that the application is made in good faith and that the applicant has good reason for requiring the certificate or search, may make an order requiring the Director to issue the certificate or make the search; and the clerk of the court shall forthwith forward a copy of the order to the Director, who shall comply therewith.

Appeal from refusal of Director to search or issue certificate.

(4) Where the Director has made an order under section 22, any person interested may, within . . . years thereafter, appeal therefrom to a judge of the . . . Court; and the judge may make an order confirming or setting aside the order of the Director, and the order of the judge shall be final and shall be binding on the Director.

Appeal from order of Director under s. 22.

(5) At least days notice of the application or appeal shall be served on the Director.

Notice.

GENERAL

35. The Director and every division registrar (and deputy division registrar) may take the affidavit or statutory declaration of any person for the purposes of this Act.

Power to take affidavits.

36. The Director may compile, publish and distribute such statistical information respecting the births, stillbirths, marriages, deaths, adoptions, changes of name, and dissolutions and annulments of marriage registered during any period as he may deem necessary and in the public interest.

Publication by Director of statistics information

37. As soon as convenient after the first day of January in each year, the Director shall make for the use of the Legislative Assembly and for public information, a statistical report of the births, stillbirths, marriages, deaths, adoptions, changes of name, and dissolutions and annulments of marriage during the preceding calendar year.

Annual report of Director

38. (1) All records, books and other documents pertaining to any office under this Act are the property of the Crown.

Records property of the Crown

(2) Where a vacancy occurs in any office under this Act the person having the possession, custody or control of any books, records or other documents pertaining to the office shall give up possession of and deliver them to the successor in office or to

Delivery of records to successor

any person appointed by the Director to demand and receive them, and any person who fails to comply with this subsection is guilty of an offence.

Secrecy.

39. (1) No division registrar (or deputy division registrar) and no person employed in the service of His Majesty shall communicate or allow to be communicated to any person not entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any records containing information obtained under this Act.

Exception.

(2) Nothing in subsection (1) prohibits the compilation, furnishing or publication of statistical data that does not disclose specific information with respect to any particular person.

Notations.

40. Every notation made under this Act shall be effected without altering or defacing any entry on the registration, and shall be dated and initialled by the person making the notation.

PENALTIES

Failure to carry out duties.

41. (1) Every person who fails to give any notice, or to furnish any statement, certificate or particulars required under or pursuant to this Act, within the time limited by this Act, is guilty of an offence and liable (on summary conviction) to a fine not exceeding fifty dollars.

Compliance by one person sufficient.

(2) Where more than one person is required to give any notice, or to register, or to furnish any statement, certificate or particulars required under or pursuant to this Act and the duty is carried out by any of such persons, the other or others shall not be liable.

Interference with public notice.

42. Every person who wilfully removes, defaces or destroys a public notice relating to the registration of births, stillbirths, marriages or deaths is guilty of an offence and liable (on summary conviction) to a fine not exceeding ten dollars.

Failure to obtain permit for transportation of body.

43. (1) Subject to subsection (2) and any other Act, a common carrier transporting or carrying, or accepting through its agents or employees for transportation or carriage, the body of a deceased person without the prescribed burial permit issued under this Act, is guilty of an offence and liable (on summary conviction) to a fine not exceeding two hundred dollars.

Proviso.

(2) If the death occurred outside the province and the body is accompanied by a burial permit issued in accordance with the law in force where the death occurred, the burial permit shall

be sufficient to authorize the transportation or carriage of the body into or through the province.

44. Every person who violates section 39 is guilty of an offence and liable (on summary conviction) to a fine not exceeding two hundred dollars. ^{Secrecy.}

45. Every person who fails to comply with or violates any provision of this Act or the regulations, for which failure or violation no penalty is otherwise provided, is guilty of an offence and liable (on summary conviction) to a fine not exceeding one hundred dollars. ^{General penalty.}

46. No prosecution shall be commenced under this Act without the consent of (the Director). ^{Consent to prosecutions.}

REGULATIONS

47. The Lieutenant-Governor in Council may make regulations, ^{Regulations}

- (a) prescribing the forms to be used in carrying out the provisions of this Act;
- (b) prescribing the duties of the Director;
- (c) prescribing the duties of and records to be kept by the division registrars;
- (d) prescribing the information and returns to be furnished to the Director, and fixing the times when information and returns are to be transmitted;
- (e) fixing the times when division registrars shall forward registrations to the Director;
- (f) designating the persons who may have access to or may be given copies of or information from the records in the office of the Director or of a division registrar, and prescribing an oath of secrecy to be taken by such persons;
- (g) for the registration of births, marriages, deaths, stillbirths, dissolutions and annulments of marriage, adoptions or changes of name in cases not otherwise provided for in this Act;
- (h) prescribing the fees to be paid for searches, certificates and anything done or permitted to be done under this Act and providing for the waiver of payment of any such fees in favour of any person or class of persons;

- (i) designating the persons who may sign registrations and notations;
- (j) prescribing the evidence on which the Director may register a birth, stillbirth, marriage or death after one year from the date thereof;
- (k) prescribing the evidence on which the Director may make a registration of birth in the case of a child legitimated by the intermarriage of his parents, subsequent to his birth;
- (l) requiring persons in charge of hospitals to make returns of the births of all children born in the hospitals;
- (m) prescribing special forms for registrations in respect of Indians;
- (n) authorizing every Indian agent in (insert name of province) to act *ex officio* as division registrar for the Indians under his jurisdiction; and
- (o) for the purpose of effectively securing the due observance of this Act, and generally for the better carrying out of the provisions thereof and obtaining the information required thereby.

CONSTRUCTION

Construction.

48. 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.

APPENDIX H*(See page 18)***CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF
LEGISLATION IN CANADA**

At the 1948 meeting of the Conference under the heading of "new business" a memorandum was requested on (I) some aspects of conference policy, (II) the revision and correlation of certain uniform Acts and the republication of all Acts recommended up to the present time (1948 Proceedings, pages 24 and 25).

I**CONFERENCE POLICY**

Up to about 1931 this Conference was the only representative body engaged in the preparation of uniform legislation.

During the years 1931, 1932 and 1933 uniform insurance legislation was considered by a joint committee of this Conference and the Association of Superintendents of Insurance.

In 1933 this Conference resolved "that it should not hereafter consider legislation respecting insurance unless specifically requested to do so by at least three of the provincial Attorneys General or by the Canadian Bar Association or the Association of Superintendents of Insurance". Since that time the Superintendents of Insurance have dealt with all proposed amendments to the uniform Acts respecting insurance originally prepared by this Conference.

About the year 1929 the Attorneys General of the provinces interested in "Blue Sky" legislation arranged for a committee of senior civil servants to draft uniform legislation for the prevention of fraud in connection with the sale of securities. This legislation was subsequently enacted in several of the provinces.

In 1936 at the suggestion of the Canadian Bar Association a Dominion-Provincial committee considered a uniform Companies Act. The late R. Andrew Smith, K.C., Legislative Counsel for Alberta, compiled a draft bill and a second draft bill has been prepared by the Department of the Provincial Secretary for the Province of Ontario. The last meeting of this Conference was held in 1947.

More recently the various provincial Registrars of Vital Statistics and the Dominion Bureau of Statistics considered

uniform legislation on vital statistics, and the welfare officials of the Department of National Health and Welfare and of several of the provinces, have been giving consideration to the drafting of uniform rules regarding the residence of persons in receipt of government aid. In these two cases the legislation will eventually come before this Conference for final revision. Insurance legislation, security frauds prevention legislation and company legislation may or may not again come to the attention of this Conference.

There may be other illustrations but the foregoing will indicate the situation.

It would seem that this Conference because of its personnel and experience is possibly best qualified to draft uniform legislation. This does not imply that these other bodies are not also well qualified to do the work they have undertaken. As a matter of fact members of this Conference are in some cases also members of the other bodies referred to.

In the future because of the increasing complexities of public administration, other bodies may be formed to consider particular subjects on which it is felt uniformity of legislation is desirable.

It is suggested it may be desirable for all uniform legislation to come before this Conference for final approval.

It is frankly admitted that the assistance of the technical officials who took part in the preparation of legislation on Security Frauds Prevention, Companies, Vital Statistics and Rules of Residence, is very necessary and desirable and better uniform legislation can be prepared with their help.

It seems the procedure which is taking place in connection with Vital Statistics and the Rules of Residence is ideal. In both these cases the technical administrative officers got together and considered the policy and details necessary for adequate legislation. After more or less uniformity in the views of these various technical officers have been obtained their conclusions will come before this Conference in the form of a preliminary draft of legislation. The work of this Conference will be to revise the draft legislation without altering the policies upon which agreement has been reached.

While it is not suggested anything should now be done about what has happened in the past, it is recommended that this Conference might suggest to the Attorneys General of the provinces, the Minister of Justice and the officers of the Canadian

Bar Association, the desirability of having all inter-provincial-federal agencies or committees of the Canadian Bar Association organized in the future and dealing with matters in which uniformity of legislation is sought, submit the drafts of their proposed legislation to this Conference for final revision before they are recommended for enactment.

II

CORRELATION, REVISION AND REPUBLICATION OF UNIFORM ACTS

The second matter on which a report was requested was:

- (a) the correlation and revision of uniform Acts especially those dealing with commercial paper; and
- (b) the republication in a convenient form of uniform Acts with amendments to date.

(a) CORRELATION AND REVISION

When this Conference was revising the Conditional Sales Act in 1944 and 1945 it was suggested that the draftsman should use so far as appropriate the same phraseology as was used in the Bills of Sale Act and the Assignment of Book Debts Act.

A rough check of the phraseology used in some of the sections of the Bills of Sale Act, the Assignment of Book Debts Act and the Conditional Sales Act shows considerable variation in the phraseology used in corresponding sections.

The following extracts will illustrate the lack of uniformity:

Bills of Sale Act, 1928 Proc., p. 29, s. 3 (1), line 3:
 "shall be *absolutely* void"

Conditional Sales Act, 1947 Proc., p. 101, s. 3, line 5:
 "shall be void"

Bills of Sale Act, 1928 Proc., p. 29, s. 3 (1), line 10:
 "shall as against creditors and"

Conditional Sales Act, 1947 Proc., p. 101, s. 3, lines 7 and 8:
 "and as against creditors of *the buyer*"

Assignment of Book Debts Act, 1928 Proc., p. 49, s. 4 (1), lines 2 and 3:
 "shall be absolutely void as against the creditors of *the assignor*".

The words "of the buyer" in the Conditional Sales Act, section 3, and "of the assignor" in the Assignment of Book Debts Act, section 4 (1), are unnecessary as the word "creditors" as defined in section 2 (c) of the Conditional Sales Act means "creditors of the buyer" and in section 2 (e) of the Assignment of Book Debts Act means "creditors of the assignor".

Bills of Sale Act, 1928 Proc., p. 29, s. 3 (1), lines 3 to 8:

"shall be absolutely void *as against creditors* and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered or are valid without registration, unless"

Conditional Sales Act, 1947 Proc., p. 101, s. 3, lines 3 to 8:

"unless the requirements of this Act are complied with . . . 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"

Assignment of Book Debts Act, 1928 Proc., p. 49, s. 4 (1), lines 2 to 4:

"shall be absolutely void as against the creditors of the assignor and as against subsequent purchasers unless".

Note position of the word "creditors" in section 3 (1) of the Bills of Sale Act and in section 3 of the Conditional Sales Act and the omission of all the words qualifying "purchasers" in section 4 (1) of the Assignment of Book Debts Act.

Note also that there is no definition of "subsequent purchasers or mortgagees" in the Conditional Sales Act and the difference in the definition of "subsequent purchasers or mortgagees" in the Bills of Sale Act and "subsequent purchasers" in the Assignment of Book Debts Act.

Bills of Sale Act, 1928 Proc., pp. 32-3, s. 11 (1), lines 2 to 7:

"shall, after the expiration of the period of three years from its registration, cease to be valid as against creditors and as against subsequent purchasers or mortgagees claiming from or under the grantor in good faith, for valuable consideration and without notice, whose conveyances or mortgages have been duly registered, or are valid without registration, unless".

Assignment of Book Debts Act, 1949 Proc., Report dated, 20th June, 1949, Manitoba Commissioners, s. 6A(1); p. 79, lines 1 to 4:

“shall, after the expiration of three years from its registration, cease to be valid as against the creditors of the assignor, and as against subsequent purchasers, unless”.

In addition to other variations, note in section 11 (1) of the Bills of Sale Act and in section 6A(1) of the Assignment of Book Debts Act the words “cease to be valid” instead of the words “be void” in section 3 of the Conditional Sales Act, and “be absolutely void” in section 3 (1) of the Bills of Sale Act, and “be absolutely void” in section 4 (1) of the Assignment of Book Debts Act.

No doubt additional illustrations can be found but these will be sufficient for the purposes of this report.

It is submitted that if we intend the same result to follow in these sections we should use identical language otherwise the Courts may assume that when we used different language we intended a different result.

It is recommended that these Acts dealing with commercial paper be referred to a group of Commissioners for correlation and revision and this work be completed and approved by this Conference before these Acts are republished with amendments.

(b) REPUBLICATION

At the meeting of the Conference held in 1939 it was resolved “that all Acts adopted and recommended by the Conference to date with the exception of the Uniform Fire Insurance Act and the Uniform Life Insurance Act be considered by the Ontario Commissioners with the object and feasibility of including these in next year’s annual Proceedings”.

In 1941 the Ontario Commissioners recommended “that the printing of all Acts adopted by the Conference (with all alterations subsequently adopted by the Conference) be proceeded with after the conclusion of the present war and that such a consolidation should be printed with Conference Proceedings for purposes of record and that an ample supply should also be prepared as a separate booklet for distribution to all members and interested persons”.

It is suggested that when this republication is undertaken consideration might be given to the consolidation of some of the

legislation prepared by this Conference, for example: the Partnership Act and the Partnerships Registration Act; the Warehousemen's Lien Act and the Warehouse Receipts Act; the Foreign Judgments Act, the Reciprocal Enforcement of Judgments Act and the Reciprocal Enforcement of Maintenance Orders Act. The Corporation Securities Registration Act might well form part of a Companies Act. It might also be advisable to drop from the annual list of recommended Acts the sections dealing with photographic records and the rule in *Russell v. Russell* and the sections dealing with judicial notice of statutes and proof of state documents and foreign affidavits as these are now included in the Evidence Act (1945 Proceedings, page 75).

It is recommended that the 1941 recommendation of the Ontario Commissioners with respect to the printing of all uniform Acts recommended by the Conference be now proceeded with and that some additional assessment be made on the Dominion and the Provinces to meet the printing costs. In such republication consideration might be given to the suggestion contained in the preceding paragraph of this report.

While the following recommendations do not come strictly within the scope of the memorandum requested by the Conference they may warrant consideration.

Amendments and Court Decisions

It might be advisable for this Conference to give consideration to establishing a procedure whereby a record would be kept of all amendments made by Parliament or provincial legislatures to uniform Acts as recommended by this Conference and also any decisions of the Courts which might suggest the advisability of appropriate amendments to uniform Acts.

It is recommended that some member of the Conference assume the responsibility of checking the provincial statutes each year to ascertain whether or not amendments were made to any of the Uniform Acts recommended by the Conference and make an annual report to this Conference.

It is also recommended that another member of the Conference assume the responsibility of checking the Law Reports each year to ascertain whether any judicial decisions were reported which might suggest the advisability of amendments to uniform legislation and make an annual report to this Conference.

Submissions re Legislation before Conference

There is another matter to which I think this Conference might give some consideration. You will recall that when this Conference was considering the matter of warehouse receipts we obtained some valuable help in connection with the legislation from the Canadian Warehousemen's Association (1945 Proceedings, pages 22 and 23). In the conference of Superintendents of Insurance representatives of the insurance companies and the underwriters' associations always attend the conference and place their views before the Superintendents. This practice may have its difficulties. When this Conference deals with technical administrative legislation such as Vital Statistics or controversial matters like Defamation it could receive valuable assistance from technical officers or organizations interested in the business which is the subject matter of legislation. Up to the present this Conference has worked pretty well on its own but there is a possibility that in the future, groups or organizations interested in legislation being considered by the Conference, may attempt to influence this Conference to adopt some particular policy. This Conference has already ruled as to the method by which uniform legislation can be initiated in this Conference (1947 Proceedings, page 24). It might now be well to establish a procedure under which this Conference could obtain the assistance of technical officers or interested organizations. It might be advisable to lay down the rule that all submissions to this Conference by outside organizations should be limited to matters of procedure and administration rather than general policy and should be in writing to the Secretary of this Conference. Oral representations should not be permitted unless the Conference by a two-thirds vote of those present at the meeting are in favor of hearing such oral representations. Written or oral representations by interested organizations on general policy should ordinarily be made to parliament or to the legislature considering the enactment of legislation.

It is recommended: (a) that if this Conference desires the assistance of technical officers of any government or of any outside organization, this Conference request such assistance through the Minister of Justice or the Attorney-General of the province; and (b) that all representations and submissions to this Conference by outside organizations should be limited to matters of procedure and administration rather than general policy and shall be submitted in writing to the Secretary of the

Conference. Oral submissions to this Conference shall not be permitted unless at least two-thirds of the members present at the meeting of the Conference vote in favour of hearing such oral representations and that any person making oral submissions shall withdraw from the Conference after he has made his presentation.

The recommendations in this memorandum are the suggestions of the undersigned and not necessarily those of the other Manitoba Commissioners.

Respectfully submitted,

R. M. FISHER.

APPENDIX I

*(See page 20)*ASSIGNMENT OF BOOK DEBTS
REPORT OF MANITOBA COMMISSIONERS

At the 1948 meeting of the Conference the following resolution was adopted:

RESOLVED that the principle of the amendment recommended by the Alberta Commissioners in their report on the Uniform Assignment of Book Debts Act be approved; and that the matter be referred to the Manitoba Commissioners to report on next year with a draft amendment to effect the desired purpose, having in mind related uniform Acts, such as the Uniform Bills of Sale Act.

As instructed, the Manitoba Commissioners have prepared, and enclose herewith, a draft of certain proposed amendments to the above-mentioned Act to provide for the expiration of the registration of an assignment after a period of three years, similar to that in the Uniform Bills of Sale Act, and for the renewal of registered assignments.

In the redrafted subsections (1) and (2) of section 6, subsections (1) and (2) of section 15 and section 16, the proposed changes in the present provisions are italicized. Sections 6A and 6B are, of course, new.

R. M. FISHER,
I. J. R. DEACON,
G. S. RUTHERFORD,
Manitoba Commissioners.

THE UNIFORM ASSIGNMENT OF BOOK DEBTS ACT

The following new sections to be enacted:

6A. (1) A registered assignment shall, after the expiration of three years from its registration, cease to be valid as against the creditors of the assignor, and as against subsequent purchasers, unless before the expiration of that period, an affidavit (hereinafter called "an affidavit on renewal") is made and registered in accordance with subsections (2) and (3).

(2) The affidavit on renewal shall be made by the assignee or his agent or by one of the assignees or by the agent of the assignees and shall state that the assignment is valid and subsisting and that the assignment is not being kept in force for any fraudulent purpose or to defeat, delay or prejudice creditors of the assignor.

(3) Within thirty days after the making of the affidavit on renewal, it shall be registered by filing it or a duplicate original thereof,

- (a) in the office of the proper officer of each of the registration districts in which the assignment or duplicate original thereof or a certified copy thereof was registered; or
- (b) where the assignor is a corporation that has moved its head office or its registered office within the province to a registration district in the province other than that in which the assignment was registered, in the registration district in which the head office or registered office of the corporation is situated at the time of the making of the affidavit on renewal; or
- (c) where the assignor is not a corporation and is not carrying on business in the registration district or any one or more of the districts in which the assignment or a duplicate original thereof, or a certified copy thereof was registered, in the office of the proper officer of each of the registration districts in which the assignor carries on business at the time of the making of the affidavit on renewal.

(4) The proper officer shall cause the affidavit on renewal or duplicate original thereof to be numbered, endorsed with a memorandum of the day, hour and minute of filing and indexed by entering in alphabetical order, in a register kept by him, the names of the parties to the assignment in respect of which the affidavit was made and the date of the making of the affidavit; and shall note the fact of the filing of the affidavit, or a duplicate original thereof, upon the said assignment or copy thereof filed in his office.

(5) A similar affidavit on renewal or a duplicate original thereof shall be made and registered in accordance with subsections (2) and (3) within three years from the registration of the first affidavit on renewal, and thereafter within each succeeding three years from the registration of the last preceding affidavit on renewal or duplicate original thereof.

6B. Where the assignor is a corporation and moves its head office or its registered office within the province to a registration district in the province other than that in which the assignment is registered, or where the assignor is not a corporation and ceases to carry on business in the registration district in which the assignment is registered and commences to carry on business in some other registration district, the assignment shall within thirty days after the assignee has received notice,

- (a) if the assignor is a corporation, of the place to which its head office or registered office has been moved; or
- (b) if the assignor is not a corporation, of the place or places in which the assignor has commenced to carry on business,

be registered in the office of the proper officer of the registration district into which such head office or registered office has been removed or in which the assignor has commenced to carry on business, by filing therein a copy of the assignment and of all affidavits and documents accompanying or relating to the assignment, proved to be a true copy by the affidavit of some person who has compared the same with the originals, otherwise the assignee shall not have any right to the book debts therein mentioned as against creditors and as against subsequent purchasers.

The following sections of the Act to be amended to read as follows:

6. (1) An assignment registered under this Act may be discharged in whole or in part by the registration,

- (a) in the office in which the same is registered; or
- (b) *if the assignment has been renewed, then in every office in which the latest affidavit on renewal thereof or duplicate original thereof is registered,*

of a certificate of discharge, signed by the assignee, his executors, administrators, or assigns, and accompanied by an affidavit of an attesting witness of the due execution thereof.

(2) The proper officer in whose office a certificate of discharge accompanied by the affidavit of execution is registered shall note the fact of such discharge against each entry in the books of his office respecting the registration of the assignment or affidavit on renewal if the assignment or a copy was not registered in his office, and shall make a like notation upon the assignment or copy registered in his office or upon the affidavit on renewal if the assignment or a copy thereof is not registered in his office.

15. (1) Subject to the rights of other persons accrued by reason of any omission or misstatement referred to in this section, a judge of the county court, on being satisfied that the omission to register an assignment or *an affidavit or renewal* within the time prescribed by this Act, or any omission or misstatement in any document filed under this Act, was accidental or due to inadvertence or impossibility, or other sufficient cause, may in his discretion, extend the time for registration or order the omission or misstatement to be rectified, on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter or thing as the judge thinks fit to direct.

(2) The order, or a copy thereof, made under this section shall be annexed to the assignment or copy thereof, or *affidavit on renewal*, on file or tendered for registration and appropriate entries shall be made in the register.

16. No defect or irregularity in the execution or attestation of an assignment or other document, no defect, irregularity, or omission in any affidavit accompanying an assignment or filed in connection with its registration, *and no defect or irregularity in any affidavit on renewal*, and no error of a clerical nature or in an immaterial or non-essential part of an assignment or *affidavit on renewal*, shall invalidate or destroy the effect of the assignment or *affidavit on renewal* or the registration thereof, unless in the opinion of the court or judge before whom a question relating thereto is tried such defect, irregularity, omission, or error has actually misled some person whose interests are affected by the assignment.

APPENDIX J

(See page 21)

BULK SALES

REPORT OF THE SASKATCHEWAN COMMISSIONERS

At the 1948 meeting of the Conference, in accordance with a Resolution passed at the 1947 meeting, the Saskatchewan Commissioners presented a report with respect to a proposed amendment which would extend the scope of the Act so that it would include the sale of equipment of a hotel, garage, etc. (1948 Proceedings, page 100).

After discussion the Conference passed the following Resolution:

RESOLVED that the Saskatchewan Commissioners be requested to communicate with the local secretary for each province with a view to having him discuss with his Attorney General and others interested the matter of extending the scope of the Uniform Act along the lines of the Bulk Sales Act Amendment Act, 1945, of British Columbia; and that the Saskatchewan Commissioners be requested to prepare a report for the next meeting based on the advice contained in the replies from the local secretaries.

The Uniform Act as originally adopted is set forth on pages 335 to 341 of the 1920 Proceedings of the Canadian Bar Association. It was amended by the Conference in 1925 and 1939, without change in principle.

The relevant provisions of the Uniform Act are as follows:

2. (c) "Stock" shall mean any stock of goods, wares and merchandise ordinarily the subject of trade and commerce, and the goods, chattels and fixtures ordinarily used in connection with any business.

3. This Act shall apply only to sales by traders and merchants, defined as follows:

(a) Persons who, as their ostensible occupation or part thereof, buy and sell goods, wares and merchandise ordinarily the subject of trade and commerce;

(b) Commission merchants;

(c) Manufacturers.

Having proceeded pursuant to the Resolution we have to report as follows:

One province favours amendment of the Act by adding to section 3 the following clause:

- (d) Proprietors of hotels, rooming houses, restaurants, motor vehicle service stations, oil and gasoline stations and machine shops.

One province favours amendment of the Act by inclusion of the British Columbia amendments, except that the Act should not apply in the case of the sale of an hotel.

British Columbia would no doubt favour the amendments, having already enacted them. The situation would appear to be the same in Ontario, the Act of that province being wider in scope than the Uniform Act plus the proposed amendment. Mr. Treadgold replied to that effect.

Adoption by the Conference of the amendments made to the British Columbia Act in 1945 (1945, c. 6) would involve the following changes in the Uniform Act:

A. Clause (c) of section 2, as above set forth, would be redrawn to read as follows:

- (c) "Stock" shall mean:
 - (a) stock of goods, wares, merchandise and chattels ordinarily the subject of trade and commerce;
 - (b) the goods, wares, merchandise or chattels in which any person trades, or that he produces or that are outputs of, or with which he carries on, any business, trade or occupation.

B. Section 3, as above set forth, would be amended by adding thereto the following clause:

- (d) Proprietors of hotels, rooming houses, restaurants, motor vehicle service stations, oil and gasoline stations and machine shops.

E. C. LESLIE,
J. P. RUNCIMAN,
Saskatchewan Commissioners.

APPENDIX K

(See page 21)

MEMORANDUM

UNIFORM INTESTATE SUCCESSION ACT

(1925 Proceedings — Appendix C)

Sections 8, 9, 10 and 11 of the Uniform Intestate Succession Act are as follows:

8. If an intestate dies leaving no widow or issue or father or mother, his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the children of the deceased brother or sister shall take the share their parent would have taken, if living:

Provided that where the only persons entitled are children of deceased brothers and sisters, they shall take per capita.

9. If an intestate dies leaving no widow, issue, father, mother, brother or sister and no children of any deceased brother or sister, his estate shall go to his next-of-kin.

10. In every case where the estate goes to the next-of-kin, it shall be distributed equally among the next-of-kin of equal degree of consanguinity to the intestate and those who legally represent them; but in no case shall representation be admitted among collaterals after brothers' and sisters' children.

11. For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative; and the kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

These uniform sections have been adopted in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Prince Edward Island.

The corresponding provisions in those provinces are as follows:

British Columbia: Administration Act, Revised Statutes, c. 5, ss. 116, 117, 118 and 119 (originally enacted in 1925).

Alberta: Intestate Succession Act, Revised Statutes, c. 211, ss. 7, 8, 9 and 10 (originally enacted in 1928).

Saskatchewan: Intestate Succession Act, Revised Statutes, c. 109, ss. 8, 9, 10 and 11 (originally enacted in 1928).

Manitoba: Devolution of Estates Act, Revised Statutes, c. 53, ss. 8 (2), 8 (3), 9 and 10 (originally enacted in 1927).

New Brunswick: Intestate Succession Act, Revised Statutes, c. 174, ss. 8, 9, 10 and 11 (originally enacted in 1926).

Prince Edward Island: Intestacy Act, Statutes of 1944, c. 14, ss. 8, 9, 10 and 11 (original enactment).

The provisions of provincial statutes corresponding to sections 8, 9 and 10 of the uniform Act have been before the courts on numerous occasions, the question in every case being — Is there representation among collaterals after brothers' and sisters' children?

There is some conflict with respect to provisions corresponding to section 8 of the uniform Act, but there appears to be unanimity of opinion that there is no representation where the estate goes to the next of kin under provisions corresponding to sections 9 and 10 of the uniform Act.

The judgments will now be noted.

In re McKay (1927) 39 B.C.R. 51 — (British Columbia)

Held (Hunter, C.J.B.C.) that grandnephews and grandnieces (children of deceased nephews and nieces) take along with brothers and sisters and nephews and nieces of the intestate. No written reasons.

In re Kroesing Estate (1928) 1 W.W.R. 224; 1 D.L.R. 643 — (Alberta)

The intestate was survived by one uncle and the children of two uncles deceased.

“The children of the deceased uncles, like the uncles, are collateral, but reckoning upwards to the common ancestor and then downwards from him these children are one degree farther removed from the deceased than the surviving uncle and, therefore, do not share in the distribution, the surviving uncle taking the whole estate. Statute of Distribution, 22 & 23 Car. 2, ch. 10, section 7; Halsbury, vol. II, p. 22; Kingsford on Executors & Administrators, p. 393; *in re Ross's Trusts*, L.R. 13 Eq. 286, at p. 293, 41 L.J. ch. 130, 25 L.T. 817”.

This case was on a provision of the Alberta statute in force prior to enactment in 1928 of the uniform sections 8, 9, 10 and

11; but it is noted because it is referred to in a later judgment hereinafter noted.

In re Budd Estate: Harmon v. Furber (1934) 2 *W.W.R.* 182; 42 *Man. R.* 152; 4 *D.L.R.* 539 — (*Manitoba*)

The intestate died unmarried survived by brothers and sisters and a nephew and grandnephew. The nephew was a son and the grandnephew the grandson of a sister who predeceased the intestate.

On the question, did the share of the estate that would have gone to the said sister, had she survived the intestate, pass to the nephew and grandnephew in equal shares or did it all go to the nephew, held (Court of Appeal) that the whole share went to the nephew. *Carter v. Crawley* (1680) Sir T. Raym, 496, 83 *E.R.* 259 and other decisions on the Statute of Distribution, 22 & 23 *Car. II*, c. 10, referred to.

This case was on a provision of the Manitoba statute in force prior to enactment in 1927 of the uniform sections 8, 9, 10 and 11, but it is noted because it is referred to in later judgments hereinafter noted.

Carter v. Patrick (1935) 1 *W.W.R.* 383 — (*British Columbia*)

Held (McDonald, J.) that a grandnephew shares with brothers and sisters and nephews and nieces of the intestate.

“The next question that arises is whether a grandnephew shares with brothers and sisters and nephews and nieces of the deceased. As to this question I follow the decision of the late Chief Justice Hunter in *In re McKay* (1927) 39 *B.C.R.* 51. It is true that his Lordship there gave a different decision to that which would have been given in England under the Statute of Distribution, 1670, ch. 10, or which was given in Manitoba in *In re Budd Estate; Harmon v. Furber* (1934) 2 *W.W.R.* 182, in which was cited *Crowther v. Cawthra* (1882) 1 *O.R.* 128. The reason, I take it, why the learned Chief Justice decided as he did is because our Statute is different from those in other jurisdictions. See Statute of B.C. 1925, ch. 2, sections 116 and 118. I think that the learned Chief Justice having considered those sections decided that the proviso at the end of section 118 applied to that section only and did not apply to section 116 under which latter section the present estate falls. Following his decision I hold that the grandnephew is entitled to share.”

In re Cromarty Estate (1937) 2 W.W.R. 682: (1936) 51 B.C.R. 531 —(British Columbia)

The surviving next of kin of the intestate, who had never married, were uncles and aunts and children of a deceased aunt.

Held (McDonald, J.) that the estate was distributable per capita among the surviving uncles and aunts.

The decision in *Carter v. Crawley* (1681), Sir T. Raym, 496, 83 E.R. 259, and other decisions on the Statute of Distribution, 22 & 23 Car. II, s. 10, and *In re Kroesing Estate* (1928) 1 W.W.R. 224 (Alta.) followed. *In re McKay*, and *Carter v. Patrick*, declared not applicable.

Re Gall (1937) 3 W.W.R. 266 (Alberta)

The intestate was survived by a brother and sister, two nephews and two nieces and a grandnephew and grandniece.

Held (Ives, J.) that the grandnephew and grandniece were not entitled to share. (No written reasons). *In re McKay*, and *Carter v. Patrick*, considered. *In re Budd Estate* followed.

Canada Permanent Trust Co. v. Saunders et al — Re Hind (1938) 3 W.W.R. 657; (1939) 1 D.L.R. 167 —(Saskatchewan)

The intestate left surviving him a maternal uncle and some cousins.

Held that the estate devolved upon the uncle to the exclusion of the cousins.

In the *Cran Estate* case, hereinafter noted, Turgeon, C.J.S., in referring to the judgment of the court in the *Canada Permanent Trust Co.* case, while admitting that some of the language used in disposing of that case was misleading, pointed out that no harm resulted. The uncle simply took as the next-of-kin, and not as representing his deceased parent as indicated in the judgment.

In re Cran Estate: Western Trust Co. v. Forrest and Cran (1941) 1 W.W.R. 209; 1 D.L.R. 708 —(Saskatchewan)

At the death of the intestate, who had never been married, his only living relatives were his maternal grandmother and a number of uncles and aunts. The grandmother claimed the whole of the estate as next-of-kin. The uncles and aunts claimed a share of the estate as the legal representatives of their parents, the intestate's paternal grandparents.

Held, Gordon, J.A. dissenting, that the grandmother took the whole estate.

It appears from this judgment that the construction to be placed on section 10 is that which has been given to substantially the same language in the law of England since 22 & 23 Car. II, c. 10; that the meaning of "after" in the phrase "after brothers' and sisters' children" is "excepting in the case of". *Carter v. Crawley* (1681) Raym. (Sir T.) 496, 85 E.R. 259, applied; and that this should be the conclusion despite the fact that, in view of sections 8 and 9 of the Act, the words "and those who legally represent them" in section 10 are thereby rendered unnecessary and inoperative.

Per Turgeon, C.J.S., after discussing at length the law in England under the Statute of Distribution and *Carter v. Crawley* and other cases:

"Now, the context of our Act is not altogether the same as that of ch. 10 of 22 & 23 Car. II, and this makes the difficulty of applying the language greater in our case than in the case of the older statute. But the difference is only one of degree and not of nature. In the case of 22 & 23 Car. II, ch. 10, it was unnecessary to use all the language which was used when it was only intended to say that representation, other than in the case of the intestate's descendants, should continue to be admitted only among his nephews and nieces. The language in the context in which it was there used risked the interpretation of creating new rights of representation among collaterals who were in the same degree of kindred as nephews and nieces and who therefore did not come 'after' them (in one sense of the word) as uncles and aunts. But it was held that the old, accepted, meaning of the language was to be maintained. Our Act differs in this respect, that nephews and nieces are provided for specifically in section 8 and they required no further language to preserve their rights such as the language used in section 10. But I think it is safer to assume that this language was used unnecessarily in section 10 than to hold that it was intended to be interpreted as it has never been interpreted in the past, that is, as taking away certain rights always enjoyed by the intestate's surviving grandparents when next-of-kin and conferring a corresponding preference, for the first time, upon uncles and aunts. I think that if the Legislature had intended any such disturbances of existing rights it would have said so in apt words of unmistakable meaning, as on other occasions, instead of using language which, however cumbersome and

even equivocal, has always been held to mean only one thing: That representation among collaterals is to be admitted only in the case of the intestate's nephews and nieces.

“This taking by representation is a preference which is enjoyed at the expense of the surviving next-of-kin. It is an exceptional privilege and the old cases go at length into the reasons which warrant its existence in the case of the younger generations (that is, younger than the intestate) represented by his descendants and by his nephews and nieces. None of these reasons has any application to members of an older generation such as uncles and aunts. It is therefore all the more necessary, when the right to such a preference is claimed, as in this case, to make sure that language undoubtedly creating it is found in the statute. Our present Act is very explicit. In section after section it specifies clearly those to whom rights and preferences are to be given. It seems reasonable to suppose that, if the Legislature had intended to create a new preference in favour of uncles and aunts, it would have said so unequivocally as in other cases, and would not have left its intention to be inferred from the use of a formula which has always been accepted as meaning something else.”

*In re Robinson Estate: Moore v. Kirk et al (1941) 2 W.W.R. 86 —
(British Columbia)*

The intestate, a bachelor, left surviving him only an uncle (or an uncle and aunts) and several first cousins, the children of deceased uncles and aunts. It was also assumed that there were left surviving him the grandchildren of a deceased aunt.

Held (Fisher, J.) that the uncle (or uncle and aunts, as the case might be) took the whole estate. *In re Cromarty Estate, and Canada Permanent Trust Co. (Hind Estate) v. McKim* followed.

*In re McIver Estate (1941) 3 W.W.R. 849; 59 B.C.R. 139 —
(British Columbia)*

The intestate, a bachelor, left no brother or sister surviving him. He was survived by nephews and nieces, and grandnephews and grandnieces being children of two deceased children of Mary Marsh, a sister of the intestate.

Held (Robertson, J.) that the grandnephews and grandnieces were entitled to share in the estate.

“The matter seems settled by *In re McKay Estate (1927)* 39 B.C.R. 51; *Carter v. Patrick (1935)* 1 W.W.R. 383, 49

B.C.R. 411. Mary Marsh's grandchildren by her two deceased children are entitled to share in the estate."

In re Minor Estate, 61 B.C.R. 401; (1945) 3 D.L.R. 474 — (*British Columbia*)

The intestate was survived only by nephews, nieces, and by grandnephews and grandnieces, issue of a deceased brother.

Held (Macfarlane, J.) that grandnephews and grandnieces are excluded. *Re McKay*, and *Carter v. Patrick*, distinguished. *Re Budd*, *Re Gall*, *Re Cromarty*, *Re Robinson*, *Canada Permanent Trust Co. v. Saunders*, *Re Cran*, referred to.

"These sections have been considered by respected judges of this Court. In *In re Estate of David McKay*, deceased (1927), 39 B.C. 51, the late Chief Justice Hunter is reported, without reasons, as deciding that a grandnephew of a deceased intestate should take a share that would have been taken by his parent, a nephew of a deceased intestate who predeceased the intestate. In *Carter v. Patrick* (1935), 49 B.C. 411, at p. 412, the late Chief Justice McDonald, sitting in this Court followed that decision and with reference to it said:

'I think that the learned Chief Justice having considered those sections (116 and 118) decided that the proviso at the end of section 118 applied to that section only and did not apply to section 116 under which latter section the present estate falls'.

"If that is what is decided by those cases, and if that is all that is so decided, then I do not think they necessarily govern the case here.

"In both those cases, there were brothers and sisters of the deceased living at the date of his death while in this case there were neither brothers nor sisters of the deceased living at the date of the death of the deceased. In the decisions mentioned the first part of section 116 was under consideration and an attempt was made to apply the prohibition at the end of section 118 to the facts of those cases. The proviso to section 116 had obviously no application. Section 116 confers a right of representation on the children of a deceased brother or sister. It is clear, I think, that children in this connection means 'immediate' descendants. Vide *Vickers*, V.C., in *Re Ross's Trusts* (1871), 41 L.J. Ch. 130, at p. 133.

"I think, therefore, that the section means that where there are brothers or sisters of the deceased living at the date of death and children of a deceased brother or sister or of both then the children take but that it does not confer any right of representation beyond that.

"In passing, I might say, that in *In re Gall Estate*, (1937) 3 W.W.R. 266, Ives, J. in Alberta refused to follow *In re Estate of David McKay, Deceased*, supra, and *Carter v. Patrick*, supra. In Manitoba, the Court of Appeal, in a considered decision (*In re Budd Estate*) *Harmon v. Furber*, (1934) 2 W.W.R. 182, in the case of an intestate who died unmarried leaving him surviving several brothers and sisters and a nephew and grandnephew, applied a proviso in terms the same as the proviso to section 118 to exclude the grandnephew.

"In *In re Cromarty Estate* (1936), 51 B.C. 531, at pp. 532-3, the same learned judge who decided *Carter v. Patrick*, supra, in refusing to extend the right of representation to the children of next-of-kin other than or more remote than brothers and sisters, in that case, uncles and aunts, followed the cases

'decided on the Statute of Distributions, 22 & 23 Car. II, Cap. 10, which is in this connection very similar to our own; and *In re Kroesing Estate*, (1928) 1 W.W.R. 224, decided on The Intestate Succession Act of Alberta, R.S.A. 1922, cap. 143, which is also in this connection very similar to our own'.

"Fisher J., in *In re Robinson Estate*, *Moore v. Kirk*, (1941) 2 W.W.R. 86, took a similar course, following as well the decision in *Canada Permanent Trust Co. (Hind Estate) v. McKim*, (1938) 3 W.W.R. 391, and 657.

"Macfarlane J. then referred to *In re Cran Estate* as it provides an easily accessible collection of the relevant authorities and as well makes it clear that except in the case of the intestate's own descendants the privilege of taking by representation was extended by law only to one other class of the deceased's kindred, that other class being his nephews and nieces, the children of a deceased brother or sister to one degree only, that is to their immediate descendants, and no further (*Carter v. Crawley* (1683), T. Raym. 496; 83 E.R. 259). Save in this one case representation among collaterals was unknown.

“As I see it, no right of representation is conferred by statute here except upon children of a deceased brother or sister. . . . Neither before the statute of 1925, nor under it do they take. The nephews and nieces, being the only persons entitled, take per capita under the proviso to section 116.”

Re Haggart (1947) 1 W.W.R. 79; 2 D.L.R. 72 —(Alberta)

The intestate left surviving him only first cousins, and children of first cousins who predeceased him.

Held (Macdonald, J.) that the words “but in no case shall representation be admitted among collaterals after brothers’ and sisters’ children” prevent the children of deceased cousins representing such cousins.

In *re Cromarty Estate: Canada Permanent Trust Co. (Hind Estate) v. Canada Permanent Trust Co. (McKim Estate)*; In *re Cran Estate*; *Western Trust Co. v. Forrest and Cran*; In *re Robinson Estate*; *Moore v. Kirk*; applied.

In re Drain Estate, Nixon v. Drain et al (1948) 1 W.W.R. 280 — (British Columbia)

The intestate was survived by only (1) brothers and sisters, (2) sons and daughters of deceased brothers and sisters, and (3) grandchildren of deceased brothers and sisters.

Held (Wilson, J.) that the third class was not entitled to share in the estate. In *re Minor Estate* followed in preference to In *re McIver Estate*.

Re McMahan, Day v. McMahan (1948) 1 D.L.R. 80; 20 M.P.R. 413 —(New Brunswick)

The intestate was survived only by a sister and by nephews, nieces, grandnephews and grandnieces, being children and grandchildren of deceased brothers and a sister.

Held (Supreme Court, Appellate Division) that the grandnephews and grandnieces were not entitled to share in the estate since the word “children” in section 8 is restricted to the issue of the first generation. *Re McKay and Carter v. Patrick* not followed. *Re Gall, Canada Permanent Trust Co. v. Saunders and Re Minor* referred to.

In Re McLea Estate (1948) 2 W.W.R. 12 —(Manitoba)

The intestate had never married. His parents predeceased him and he was survived by one sister, by nephews and nieces (children of a deceased brother and sister) and by some grandnephews and grandnieces.

Held (Williams, C.J.K.B.) following in re Budd Estate, that a grandnephew or grandniece of an intestate is not entitled to take that share in the estate which a parent of the grandnephew or grandniece would have been entitled to take if that parent had survived the intestate.

“The reasoning in In re Cran Estate; Western Trust Co. v. Forrest and Cran, supra, confirms me in my view that the principles laid down by the Manitoba Court of Appeal in In re Budd Estate; Harmon v. Furber, supra, are still applicable in Manitoba, notwithstanding the changed wording of the statute.

“If I am wrong in this I feel I should follow the decision in In re Cran Estate; Western Trust Co. v. Forrest and Cran, supra, and the reasoning of Macfarlane, J. and of Wilson, J. in In re Minor Estate, supra, and In re Drain Estate; Nixon v. Drain, supra, respectively. While the Manitoba Act is not a ‘Uniform Act’ the sections I am considering are uniform with those in Saskatchewan and British Columbia and it is advisable that judicial decisions on such sections should be as uniform as possible.”

In re Dixon Estate (1948) 2 W.W.R. 108 —(Manitoba)

The question here was: Did all of the intestate’s estate go to her paternal grandmother (her one surviving grandparent) or were her uncles and aunts on both sides entitled to share therein?

Held (Williams, C.J.K.B.) that the estate went to the paternal grandmother. In re Cran Estate and In re Budd Estate referred to.

SUMMARY

AND

PROPOSED AMENDMENTS

Section 8 of Uniform Act

1. (1) There is representation in the case of deceased nephews and nieces where an intestate dies leaving:

- (a) brothers and sisters;
- (b) nephews and nieces (children of deceased brothers and sisters); and
- (c) grandnephews and grandnieces.

The grandnephews and grandnieces are entitled to share.

In re McKay (B.C.)
Carter v. Patrick (B.C.)

(2) There is no representation in the above circumstances. The grandnephews and grandnieces are not entitled to take.

In re Budd Estate (Man.)
 Re Gall (Alta.)
 In re Drain Estate (B.C.)
 Re McMahan (N.B.)
 In re McLea Estate (Man.)

2. (1) There is representation in the case of deceased nephews and nieces where an intestate dies leaving only:

- (a) nephews and nieces;
- (b) grandnephews and grandnieces, children of deceased nephews and nieces.

The grandnephews and grandnieces are entitled to share.

In re McIver Estate (B.C.)

(2) There is no representation in the above circumstances. The grandnephews and grandnieces are not entitled to share.

In re Minor Estate (B.C.)

3. It is suggested that the advisability of amending section 8 of the Uniform Act should receive the consideration of the Conference and that, if amendment is deemed advisable, the following amendments would remove any doubt as to the meaning of the section:

- (a) insert the word "surviving" before the word "children";
- (b) strike out the proviso and insert the following section:
 "8a. If an intestate dies leaving no widow, issue, father, mother, brother or sister, his estate shall go to his surviving nephews and nieces in equal shares."

The proviso to section 8 is not an exception to the section. The proviso refers to an entirely different case, namely, nephews and nieces taking in their own right as next of kin, there being no surviving brothers or sisters of the intestate. The section itself contemplates the survival of at least one brother or sister.

This proviso does not confer a right of succession upon nephews and nieces. It merely declares the manner in which they take, in case they take as a class where all brothers and sisters of the intestate predecease him. Not being specifically provided for, it would appear that they are "next of kin" under section 9 and, being in the third degree of consanguinity, take after grandparents of the intestate along with any uncles and aunts of the intestate.

The proposed section 8a would place nephews and nieces before grandparents — a seemingly logical position, representation being admitted under section 8 in the case of a deceased

brother or sister. Precedents appear in the law of England and of Nova Scotia.

In any event the proviso to section 8 appears to be unnecessary. Under section 10 the surviving next of kin take the estate in equal shares. (In re Cran Estate and other cases, *supra*).

Section 10 of Uniform Act

4. There is no representation.

In re Kroesing Estate (Alta.)
 In re Cromarty Estate (B.C.)
 Can. Permanent Trust Co. v. Saunders (Sask.)
 In re Cran Estate (Sask.)
 In re Robinson Estate (B.C.)
 Re Haggart (Alta.)
 In re Dixon Estate (Man.)

5. It is suggested that the advisability of amending section 10 of the Uniform Act should receive the consideration of the Conference, and it is submitted that this section would more clearly express its purpose if it were amended to read as follows:

“10. In every case where the estate goes to the next of kin it shall be distributed equally among the surviving next of kin of equal degree of consanguinity to the intestate”.

Sections 9 and 10 of Uniform Act

6. If section 10 is redrawn in the above form sections 9 and 10 might be combined to read as follows:

“9. If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall go in equal shares to his surviving next of kin of equal degree of consanguinity to him”.

Sections 8, 9 and 10 of Uniform Act

7. In order to place the whole matter in concise form, the following is presented as a proposed redraft of sections 8, 9 and 10:

“8. If an intestate dies leaving no widow, issue, father or mother, his estate shall go to his brothers and sisters in equal shares, and if any brother or sister is dead the surviving children of the deceased brother or sister shall take the share their parent would have taken, if living.

“9. If an intestate dies leaving no widow, issue, father, mother, brother or sister, his estate shall go to his surviving nephews and nieces in equal shares.

“10. If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall go in equal shares to his surviving next of kin of equal degree of consanguinity to him.”

J. P. RUNCIMAN.

APPENDIX L

*(See page 22)*ACTIONS AGAINST THE CROWN
REPORT OF MANITOBA COMMISSIONERS

In the Proceedings of the 1948 meeting of the Conference, the following appears on page 25 under the heading of New Business:

5. Actions against the Crown.—The Manitoba Commissioners undertook to prepare a report on this subject for the 1949 meeting.

The Honourable the Attorney General of Manitoba requested Mr. John Allen, K.C., to prepare a draft Act to authorize the bringing of civil actions against the Crown. Mr. Allen, after careful study of the subject, produced a thorough and comprehensive draft. This was submitted by the Attorney General to a joint committee appointed by the Law Society of Manitoba, the Manitoba Bar Association, and the Manitoba Section of the Canadian Bar Association, under the chairmanship of Mr. R. B. Graham, K.C. The draft Act attached hereto is the draft as revised by the said committee, and at the request of the Attorney General is submitted by the Manitoba Commissioners for the consideration of the Conference. It is understood that Mr. Allen may have certain comments to make with respect thereto.

R. M. FISHER,
I. J. R. DEACON,
G. S. RUTHERFORD.
Manitoba Commissioners.

NOTE:—As the Draft Act referred to in this report was not discussed clause by clause and as each member has a copy, it is omitted here.

APPENDIX M

*(See page 23)*REPORT OF THE FEDERAL REPRESENTATIVES TO
THE CONFERENCE OF COMMISSIONERS ON
UNIFORMITY OF LEGISLATION IN CANADA
RE DRAFT UNIFORM RESIDENCE ACT

Gentlemen:

As recited at page 22 of the 1948 Proceedings of the Conference, after lengthy discussion of the oral report of the Nova Scotia Commissioners concerning a proposed draft Uniform Residence Act, the following resolution was adopted:

RESOLVED that the matter of the preparation of a draft Uniform Residence Act be referred to the Dominion Representatives and that they confer with officials of the Department of National Health and Welfare at Ottawa with a view to expediting the preparation of a draft; that the Dominion Representatives be authorized to proceed herein as they think best; and that the Secretary be requested to write the Attorney General of Prince Edward Island and the Deputy Attorney General of Saskatchewan informing them of the action taken at this meeting.

The subject of this resolution was communicated to Mr. R. E. Curran, Legal Adviser, Department of National Health and Welfare, for transmission to the Dominion Council of Health with the suggestion that substantial agreement in principle should be reached by the appropriate authorities of the Provinces concerned, following which the Conference would be glad to undertake the implementation of that policy in the form of draft legislation.

Mr. Curran reported that the item had been placed on the agenda of the meeting of the Dominion Council of Health but, due to pressure of other business relating to the health programme, there had not been adequate opportunity to discuss the item in full but that it was hoped that the next meeting would afford such opportunity.

Mr. Curran agrees that until appropriate action is taken by the Dominion Council of Health along the lines suggested, there is little, if anything, which this Conference can accomplish.

He has undertaken to keep the matter before the attention of the Dominion Council of Health and is confident that it will be included in the agenda for the next meeting of that body.

It would be the recommendation of the federal representatives to this Conference, therefore, that we should agree to hold open a place on our Agenda during the next couple of years in order that if and when the requisite material is received from the Dominion Council of Health, after clearance with the appropriate provincial authorities, this Conference may again take up the request of a year ago from the Attorney General of Prince Edward Island and the Deputy Attorney General of Saskatchewan to proceed toward the drafting of a uniform statute.

W. P. J. O'MEARA,
For Federal Representatives.

APPENDIX N

(See page 24)

THE UNIFORM MECHANICS' LIEN ACT

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 Mechanics' Lien Act".

INTERPRETATION

2. In this Act,
 - (a) "completion of the contract" means substantial performance, not necessarily total performance, of the contract;
 - (b) "contractor" means a person contracting with, or employed directly by, the owner or his agent to do work upon or to furnish material for an improvement, but does not include a labourer;
 - (c) "court" means the county court of the district in which the land affected by the lien is situate;
 - (d) "highway" includes any road, road allowance, street, lane, thoroughfare, bridge, subway, pier, ferry, square, and public place, appropriated to the public use;
 - (e) "improvement" includes any thing constructed, erected, built, placed, dug or drilled on or in land except a thing that is not attached to the realty or intended to be or become part thereof;
 - (f) "judge" means a judge of the court;
 - (g) "labourer" means any person employed for wages in any kind of labour whether employed under a contract of service or not;
 - (h) "lien" means a lien created by this Act;
 - (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 a claim or 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 situate;

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

(l) "registrar" means a district registrar (a registrar of deeds);

(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 by a sub-contractor under him, 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 does not apply in respect of a highway or any work done or caused to be done thereon by a municipality or in respect of material furnished therefor.

(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 "muni

cipality" may be included in section 2. This section may be omitted in provinces where the title to highways is vested in the Crown.)

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 have, subject as herein otherwise provided, a lien for wages or for 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 land in respect of which the improvement is being made, as such estate or interest exists at the time the lien arises, or at any time during its existence.

(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, a 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 a lien is claimed by any person other than the contractor, it shall not attach so as to make the owner liable for a greater sum than the amount owing to the contractor for whom, or for whose sub-contractor, the work has been done, or the materials have been furnished.

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

(4) No claim of lien shall be registered if the amount of the claim or the aggregate of 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, a 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. (1) An agreement by a 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).)

(2) Every device by an owner, contractor, or sub-contractor 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.)

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

(Sask., 15; Ont., 14(5).)

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

(Ont., 13(3).)

8. A lien arises when the work is begun or the first material is furnished.

9. (1) A lien has 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) Upon registration of the claim of lien, the lien, subject to subsection (3), has 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 or conveyance that is registered after a lien for material arises, but before the registration of the claim of lien, has priority over the lien to the extent of any payments or advances made thereunder in good faith before the person making such payments or advances has knowledge of the lien.

(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 work is done or material is furnished, is encumbered by a mortgage or other charge registered before a lien arises, the mortgage or other charge has priority,

- (a) over the lien to the amount of the 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) over a lien for material furnished to the extent of any payments or advances made under the mortgage or charge after the lien arose 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 has priority over a 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) Subject to subsection (2) all lienholders shall rank proportionately for the amounts for which their liens may respectively be enforced and the proceeds of any sale so far as required 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) Liens for wages, for all purposes under this Act and to the extent of (thirty) days wages, have priority over all other liens; all liens for wages shall rank on an equal footing.

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

11. Where, with the privity and consent of a husband, work is done or material is furnished upon or in respect of the land of his wife or of land in which she has an interest or right of dower, the husband shall be conclusively presumed to be acting as her agent as well as for himself unless the person doing the work or furnishing the materials has actual notice to the contrary.

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

12. (1) Where the estate or interest upon which the lien attached is leasehold, the fee simple shall also be subject to the lien; provided the person doing the work or supplying the material gives notice in writing by registered letter or personal service

to the owner or his agent of the work to be done or the material to be furnished and the owner or his agent fails within ten days thereafter to give notice to such person that he will not be responsible therefor.

(N.B., 8(1); Ont., 7(1).)

(2) No forfeiture or cancellation of a lease, except for non-payment of rent, shall deprive any person otherwise entitled to a lien 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 in respect of which a lien has arisen 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 lienholders to the same extent as if the money 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.)

(NOTE:—The desirability of retaining this subsection is left to the decision of the Conference. In view of the fact that no penalty is provided for violation of the subsection, violation would appear to constitute an indictable offence under section 164 of the Criminal Code.)

(2) Material actually furnished to be used for the purpose set out in section 4 is subject to a lien in favour of the person furnishing it until it is placed in the improvement; and while that lien exists the material is not subject to execution or other process to enforce any debt other than that for the purchase money thereof.

(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 which a lien may arise shall deduct from any payments made by him thereunder and subject to section 17 retain for a period of (30) 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 instalment 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 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 value is fifteen thousand dollars.

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

(4) Every lien is 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 payable; or
- (b) his sub-contractor.

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

(5) A payment, other than of 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 to the owner by the person claiming the lien operates 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 than the satisfaction of liens.

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

16. (1) Where a lienholder gives to the owner notice in writing of his lien stating under oath the amount 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.

(2) The amounts retained pursuant to subsection (1) shall constitute a fund, separate from that constituted by the amounts retained pursuant to section 15, for the benefit of lienholders who give notice under this section.

(3) The lien of each lienholder who gives notice under this section is a charge in his favour upon the amount directed by this section to be retained; and each of such lienholders shall rank *pari passu* on the amount retained under this section for the amount for which his lien may be enforced, and the amount so retained shall be distributed among such lienholders *pro rata* as hereinafter provided.

(4) A payment made to a lienholder under this section shall not disentitle him to claim for any balance remaining payable to him and to be paid therefor from moneys retained under section 15.

17. Payment of the amounts required to be retained under sections 15 and 16 may be made so as to discharge every lien or charge under this Act in respect thereof,

- (a) on the expiration of the (30) days after the completion or abandonment of the contract, if a claim of lien has not been registered or action commenced as provided herein; or
- (b) on the expiration of two years mentioned in section 27 if action has not been commenced within that period as mentioned in that section,

whichever is the sooner.

(N.B., 12(5); Ont., 11(5); Man., 9(4); Sask., 11(3); Alta., 14(5).)

18. If an owner, contractor, or sub-contractor, makes a payment to a lienholder for or on account of a debt due the lienholder for work done or material furnished to be used as mentioned in section 4, for which debt the owner, contractor, or sub-contractor is not primarily liable, and within three days thereafter gives written notice of the payment to the person primarily liable, or his agent, the payment shall be deemed to be a payment on the contract with the person primarily liable, but not so as to affect the percentage to be retained by the owner as provided by section 15 or any further deduction required by section 16.

(N.B., 13(1); Ont., 12(1); Man., 10; Sask., 12; Alta., 15.)

19. Subject to subsection (2) of section 4, a lienholder is entitled to enforce his lien notwithstanding the non-completion

or abandonment of the contract by a contractor or sub-contractor under whom he claims.

(N.B., 13(2); Ont., 12(2); Alta., 16.)

REGISTRATION OF LIEN

20. (1) A claim of lien upon 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 name and address of

(i) the lienholder,

(ii) the owner, or the person whom the lienholder or his agent believes to be the owner of the land 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, which affidavit 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 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.

(Man., 14(3).)

(6) A lienholder may at any time change his address for service by notifying the owner and the (registrar) in writing; 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 shall 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 of lien against different lands of the same owner.

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

(2) Any number of persons claiming liens upon the same land 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 is 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 the 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 the requirement of 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 with one or more of the provisions of sections 20 and 21, the judge may allow 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 receipt of the proper fee, shall register a 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 registrar shall certify the registration upon the duplicate, which duplicate shall be filed in the office of the clerk of the court wherein action is brought to enforce the lien.

(3) The fee payable on registration of a claim of lien is as follows:

For registration of a claim of lien for wages and certifying duplicate	25 cents
For registration of any other claim of lien and certifying duplicate	\$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 work for which the wages are owing and the lien claimed.

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

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

(3) 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 the price of which is claimed for.

(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 or sub-contract as the case may be.

(5) Where a contract is under the supervision of an architect, engineer or other person, upon whose certificate 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 after application in writing to him by the contractor refused or neglected for three days to give a final certificate.

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

25. Every lien in respect of which a claim of lien (or a *lis*

pendens) 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 of lien has been registered shall cease to exist on the expiration of two years from the registration of the claim of lien unless, in the meantime, an action is commenced 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 land 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, 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 commenced (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, postage prepaid, addressed to the lienholder at the address for service shown in the claim of lien.

(3) Unless such an action is commenced within the time provided by subsection (1), the lien shall cease to exist; and the registrar upon the application of any person interested 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 that an action has been commenced is registered a certificate of the clerk of the court in which the action was commenced,

(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 discharges 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 to every such lien.

(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, the registrar upon application in writing of any person having any right, title or interest in or to any land affected by such lien, or his duly authorized agent, and upon being satisfied as to the facts, may vacate the registration.

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

29. The rights of a lienholder 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 substantially 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 in the registry office where the claim of lien is 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(1-3); Ont., 25(1-3); Man., 25(1); Sask., 28(1).)

31. (1) The taking of security or a promissory note or bill of exchange for, or the taking of any other acknowledgment of the amount of a lien or any part thereof, or the extension of the time for the payment thereof, or the taking of proceedings for the recovery of a personal judgment therefor, or said judgment shall not merge, prejudice, or destroy the 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 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) Where a lienholder extends the time for payment of indebtedness in respect of which he has registered a claim of lien, subsection (1) shall not apply either to the lien or otherwise to the case, unless the lienholder commences an action to enforce the lien (and registers a certificate of *lis pendens*) within the time herein in this Act 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; provided that where a lienholder gives an extension of time as mentioned in this subsection, if any other person commences an action to enforce a lien against the same land, 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., 27(3); Ont., 26(4); Man., 26(2); B.C., 38; N.B., 28; Ont., 27.)

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

- (a) the terms of the agreement 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; and
 - (c) the production for inspection of the contract or agreement, if it is in writing.
- (2) If the owner or his agent,
- (a) refuses or neglects within a reasonable time to inform the lienholder of
 - (i) the terms of the agreement, and
 - (ii) the amount already paid, and the amount due and unpaid thereunder; or
 - (b) intentionally or knowingly falsely states 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 and section 44 shall apply.

(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 or 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 agreement.

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

- (a) refuses or neglects within a reasonable time 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 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 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 when section 44 shall apply.

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

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

- (a) the terms of any agreement 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 (thereunder) between the owner and the contractor, or between the contractor and any one or more sub-contractors, or between any sub-con-

tractor 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 within a reasonable time to inform the lienholder
 - (i) of the terms of the agreement, and
 - (ii) of the amount already paid and the amount due and unpaid thereunder; or
- (b) intentionally or knowingly falsely states 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 when section 44 shall apply.

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

ENFORCEMENT OF LIEN

33. Any lien may be enforced by action in the county court of the district in which the land affected by the lien is situate, 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, the judge may make an order for the transmission to the judge or clerk of any other county court in the province of the papers relating to any action under this Act, and upon an order being made such action shall become and be an action 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. An action shall be commenced by filing in the office of the court a statement of claim, entitled in the court and cause, giving the grounds and particulars of the claim and a copy of the statement of claim shall be served on the owner, or his agent, and such service may be effected either within or without the province.

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) Within sixteen days after service upon him of the statement of claim, the defendant may enter a defence by filing in the court a statement of defence, entitled in the court and cause, showing the nature of his defence, and by serving on the plaintiff or his solicitor a copy thereof.

(2) If the defendant fails to enter a defence within the time specified in subsection (1) 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 that in an action in the (Court of King's Bench).

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

(Man., 32.)

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

(Man., 33.)

39. Any number of lienholders claiming liens on the same land 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 land in question.

(Man., 35.)

40. After the filing and service of the statement of defence, or if none is filed and served, after the time for filing and serving the statement of defence has expired the judge shall upon application by any party to the action and after due notice to the opposite party, fix a time and place for the trial of the action.

(Man., 36.)

41. 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 Sche-

dule, upon the solicitors for the parties who appear by solicitors, and on all lienholders who have registered their liens, and on all other persons having any registered charges, encumbrances or claims on the land affected by the lien, who are not parties or who, being parties, appear personally in the action; and the service on those not parties shall be personal, unless otherwise directed by the judge.

(Man., 37.)

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

(Man., 34.)

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

(Man., 38.)

44. (1) At the trial of the action the judge shall proceed to determine all questions which arise therein or which are necessary to be tried to dispose of the action completely and, subject to section 43, 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 and, subject to section 43, 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.

(Man., 39.)

45. (1) In the judgment, the judge may order that the estate or interest charged with the lien be sold, allowing, however, a reasonable time for advertising the sale and such sale shall be by the sheriff unless otherwise ordered and shall be in the manner prescribed for sales under writs of *feri facias*.

(Man., 40.)

(2) The judge may 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 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.

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

(Man., 41; N.B., 37(2).)

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; N.B., 37(3).)

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 as so to include such claim therein.

(Man., 44.)

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

(Man., 45; N.B., 34.)

51. The judge may hear the application of any lienholder entitled to the benefit of the action and after due notice to the other claimants 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; N.B., 35.)

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

(N.B., 18(2); Ont., 17(2); N.B., 33(2).)

53. (1) A judge may at any time 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 the judge may thereupon order the registration of the claim of lien be vacated.

(2) A judge may order vacated 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 paid into court, or any security given in an action,

(a) takes the place of the land 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, is subject to the claim of every person who has registered a lien and, before the time limited by section 27 has expired, has commenced 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 or security so paid in or given.

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

(5) Whenever a judge orders a registration of a claim of lien to be vacated, such order shall forthwith be filed in the proper registry office.

(New.)

54. A judge may, on a summary application at any time before or after an action is commenced for the enforcement of a

lien, order 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).)

NEW TRIAL

55. In any action 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 and without appeal, but, upon application within fourteen days after judgment is pronounced, the judge who tried the action may grant a new trial.

(Man., 47; N.B., 39.)

APPEAL

56. (1) In any action 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 no appeal shall lie therefrom.

(2) The procedure on the appeal shall be the same as in other appeals from the county court.

(Man., 48; N.B., 39(2).)

COSTS

57. The costs of the action awarded by the judge trying the action shall not, exclusive of actual disbursements, exceed in the aggregate an amount equal to twenty-five per centum of the amount found actually due, and shall be apportioned and borne as the judge may direct, but in making such apportionment he shall have regard to the actual service rendered by or on behalf of the parties respectively.

(Man., 49; N.B., 41.)

58. Where costs are awarded against the plaintiff or other person claiming a lien, the costs shall not exceed in the aggregate an amount equal to twenty-five per centum 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; N.B., 43.)

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 or commission shall be payable on any payment of money into court or on obtaining money out of court in respect of a claim of lien.

(Man., 55.)

TRIAL BY REFEREE

64. In an action brought under this Act the judge may refer the action to the referee in chambers of the Court of King's 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 entitled 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.)

CONSTRUING 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 (19)" 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 done (or materials were furnished) for (here state the name and residence of the person upon whose credit the work was done or materials were 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 (19)" 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 days' 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 (19)" 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 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)

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

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

NOTICE

To
Under the provisions of "The Mechanics' Lien Act (19)" 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.

This notice is given by virtue of my interest as follows:
Dated at..... this..... day of..... 19 .

(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..... of
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
(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____,
 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....., the party 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____.

 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.

(R.S.M., c. 129, Sch., Form 7.)

APPENDIX O

*(See page 27)*REMARKS OF THE HONOURABLE ANTOINE RIVARD,
K.C., ON THE OCCASION OF HIS ELECTION AS
PRESIDENT OF THE CONFERENCE

I am extremely moved by your unanimous decision to elect me as your president for the incoming year. I understand that this great honour has been bestowed upon me on account of the people and the section of the country which I have the opportunity to represent in your midst.

I know that the Quebec Bar and the Quebec Government will fully appreciate the fact that for the first time since its formation, 31 years ago, the Conference of Commissioners on Uniformity of Laws in Canada has seen fit to elect a Quebec lawyer as its president.

I realize the onus of the functions you have assigned to me. I know that my resources are very poor to bear it to your satisfaction; but I also know that I can count on your co-operation, your indulgence and your friendship.

One may think it extraordinary that a Quebec representative should be the president of a body concerned with uniformity of laws in Canada.

I see in your choice a clear confirmation of your attitude towards Quebec. Our representatives here have always maintained the rights of our Province to its peculiar system of civil law, which is directly derived from the French Code Napoleon. May I be allowed to say that the strongest link which has united us to the British Crown is the fact that we have been allowed to preserve our language, our schools, our faith and our laws. We are convinced that these are conditions not only essential to our own existence as a race, but also to the complete unity of the Canadian nation.

Our position has always been clear and definite on that point. I wish to say again that since I have been with you I have never felt the slightest attempt to alter directly or indirectly our civil code, which it is our duty to preserve in its entire integrity.

Our position has always been very definite, and it is because every one of you always saw and understood the situation in its true light that I am proud to be called to this presidential chair to-day.

I believe that nothing but good must derive from these annual meetings of law makers and law interpreters across our land. There remain still many statutes which could and should be drafted in a uniform way everywhere in this great country of ours.

By our work, slowly, but surely and wisely, beneficial results will be obtained in many domains over which the provinces have absolute jurisdiction and which, as far as we are concerned, do not affect in any way the principles or the letter of our civil code.

We are all Canadians and we, of Quebec, wish to claim as often as we can that we are at home everywhere in Canada.

By choosing a representative of the French-speaking minority as your president you have officially proclaimed this true contention and you have said in no uncertain terms that we stand here, every one of us, with equal rights and equal obligations.

I wish to express again my deep gratitude to you all.

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