

**1950**

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**PROCEEDINGS**

**OF THE**

**THIRTY-SECOND ANNUAL MEETING**

**OF THE**

**CONFERENCE OF COMMISSIONERS**

**ON**

**UNIFORMITY OF LEGISLATION  
IN CANADA**

**HELD AT**

**WASHINGTON, D.C.**

**SEPTEMBER 12TH TO 16TH, 1950**

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY  
OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1950-51

*Honorary President* . . . . . Hon. Antoine Rivard, K.C., Quebec.  
*President* . . . . . Horace A. Porter, K.C., Saint John.  
*1st Vice-President* . . . . . C. R. Magone, K.C., Toronto.  
*2nd Vice-President* . . . . . G. S. Rutherford, K.C., Winnipeg.  
*Treasurer* . . . . . A. C. Des Brisay, K.C., Vancouver.  
*Secretary* . . . . . L. R. MacTavish, K.C., Toronto.

LOCAL SECRETARIES

*Alberta* . . . . . H. J. Wilson, K.C., Edmonton. ✓  
*British Columbia* . . . . . Eric Pepler, 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. ✓  
✓ *Newfoundland* . . . . . H. P. Carter, K.C., St. John's.  
✓ *Nova Scotia* . . . . . H. F. Muggah, K.C., Halifax.  
✓ *Ontario* . . . . . Donald M. Treadgold, K.C., Toronto.  
*Prince Edward Island* . . . . . J. O. C. Campbell, 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, 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.  
ERIC PEPLER, K.C., Deputy Attorney-General, Victoria.  
*(Commissioners appointed under the authority of the  
statutes of British Columbia, 1918, c. 92.)*

*Canada:*

J. D. AFFLECK, Advisory Counsel, Department of Justice,  
Ottawa.  
E. A. DRIEDGER, K.C., Parliamentary Counsel, Department  
of Justice, Ottawa.  
HIS HONOUR JUDGE ROBERT FORSYTH, City Hall, Toronto.  
E. R. HOPKINS, Deputy Clerk, House of Commons, Ottawa.  
T. D. MACDONALD, K.C., Department of Justice, Ottawa.  
W. P. J. O'MEARA, K.C., Assistant Under Secretary of  
State and Advisory Counsel, Ottawa.

*Manitoba:*

JOHN ALLEN, K.C., Legal Adviser to the Attorney-General,  
Winnipeg.  
IVAN J. R. DEACON, K.C., 212 Avenue Bldg., Winnipeg.  
R. MURRAY FISHER, K.C., Deputy Provincial Secretary,  
Winnipeg.  
ORVILLE M. M. KAY, 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., 55 Canterbury St., Saint John.  
*(Commissioners appointed under the authority of the  
statutes of New Brunswick, 1918, c 5.)*

*Newfoundland:*

H. P. CARTER, K.C., Director of Public Prosecutions, St.  
John's.

C. J. GREENE, LL.B., Legal Assistant, Attorney-General's  
Department, St. John's.

J. A. POWER, K.C., Assistant Deputy Attorney-General,  
St. John's.

H. G. PUDESTER, K.C., LL.B., Deputy Attorney-General,  
St. John's.

*Nova Scotia:*

HORACE E. READ, O.B.E., K.C., Dean, Dalhousie University  
Law School, Halifax.

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

HENRY F. MUGGAH, K.C., Legislative Counsel, 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. MAC TAVISH, K.C., Legislative Counsel, Toronto.

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

D. M. TREADGOLD, K.C., Municipal Legislative Counsel,  
Toronto.

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

*Prince Edward Island:*

J. O. C. CAMPBELL, K.C., Deputy Attorney-General,  
Charlottetown.

HON. F. A. LARGE, K.C., Minister of Education, Charlotte-  
town.

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

*Quebec:*

ROGER BISSON, K.C., Three Rivers.

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

HON. ANTOINE RIVARD, K.C., Solicitor General, 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.

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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. C. Rhodes Smith, K.C.

*Attorney-General of New Brunswick:* Hon. J. B. McNair, K.C.

*Attorney-General of Newfoundland:* Hon. L. R. Curtis, K.C.

*Attorney-General of Nova Scotia:* Hon. M. A. Patterson, K.C.

*Attorney-General of Ontario:* Hon. Dana Porter, K.C.

*Attorney-General of Prince Edward Island:* Hon. W. E. Darby, K.C.

*Attorney-General of Quebec:* Hon. Maurice Duplessis, K.C.

*Attorney-General of Saskatchewan:* Hon. J. W. Corman, K.C.

## PAST OFFICERS OF THE CONFERENCE

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(For a list of members up to and including 1944, see the  
1944 Proceedings at pages 6–9.)

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### *Honorary Presidents*

HON. SIR JAMES AIKINS, K.C., Winnipeg.....	1923–1928
HON. JOHN F. LYMBURN, K.C., Edmonton.....	1932–1933
HON. W. J. MAJOR, K.C., Winnipeg.....	1933–1937
HON. J. B. MCNAIR, K.C., Fredericton.....	1937–1939
HON. G. D. CONANT, K.C., Toronto.....	1939–1941
HON. F. F. MATHERS, K.C., Halifax.....	1941–1943
HON. MR. JUSTICE F. H. BARLOW, Toronto.....	1943–1944
PETER J. HUGHES, K.C., Fredericton.....	1944–1946
W. P. FILLMORE, K.C., Winnipeg.....	1946–1948
W. P. J. O'MEARA, K.C., Ottawa.....	1948–1949
J. PITCAIRN HOGG, K.C., Victoria.....	1949–1950
HON. ANTOINE RIVARD, K.C., Quebec.....	1950–

### *Presidents*

SIR JAMES AIKINS, K.C., Winnipeg.....	1918–1923
MARINER G. TEED, K.C., Saint John.....	1923–1924
ISAAC PITBLADO, K.C., Winnipeg.....	1925–1930
JOHN D. FALCONBRIDGE, K.C.....	1930–1934
DOUGLAS J. THOM, K.C., Regina.....	1935–1937
I. A. HUMPHRIES, K.C., Toronto.....	1937–1938
R. MURRAY FISHER, K.C., Winnipeg.....	1938–1941
F. H. BARLOW, K.C., Toronto.....	1941–1943
PETER J. HUGHES, K.C., Fredericton.....	1943–1944
W. P. FILLMORE, K.C., Winnipeg.....	1944–1947
W. P. J. O'MEARA, K.C., Ottawa.....	1947–1948
J. PITCAIRN HOGG, K.C., Victoria.....	1948–1949
HON. ANTOINE RIVARD, K.C., Quebec.....	1949–1950
HORACE A. PORTER, K.C., Saint John.....	1950–

*Vice-Presidents*

MARINER G. TEED, K.C., Saint John.....	1918-1923
ISAAC PITBLADO, K.C., Winnipeg.....	1923-1924
ROBERT W. SHANNON, K.C., Regina.....	1925-1931
DOUGLAS J. THOM, K.C., Regina.....	1931-1935
I. A. HUMPHRIES, K.C., Toronto.....	1935-1937
R. MURRAY FISHER, K.C., Winnipeg.....	1937-1938
W. E. BENTLEY, K.C., Charlottetown.....	1938-1939
R. ANDREW SMITH, K.C., Edmonton.....	1939-1941
PETER J. HUGHES, K.C., Fredericton.....	1941-1943
W. P. FILLMORE, K.C., Winnipeg.....	1943-1944
W. P. J. O'MEARA, K.C., Ottawa.....	1944-1946
ERIC H. SILK, K.C., Toronto.....	1946-1947
J. PITCAIRN HOGG, K.C., Victoria.....	1947-1948
ANTOINE RIVARD, K.C., M.L.A., Quebec.....	1948-1949
J. B. MILNER, LL.B., Halifax.....	1948-1949
HORACE A. PORTER, K.C., Saint John.....	1949-1950
CLIFFORD R. MAGONE, K.C., Toronto.....	1949-
G. R. RUTHERFORD, K.C., Winnipeg.....	1950-

*Treasurers*

FRANK FORD, K.C., Edmonton.....	1918-1924
W. RANDOLPH COTTINGHAM, K.C., Winnipeg.....	1925-1928
R. MURRAY FISHER, K.C., Winnipeg.....	1928-1931
E. RENE RICHARD, Sackville.....	1931-1934
C. P. McTAGUE, K.C., Windsor.....	1934-1935
R. MURRAY FISHER, K.C., Winnipeg.....	1935-1937
R. ANDREW SMITH, K.C., Edmonton.....	1937-1939
ERIC H. SILK, K.C., Toronto.....	1939-1941
W. P. J. O'MEARA, K.C., Ottawa.....	1941-1944
J. P. RUNCIMAN, K.C., Regina.....	1944-1949
G. S. RUTHERFORD, K.C., Winnipeg.....	1949-1950
A. C. DES BRISAY, K.C., Vancouver.....	1950-

*Secretaries*

JOHN D. FALCONBRIDGE, K.C., Toronto.....	1918-1930
SIDNEY E. SMITH, Halifax.....	1930-1934
V. C. MACDONALD, K.C., Halifax.....	1934-1937
WILSON E. McLEAN, K.C., Winnipeg.....	1937-1941
ERIC H. SILK, K.C., Toronto.....	1941-1944
L. R. MAC TAVISH, K.C., Toronto.....	1944-



### 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 prepare 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 by statute for the 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 during the week preceding the annual meeting of the Canadian Bar Association, and at or near the same place, as follows:

- 1919. August 26-29, Winnipeg.
- 1920. August 30, 31, September 1-3, Ottawa.
- 1921. September 2, 3, 5-8, Ottawa.
- 1922. August 11, 12, 14-16, Vancouver.
- 1923. August 30, 31, September 1, 3-5, Montreal.
- 1924. July 2-5, Quebec.
- 1925. August 21, 22, 24, 25, Winnipeg.
- 1926. August 27, 28, 30, 31, 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.
- 1950. September 12-16, Washington, D.C.

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 in 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 1950 the newly-formed Province of Newfoundland joined the Conference and named representatives to take part in the work of the Conference.

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, the Uniform Frustrated Contracts Act, and the Uniform Proceedings Against the Crown 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 had 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.

In 1950, as the Canadian Bar Association was holding a joint annual meeting with the American Bar Association in Washington, D.C., the Conference also met in Washington. This gave the members an opportunity of watching the proceedings of the National Conference of Commissioners on Uniform State Laws which was meeting in Washington at the same time. A most interesting and informative week was had.

Particular attention is directed to the Federal Report on the Ordinances of the Northwest Territories (on page 26 of these Proceedings) which establishes a new field in which the work of the Conference has proved of value.

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	....	....	....
Proceedings Against the Crown.....	1950	....	....	....
Reciprocal Enforcement of Judgments..	1924	1925, am. 1935	1925	1950
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 the 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 & '50	
....	1930	....	1947	....	1929	....	Am. '31 & '32	
1927	....	....	1933	....	....	....	Am. '25, '39, '49 & '50	
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 & '50	
....	....	....	....	....	....	....	....	
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	
....	....	....	....	....	....	....	....	
1950	....	1948\$	....	....	1950†	....	Am. '50	
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, SEPTEMBER 12TH, 1950)

10 a.m.-11 a.m.

*Opening.*

The Conference assembled in the Lee House, Washington, D.C.

The President, Mr. Rivard, acted as chairman and outlined the work of the meeting as set out in the Agenda (Appendix A, page 34).

The following resolution was adopted:

RESOLVED that the Secretary be requested to convey to G. P. Hogg, Barrister, of Vancouver, son of the late John Pitcairn Hogg, K.C., the sincere sympathy of the members of this Conference in the loss of his father, and to assure him that this Conference deeply regrets the death of its present Honorary President who, since his first attendance at these meetings some twelve years ago, has been the valued counsel and good friend of every member of the Conference.

*Minutes of Last Meeting.*

The following resolution was adopted:

RESOLVED that the minutes of the 1949 annual meeting as printed in the 1949 Proceedings be taken as read and adopted.

*President's Address.*

The President, Mr. Rivard, addressed the meeting (Appendix B, page 38).

*Treasurer's Report.*

The Treasurer, Mr. Rutherford, presented his report (Appendix C, page 41). Messrs. Hughes and Treadgold were appointed auditors and the report was referred to them for audit and report to this meeting.

*Secretary's Report*

The Secretary, Mr. MacTavish, presented his report (Appendix D, page 43), which was adopted.

*Nominating Committee.*

The President named a committee, consisting of Messrs. Deacon, Ker, McKenzie and Muggah, to make recommendations as to the officers of the Conference for 1950-51 and to report thereon to this meeting.

*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 and to send copies thereof to the members of the Conference, the members of the Council of the Canadian Bar Association and those others whose names appear on the mailing list of the Conference; and that the Secretary be requested to make arrangements to have the 1950 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 1951 annual meeting of the Canadian Bar Association and at or near the same place.



MINUTES OF THE UNIFORM LAW SECTION

The following commissioners and representatives were present at the plenary sessions and the sessions of this Section:

*Alberta:*

MR. MCKENZIE.

*British Columbia:*

MR. DES BRISAY.

*Canada:*

MESSRS. AFFLECK and O'MEARA.

*Manitoba:*

THE HON. MR. SMITH and MESSRS. DEACON, FISHER and RUTHERFORD.

*New Brunswick:*

MESSRS. HUGHES and PORTER.

*Nova Scotia:*

MR. READ.

*Ontario:*

THE HON. MR. JUSTICE BARLOW and MESSRS. MACTAVISH and TREADGOLD.

*Prince Edward Island:*

THE HON. MR. LARGE.

*Quebec:*

MR. KER.

*Saskatchewan:*

MESSRS. LESLIE and RUNCIMAN.

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## FIRST DAY

(TUESDAY, SEPTEMBER 12TH, 1950)

*First Session*

11 a.m.—12 noon.

*Hours of Sittings.*

The following resolution was adopted:

RESOLVED that this Section of the Conference sit from 9 a.m. to 12 noon and from 2 p.m. to 5 p.m. daily during this meeting.

*Intestate Succession.*

The Report of the Saskatchewan Commissioners on the proposed amendments to the Uniform Intestate Succession Act was presented by Mr. Leslie (Appendix E, page 45).

After consideration of the matters raised in the Report, the Saskatchewan Commissioners were requested to redraft sections 8, 9 and 10 of the Uniform Intestate Succession Act (see page 26 of the 1925 Proceedings; see also 1926 Proceedings at page 17 as to Section 16) having regard to the views expressed at this meeting and to report thereon to this meeting.

*Assignment of Book Debts.*

The Report of the Manitoba Commissioners on the Uniform Assignment of Book Debts Act, as amended at the 1949 meeting, and their recommendations as to the submissions of the Canadian Bankers' Association were presented by Mr. Deacon (set out in part as Appendix G, page 52).

The Report was adopted in principle, but a detailed consideration of the draft Act attached to the Report was deferred as it was felt that having regard to the New Brunswick Report on the same subject (the New Brunswick Commissioners having correlated the Manitoba draft Act with their own draft Act) time would be saved by dealing solely with the most advanced draft.

*Second Session*

2 p.m.—5 p.m.

*Assignment of Book Debts—(continued).*

The Report of the New Brunswick Commissioners on the revision of the Uniform Assignment of Book Debts Act to accord with the other uniform Acts dealing with commercial paper was presented by Mr. Hughes (set out in part as Appendix H, page 55).

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

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SECOND DAY

(WEDNESDAY, SEPTEMBER 13TH, 1950)

*Third Session*

9 a.m.—12 noon.

*Assignment of Book Debts—(concluded).*

Upon conclusion of the consideration of the draft Act attached to the New Brunswick Report the following resolution was adopted:

RESOLVED that the Uniform Assignment of Book Debts Act attached to the New Brunswick Report be referred back to the New Brunswick Commissioners for incorporation therein of the amendments made at this meeting; that copies of the Act as so amended be sent by the local secretary for New Brunswick to each of the other local secretaries for distribution by them to the members of this Section in their jurisdictions; and that if the Act in such form is not disapproved by two or more jurisdictions by notice to the Secretary on or before the 30th day of November, 1950, it be recommended for enactment in that form.

NOTE:—Copies of the Act were distributed pursuant to the above resolution on October 24th, 1950. No disapprovals were received. The Act as adopted and recommended for enactment is set out as Appendix I, page 56.

*Intestate Succession—(concluded).*

The following resolution was adopted:

RESOLVED that the Uniform Intestate Succession Act (1925 Proceedings, page 26) be amended by striking out sections 8, 9 and 10 and substituting therefor the following:

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 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 nephews and nieces in equal shares and in no case shall representation be admitted.

10. If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

Further, that copies of the Act as so amended and now adopted by the Conference be sent by the local secretary for Saskatchewan to each of the other local secretaries for distribution by them to the members of this 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, 1950, it be recommended for enactment in the provinces that have not yet adopted it, or in the alternative, that sections 8, 9 and 10 as now adopted be recommended for enactment in the provinces that have enacted the Uniform Act.

And further, that if the Act as so amended is not disapproved, the Secretary shall cause the Act to be printed in up-to-date form (originally adopted in 1925, section 16 redrawn in 1926, and sections 8, 9 and 10 redrawn in 1950) as an appendix to the 1950 Proceedings.

NOTE:—Copies of sections 8, 9, and 10 were distributed pursuant to this resolution on October 14th, 1950. No disapprovals were received. The Act in up-to-date form is set out as Appendix F, page 48.

*Fourth Session*

2 p.m.—5 p.m.

*Proceedings Against the Crown.*

The Conference met in plenary session for the purpose of considering the Manitoba Commissioners' Report on Proceedings Against the Crown (Appendix J, page 67) which was presented by Mr. Rutherford.

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

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THIRD DAY

(THURSDAY, SEPTEMBER 14TH, 1950)

*Fifth Session*

9 a.m.—12 noon.

*Proceedings Against the Crown—(continued).*

The Conference continued to sit in plenary session for the purpose of considering the draft Act attached to the Manitoba Commissioners' Report.

*Proceedings Against the Crown—(concluded).*

On the completion of the consideration of the draft Act attached to the Manitoba Commissioners' Report the following resolution was adopted:

RESOLVED that the Uniform Proceedings Against the Crown Act attached to the Manitoba Commissioners' Report be referred back to the Manitoba Commissioners for incorporation therein of the amendments adopted at this meeting; that copies of the Act as so amended be sent by the local secretary for Manitoba to each of the other local secretaries for distribution by them to each member of this Conference in their jurisdictions; and that if the Act in that form is not disapproved by one or more jurisdictions by notice to the Secretary on or before the 30th day of November, 1950, it be recommended for enactment.

NOTE:—Copies of the Act were distributed pursuant to the above resolution on October 11th, 1950. No disapprovals were received. The Act as adopted and recommended for enactment is set out as Appendix K, page 76.

*Cemetery Plots.*

At the request of Mr. Rutherford this matter was not proceeded with, and, at his request made subsequently, was dropped from the Agenda.

*Contributory Negligence.*

Mr. Porter stated that in his opinion uniformity of legislation was desirable with regard to contributions between joint tortfeasors and that in this respect the Uniform Contributory Negligence Act, as adopted by the Conference in 1935, was deficient. He pointed out that Ontario now has two sections which he believed should be in the Uniform Act, namely, the one that has reference to gratuitous passengers and the other providing for the case where the plaintiff is the spouse of the negligent person. Mr. Porter pointed out that British Columbia also has a provision respecting gratuitous passengers and cited *Scribner v. Hoey*, a 1940 New Brunswick case, to illustrate the present deficiencies in the law.

After consideration the following resolution was adopted:

RESOLVED that the Uniform Contributory Negligence Act (1935 Proceedings, pages 31 and 32) be referred to the British Columbia Commissioners for re-consideration in the light of the

comments made by Mr. Porter at this meeting and that they report thereon to the 1951 annual meeting.

*Evidence—Re Birth Certificates.*

At the request of the New Brunswick Commissioners the matter was dropped from the Agenda.

*Evidence—Section 6.*

The matter raised by the Attorney-General of Alberta as to section 6 of the Uniform Evidence Act (evidence in proceedings in consequence of adultery, 1941 Proceedings, pages 68, 69) was referred back to the Alberta Commissioners for report to the 1951 annual meeting.

*Highway Traffic and Vehicles.*

This matter, referred to in the 1948 Proceedings, page 25, and in the 1949 Proceedings, page 24, was referred back to the respective jurisdictions named therein for report to the 1951 annual meeting.

*Vital Statistics.*

The Report of the Committee on Vital Statistics was presented by Mr. Treadgold (Appendix L, page 84). ✓

The following resolution was adopted:

RESOLVED that the Report of the Committee on Vital Statistics be adopted and that subsection 7 of the section 31 of the Uniform Vital Statistics Act (1949 Proceedings, page 65) be amended by inserting after the word "death" in the second line the words "or stillbirth", so that the subsection shall read:

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

*Amendments to Uniform Acts.*

Mr. Treadgold presented his Report on Amendments to Uniform Acts (Appendix M, page 85).

The following resolutions were adopted:

RESOLVED that the matter mentioned in Mr. Treadgold's Report under the heading "Reciprocal Enforcement of Maintenance Orders" be referred to the British Columbia Commissioners for study and report to the 1951 annual meeting as to whether the Uniform Reciprocal Enforcement of Maintenance Orders Act ought to be amended in the way that was done in British Columbia by section 5 of chapter 46 of the Statutes of British Columbia, 1950.

RESOLVED that the matter mentioned in Mr. Treadgold's Report under the heading "Legitimation" be referred to the Ontario Commissioners to be considered in connection with the general study of the Uniform Legitimation Act.

In connection with the matters mentioned in Mr. Treadgold's Report under the heading "Vital Statistics" the following resolutions were adopted:

RESOLVED that subsection 4 of section 14 of The Uniform Vital Statistics Act (1949 Proceedings, page 57) be amended by inserting after the word "officer" in the eighth line the word "who", so that the subsection shall read as follows:

- (4) Where a death occurs without medical attendance, or 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, who shall thereupon inquire into the facts and shall complete the medical certificate in accordance with subsection (3).

RESOLVED that Mr. Treadgold communicate with the Vital Statistics Council of Canada to ascertain whether the Council will approve of amending subsection 2 of section 31 of the Uniform Vital Statistics Act (1949 Proceedings, page 64) by inserting after the word "birth" in the second line the words "or of an extract therefrom", so that the subsection would read as follows:

- (2) A certified copy or photographic print of the registration of a birth or of an extract therefrom 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,

and that if the Vital Statistics Council of Canada approves of such amendment the Uniform Vital Statistics Act be amended accordingly.

NOTE:—In accordance with this resolution Mr. Treadgold wrote the Vital Statistics Council of Canada on September 22nd, 1950. In reply the Secretary of the Council requested that the matter be held in abeyance until the Council considers it at its next meeting in 1951.

#### *Interpretation.*

Mr. Porter asked that consideration be given to the problems created by defining the word "year" in the Uniform Interpretation Act (1938 Proceedings, page 62) as meaning "calendar year".

After discussion it was decided to take no action.

#### *Judicial Decisions affecting Uniform Acts.*

As no report was received from Mr. Milner, the matter was referred to Dean Read on the same terms (1949 Proceedings, page 19) for report to the 1951 annual meeting.

#### *Legitimation.*

The Ontario Commissioners were requested to make a complete study of legislation on the subject of legitimation, including the Uniform Legitimation Act, and having regard to the final paragraph of Mr. Treadgold's report on Amendments to Uniform Acts (Appendix M, page 85), and to report thereon, with a new draft Act, if advisable, to the 1951 annual meeting.

#### *Reciprocal Enforcement of Maintenance Orders.*

Mr. MacTavish outlined the situation as it exists in Ontario from the use in the Uniform Reciprocal Enforcement of Maintenance Orders Act of the word "register" (1946 Proceedings, pages 69-74). Under the Rules of Practice of the Supreme Court of



Ontario there is no way in which an order or judgment can be "registered". Documents are filed; orders and judgments are signed and entered. It was pointed out that the Uniform Reciprocal Enforcement of Judgments Act also uses the word "register" but that the word is defined so as to avoid the difficulty now in question (1924 Proceedings, page 61).

After consideration it was decided to take no action as it was felt that if the difficulty were substantial a rule could be made under the authority of section 8 of the Uniform Act to provide procedure for "registration".

*Northwest Territories Ordinances Revision.*

Mr. Affleck, in the absence of Mr. T. D. MacDonald, presented a verbal report on the current work of the Federal authorities with respect to the revision, etc., of the ordinances of the Northwest Territories. The following is a summary of Mr. Affleck's remarks:

"A number of the uniform statutes prepared by the Commissioners on Uniformity of Legislation have been adopted as ordinances of the Northwest Territories in recent years.

The ordinances of the Northwest Territories closely parallel provincial statutes in a great many respects. The Northwest Territories Act, R.S.C., c. 142, gives power to the Commissioner in Council to make ordinances for the government of the Northwest Territories in much the same classes of subjects as those that, under the British North America Act, 1867, are within the legislative competence of the several provinces of Canada.

During the past three years, considerable progress has been made in the work of revising the ordinances. At the commencement of that work 134 ordinances were in force, many of which had been enacted some forty or more years ago. Approximately one-half of these have been repealed and the other half revised and re-enacted in line with modern requirements. Several new ordinances, for example a legitimation ordinance, have been added. Of particular interest to the Conference, perhaps, is the fact that twelve of the revised and new ordinances are based upon uniform drafts found in your annual reports.

Some twenty ordinances still await revision and it is contemplated that, as in cases above mentioned, at least several will be based on the uniform drafts of the Commissioners.

This report indicates that the value of the work of the Commissioners applies not only in respect of provincial legislation but

also in respect of legislation of the Territories under the administration of the Federal Government. It may, in some degree at least, throw new light upon the extent to which that work has resulted in achieving an increased measure of uniformity of legislation in Canada.”

*Reciprocal Enforcement of Judgments.*

Mr. O'Meara made a verbal report as to the situation with respect to the proposed new Uniform Reciprocal Enforcement of Judgments Act and pointed out the difficulties in the way of an Act that would be acceptable to all jurisdictions.

The matter was referred back to the Federal, Quebec and Ontario Commissioners for report to the 1951 annual meeting.

*Publication of Recommended Uniform Acts.*

Because of the work now in progress, of the New Brunswick Commissioners in correlating and revising the Uniform Acts dealing with commercial paper, this matter was deferred until the 1951 annual meeting.

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FOURTH DAY

(FRIDAY, SEPTEMBER 15TH, 1950)

*Seventh Session*

9 a.m.—12 noon.

*Bulk Sales.*

The Report of the New Brunswick Commissioners on the Uniform Bulk Sales Act was presented by Mr. Hughes (Appendix N, page 87).

This item appears on the Agenda as “Correlation and revision of the recommended Uniform Acts dealing with commercial paper” and is the second of such to be dealt with at this meeting, the first being the Uniform Assignment of Book Debts Act.

The Conference then commenced a consideration of the draft Uniform Act attached to the New Brunswick Report.

*Eighth Session*

2 p.m.—5 p.m.

*Bulk Sales—(concluded).*

Consideration of the draft Act attached to the New Brunswick Report was continued. On its completion the following resolution was adopted:

RESOLVED that the Uniform Bulk Sales Act attached to the New Brunswick Report be referred back to the New Brunswick Commissioners for incorporation therein of the amendments made at this meeting; that copies of the Act as so amended be sent by the local secretary for New Brunswick to each of the other local secretaries for distribution by them to the members of this Section in their jurisdictions; and that if the Act in such form is not disapproved by two or more jurisdictions by notice to the Secretary on or before the 30th day of November, 1950, it be recommended for enactment in that form.

NOTE:—Copies of the Act were distributed pursuant to the above resolution on October 24th, 1950. No disapprovals were received. The Act as adopted and recommended for enactment is set out as Appendix O, page 90.

#### *Bills of Sale.*

The following resolution was adopted:

RESOLVED that the Uniform Bills of Sale Act be referred to the New Brunswick Commissioners for the purpose of revision to bring it into line with the new Uniform Assignment of Book Debts Act and the new Uniform Bulk Sales Act adopted at this meeting, and that the New Brunswick Commissioners report thereon to the 1951 annual meeting.

#### *Conditional Sales.*

The following resolution was adopted:

RESOLVED that the Uniform Conditional Sales Act be referred to the New Brunswick Commissioners for the purpose of revision to bring it into line with the new Uniform Assignment of Book Debts Act and the new Uniform Bulk Sales Act adopted at this meeting, and that the New Brunswick Commissioners report thereon to the 1951 annual meeting.

#### *Companies.*

On the instruction of the Attorney-General of New Brunswick, who desired to expedite the preparation of a uniform Companies Act, Mr. MacLatchy moved the following resolution, which was duly adopted:

RESOLVED that the Federal Representatives prepare a draft of a Uniform Companies Act and report thereon to the next meeting of the Conference unless they are assured that this work will be proceeded with forthwith by the special Federal-Provincial Committee on Uniform Company Law.

## 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;
- HON. C. R. SMITH, K.C., Attorney-General, representing Manitoba;
- C. R. MAGONE, K.C., Deputy Attorney-General, representing Ontario;
- HON. ANTOINE RIVARD, K.C., Solicitor General, representing Quebec;
- E. B. MACLATCHY, K.C., Deputy Attorney-General, representing New Brunswick;
- H. F. MUGGAH, representing Nova Scotia;
- K. M. MARTIN, K.C., representing Prince Edward Island;
- J. O. C. CAMPBELL, K.C., representing Prince Edward Island;
- A. J. MACLEOD, representing the Department of Justice, Canada.

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Mr. C. R. Magone, K.C., acted as chairman and Mr. A. J. MacLeod acted as secretary.

The Section discussed the question whether any changes are required or desirable in the law relating to drunken driving and whether provision should be made for chemical tests of intoxication. It was recommended, by a majority, that the minimum penalty be removed from section 285 of the Criminal Code, that the references in clause 4(b) of that section relating to sections 1035 (fine in lieu of imprisonment) and 1081 (suspended sentence) be repealed, and that provision be made for the prohibition against driving for a limited period. Mr. MacLatchy, representing New Brunswick, formally dissented from the foregoing recommendation. The Section also recommended that, if investigation demonstrates that chemical tests for intoxication are accurate and may be relied upon, the criminal law be amended to permit the results of such tests to be admitted as evidence of intoxication

without proof that the accused was cautioned before the test was administered.

The Section discussed the question whether there should be inserted in the Criminal Code a section authorizing the police, under search warrant, to observe the operation of telephone equipment in telephone exchanges and to require the telephone company to trace telephone calls, particularly for the purpose of obtaining evidence against bookmakers. The Section concluded that to implement this proposal would be contrary to public policy, because it would constitute an invasion of private rights that would not be warranted in the circumstances.

With regard to the question whether the provision in the Criminal Code that allows incorporated clubs to take a rake-off (section 226(b) (ii) ) should be eliminated, the Section recommended that all of the proviso in section 226(b) (ii) be repealed.

The fourth item on the Agenda was as follows:

“Are changes required in the law relating to criminal negligence?—Should a special offence be created for homicides arising out of motor car fatalities and, if so, how should it be tried?—Are changes required in section 285 of the Criminal Code?”

With respect to this item the Section recommended,

- (a) that criminal negligence be defined in the Code and that section 285 of the Code be amended to make it a specific offence to cause the death of any person by criminal negligence in the operation of a motor vehicle and thus eliminate the use of the terms “manslaughter” and “kill and slay”;
- (b) that the Code be amended to make it a specific offence to cause the death of any person by criminal negligence in cases other than those involving the operation of motor vehicles.

The Section made no recommendation on the question whether any changes are required in the lottery sections of the Criminal Code and, in particular, whether they should be amended to permit the holding of raffles for motor cars, etc., on behalf of charitable and religious organizations.

The Section discussed the question whether changes are required or desirable in the law relating to confessions and statements to the police, but made no recommendation with respect thereto. It was considered that the law relating to the admissi-

bility of statements made by the accused to the police has been clarified by the decision of the Supreme Court of Canada in *Rex v. Boudreau*, 1949, S.C.R. 262.

The Section recommended that the provisions of the Code relating to minimum penalties be repealed except where the death penalty is mandatory and that the penalty provisions of the Code be classified with a view to simplification and greater uniformity.

At the request of the Criminal Code Revision Committee the Section discussed new drafts of Parts VII, XI and XXI of the Criminal Code. Time did not permit an examination of these draft Parts in detail but certain views were communicated to Mr. H. J. Wilson, K.C., who is a member of the Criminal Code Revision Committee, with respect to Parts XI and XXI.

The Criminal Law Section met with the Uniform Law Section on the afternoon of September 13th and the morning of September 14th to discuss a uniform Act with respect to Proceedings against the Crown.

Col. Eric Pepler, K.C., and T. D. MacDonald, K.C., were elected chairman and secretary respectively for the ensuing year.

The meeting adjourned on the afternoon of September 15th at 5 p.m. to reconvene for the closing plenary session of the Conference on the morning of September 16th.

## MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, SEPTEMBER 16TH, 1950)

11 a.m.

*Report of Criminal Law Section.*

Mr. Magone, for the Criminal Law Section, made a verbal report on the work of the Section at this meeting.

*Appreciations.*

The following resolutions were adopted unanimously:

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to Mr. Barkdull, President of the National Conference of Commissioners on Uniform State Laws, the members and the secretariat for the many courtesies extended to us during our stay in Washington and for the particularly enjoyable dinner and dance at the Congressional Club on the evening of September 14th.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to the American Bar Association, and particularly to its Executive Secretary, Mrs. Olive G. Ricker, for advice and assistance in making the local arrangements for this meeting.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to Mr. A. N. Carter, K.C., President of the Canadian Bar Association, and Mrs. Carter for their courtesy in inviting the members of the Conference and their wives to their reception at the Mayflower Hotel on the evening of Friday, September 15th, which was greatly appreciated and enjoyed.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to the Honourable Antoine Rivard, K.C., for his courtesy in inviting the members of the Conference and their wives to his reception at the Shoreham Hotel on the afternoon of September 13th, which was greatly appreciated and enjoyed.

*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.

The report was adopted.

*Report of Nominating Committee.*

Mr. Deacon, for the nominating committee named by the President, presented the following report:

In carrying out our duty we have been governed by our understanding that the office of President should in alternative years be held by members of the Civil and Criminal Sections of the Conference.

We therefore submit the following nominations:

<i>Honorary President</i> .....	Hon. Antoine Rivard, K.C.
<i>President</i> .....	Horace A. Porter, K.C.
<i>1st Vice-President</i> .....	C. R. Magone, K.C.
<i>2nd Vice-President</i> .....	G. S. Rutherford, K.C.
<i>Treasurer</i> .....	A. C. Des Brisay, K.C.
<i>Secretary</i> .....	L. R. MacTavish, K.C.

The report was adopted and those named declared elected.

*Close of Meeting.*

Mr. Fisher, on behalf of all the members, complimented Mr. Rivard on the manner in which the affairs of the Conference had gone forward during his year as President.

Mr. Rivard thanked the members and turned the chair over to the new President, Mr. Porter, who closed the meeting.



## APPENDIX A

*(See page 16)*

## AGENDA

## PART I

## OPENING PLENARY SESSION

1. Opening of Meeting.
2. Minutes of Last Meeting.
3. President's Address.
4. Treasurer's Report and Appointment of Auditors.
5. Secretary's Report.
6. Appointment of Nominating Committee.
7. Publication of Proceedings.
8. Next Meeting.

## PART II

## UNIFORM LAW SECTION

- Amendments to Uniform Acts — Report of Mr. Treadgold (1949 Proceedings, page 18).
- Assignment of Book Debts — Consideration of the Act as amended at last year's meeting — Manitoba Commissioner's Report (1949 Proceedings, page 20).
- Cemetery Plots — Report of Manitoba Commissioners (1949 Proceedings, page 24).
- Contributory Negligence—Reconsideration of the Uniform Contributory Negligence Act. Added to the Agenda at the request of the New Brunswick Commissioners.
- Correlation and revision of the recommended Uniform Acts dealing with commercial paper — Report of New Brunswick Commissioners (1949 Proceedings, page 18).
- Crown Proceedings — Report of Manitoba Commissioners and consideration of draft Uniform Act (1949 Proceedings, page 22).
- Evidence — Re birth certificates, proof outside issuing jurisdiction — Report of New Brunswick Commissioners (1949 Proceedings, page 24).

- Evidence — Report of Alberta Commissioners (1949 Proceedings, page 23).
- Highway Traffic and Vehicles — Reports of Ontario, British Columbia, Nova Scotia, Alberta, Manitoba and New Brunswick Commissioners (1948 Proceedings, page 25; 1949 Proceedings, page 24).
- Interpretation — Reconsideration of the definition of the word “year” as found in the Uniform Interpretation Act. Added to the Agenda at the request of the New Brunswick Commissioners.
- Intestate Succession — Report of Saskatchewan Commissioners (1949 Proceedings, page 21).
- Judicial Decisions affecting Uniform Acts — Report of Mr. Milner (1949 Proceedings, page 19).
- Legitimation — Reconsideration of the Uniform Legitimation Act. Added to the Agenda at the request of the New Brunswick Commissioners.
- Maintenance Orders — Reconsideration of the use of the words “register”, “registration”, etc., as used in the Uniform Reciprocal Enforcement of Maintenance Orders Act. Added to the Agenda at the request of the Ontario Commissioners.
- Northwest Territories Ordinances Revision — Report of Mr. Driedger. Added to the Agenda at the request of the Federal Representatives.
- Reciprocal Enforcement of Judgments — Report of Federal and Quebec Representatives and Ontario Commissioners (1949 Proceedings, pages 23, 24).
- Re Publication in convenient form of recommended Uniform Acts — Report of Saskatchewan Commissioners (1949 Proceedings, page 18).
- Vital Statistics — Report of Special Committee on copies of still-birth registrations.

### PART III

#### CRIMINAL LAW SECTION

1. Are any changes required or desirable in the law relating to drunken driving and should provision be made for chemical tests of intoxication?  
Discussion to be led by Colonel Eric Pepler, K.C., Deputy Attorney-General of British Columbia.

2. Should there be inserted in the Criminal Code a section authorizing the police, under search warrant, to observe the operation of telephone equipment in telephone exchanges and to require the telephone company to trace telephone calls, particularly for the purpose of obtaining evidence against bookmakers?

Discussion to be led by Mr. C. R. Magone, K.C., Deputy Attorney-General of Ontario.

3. Should the provision in the Criminal Code allowing incorporated clubs to take a rake-off be eliminated? [See section 226(b) (ii).]

Discussion to be led by Mr. C. R. Magone, K.C., Deputy Attorney-General of Ontario.

4. Are changes required in the law relating to criminal negligence? — Should a special offence be created for homicides arising out of motor car fatalities and, if so, how should it be tried?— Are changes required in Section 285 of the Criminal Code?

Discussion to be led by Hon. Antoine Rivard, K.C., Solicitor General of Quebec.

5. Are any changes required in the lottery sections of the Criminal Code and, in particular, should they be amended to permit the holding of raffles for motor cars, etc., on behalf of charitable and religious organizations and, if so, what should be the form and substance of such an amendment?

Discussion to be led by Mr. C. R. Magone, K.C., Deputy Attorney-General of Ontario.

6. New draft of Part VII of the Criminal Code.

General discussion at the request of the Criminal Code Revision Committee.

7. New draft of Part XI of the Criminal Code.

General discussion at the request of the Criminal Code Revision Committee.

8. New draft of Part XXI of the Criminal Code.

General discussion at the request of the Criminal Code Revision Committee.

9. Are changes required or desirable in the law relating to confessions and statements to the police?

Discussion to be led by Mr. J. L. Salterio, K.C., Deputy Attorney-General for Saskatchewan.

10. Are changes required or desirable in the provisions of the Criminal Code and other statutes relating to minimum penalties?—Should minimum penalties be abolished?

Discussion to be led by Mr. H. J. Wilson, K.C., Deputy Attorney-General of Alberta.

#### PART IV

#### CLOSING PLENARY SESSION

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

**APPENDIX B***(See page 16)***PRESIDENT'S ADDRESS****DISCOURS D'OUVERTURE DE LA TRENTE-DEUXIEME REUNION  
ANNUELLE DE LA CONFERENCE DES COMMISSAIRES SUR  
L'UNIFORMITE DES LOIS AU CANADA****MESSIEURS:**

En déclarant ouvert le trente-deuxième congrès annuel de la Conférence des Commissaires sur l'Uniformité des Lois au Canada, je crois devoir souligner des faits particuliers qui donnent à cette réunion un caractère historique d'une toute spéciale importance. Depuis sa fondation, c'est la première fois que notre conférence est présidée par un représentant de la province de Québec et c'est aussi la première fois qu'elle est ouverte par des paroles prononcées dans la langue française, qui est aussi la langue des découvreurs et des pionniers de notre pays. C'est également la première fois que cette conférence se tient en dehors du territoire canadien, dans un pays ami et voisin, dans la capitale de la grande République des Etats-Unis d'Amérique.

En affirmant devant l'Amérique le caractère essentiellement bilingue du Canada, en nous unissant à un peuple qui avec le nôtre veut le triomphe de la liberté et de la démocratie, nous assurons à nos travaux des garanties heureuses de clairvoyance, de justice et de vérité.

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**GENTLEMEN:**

In opening the 32nd annual meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, I feel that very special circumstances give to this gathering a great importance. For the first time in its 32 years of existence the Conference is held outside of the Canadian territory, in the capital of a great, powerful and friendly nation. It is my most pleasant duty to express at the outset of our deliberations our thanks to our confrères from the United States of America and more especially to the National Conference of Commissioners on Uniform State Laws for their kindness and courtesy in inviting us to Washington and for their spontaneous and generous hospitality. It has been my privilege to express these feelings yesterday, at

the opening of the National Conference of Commissioners on Uniform State Laws, and I must assure you that the hearty welcome which, as your representative, I received, told in no uncertain terms the friendship and sympathy of our American confrères.

The boundary line between Canada and United States has never been an obstacle to our friendly relations. We are bound together by a common inheritance which is deeply rooted in the democratic institutions which safeguard in America justice, peace and order. Our two countries have fought side by side on the battlefields of the world for these ideals. They are still fighting to-day against aggression and tyranny; but we must also remember that each one of our two nations, in the land submitted to its jurisdiction, has organized and maintained a system of laws which gives to every one that portion of justice and security which every human being is hoping for.

May I say that this year, in performing our work in this wonderful city of Washington, we know already that we will feel completely at home, that we will work in an atmosphere of freedom, of security, of justice which it is our duty to preserve in our own land.

It is not my intention to impose a long speech on you. We are here to work and the brilliant period of long, happy and witty addresses will start next week, after our serious work will be completed. It would be a waste of time to recall the eminent services rendered by these conferences to a fair and good administration of justice in Canada. With the growth of our nation, with the work annually performed by a Federal Government and ten Legislatures, the laws, rules and regulations are multiplied each year. Each year the Canadian citizen, as well as the American one, has to learn of new rules he must follow, of additional prohibitions imposed on him, of new formalities he must observe. A reasonable degree of uniformity must be achieved to preserve the observance of the law, the maintenance of public order. In trying to reach that goal, we are serving the highest interests of the Canadian community.

During the past months, as well as during the previous years, we have heard a lot of things concerning the Canadian unity. I have had the privilege of attending two conferences on constitutional issues in Canada — the constitutional conference of Federal and Provincial Governments, held in January last, and, a few weeks ago, the conference of the Attorneys-General, held in

Ottawa on August 21st. I have been deeply impressed by the atmosphere of cordiality, of friendship, of sincere desire, of effective co-operation which prevailed at these meetings. On every one of these occasions I met many of you gentlemen, whom I was accustomed to see with such pleasure at our conference. I am sure that the wonderful spirit which has always existed in the reunions of these conferences, the ties of friendship and mutual understanding which we are privileged to have amongst us have been a great factor in the remarkable progress achieved by these conferences towards the Canadian unity.

You will allow me to add that I bring from my own Province of Quebec and from my Government the sincere expression of gratitude to you for your extreme kindness in choosing me as your President for the present year. They know, more fully than ever before, that our work does not mean an absorption of the French minority in which, for the sake of uniformity, we would lose our old system of French laws. They realize that you are convinced that this duality of legislation which came to us from the two great nations which have given to the world freedom and justice, is an asset, essential to the very existence of the Canadian nation. The maintenance in the Province of Quebec of the French Civil Code has never been, is not and will never be an obstacle to the Canadian unity. On the contrary, its existence, its preservation is a guaranty that the four million Canadian speaking the French language will always remain true, not only to the land which their ancestors discovered, but also to the British institutions which have protected their rights, their language and their faith.

Before closing these remarks I must add that every one of us has learned with great sorrow the sad news of the death of our honorary president, Mr. J. Pitcairn Hogg, K.C., of Victoria, who passed away a few months ago. Mr. Hogg had for many years been an active member of this Conference. He enjoyed the admiration, the confidence of every one of us. I am sure to express the feelings of all in conveying to his son, who is one of our confrères in British Columbia, the expression of our deepest sympathy.

I also wish to point out with pleasure that since our last meeting in Calgary, the new Province of Newfoundland has officially joined the Conference. I am sure that this addition to our meeting will help us to reach happy solutions to the numerous problems which are laid before us.

I would now ask the President of the Criminal Law Section, Mr. Clifford Magone, to address you.

## APPENDIX C

(See page 16)

TREASURER'S REPORT  
1950

## RECEIPTS

Received from retiring Treasurer and deposited in Dominion Bank 31st August, 1949.....\$	948.05
Subscription from Government of Canada	75.00
Contributions from Governments of:	
Quebec.....	75.00
Saskatchewan.....	75.00
British Columbia.....	75.00
Manitoba.....	75.00
New Brunswick.....	75.00
Alberta.....	75.00
Ontario.....	75.00
Nova Scotia.....	75.00
Newfoundland.....	75.00
Prince Edward Island.....	75.00
	750.00
Bank Interest 30th November, 1949....	2.28
Bank Interest 31st of May, 1950.....	2.64
	<hr/>
	\$1,777.97

## DISBURSEMENTS

Exchange on cheque from retiring Treas- urer.....	1.05
National Printers Limited Sales Tax on printing of Proceedings of 30th Annual Meeting, 1948 .	33.47
Plus .15 cents exchange.....	.15
	<hr/>
Clerical Assistance (V. J. Johnson).....	25.00
Clerical Assistance (D. H. McCleary)...	25.00



National Printers Limited—print- ing Proceedings of 31st Annual Meeting, 1949.....	661.69		
Plus bank charges.....	.86	662.55	
<hr/>			
Noble Scott Company, Limited— Stationery.....	13.50		
Plus bank charges.....	.15	13.65	
<hr/>			
Noble Scott Company, Limited— Agenda.....	27.27		
Plus bank charges .....	.15	27.42	788.29
<hr/>			
Cash in Bank 31st August, 1950.....			989.68
<hr/>			
	\$1,777.97		\$1,777.97

G. S. RUTHERFORD,  
*Treasurer.*

Winnipeg,  
1st September, 1950.

Audited and found correct,

J. EDWARD HUGHES,  
D. M. TREADGOLD,

*Auditors.*

Washington, D.C., 14th September, 1950.

## SCHEDULE D

*(See page 16)*SECRETARY'S REPORT  
1950*1949 Proceedings.*

The Proceedings of the thirty-first annual meeting held a year ago last month in Calgary were prepared, printed and distributed in the usual fashion. As usual too, the 1949 Proceedings were published as part of the Year Book of the Canadian Bar Association.

*Secretarial Assistance.*

The cost of secretarial assistance during the past year, as authorized by standing resolution passed last year and as shown in the Treasurer's report, was \$50. This is the same amount as was expended on this item during the previous year.

*Rules of Drafting.*

The pamphlet containing the Rules of Drafting published early last year is still in demand. Less than 1,000 copies of the 2,000 printed remain on hand. It is interesting to note that a number of requests for copies were received from various drafting agencies of the United States Congress here in Washington, from the Institute of Advanced Legal Studies, University of London (England) and from the Professor of Government and Public Administration, Oxford University. In view of the interest taken in this pamphlet, may I suggest that the members of the Conference peruse these Rules of Drafting with a view to their improvement as I think that in due course a third edition will be required.

*Newfoundland.*

In accordance with instructions given me at last year's meeting, I communicated with the Attorney-General of Newfoundland. As you now know, the Honourable L. R. Curtis, K.C., consented to become a member *ex officio* and named four senior officials of his Department to represent his province on this Conference, namely:

H. G. Puddester, K.C., LL.B., Deputy Attorney-General,  
J. A. Power, K.C., Assistant Deputy Attorney-General,  
H. P. Carter, K.C., Director of Public Prosecutions,  
C. J. Greene, LL.B., Legal Assistant, Department of the  
Attorney-General.

*Washington Meeting.*

I wish to take this opportunity of formally expressing my thanks to Mr. Howard L. Barkdull of Cleveland, President of the National Conference of Commissioners on Uniform State Laws, Mr. Barton H. Kuhns of Omaha, Secretary of that Conference, and more especially, Mrs. Olive G. Ricker of Chicago, the Executive Secretary of the American Bar Association, for their many kindnesses and suggestions as to local arrangements for this meeting. Their advice and assistance was very welcome and was given magnanimously on every occasion.

L. R. MACTAVISH,  
*Secretary.*

**APPENDIX E**

(See page 19)

**INTESTATE SUCCESSION**

**REPORT OF THE SASKATCHEWAN COMMISSIONERS**

At the 1949 meeting 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.

Section 10 of the Uniform Act provides as follows:

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.

It has been well settled that there is no representation among collaterals under section 10 and that the words "and those who legally represent them" are inoperative. (See cases cited in Appendix K to the 1949 Proceedings.)

We therefore recommend deletion of the words "and those who legally represent them".

Further, it would appear that the words "among collaterals after brothers' and sisters' children", at the end of the section, are unnecessary and perhaps misleading. Section 8 expressly provides for representation in the case of children of deceased brothers or sisters survive the intestate.

We therefore recommend deletion of the words "among collaterals after brothers' and sisters' children".

If those recommendations are adopted section 10 will read as follows:

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 but in no case shall representation be admitted.

We suggest the following redraft:

10. 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 in no case shall representation be admitted.

Sections 9 and 10 might well be combined.

Some questions arise with respect to succession by nephews and nieces.

When do nephews and nieces of an intestate take his estate under the provisions of the Uniform Act? Do they take in priority to grandparents of the intestate, or do nephews and nieces take after grandparents and along with uncles and aunts of the intestate?

In either event do the uniform provisions require clarification?

The proviso to section 8 reads as follows:

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

This proviso merely declares the manner in which nephews and nieces take the estate when it goes to them.

So we proceed to section 9, which reads as follows:

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.

What is the effect of the words "and no children of any deceased brother or sister"? Do those words bring in nephews and nieces as a preferred class before the estate goes to other next-of-kin? If that is the effect of the words, and it would appear to be so, the method of expressing the intention is unsatisfactory, and also there ought to be a provision declaring that in no case shall representation be admitted.

The Act expressly provides for cases where there are neither brothers or sisters nor children of deceased brothers or sisters of the intestate. It does not so provide for cases where there are no brothers or sisters but there are children of deceased brothers or sisters.

If the Conference deems clarification necessary:

1. Should section 9 be amended by deleting the words "and no children of any deceased brother or sister"; or
2. Should those words be deleted and a new section inserted, as follows:

8a. If an intestate dies leaving no widow, issue, father, mother, brother or sister, his estate shall go to his nephews and nieces in equal shares and in no case shall representation be admitted.

If the first alternative were adopted the nephew and niece class would clearly fall among the next-of-kin and, being in the third degree of consanguinity, would take, along with uncles and aunts of the intestate, after his grandparents.

If the second alternative were adopted nephews and nieces would take in priority to grandparents of the intestate.

In either event the proviso to section 8 becomes unnecessary and if the second alternative is adopted section 9 must be amended by striking out the words "brother or sister" and substituting "brother, sister, nephew or niece".

The law of distribution in England under The Administration of Estates Act, 1925, is summarized in Halsbury (Second Edition), at page 587.

That Act provides for certain specified classes of relatives of the intestate — widow, issue, father, mother, brothers and sisters, *nephews and nieces*, grandparents, uncles and aunts, and cousins, in that order — and if there are no relatives in any of those classes the estate goes to the Crown.

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

## APPENDIX F

*(See page 20)*

(The following is the form of the Act adopted by the Conference and recommended for enactment, see 1925, 1926 and 1950 Proceedings:)

AN ACT TO MAKE UNIFORM THE LAW RESPECTING THE DISTRIBUTION OF ESTATES OF INTESTATES.

**H**IS 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 Intestate Succession Act".
2. In this Act,
  - (a) "estate" includes both real and personal property;
  - (b) "issue" includes all lawful lineal descendants of the ancestor.
3. This Act shall apply only in cases of death after its commencement.
4. (1) If an intestate dies leaving a widow and one child, one-half of his estate shall go to the widow.  
 (2) If he leaves a widow and children, one-third of his estate shall go to the widow.  
 (3) If a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.
5. If an intestate dies leaving issue, his estate shall be distributed, subject to the rights of the widow, if any, per stirpes among such issue.
6. (1) If an intestate dies leaving a widow but no issue, his estate, where the net value thereof does not exceed \$20,000, shall go to his widow.  
 (2) Where the net value exceeds \$20,000, the widow shall be entitled to \$20,000 and shall have a charge upon the estate for that sum, with legal interest from the date of the death of the intestate.  
 (3) Of the residue of the estate, after payment of the said sum of \$20,000, and interest, one-half shall go to the widow and

one-half to those who would take the estate, if there were no widow, under section 7, 8 or 9, as the case may be.

(4) In this section "net value" means the value of the estate wherever situate, both within and without the province, after payment of the charges thereon and the debts, funeral expenses, expenses of administration and succession duty.

**7.** If an intestate dies leaving no widow or issue, his estate shall go to his father and mother in equal shares if both are living but if either of them is dead the estate shall go to the survivor.

**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 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 nephews and nieces in equal shares and in no case shall representation be admitted.

**10.** If an intestate dies leaving no widow, issue, father, mother, brother, sister, nephew or niece, his estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

**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.

**12.** Descendants and relatives of the intestate, begotten before his death but born thereafter, shall inherit as if they had been born in the lifetime of the intestate and had survived him.

**13.** (1) If any child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purposes of this section only, as part of the estate of the intestate distributable according to law; and, if the advancement is equal to or greater than the share of the estate which the child would be entitled to receive as above reckoned, the child and his descendants shall be excluded from any share in the estate; but if the advancement is not equal to such share, the child and his descendants shall be entitled to receive so much only of the estate of the intestate as is sufficient



to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

(2) The value of any portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in writing, otherwise the value shall be the value of the portion when advanced.

(3) The onus of proving that a child has been maintained or educated, or has been given money, with a view to a portion, shall be upon the person so asserting, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

**14.** All such estate as is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

**15.** Subject to the provisions of (The Dower Act in Alberta or Manitoba, or any similar Act in the other provinces), no widow shall be entitled to dower in the land of her deceased husband dying intestate, and no husband shall be entitled to an estate by the curtesy in the land of his deceased wife so dying.

**16.** Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit through the mother, if dead, any real or personal property which they would have taken if the children had been legitimate.

**17.** If an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and if any child is dead the children of the deceased child shall take the share their parent would have taken if living:

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

**18.** The estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow", the word "her" for "his", the word "she" for "he", and the word "her" for "him" where such words respectively occur in sections 4, 5, 6, 7, 8, 9, 12 and 17.

**19.** (1) If a wife has left her husband and is living in adultery at the time of his death, she shall take no part of her husband's estate.

(2) If a husband has left his wife and is living in adultery at the time of her death, he shall take no part of his wife's estate.

**20.** 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.

**21.** This Act shall come into force on the day of \_\_\_\_\_, 19\_\_\_\_.

## APPENDIX G

*(See page 19)*ASSIGNMENT OF BOOK DEBTS  
REPORT OF THE MANITOBA COMMISSIONERS

At the 1949 meeting of the Conference it was resolved that the Uniform Assignment of Book Debts Act be referred to the Manitoba Commissioners for incorporation therein of the amendments adopted at that meeting, that copies be distributed as usual, and that failing disapproval by two or more jurisdictions by November 30th, 1949, the Act or, in the alternative, the amendments adopted, be recommended for enactment.

Unfortunately, the Manitoba Commissioners were unable to complete their task until the end of December, and the revised draft was not sent to the various provinces until January, 1950. Accordingly, as noted on page 20 of the 1949 Proceedings of the Conference, the recommendation as to enactment was withheld till the 1950 meeting.

Under date of 15th May, 1950, the Secretary of the Conference sent to the Manitoba Commissioners a copy of a letter received by him from Mr. H. L. Robson, Assistant Secretary of The Canadian Bankers' Association, containing four suggestions for changes in the proposed Uniform Act. A copy of Mr. Robson's letter is appended hereto.

The Manitoba Commissioners have considered the suggestions made in Mr. Robson's letter. They do not approve the adoption of the first suggestion. The second suggestion has been adopted by adding a new subsection 7 to section 7 and by adding a Schedule including a form of Affidavit on Renewal. They consider that the third suggestion is covered by section 13, and that the fourth suggestion is covered by the proposed additional section or sections as outlined following the final section of the revised draft Act.

Besides the new provisions respecting affidavits on renewal the Manitoba Commissioners have made some changes in the language of other sections in order to bring them into conformity with the present practice of the Conference. No changes in principle have been made in these other sections.

Dated at Winnipeg this 26th day of June, 1950.

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

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THE CANADIAN BANKERS' ASSOCIATION

Montreal, Que.  
May 12th, 1950.

L. R. MACTAVISH, Esq., K.C.,  
Secretary,  
Conference of Commissioners on Uniformity of  
Legislation in Canada,  
Toronto, Ontario.

Dear Sir:

*Uniform Assignment of Book Debts Act*

In view of the recommendation before the Commissioners on Uniformity of Legislation for amendment of the General Assignment of Book Debts Act to provide for registration of an affidavit on renewal each three years, we thought it might be helpful to obtain the views of the banks. It is probably the case that the banks form the largest class of creditors holding security by way of general assignment of book debts. For such consideration as the Commissioners wish to give, we take the opportunity of passing on a summary of the banks' comments:

1. With a view to reducing the routine involved it is thought that the renewal period of three years might be extended to six years. Under an adequate system of indexing the making of searches over such a period would not offer much difficulty.
2. It would be helpful if the Act could have a form of affidavit on renewal embodied in a schedule, following the example of the Bills of Sale and Chattel Mortgages Acts.
3. It is suggested that the amendment should contain a provision similar to subsection 4 of section 15 of the Bills of Sale and Chattel Mortgages Acts, providing for affidavits being made by managers, assistant managers or accountants of branch banks.

4. It is considered important that the proposed amendment contain a provision to the effect that all assignments dated prior to the date when the Act comes into force shall be deemed, for purposes of the first affidavit on renewal, to have been dated on that date.

We trust these points may receive the consideration of the Commissioners.

Yours very truly,

(Signed) H. L. ROBSON,  
*Assistant Secretary.*

NOTE:—The draft Act attached to the Manitoba report is omitted from these Proceedings owing to its tentative nature, to the fact that each member of the Conference has a copy, and to the fact that it was not considered in detail at the meeting.

**APPENDIX H***(See page 19)***ASSIGNMENT OF BOOK DEBTS****REPORT OF THE NEW BRUNSWICK COMMISSIONERS**

In accordance with the reference made to us in 1949 we have gone over the Uniform Assignment of Book Debts Act as well as the other commercial paper Acts.

Just as our report was about to be forwarded to the Secretary we received the report of the Manitoba Commissioners dated June 26, 1950. Their report took care of a number of corrections in verbiage which we had in mind to suggest. However, there are still some others to be considered.

Dated at Saint John, N.B. this 18th day of July, 1950.

H. A. PORTER,

J. E. HUGHES,

*New Brunswick Commissioners.*

NOTE:—This report has been abridged and the draft Act attached to the report is omitted from these Proceedings owing to the fact that it, as amended at this meeting, appears in full as Appendix I.

## APPENDIX I

(See page 20)

(The following is the form of the Act adopted by the Conference and recommended for enactment:)

AN ACT TO MAKE UNIFORM THE LAW RESPECTING  
ASSIGNMENTS OF BOOK DEBTS

**H**IS 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 Assignment of Book Debts Act".

Interpretation.

2. In this Act,

- (a) "assignee" means a person to whom an assignment of books debts is made;
- (b) "assignment" includes every legal and equitable assignment, whether absolute or by way of security, and every mortgage or other charge upon book debts;
- (c) "assignor" means a person who makes an assignment of book debts;
- (d) "book debts" means all existing or future debts that in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;
- (e) "creditor" means a creditor of the assignor, whether an execution creditor or not, who becomes a creditor before the registration of an assignment or an affidavit on renewal, as the case may be, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act, 1949* (Canada) and a liquidator of a company under the *Winding-Up Act* (Canada) or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed;

- (f) "document" includes an assignment, an affidavit and a certificate of discharge;
- (g) "proper officer" means the officer in whose office assignments, affidavits on renewal, certificates of discharge or other documents are required to be registered in any registration district;
- (h) "registration district" means a district established under this Act for the registration of assignments, affidavits on renewal, certificates of discharge, or other documents;
- (i) "subsequent purchaser" includes a person who in good faith for valuable consideration and without notice obtains, by assignment, an interest in book debts that have already been assigned;
- (j) "valuable consideration" includes
  - (i) any consideration sufficient to support a simple contract,
  - (ii) an antecedent debt or liability.

**3.** This Act does not apply to,

Where Act  
does not  
apply.

- (a) an assignment of book debts whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the Province and contained
  - (i) in a trust deed or other instrument to secure bonds, debentures, or debenture stock, of the corporation or of any other corporation, or
  - (ii) in any bonds, debentures, or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures, or debenture stock, of any other corporation, or
  - (iii) in any bonds, debentures or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument;

NOTE:—Provinces that have no provision for registration of trust deeds should so provide.

- (b) an assignment of book debts due at the date of the assignment from specified debtors;
- (c) an assignment of debts growing due under specified contracts;



- (d) an assignment of book debts included in a transfer of a business made *bona fide* and for value;
- (e) an assignment of book debts, included in an authorized assignment under the *Bankruptcy Act, 1949* (Canada).

NOTE:—In some provinces it may be necessary to add other exceptions, *e.g.*, earnings under *The Farm Implement Act* and marriage settlements.

#### REGISTRATION

Requirements to preserve validity of assignment of book debts.

4. (1) Except as provided in this Act, an assignment of book debts made by a person engaged in a trade or business is void as against a creditor and as against a subsequent purchaser unless the assignment is,

- (a) in writing;
- (b) accompanied by an affidavit of an attesting witness, or affidavits of attesting witnesses, of the execution thereof by the assignor, or assignors respectively, identifying the assignment and stating the date of execution by the assignor, or the respective dates of execution by the assignors, as the case may be, and a further affidavit of the assignee or one of the several assignees, his or their agent, stating that the assignment was executed in good faith and for valuable consideration and not for the mere purpose of protecting the book debts therein mentioned against the creditors of the assignor or assignors or for the purpose of preventing them from recovering any claims that they have against the assignor or assignors;
- (c) registered, as hereinafter provided, together with the affidavits, within thirty days of the execution of the assignment.

Determination of date of assignment of more than one assignor.

(2) Where there are two or more assignors, the date of execution by the assignor who last executes the assignment shall be deemed to be the date of execution of the assignment.

Effective date of assignment, etc.

(3) An assignment or affidavit on renewal that is required to be registered under this Act shall, as against a creditor or a subsequent purchaser, take effect only from the time of the registration of the assignment or the affidavit on renewal as the case may be.

Method of registration.

5. (1) Registration of an assignment under this Act is effected by filing the assignment together with such affidavits as are required by this Act, within thirty days from the date of its

execution, in the office of the proper officer of a registration district determined in accordance with the following rules:

- (a) where the assignor is a corporation incorporated under the laws of the Province, in the registration district in which the head office or registered office is situated;
- (b) where the assignor is an extra-provincial corporation having a head office or registered office within the Province, in the registration district in which such head office or registered office is situated;
- (c) where the assignor is an extra-provincial corporation not having a head office or registered office within the Province, in the registration district of. . . . .;
- (d) where the assignor is not a corporation, in the registration district in which the assignor carries on business at the time of the execution of the assignment;
- (e) where the assignor is not a corporation, and at the time of the execution of the assignment carries on business in different registration districts, in any such registration district, and by filing a duplicate original of the assignment and affidavits, or a copy thereof certified by the proper officer of that registration district, in each of the other registration districts.

(2) The proper officer shall cause every assignment filed in his office to be numbered, endorsed with a memorandum of the date, 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 with their descriptions and the date of execution and registration of the assignment.

Duties of registration officer on making of a registration.

(3) Where the time for registration of a document under this Act expires on a Sunday or other day on which the office in which the registration is to be made is closed, the registration shall, so far as regards the time of registration, be valid if made on the next following day on which the office is open.

Extension of registration period where it expires on Sunday or holiday.

#### DISCHARGE

6. (1) An assignment registered under this Act may be discharged in whole or in part by the registration, in the office or offices in which it 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 execution thereof.

Discharge of assignment.

Duty of registration officer on registration of discharge.

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

Registration where assignors reside in different districts.

(3) If there are two or more assignors residing in different registration districts affected by the discharge, the registration may be effected either by filing a duplicate or other original of the certificate of discharge and affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district, in the office of the proper officer of each of the other registration districts; and each proper officer shall make the like notations of the discharge in the records of his office as are provided by subsection (2).

Certificate of entry of discharge.

(4) The proper officer in whose office the certificate of discharge is registered shall on request furnish a certificate of the entry of the discharge in the records of his office.

#### AFFIDAVIT ON RENEWAL

Expiration of validity of assignment unless renewed.

7. (1) A registered assignment, after the expiration of three years from its registration, is void as against creditors, and as against subsequent purchasers whose assignments have been registered or are valid without registration, unless before the expiration of that period an affidavit on renewal is made and filed in accordance with subsections (2) and (3).

Term of affidavit on renewal.

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

Filing of affidavit on renewal.

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

(a) in the office of the proper officer of each of the registration districts in which the assignment 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 office of the proper officer of 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 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 filing of an affidavit on renewal or a duplicate original thereof in accordance with clause (b) or (c) of subsection (3) shall constitute registration of the assignment in the office. Effect of filing.

(5) A similar affidavit on renewal or a duplicate original thereof shall be made and filed in accordance with subsections (2) and (3) within three years from the filing of the first affidavit on renewal, and thereafter within three years from the filing of the last preceding affidavit on renewal or duplicate original thereof; otherwise the assignment shall, after the expiration of any such period, be void to the extent provided in subsection (1). Subsequent affidavits on renewal.

(6) The proper officer shall cause the affidavit on renewal or duplicate original thereof to be numbered, endorsed with a memorandum of the date, 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 duplicate original thereof upon the assignment or copy thereof filed in his office. Duty of registration officer on filing of affidavit on renewal.

(7) An affidavit on renewal may be in the form set out in the Schedule. Form of affidavit on renewal.

**8.** 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 Further registration where assignor changes its business location.

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 moved 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 them with the originals; otherwise the assignment is void to the extent provided in subsection (1) of section 7.

INSPECTION OF RECORDS

Inspection of books of registration officer.

9. (1) Upon payment of the prescribed fee a person may inspect the books of any proper officer containing records or entries of documents registered or filed under this Act.

(2) Upon receiving payment of the prescribed fee, the proper officer shall produce for inspection any document registered or filed in his office under this Act.

REGISTRATION DISTRICTS AND OFFICES

Registration districts and offices.

10. For the purpose of registration or filing of documents under this Act each county in the Province is a registration district and the . . . . . whose office is situated within a registration district is the proper officer for the registration or filing of such documents in that registration district.

NOTE:—In each province a subsection should be inserted here making appropriate provisions as to the effect of changes in the judicial or other districts on which registration districts are based.

AFFIDAVITS

By whom affidavits may be taken.

11. In addition to any person authorized by law to take affidavits, the proper officer of any registration district may take the affidavit of any person under this Act.

Affidavit when assignee dies.

12. An affidavit required by this Act to be made by an assignee may, in the event of his death, be made by his executor

or administrator or by any of his next of kin, or by the duly authorized agent of the executor or administrator.

13. Where the assignee or agent of the assignee is a corporation, any officer, employee or agent of the corporation may make any affidavit under this Act on behalf of the corporation. Affidavit on behalf of corporation.

14. Every affidavit made under this Act by the agent of an assignee, or by an executor or administrator or by a next of kin or the duly authorized agent of an executor or administrator or by an officer, employee or agent of a corporation, shall state that the deponent is aware of the circumstances connected with the assignment and that he has a personal knowledge of the facts deposed to. Affidavit of agent or officer.

15. No document executed by a corporation under this Act may be registered unless accompanied by an affidavit of an officer, employee or agent of the corporation attesting the execution and the date thereof; but no affidavit of an attesting witness is required. Proof of execution by corporation

*Alternate wording:*

15. Where a document has been executed by a corporation under this Act, no affidavit of an attesting witness shall be required.

AFFIDAVIT OF EXECUTION

16. (1) Where the attesting witness to a document under this Act dies or leaves the Province before making the affidavit of execution required by this Act or becomes incapable of making or refuses to make the affidavit, a judge of the . . . . . Court upon being satisfied of the execution and attestation of the document may make an order permitting the registration of the document. Proof of execution where witness not available.

(2) The order, or a copy thereof, shall be filed with the document. Idem.

(3) Registration of the document, under the order, has the like effect as the registration thereof with the affidavit of execution otherwise required by this Act.

OMISSIONS, MISSTATEMENTS, DEFECTS, IRREGULARITIES AND MISCELLANEOUS

17. (1) Subject to the rights of other persons accrued by reason of an omission or misstatement referred to in this sub- Extension of time for registration where omission is accidental.

section, a judge of the . . . . . Court upon being satisfied that the omission to register or file a document within the time prescribed by this Act, or any omission or misstatement in a document filed under this Act, was accidental or due to inadvertence or impossibility or other sufficient cause, may extend the time for registration or filing, or order the omission or misstatement to be rectified, on any terms and conditions he directs.

Idem.

(2) The proper officer shall annex the order made under this section, or a copy thereof, to the document on file or tendered for registration or filing and make the appropriate entries in the register.

Effect of defects, irregularities and omissions.

**18.** A document shall not be invalidated or its effect destroyed by reason only of a defect, irregularity, omission or error therein or in the execution or attestation thereof unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error, has actually misled some person whose interests are affected by the document.

Evidence of registered documents.

**19.** (1) A copy of a document registered or filed under this Act, certified as such by the proper officer, shall be receivable in evidence as *prima facie* proof for all purposes as if the original document were produced, and also as *prima facie* proof of the execution of the original document, according to the purport of such copy.

(2) The proper officer's certificate shall be *prima facie* proof of the date, hour and minute of registration or filing of the document.

(3) No proof shall be required of the signature or official position of any proper officer in respect to any certificate produced as evidence pursuant to this section.

Fees.

**20.** For services under this Act each proper officer shall be entitled to receive such fees as may be set by the Lieutenant-Governor in Council.

NOTE:—It is optional with the provinces to incorporate in the Act the scale of fees.

Uniform construction.

**21.** 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.

Repeal.

**22.** (As required.)

Commencement of Act.

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

NOTE:—Where the uniform Act has been enacted and it is proposed to amend the statute to incorporate the above amendments, or to repeal the existing Act and substitute the new one, the amending Act or the new Act should have a section or sections to the effect that:

- (a) an assignment registered 2 years and 6 months or more prior to the date the amending or the new Act comes into force shall not be void as provided by subsection (1) of section 7 if an affidavit on renewal is filed within 6 months of the amending Act or the new Act coming into force, and
- (b) where an assignment is registered at the date the amending Act or the new Act comes into force and the assignor is a corporation that has moved, prior to said date, its head office or registered office within the Province to a registration district other than that in which the assignment is registered or the assignor is not a corporation and, prior to said date, ceased to carry on business in the district in which the assignment is registered and commenced to carry on business in some other registration district, the time for the registration required by section 8 shall be within 60 days after the amending Act, or the new Act, comes into force if the assignee had notice of such removal or of commencing to carry on business prior to the amending Act or the new Act coming into force.

SCHEDULE

(Section 7)

AFFIDAVIT ON RENEWAL  
OF  
ASSIGNMENT OF BOOK DEBTS

Province of \_\_\_\_\_ { In the matter of an assignment  
of books debt by \_\_\_\_\_  
To Wit: \_\_\_\_\_ of \_\_\_\_\_

I, \_\_\_\_\_, of the \_\_\_\_\_, in the Province of \_\_\_\_\_, make oath and say:

1. That I am the assignee (or as the case may be) named in an assignment of book debts dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, made between (name of assignor) of the one part and (name of assignee or assignees) of the other part and registered in the office of the proper officer(s) of the registration district(s) hereinafter mentioned on the date (or respective dates) hereinafter stated, namely,

District \_\_\_\_\_

Date of Registration \_\_\_\_\_

.....  
.....  
and in respect of which an affidavit on renewal was last filed in the office of the proper officer(s) of the registration district(s) hereinafter mentioned on the date (or respective dates) hereinafter stated, namely, Omit if assignment not renewed-



*District*

*Date of Filing*

.....  
.....

2. That I am aware of the circumstances connected with the said assignment of book debts and have a personal knowledge of the facts herein deposed to.

3. That the aforesaid assignment of book debts is valid and subsisting and is not being kept in force for any fraudulent purpose or to defeat, delay, or prejudice creditors of the assignor named therein.

4. That I have not (or the assignee hereinbefore named has not) further assigned the book debts mentioned in the aforesaid assignment of book debts

Sworn before me, etc.,

## APPENDIX J

*(See page 21)*

## PROCEEDINGS AGAINST THE CROWN

## REPORT OF THE MANITOBA COMMISSIONERS

At the 1949 meeting of the Conference the Manitoba Commissioners presented a report on this subject accompanied by a draft Act. The draft was not considered, but the Conference passed four resolutions laying down principles to be embodied in the draft Act.

In the light of these statements of principle the Manitoba Commissioners have revised the former draft, and have also made other changes that they deemed advisable. The new draft accompanies this report.

The Manitoba Commissioners draw the attention of the Conference to subsection 4 of section 4 of the draft submitted, which preserves certain statutory immunities of officers of the Crown in actions of tort and gives the benefit of those immunities to the Crown. It is suggested that the Conference should consider whether this subsection should stand as drafted, or should be eliminated, and a recommendation made that each province enacting the uniform Act repeal all such special immunities contained in specific Acts.

A related problem may arise in connection with statutory exemptions in favour of the Crown or Crown officers in actions other than for tort. An example is to be found in subsection 3 of section 17 of The Securities Act (Manitoba). This Act authorizes the taking of certain court proceedings by the Attorney-General, and the above mentioned subsection provides, among other matters, that "costs may be awarded to but not against the Attorney-General". This would seem to be in conflict with the provisions of the draft now submitted. This provision in The Securities Act could be repealed, but there may be a number of similar provisions in other statutes, and it would require a careful check of all the provincial statute law to find them.

The Conference might, therefore, consider the advisability of including in the draft Act an additional section to the following effect:

Except as otherwise provided herein, where this Act conflicts with any other Act this Act shall prevail.

Another kind of difficulty may arise in connection with provincial statutes that include a provision similar to subsection 1 of Section 44 of The Manitoba Power Commission Act. This reads as follows:

- (1) Without the consent of the Attorney-General no action shall be brought against the commission or any of its members for anything done or omitted in the exercise of its office.

Although the consent required by this subsection might be termed a "fiat", it is submitted that it is not just the same thing as the Lieutenant-Governor's fiat abolished by section 3 of the draft submitted, but is a special statutory permit. Provinces that have similar provisions in their legislation relating to Crown-owned corporations may desire to consider whether it would be advisable to add to section 3 of the draft submitted a subsection 3 which might be worded somewhat as follows:

Subject to this Act, where a person has a claim against an officer of the Crown or a corporation owned or controlled by the Crown that, if this Act had not been passed, might be enforced subject to the consent of an officer of the Crown, then the claim may be enforced as of right without such consent.

Dated at Winnipeg this 29th day of June, 1950.

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

AN ACT RESPECTING CIVIL ACTIONS AGAINST THE  
CROWN

**H**IS 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 Crown Proceedings Act". Short title.
2. In this Act,
  - (a) "agent", when used in relation to the Crown, includes Interpretation, "agent"; an independent contractor employed by the Crown;
  - (b) "the Crown" means His Majesty the King in right of "the Crown"; the Province of \_\_\_\_\_ ;
  - (c) "officer", in relation to the Crown, includes a minister "officer"; of the Crown and any servant of the Crown;
  - (d) "order" includes a judgment, decree, rule, award, and "order"; declaration;
  - (e) "person" does not include the Crown; "person";
  - (f) "proceedings against the Crown" means civil proceed- "proceedings against the Crown"; ings against the Crown and includes a claim by way of set-off or counterclaim raised in proceedings by the Crown, and interpleader proceeding to which the Crown is a party;
  - (g) "rules of court" means rules of court made under the "rules of court". authority of (The Court of Appeal Act) or of (The King's Bench Act) or of (The County Courts Act).  
(10 and 11 Geo. VI, c. 44, s. 38, Imp.)

PART I

SUBSTANTIVE LAW

3. (1) Subject to this Act, where a person has a claim Right to sue the Crown. against the Crown, that, if this Act had not been passed, might be enforced by petition of right, subject to the grant of a fiat by the Lieutenant-Governor, then the claim may be enforced as of right by proceedings against the Crown in accordance with this Act, without the grant of a fiat by the Lieutenant-Governor. Statutes and proceedings to which this Act does not apply: The Workmen's Compensation Act.
- (2) This Act is subject to (The Workmen's Compensation Act) and does not apply to,
  - (a) proceedings against a district registrar as provided in (The Real Property Act); The Real Property Act.

- The Registry Act. (b) proceedings against a registrar as provided in (The Registry Act);
- The Succession Duty Act. (c) proceedings authorized by or arising out of (The Succession Duty Act);
- The Income Tax Act. (d) proceedings authorized by or arising out of (The Income Tax Act);
- The Manitoba Corporation Income Tax Act, 1947 and the Manitoba Corporation Income Tax Act, 1949. (e) proceedings authorized by or arising out of (The Manitoba Corporation Income Tax Act, 1947) or (The Manitoba Corporation Income Tax Act, 1949); and
- The Federal Courts Jurisdiction Act. (f) proceedings to which (The Federal Courts Jurisdiction Act) relates.
- (10 and 11 Geo. VI, c. 44, ss. 1 and 23, Imp.)

Liability of the Crown in tort.

4. (1) Subject to this Act, and notwithstanding section 6 of The (Uniform) Interpretation Act, the Crown shall be subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its officers or agents;
- (b) in respect of any breach of those duties that a person owes to his servants or agents by reason of being their employer;
- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control, of property; and
- (d) under any statute, or under any regulation or by-law made or passed under the authority of any statute.

Liability of Crown for acts of its officers or agents.

(2) No proceedings shall lie against the Crown under clause (a) of subsection (1) in respect of any act or omission of an officer or agent of the Crown unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his estate.

Liability for acts of officers performing duties legally required.

(3) Where a function is conferred or imposed upon an officer of the Crown as such, either by any rule of the common law or by statute, and that officer commits a tort while performing or purporting to perform that function, the liability of the Crown in respect of the tort shall be such as it would have been if that function had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

Application of statutes limiting liability of officers of the Crown.

(4) An enactment that negatives or limits the amount of the liability of an officer of the Crown in respect of any tort com-

mitted by that officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that officer, apply in relation to the Crown as it would have applied in relation to that officer if the proceedings against the Crown had been proceedings against that officer.

(5) Where property vests in the Crown by virtue of any rule of law that operates independently of the acts or the intentions of the Crown, the Crown shall not, by virtue of this Act, be subject to liability in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liability of the Crown under this Act in respect of any period after the Crown, or any person acting for the Crown, has in fact taken possession or control of the property, or entered into occupation thereof.

(6) No proceedings shall lie against the Crown under this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities that he has in connection with the execution of judicial process.

(7) This Act does not apply to proceedings against, or authorize proceedings in tort to be brought against, His Majesty in his private capacity.

(10 and 11 Geo. VI, c. 44, ss. 2, 40 (1) and 44 (4), Imp.)

5. The law relating to indemnity and contribution shall be enforceable by and against the Crown in respect of any liability to which it is subject, as if the Crown were a person of full age and capacity.

(10 and 11 Geo. VI, c. 44, s. 4, Imp.)

NOTE:—The Tortfeasors and Contributory Negligence Act (Manitoba) should be amended to bind the Crown.

## PART II

### JURISDICTION AND PROCEDURE

6. Subject to this Act, all proceedings against the Crown in (His Majesty's Court of King's Bench for Manitoba) shall be instituted and proceeded with in accordance with (The King's Bench Act).

(10 and 11 Geo. VI, c. 44, s. 13, Imp.)

7. Subject to this Act and to any enactment limiting the jurisdiction of a County Court, any proceedings against the Crown may be instituted in a County Court and proceeded with in accordance with (The County Courts Act).

(10 and 11 Geo. VI, c. 44, s. 15, Imp.)

Appeals and stay of execution or proceedings.

**8.** Subject to this Act, all enactments and rules of court relating to appeals and stay of execution or proceedings shall, with necessary modifications, apply to proceedings against the Crown.

(10 and 11 Geo. VI, c. 44, s. 22, Imp.)

Proceedings under The Small Debts Recovery Act or Wages Recovery Act prohibited.

**9.** Nothing in this Act shall authorize proceedings against the Crown under (The Small Debts Recovery Act) or (The Wages Recovery Act).

Application of rules as to discovery, inspection of documents, etc.

**10.** In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents, examination for discovery, and interrogatories shall apply in the same manner as if the Crown were a corporation, except that the Crown shall be entitled to refuse to produce a document or to make answer to a question on discovery or interrogatories on the ground that the production thereof or the answer would be injurious to the public interest.

(10 and 11 Geo. VI, c. 44, s. 28, Imp.)

Designation of the Crown in proceedings.

**11.** In proceedings under this Act, the Crown shall be designated "The Government of (Manitoba)".

(10 and 11 Geo. VI, c. 44, s. 17, Imp.)

Service on the Crown.

**12.** A document to be served on the Crown shall be served by delivering a copy to the Attorney-General or the Deputy Attorney-General or any barrister or solicitor employed in the Department of the Attorney-General.

(10 and 11 Geo. VI, c. 44, s. 18, Imp.)

Trial without a jury.

**13.** In proceedings against the Crown the trial shall be without a jury.

(R.S.M. 1940, c. 160, s.14.)

Interpleader.

**14.** The Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the same manner as a person may obtain relief by way of such proceedings or be made a party thereto, notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer; and the provisions relating to interpleader proceedings under (The King's Bench Act and The County Courts Act) shall, subject to this Act, have effect accordingly.

(10 and 11 Geo. VI, c. 44, s. 16, Imp.)

Rights of parties and authority of court.

**15.** (1) Subject to this Act, in proceedings against the Crown the rights of the parties shall as nearly as possible be the same as in a suit between person and person; and the court may

make any order, including an order as to costs, that it may make in proceedings between persons, and may otherwise give such appropriate relief as the case may require.

(2) Where, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties.

Injunction or specific performance not to lie against the Crown.

(3) In proceedings against the Crown in which the recovery of land or other property is claimed, the court shall not make an order for the recovery of the land or the delivery of the property; but may, in lieu thereof, make an order declaring that the claimant is entitled, as against the Crown, to the land or property or to the possession thereof.

Order for recovery of land not to be made against the Crown.

(4) The court shall not in any proceedings grant an injunction or make an order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown.

Limitation on orders or injunctions against the Crown.

(5) No person may avail himself of any set-off or counterclaim in proceedings by the Crown for the recovery of taxes, duties, or penalties, or avail himself, in proceedings of any other nature by the Crown, of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

Set-off or counterclaim.

(6) No person may, without leave of the court, avail himself of any set-off or counterclaim in proceedings by the Crown unless the subject matter of either the set-off or the counterclaim relates to a matter under the administration of the particular government department with respect to which the proceedings are brought by the Crown.

Restriction on set-off, counterclaim, etc.

(10 and 11 Geo. VI, c. 44, ss. 21 and 35, Imp.)

### PART III

#### JUDGMENTS AND EXECUTION

**16.** (1) A judgment debt due to or from the Crown shall bear interest in the same way as a judgment debt due from one person to another.

Interest on judgments.

(2) This section applies to litigation pending at the time of its enactment.

Application to pending litigation.

(10 and 11 Geo. VI, c. 44, s. 24, Imp.)



Certificate re-  
specting orders  
against the  
Crown.

**17.** (1) Subject to this Act, where in proceedings against the Crown, an order for costs or any other order is made by a court against the Crown, the proper officer of the court shall, on an application in that behalf, issue a certificate thereof.

Certificate as  
to costs.

(2) If the court so directs, a separate certificate shall be issued with respect to the costs, if any, ordered to be paid to the applicant.

Service of  
certificate.

(3) A certificate issued under this section may be served upon the person for the time being named in the record as the solicitor, or as the person acting as solicitor, for the Crown.

Payment by the  
Provincial  
Treasurer.

(4) If the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate shall state the amount so payable; and the Provincial Treasurer shall, subject as hereinafter provided, pay out of the Consolidated Fund to the person entitled, or to his solicitor, the amount appearing by the certificate to be due together with the interest, if any, lawfully due thereon.

Suspension of  
payment pend-  
ing appeal, etc.

(5) The court by which such an order is made or a court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of the amount so payable, or any part thereof, shall be suspended; and, if the certificate has not been issued, may order the direction to be inserted therein.

Prohibition of  
execution, etc.,  
against the  
Crown.

(6) No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of money or costs.

No individual  
liability.

(7) No person shall be individually liable under an order for the payment by the Crown of such money or costs.

Application to  
pending litiga-  
tion.

(8) This section applies to litigation pending at the time of its enactment.

(10 and 11 Geo. VI, c. 44, s. 25, Imp.)

## PART IV

### MISCELLANEOUS AND SUPPLEMENTAL

Right of Crown  
to take advan-  
tage of certain  
statutory pro-  
visions.

**18.** This Act shall not prejudice the right of the Crown to take advantage of the provisions of any Act of the Legislature; and, in proceedings against the Crown, any Act of the Legislature that could, if the proceedings were between persons, be relied upon by the defendant as a defence to the proceedings, whether in whole

or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

(10 and 11 Geo. VI, c. 44, s. 31, Imp.)

**19.** Save as otherwise expressly provided herein, this Act does <sup>Pending</sup> not affect proceedings against the Crown that have been <sup>proceedings.</sup> instituted before the commencement of this Act; and, for the purposes of this section, proceedings against the Crown by petition of right shall be deemed to have been instituted if a petition of right with respect to the matter in question has been submitted for consideration to the Lieutenant-Governor in Council before the commencement of this Act.

(10 and 11 Geo. VI, c. 44, s. 36, Imp.)

**NOTE:**—The several provinces may require to vary the language of this section to conform to the wording of their respective legislation respecting Petitions of Right.

**20.** Expenditure incurred by or on behalf of the Crown under <sup>Financial pro-</sup> this Act shall be defrayed out of the Consolidated Fund. <sup>visions.</sup>

(10 and 11 Geo. VI, c. 44, s. 37, Imp.)

**21.** Except as herein otherwise provided, nothing in this Act <sup>Saving.</sup> shall,

- (a) subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a municipal corporation is subject in that capacity; or
- (b) affect any right of the Crown to intervene in proceedings affecting its rights, property or profits.

(10 and 11 Geo. VI, c. 44, s. 40 (2), Imp.)

**22.** Subject to this Act, proceedings against the Crown by <sup>Common law</sup> way of petition of right at common law are abolished. <sup>petition of right</sup> <sup>abolished.</sup>

**23.** This Act shall be so interpreted and construed as to effect <sup>Uniform con-</sup> its general purpose of making uniform the law of the provinces <sup>struction.</sup> that enact it.

**24.** (As required.) Repeal.

**25.** This Act shall come into force on a day fixed by Proclam- <sup>Commence-</sup> <sup>ment of Act.</sup> ation.

## APPENDIX K

(See page 22)

(The following is the form of the Act adopted by the Conference and recommended for enactment:)

AN ACT RESPECTING PROCEEDINGS AGAINST  
THE CROWN

**H**IS 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 Proceedings Against the Crown Act".

Interpretation.

2. In this Act,

"agent";

(a) "agent", when used in relation to the Crown, includes an independent contractor employed by the Crown;

"Crown";

(b) "Crown" means His Majesty the King in right of the Province of \_\_\_\_\_;

"officer";

(c) "officer", in relation to the Crown, includes a minister of the Crown and any servant of the Crown;

"order";

(d) "order" includes a judgment, decree, rule, award, and declaration;

"person";

(e) "person" does not include the Crown;

"proceedings against the Crown";

(f) "proceedings against the Crown" includes a claim by way of set-off or counterclaim raised in proceedings by the Crown, and interpleader proceedings to which the Crown is a party;

"rules of court".

(g) "rules of court" means rules of court made under the authority of (The Court of Appeal Act) or of (The King's Bench Act) or of (The County Courts Act).

(10 and 11 Geo. VI, c. 44, s. 38, Imp.)

Statutes and proceedings to which this Act does not apply: The Workmen's Compensation Act.

3. (1) This Act is subject to (The Workmen's Compensation Act) and does not apply to,

The Real Property Act.

(a) proceedings against a district registrar as provided in (The Real Property Act);

The Registry Act.

(b) proceedings against a registrar as provided in (The Registry Act);

The Succession Duty Act.

(c) proceedings authorized by or arising out of (The Succession Duty Act);

- (d) proceedings authorized by or arising out of (The In-<sup>The Income Tax Act.</sup>come Tax Act);
- (e) proceedings authorized by or arising out of (The Mani-<sup>The Manitoba Corporation In-</sup>toba Corporation Income Tax Act, 1947) or (The<sup>come Tax Act, 1947, and The</sup> Manitoba Corporation Income Tax Act, 1949); and<sup>Manitoba Cor-</sup>
- (f) proceedings to which (The Federal Courts Jurisdiction<sup>poration In-</sup> Act) relates.<sup>come Tax Act, 1949.</sup>
- (10 and 11 Geo. VI, c. 44, s. 23, Imp.)<sup>The Federal Courts Jurisdiction Act.</sup>

(2) Except as otherwise provided in this Act, nothing in this<sup>Saving clauses.</sup> Act shall,

- (a) subject the Crown to greater liability in respect of the acts or omissions of an independent contractor employed by the Crown than that to which the Crown would be subject in respect of such acts or omissions if it were a private person; or
- (b) subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a municipal corporation is subject in that capacity; or
- (c) affect any right of the Crown to intervene in proceedings affecting its rights, property or profits; or
- (d) subject the Crown to proceedings under this Act in respect of a cause of action that is enforceable against a corporation or other agency owned or controlled by the Crown; or
- (e) subject the Crown to proceedings under this Act in respect of anything done in the due enforcement of the criminal law or the penal provisions of any Act of the Legislature.

(10 and 11 Geo. VI, c. 44, s. 40 (2), Imp. with additions.)

NOTE:—Clauses (b) and (c) of subsection (2) above are to be regarded as optional and each province should decide whether those clauses are required in that province.

## PART I

### SUBSTANTIVE LAW

**4.** Subject to this Act, a claim against the Crown, that, if<sup>Right to sue the Crown.</sup> this Act had not been passed, might be enforced by petition of right, subject to the grant of a fiat by the Lieutenant-Governor, may be enforced as of right by proceedings against the Crown in accordance with this Act, without the grant of a fiat by the Lieutenant-Governor.

(10 and 11 Geo. VI, c. 44, s. 1.)

Liability of the  
Crown in tort.

5. (1) Subject to this Act, and notwithstanding section 7 of The (Uniform) Interpretation Act, the Crown is subject to all those liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its officers or agents;
- (b) in respect of any breach of those duties that a person owes to his servants or agents by reason of being their employer;
- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control, of property; and
- (d) under any statute, or under any regulation or by-law made or passed under the authority of any statute.

NOTE:—See Uniform Interpretation Act sections as printed in 1941 Proceedings of the Conference at page 48.

Liability of  
Crown for acts  
of its officers  
or agents.

(2) No proceedings lie against the Crown under clause (a) of subsection (1) in respect of any act or omission of an officer or agent of the Crown unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his personal representative.

Liability for  
acts of officers  
performing  
duties legally  
required.

(3) Where a function is conferred or imposed upon an officer of the Crown as such, either by any rule of the common law or by statute, and that officer commits a tort in the course of performing or purporting to perform that function, the liability of the Crown in respect of the tort shall be such as it would have been if that function had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

Application of  
statutes limit-  
ing liability of  
officers of the  
Crown

(4) An enactment that negatives or limits the amount of the liability of an officer of the Crown in respect of any tort committed by that officer, in the case of proceedings against the Crown under this section in respect of a tort committed by that officer, applies in relation to the Crown as it would have applied in relation to that officer if the proceedings against the Crown had been proceedings against that officer.

NOTE:—Subsection 4 above may be regarded as optional and each province should consider whether it is desired to retain the exemption for which provision is therein made.

Property vest-  
ing in the  
Crown.

(5) Where property vests in the Crown by virtue of any rule of law that operates independently of the acts or the intentions of the Crown, the Crown is not, by virtue of this Act, subject to liability in tort by reason only of the property being so vested;

but this subsection is without prejudice to the liability of the Crown under this Act in respect of any period after the Crown, or any person acting for the Crown, has in fact taken possession or control of the property, or entered into occupation thereof.

(6) No proceedings lie against the Crown under this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities that he has in connection with the execution of judicial process.

Limitation of liability in respect of judicial acts.

(10 and 11 Geo. VI, c. 44, ss. 2, 40 (1) and 44 (4), Imp.)

6. The law relating to indemnity and contribution is enforceable by and against the Crown in respect of any liability to which it is subject, as if the Crown were a person of full age and capacity.

Application of law as to indemnity and contribution.

(10 and 11 Geo. VI, c. 44, s. 4, Imp.)

NOTE:—The Tortfeasors and Contributory Negligence Act (Manitoba) should be amended to bind the Crown.

## PART II

### JURISDICTION AND PROCEDURE

7. Subject to this Act, all proceedings against the Crown in (His Majesty's Court of King's Bench for Manitoba) shall be instituted and proceeded with in accordance with (The King's Bench Act).

Proceedings in the Court of King's Bench.

(10 and 11 Geo. VI, c. 44, s. 13, Imp.)

8. Subject to this Act, and to any enactment limiting the jurisdiction of a County Court any proceedings against the Crown may be instituted in a County Court and proceeded with in accordance with (The County Courts Act).

Proceedings in the County Court.

(10 and 11 Geo. VI, c. 44, s. 15, Imp.)

9. Subject to this Act, all enactments and rules of court relating to appeals and stay of execution or proceedings, with necessary modifications, apply to proceedings against the Crown.

Appeals and stay of execution or proceedings.

(10 and 11 Geo. VI, c. 44, s. 22, Imp.)

10. Nothing in this Act authorizes proceedings against the Crown under (The Small Debts Recovery Act) or (The Wages Recovery Act).

Proceedings under The Small Debts Recovery Act or Wages Recovery Act prohibited.

11. In proceedings against the Crown, the rules of the court in which the proceedings are pending as to discovery and inspection of documents, examination for discovery, and interrogatories apply in the same manner as if the Crown were a corporation,

Application of rules as to discovery, inspection of documents, etc.

except that the Crown may refuse to produce a document or to make answer to a question on discovery or interrogatories on the ground that the production thereof or the answer would be injurious to the public interest.

(10 and 11 Geo. VI, c. 44, s. 28, Imp.)

Designation of the Crown in proceedings.

**12.** In proceedings under this Act, the Crown shall be designated “ ”.

(10 and 11 Geo. VI, c. 44, s. 17, Imp.)

NOTE:—Each province will decide the name in which actions against the Crown shall be brought.

Service on the Crown.

**13.** A document to be served on the Crown shall be served by leaving a copy with the Attorney-General or the Deputy Attorney-General (or any barrister or solicitor employed in the Department of the Attorney-General).

(10 and 11 Geo. VI, c. 44, s. 18, Imp.)

NOTE:—The words in parentheses are optional.

Trial without a jury.

**14.** In proceedings against the Crown the trial shall be without a jury.

(R.S.M. 1940, c. 160, s. 14.)

Interpleader.

**15** The Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings in the same manner as a person may obtain relief by way of such proceedings or be made a party thereto, notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer; and the provisions relating to interpleader proceedings under (The King's Bench Act and The County Courts Act) shall, subject to this Act, have effect accordingly.

(10 and 11 Geo. VI, c. 44, s. 16, Imp.)

Rights of parties and authority of court.

**16.** (1) Subject to this Act, in proceedings against the Crown the rights of the parties are as nearly as possible the same as in a suit between person and person; and the court may make any order, including an order as to costs, that it may make in proceedings between persons, and may otherwise give such appropriate relief as the case may require.

Injunction or specific performance not to lie against the Crown.

(2) Where, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may, in lieu thereof, make an order declaratory of the rights of the parties.

(3) In proceedings against the Crown in which the recovery of land or other property is claimed, the court shall not make an order for the recovery of the land or the delivery of the property; but may, in lieu thereof, make an order declaring that the claimant is entitled, as against the Crown, to the land or property or to the possession thereof.

Order for recovery of land not to be made against the Crown.

(4) The court shall not in any proceedings grant an injunction or make an order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown, but in lieu thereof may make an order declaratory of the rights of the parties.

Limitation on orders or injunctions against the Crown

(5) No person may avail himself of any set-off or counterclaim in proceedings by the Crown for the recovery of taxes, duties, or penalties, or avail himself, in proceedings of any other nature by the Crown, of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties.

Set-off or counterclaim.

(6) No person may, without leave of the court, avail himself of any set-off or counterclaim in proceedings by the Crown unless the subject matter of either the set-off or the counterclaim relates to a matter under the administration of the particular government department with respect to which the proceedings are brought by the Crown.

Restriction on set-off, counterclaim, etc.

(10 and 11 Geo. VI, c. 44, ss. 21 and 35, Imp.)

### PART III

#### JUDGMENTS AND EXECUTION

**17.** A judgment debt due to or from the Crown bears interest in the same way as a judgment debt due from one person to another.

Interest on judgments.

(10 and 11 Geo. VI, c. 44, s. 24, Imp.)

**18.** (1) Subject to this Act, where in proceedings against the Crown, an order for costs or any other order is made by a court against the Crown, the proper officer of the court shall, on an application in that behalf, issue a certificate thereof.

Certificate respecting orders against the Crown.

(2) If the court so directs, a separate certificate shall be issued with respect to the costs, if any, ordered to be paid to the applicant.

Certificate as to costs.

(3) A certificate issued under this section may be served upon the person for the time being named in the record as the solicitor, or as the person acting as solicitor, for the Crown.

Service of certificate.



Payment by  
the Provincial  
Treasurer

(4) If the order provides for the payment of money by way of damages or otherwise, or of costs, the certificate shall state the amount so payable; and the Provincial Treasurer shall, subject as hereinafter provided, pay out of the Consolidated Fund to the person entitled, or to his order, the amount appearing by the certificate to be due together with the interest, if any, lawfully due thereon.

Suspension of  
payment pend-  
ing appeal, etc.

(5) The court by which such an order is made or a court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of the amount so payable, or any part thereof, shall be suspended; and, if the certificate has not been issued, may order the direction to be inserted therein.

Prohibition of  
execution, etc.,  
against the  
Crown.

(6) No execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of money or costs.

Application  
pending  
litigation.

(7) This section applies to litigation pending at the time this Act comes into force.

(10 and 11 Geo. VI, c. 44, s. 25, Imp.)

## PART IV

### MISCELLANEOUS AND SUPPLEMENTAL

Right of  
Crown to take  
advantage of  
certain statu-  
tory provisions.

**19.** This Act shall not prejudice the right of the Crown to take advantage of the provisions of any Act of the Legislature; and, in proceedings against the Crown, any Act of the Legislature that could, if the proceedings were between persons, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

(10 and 11 Geo. VI, c. 44, s. 31, Imp.)

Pending  
proceedings.

**20.** Except as otherwise provided in this Act, this Act does not affect proceedings against the Crown that have been instituted before the coming into force of this Act; and, for the purposes of this section, proceedings against the Crown by petition of right shall be deemed to have been instituted if a petition of right with respect to the matter in question has been submitted for consideration to the Lieutenant-Governor in Council before the coming into force of this Act.

(10 and 11 Geo. VI, c. 44, s. 36, Imp.)

NOTE:—The several provinces may require to vary the language of this section to conform to the wording of their respective legislation respecting Petitions of Right. The section should also be regarded as optional, and each province should decide whether it is required in that province.

**21.** Expenditure incurred by or on behalf of the Crown under this Act shall be defrayed out of the Consolidated Fund. Financial provisions.

(10 and 11 Geo. VI, c. 44 s. 37, Imp.)

**22.** Subject to this Act, proceedings against the Crown by way of petition of right are abolished. Common law petition of right abolished.

**23.** 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. Uniform construction.

**24.** (As required.) Repeal.

**25.** This Act shall come into force on a day fixed by Proclamation. Commencement of Act.

## APPENDIX L

*(See page 23)*

## VITAL STATISTICS

## REPORT OF THE SPECIAL COMMITTEE

At the 1949 meeting the Conference adopted the Uniform Vital Statistics Act considered at that meeting (1949 Proceedings, page 19).

In March of this year Mr. Harold Wadge pointed out that while subsection 2 of section 33 of the Uniform Act referred to a "certified copy or photographic print of a registration of . . . stillbirth, purporting to be issued under section 31", in fact no authority for the issue of such a document could be found in section 31 or elsewhere in the Act. It was suggested to Mr. Wadge that subsection 7 of section 31 of the Act be changed by inserting after the word "death" in the second line the words "or stillbirth". This was done in the Bill introduced and enacted in Saskatchewan and the same course was followed in New Brunswick.

We therefore recommend that subsection 7 of section 31 of the Act be amended by inserting after the word "death" in the second line the words "or stillbirth", so that the subsection shall read:

Certified  
copy of  
photographic  
print of  
registration of  
death or  
stillbirth.

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

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

*Special Committee.*

## APPENDIX M

*(See page 23)*

## AMENDMENTS TO UNIFORM ACTS

## REPORT OF D. M. TREADGOLD

At the 1949 meeting of the Conference I was assigned the duty of checking provincial statutes each year to ascertain whether any amendments were made to any of the Uniform Acts during the then past year and to report thereon to the Conference (1949 Proceedings, page 18). I understood at the time the resolution was passed that the intention was to bring to the attention of the Conference only amendments other than those recommended by the Conference and this report is based on that understanding.

*Reciprocal Enforcement of Maintenance Orders.*

British Columbia added the following sentence to subsection 6 of section 6 of the above Act (B.C. Statutes, 1950, c. 46, s. 5): "Where the Court has declined to confirm an order or a part thereof, or has varied or rescinded same, the person in whose favour the order was made and the Attorney-General shall have a like right of appeal."

Under section 6 of the Uniform Act the provincial court can confirm a maintenance order made by a court in England, Northern Ireland or a reciprocating state where the person against whom the order is made is resident in the province. A further authority is given to vary or rescind such confirming order. The first sentence of section 6 presently gives a right to the person bound by the order to appeal against the confirmation of the order. The sentence added in 1950 gives to the person in whose favour the order was made and the Attorney-General a right to appeal against the refusal to confirm an order or against any variation or rescission of the confirming order.

*Legitimation.*

Ontario rewrote section 5 of its Legitimation Act (Ontario Statutes, 1950, c. 36) to deal with cases where an order of presumption of death has been made under Ontario's new Marriage Act. In such cases where the party obtaining the order has married again, issue of the new marriage conceived before knowledge that the person presumed dead is alive are declared legitimate for all purposes. Formerly the section dealt only with the issue

of a marriage that has taken place in the *bona fide* belief of the death of the former spouse and under such circumstances that bigamy has not been committed.

Neither the former nor the new Ontario section appear in the Uniform Legitimation Act, although certain of the provinces have legislation of a similar nature dealing with the subject in their marriage Acts.

#### *Vital Statistics.*

Saskatchewan and New Brunswick enacted the Uniform Act in 1950. The only substantial change made in New Brunswick was in respect of certified copies of stillbirths. The same amendment was made in Saskatchewan and is the subject of a separate report to this meeting,

Saskatchewan amended subsections 3 and 4 of section 11 by requiring the statement of a marriage to be forwarded to, and the registration to be made by, the Director of Vital Statistics rather than the division registrar. Ontario follows the same practice in respect of its marriage registrations on the ground that, since certificates cannot be issued by division registrars, the forwarding immediately to the Director facilitates the speedy obtaining of certificates.

Saskatchewan also made numerous other changes, most of which are of a local nature. Saskatchewan also authorized the issue of certified or photographic copies of extracts from birth registrations and provided a time limitation of two years for prosecutions.

Mr. Runciman pointed out that the word "who" should be inserted after the word "officer" in the eighth line of subsection 4 of section 14. This omission was a printer's error and should be corrected.

D. M. TREADGOLD.

## APPENDIX N

*(See page 27)*

## BULK SALES

## REPORT OF THE NEW BRUNSWICK COMMISSIONERS

At the 1949 Conference it was—

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.

While the printed resolution includes The Bulk Sales Act, your Commissioners did not so understand the resolution, and in their opinion the Act may well be considered quite independently of the other three commercial paper Acts.

The original Bulk Sales Act was passed in 1920 and there are a number of cases where the language used is not such as we would use today.

In the interpretation section the following may well be included:

“sale” whether used alone or in the expression “sale in bulk” includes a transfer, conveyance, barter or exchange and an agreement to sell, transfer, convey, barter or exchange; and the verb “to sell” has a similar connotation;

and the following amendments made:

clause (a), “creditor”— The words “and owing” in line 3 seem unnecessary in view of the fact that there must be an indebtedness; and the same tautology appears in subsection 1 of section (4) where we talk of “the amount of the indebtedness or liability due, *owing, payable or accruing due* or to become due”;

clause (f), “the Bankruptcy Act” means the Bankruptcy Act (Canada) or any Act which may hereafter be substituted therefor;

clause (g), “trustee” should be recast in the last five lines to comply with the order in which the words appear in the Act and therefore read as follows:

“trustee” means an authorized trustee under the Bankruptcy Act appointed for the bankruptcy district or division wherein the stock of the vendor or some part thereof

is located, or the vendor's business or trade, or some part thereof; or any trust company licensed or authorized to carry on business in the Province; or such person as shall be named as trustee by the vendor or by the creditors of the vendor in their written consent to any sale in bulk or shall be appointed as trustee under the provisions of section 12 of this Act.

Section 4: In the Uniform Act it reads "it shall be the duty of each purchaser" and later "it shall be the duty of each vendor". Your Commissioners recommend that this section be amended by having the expression direct and reading "every purchaser shall" and "every vendor shall".

In subsection 2 of section 7 we speak of the locality "in which the subject matter of the sale in bulk was situated". Our definition of "stock in bulk" covers any stock which is the subject of a sale in bulk. Why not in this section use the simple words "in which the stock in bulk was situated"?

Subsection 4 section 7 reads:

- (4) The priorities of creditors shall be determined as of the date of the completion of the sale.

This section is ambiguous. In view of the fact that the word "sale" includes an agreement to sell, the date of completion may be the date of signing the agreement, or it may be the date of the transfer of the stock. We suggest that this term "completion of the sale" should be defined as meaning "the date on which the transfer of stock takes place", or the wording here be changed.

Subsection 2 of section 9 — Again we have the reference to "stock *which is the subject of such sale* in bulk, or any part thereof". The words italicized are unnecessary and should be deleted.

Subsection 2 of section 9 is also subject to criticism inasmuch as the purchaser is only now liable to account for the sale price realized by him and not for the value of the goods. This leaves it open for a collusive purchaser to make a resale to a third party at a bargain price and so to prejudice the creditors. Your Commissioners recommend that the purchaser "shall be personally liable to account to the creditors of the vendor for the value thereof, including all moneys, security, etc."

Section 11 — Again we have the expression "the date of the sale". Your Commissioners think this should read "the date of the completion of the sale" to correspond with the language in subsection 4 of section 7.

In the schedule reference is made to the vendor being a "corporation" but in the form itself the word "company" is used and "corporation" is not used.

Your Commissioners have attached hereto a revised and recommended copy of the Act. This includes some slight changes in wording which have not been referred to above. We have also included (within brackets) the old wording for ease of comparison.

H. A. PORTER,  
J. E. HUGHES,  
*New Brunswick Commissioners.*

NOTE:—The draft Act attached to this report is omitted from these proceedings. The Uniform Act as adopted follows as Appendix O.



## APPENDIX O

(See page 28)

(The following is the form of the Act adopted by the Conference and recommended for enactment:)

## THE BULK SALES ACT

**H**IS 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 Bulk Sales Act".

Interpretation.

2. In this Act,

- (a) "creditor" means a person to whom the vendor of stock is indebted, whether or not the debt is due, and includes a surety and the endorser of a promissory note or bill of exchange who would, upon payment by him of the debt, promissory note or bill of exchange in respect of which the suretyship was entered into or the endorsement was given, become a creditor of such vendor;
- (b) "proceeds of the sale" includes the purchase price or consideration payable to the vendor, or passing from the purchaser to the vendor, on a sale in bulk, and the moneys realized by a trustee under a security, or by the sale or other disposition of any property, coming into his hands as the consideration, or part of the consideration, for the sale;
- (c) "purchaser" includes a person who gives to a vendor real or personal property in barter or exchange for a stock in bulk;
- (d) "sale", whether used alone or in the expression "sale in bulk", includes a transfer, conveyance, barter or exchange, and an agreement to sell, transfer, convey, barter or exchange; and "sell" has a similar meaning;
- (e) "sale in bulk" means a sale of a stock, or part thereof, out of the usual course of business or trade of the vendor or of substantially the entire stock of the vendor, or of an interest in the business of the vendor;
- (f) "stock" means
- (i) stock of goods, wares, merchandise or chattels ordinarily the subject of trade and commerce,

- (ii) the goods, wares, merchandise or chattels in which a person trades, or that he produces or that are the output of, or with which he carries on, a business, trade or occupation;
- (g) "stock in bulk" means any stock or portion thereof that is the subject of a sale in bulk;
- (h) "trustee" means an authorized trustee under the *Bankruptcy Act, 1949* (Canada) appointed for the bankruptcy district wherein the stock of the vendor or some part thereof is located, or the vendor's business or trade or some part thereof is carried on at the time of the sale in bulk thereof; or any person named as trustee by the vendor or by the creditors of the vendor in their written consent to a sale in bulk; or any person appointed as trustee under section 13;
- (i) "vendor" includes a person who barter or exchanges stock in bulk with another person for other property, real or personal.

**3.** This Act applies only to sales in bulk by,

- (a) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares or merchandise ordinarily the subject of trade and commerce;
- (b) commission merchants;
- (c) manufacturers;
- (d) proprietors of hotels, rooming houses, restaurants, motor vehicle service stations, oil or gasoline stations or machine shops.

Persons to whom this Act applies.

**4.** Nothing in the Act applies to or affects a sale by an executor, administrator, receiver, assignee or trustee for the benefit of creditors, authorized trustee under the *Bankruptcy Act, 1949* (Canada), official receiver or liquidator, a public official acting under judicial process, or a trader or merchant selling exclusively by wholesale, or an assignment by a trader or merchant for the general benefit of his creditors.

Scope of Act.

**5.** (1) Except as otherwise provided in this Act, a purchaser of stock in bulk, before paying to the vendor any part of the purchase price or giving a promissory note or security for the purchase price or part thereof, or executing a transfer, conveyance or encumbrance of property, shall demand of and receive from the vendor, and a vendor of stock in bulk shall furnish to

Statement of creditors to be furnished.

the purchaser, a written statement verified by the statutory declaration of the vendor or his duly authorized agent or, if the vendor is a corporation, by the statutory declaration of its president, vice-president, secretary-treasurer or manager.

(2) The statement shall contain the names and addresses of the creditors of the vendor, together with the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the vendor to each of the creditors.

(3) The statement and declaration may be in the form set forth in Schedule A.

(4) A purchaser may, before obtaining the statement, pay to the vendor a sum not exceeding fifty dollars on account of the purchase price.

No preference  
or priority.

(5) From and after the furnishing of the statement and declaration, no preference or priority shall be obtainable by any creditor of the vendor in respect of the stock in bulk or the proceeds of sale thereof by attachment, garnishment proceedings, contract or otherwise.

6. Before the completion of a sale in bulk,

Payment of  
creditors  
in full.

(a) the claims of the creditors of the vendor as shown by the written statement shall be paid in full; or

(b) the vendor shall produce and deliver to the purchaser a written waiver of the provisions of this Act, other than the provisions contained in section 5, from creditors of the vendor representing not less than sixty per centum in number and amount of the claims exceeding fifty dollars as shown by the written statement, which waiver may be in the form set forth in Schedule B; or

Consent of  
creditors  
to sale.

(c) the vendor shall produce and deliver to the purchaser the written consent thereto of creditors of the vendor representing not less than sixty per centum in number and amount of the claims exceeding fifty dollars as shown by the written statement.

When pro-  
ceeds of sale  
to be paid  
over to  
trustee.

7. Where a sale in bulk is made with the written consent of the creditors of the vendor under clause (c) of section 6, the purchaser shall pay, deliver or convey the entire proceeds of the sale to the person named as trustee by the creditors in the written consent, or, if no trustee is named therein, to the trustee named by the vendor or appointed under section 13, to be dealt with as provided by section 8.

**8.** (1) Where the proceeds of the sale are paid, delivered or conveyed to a trustee under section 7, the trustee shall be a trustee for the general benefit of the creditors of the vendor and shall distribute the proceeds of the sale among the creditors of the vendor in proportion to the amounts of their claims as shown by the written statement, and such other creditors of the vendor as file claims with the trustee in accordance with the *Bankruptcy Act, 1949* (Canada). <sup>Distribution of proceeds of sale.</sup>

(2) The distribution shall be made in like manner as moneys are distributed by a trustee under the *Bankruptcy Act, 1949* (Canada) and in making the distribution all creditors' claims shall be proved in like manner, are subject to like contestation, and entitled to like priorities as in the case of a distribution under that Act.

(3) The creditors, vendor and trustee have in all respects the same rights, liabilities and powers as the creditors, authorized assignor, and authorized trustee respectively have under the *Bankruptcy Act, 1949* (Canada), the vendor being deemed for such purpose to be an authorized assignor under that Act, and the trustee an authorized trustee under that Act, and the priorities of creditors shall be determined as of the date of the completion of the sale.

(4) Before making distribution,

- (a) the trustee shall cause a notice thereof to be published once in the (Provincial) *Gazette* and in not fewer than two issues of a newspaper published in the Province and having a circulation in the locality in which the stock in bulk was situated at the time of the sale; and
- (b) a period of fourteen days shall elapse after the last of such publications.

(5) It is not necessary to publish any advertisement or notice of the distribution other than as provided in subsection (4).

**9.** The fees or commission of the trustee shall not exceed three per centum of the proceeds of the sale that come to his hands; and, in the absence of an agreement by the vendor to the contrary, the fees or commission, together with any disbursements made by the trustee, shall be paid by being deducted out of the moneys to be received by the creditors and shall not be charged to the vendor. <sup>Fees of trustee.</sup>

**10.** (1) A sale in bulk in respect of which this Act has not been complied with shall be deemed to be fraudulent and void <sup>Sale void against creditors unless Act complied with.</sup>

as against the creditors of the vendor; and every payment made on account of the purchase price, and every delivery of a note or other security therefor, and every transfer, conveyance and encumbrance of property by the purchaser shall be deemed to be fraudulent and void, as between the purchaser and the creditors of the vendor.

(2) If, however, the purchaser has received or taken possession of the stock in bulk, or any part thereof, he is personally liable to account to the creditors of the vendor for the value thereof including all moneys, security or property realized or taken by him from, out of, or on account of the sale or other disposition by him of the stock in bulk, or any part thereof.

(3) In an action brought, or proceedings had or taken, by a creditor of the vendor within the time limited by section 12 to set aside or have declared void a sale in bulk, or in the event of a seizure of the stock in the possession of the purchaser, or some part thereof, under judicial process issued by or on behalf of a creditor of the vendor within such period, the purchaser shall be estopped from denying that the stock in his possession at the time of the action, proceedings or seizure is the stock purchased or received by him from the vendor.

(4) If the stock then in the possession of the purchaser, or some part thereof, was in fact purchased by him subsequent to the sale in bulk from a person other than the vendor of the stock in bulk and has not been paid for in full, the creditors of the purchaser, to the extent of the amounts owing to them for the goods so supplied, are entitled to share with the creditors of the vendor in the amount realized on the sale or other disposition of the stock in the possession of the purchaser at the time of the action, proceedings or seizure, in like manner and within the same time as if they were creditors of the vendor.

Burden of  
proof on  
purchaser.

**11.** In a proceeding wherein a sale in bulk is attacked or comes in question, whether directly or collaterally, the burden of proof that this Act has been complied with is upon the person upholding the sale in bulk.

Limitation of  
time in which  
action may  
be brought  
to set aside  
sale in bulk.

**12.** No action shall be brought or proceedings had or taken to set aside or have declared void a sale in bulk for failure to comply with this Act, unless the action is brought or proceedings had or taken within six months from the date of the completion of the sale.

**13.** Upon the application of a person interested, if the creditors of the vendor in their written consent to a sale in bulk have not named a trustee and the vendor has not named one, a judge of the county (*division*) court of the county in which the vendor's stock, or any part thereof, or the vendor's business or trade, is located at the time of the sale in bulk thereof, shall by order appoint a trustee and fix the security, if any, to be given by him.

Appointment of trustee by judge.

**14.** 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.

Uniform construction.

**15.** (As required.)

Repeal.

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

Commencement of Act

SCHEDULE A

(Section 5)

STATEMENT AND DECLARATION

Statement showing names and addresses of all creditors of:

.....

Name of Creditors	Post Office Address	Nature of Indebtedness
Amount	When due	

I, \_\_\_\_\_, of \_\_\_\_\_

in the Province of \_\_\_\_\_, do solemnly declare that the above is a true and correct statement of the names and addresses of all creditors of \_\_\_\_\_, and shows correctly the amount of indebtedness or liability due, owing, payable or accruing due or to become due and payable by \_\_\_\_\_ to each of said creditors. (If the declaration is made by an agent, add: I am the duly authorized agent of the vendor and have a personal knowledge of the matters herein declared to.)

(Or, if the vendor is a Corporation)

I, \_\_\_\_\_, of \_\_\_\_\_

in the Province of \_\_\_\_\_,

do solemnly declare that the above is a true and correct statement of the names and addresses of all the creditors of the (name of Corporation) and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due, and payable by the Corporation to each of the said creditors, and that I am the \_\_\_\_\_ of the said Corporation, and have a personal knowledge of the matters herein declared to.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of The Canada Evidence Act.

Declared before me at the \_\_\_\_\_ of \_\_\_\_\_, in the Province of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_ A Commissioner, etc.

NOTE: Some provinces may wish to insert a provincial statute for the Canada Evidence Act.

SCHEDULE B

(Section 6)

WAIVER

We, the undersigned creditors of

of

in the Province of , do  
hereby waive the provisions of *The Bulk Sales Act*, of the Province of  
in so far as said Act would apply to, affect or cause to make fraud-  
ulent or void the sale in bulk by the said

of his stack of goods, wares, merchandise  
and fixtures, or part thereof, or an interest in his business (*as the case may  
be*) to

of in the Province of  
and we do hereby admit having received  
notice of the intended sale and agree not to disturb, dispute or question the  
validity of the said sale in any way under the provisions of said Act.

Dated this day of ,  
A.D. 19

Signed in the presence of



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