1951

PROCEEDINGS

OF THE

THIRTY-THIRD ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

TORONTO, ONTARIO

SEPTEMBER 4TH TO 8TH, 1951

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1951–52

Honorary President. . . . Horace A. Porter, K.C., Saint John.

President. . . . . C. R. Magone, K.C., Toronto.

1st Vice-President. . . . . G. S. Rutherford, K.C., Winnipeg.

2nd Vice-President. . . . . L. R. MacTavish, K.C., Toronto.

Treasurer. . . . . A. C. DesBrisay, K.C., Vancouver.

Secretary. . . . . D. M. Treadgold, 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. . . . . L. R. MacTavish, K.C., Toronto.

Prince Edward Island. . . . . J. O. C. Campbell, K.C., Charlottetown.

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

Saskatchewan. . . . . H. Wadge, 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. DESBRISAY, 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:

E. A. DRIEDGER, K.C., Parliamentary Counsel, Department of Justice, Ottawa.

A. J. MACLEOD, Advisory Counsel, 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. PUDDESTER, 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, K.C., 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. MACTAVISH, 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.

F. A. LARGE, K.C., Charlottetown.

J. P. NICHOLSON, Crown Prosecuter, 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.

H. Wadge, K.C., Legislative Counsel, Regina.

J. L. SALTERIO, K.C., Deputy Attorney-General, Regina.

MEMBERS EX OFFICIO OF THE CONFERENCE

Attorney-General of Alberta: Hon. Lucien Maynard, K.C.

Attorney-General of British Columbia: Hon. Gordon S. Wismer, K.C.

Attorney-General of Canada: Hon. Stuart S. Garson, K.C.

Attorney-General of Manitoba: Hon. 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.

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. The following is a list of the dates and places of the meetings of the Conference:

1918. September 2, 4, Montreal.
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.
1951. September 4-8, Toronto.

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 by L. R. MacTavish, K.C., 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.

A number of the Uniform Acts have been adopted as ordinances of the Northwest Territories in recent years. As a matter of interest, therefore, these have been noted in the Table appearing on pages 12 and 13.

D. M. T.

TABLE OF

The following table shows the model statutes prepared and adopted by the

Title of Act	Conference	Adopted Alta.	B.C.	Man.	N.B.	Nfld.
Assignment of Book Debts	1928	1929		1929	1931	..
Bills of Sale	1928	1929		1929		.. .
Bulk Sales.	1920	1922	1921	1921	1927	..
Conditional Sales	1922		1922		1927	..
Contributory Negligence	1924	1937*	1925		1925	1951*
Corporation Securities Registration	1931	.				. .
Defamation	1944	1947		1946		....
Devolution of Real Property	1927	1928			1934†	. ..
Evidence	1941					. .
—*re* Photographic Records	1944	1947	1945	1945	1946	. ..
Russel v. *Russel*	1945	1947	1947	1946		. .
Fire Insurance Policy	1924	1926	1925	1925	1931	....
Foreign Affidavits	1938	.	.	.		. ..
Foreign Judgments	1933					.
Frustrated Contracts	1948	1949		1949	1949	. ..
Interpretation	1938			1939†	.	...
Intestate Succession	1925	1928	1925	1927‡	1926	1951
Judicial Notice of Statutes and Proof of State Documents	1930		1932	1933	1931	....
Landlord and Tenant	1937	.			1938	...
Legitimation	1920	1928	1922	1920	1920	$
Life Insurance	1923	1924	1923	1924	1924	....
Limitation of Actions	1931	1935		'32,'46‡		....
Married Women's Property	1943	. .	.	1945	1951$	....
Partnership.		1899°	1894°	1897°	1921°	....
Partnership Registration	1938	.				....
Proceedings Against the Crown	1950		.	1951		....
Reciprocal Enforcement of Judgments	1924	1925	1925	1950	1925	....
Reciprocal Enforcement of Maintenance Orders	1946	1947	1946	1946	1951‡	1951‡
Regulations	1943			1945‡	. .	...
Sale of Goods	..	1898°	1897°	1896°	1919°	...
Survivorship.	1939	1948	1939	1942	1940	1951
Testators Family Maintenance	1945	1947‡		1946	. .	. .
Vital Statistics	1949		.	1951‡	1950	..
Warehousemen's Lien	1921	1922	1922	1923	1923	. ..
Warehouse Receipts	1945	1949	.	1946‡	1947	....
Wills	1929	. .	. .	1936	....	: ..

* Adopted as revised.

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

MODEL STATUTES

Conference and to what extent these have been adopted in the various jurisdictions:

ADOPTED							REMARKS
N.S.	Ont.	P.E.I.	Que.	Sask.	Canada	N.W.T.	
1931	1931	1931	....	1929	....	1948	Am. '31 & Rev. '50
1930	....	1947	. ..	1929	. ..	1948‡	Am. '31 & '32
...	....	1933	. .	. ..	. ..	1948	Am. '25, '39, '49 & Rev. '50
1930	. .	1934	. ..	. ..	. ..	1948‡	Rev. '47
1926	...	1938*	....	1944	....	1950*‡	Rev. '34 & '35
1933	1932	1949	...	1932	....	. ..	. . . . .
....	....	1949	....	..	.. .	1949*‡	Rev. '48 & Am. '49
. ..	....	....	...	1928	....	. ..	... .
....	....	...	....	...	..	1948*‡	Am. '44, '45 & '51
1945	1945	1947	....	1945	1942$	1948x	. . ..
1946	1946	1946	...	1946	..	1948x	....
1930	1924	1933	....	1925	. .	..	Stat. cond. 17 not adopted.
....	....	. ..	....	. ..	1943	1948x	... .
....	....	. ..	....	1934	. ..	....	. ...
....	1949	1949	....	. ..	....	...	. ...
....	....	1939	....	1943	...	1948†	Am. '39 & '41
....	....	....	....	1928	...	1949‡	Am. '26 & '50
....	....	1939x	....	...	....	1948x	Am. '31
....	....	1939	. ..	. ..	....	1949‡	. . ..
$	1921	1920	$	1920	....	1949‡	.....
1925	1924	1933	. .	1924	. ..	. ..	. .. .
....	....	1939‡	...	1932	. .	1948†	Am. '32 & '44
....	. ..	..:	. ..	.	....	....	. . ..
1911°	1920°	1920°	....	1898°	...	1948°	....
....	...	....	...	1941†	...	....	Rev. '46
1951$	.... .	....	....	....	. .	. ..	....
....	1929	..	....	1924	....	. ..	Am. '25
1949	1948‡	1951‡	....	1946$		1951†	....
....	1944‡	....	. ..	.	1950$	....	. . . .
1910°	1920°	1919°	...	1896°	. .	1948°	....
1941	1940	1940	. .	1942	....	...	Am. '49
. ..	.	. .	.	...	. .	. .	. . ..
....	1948$	...	...	1950‡	. ..	....	Am. '50
1951	1924	1938	. ..	1922	....	1948	. . . .
1951	1946‡	.	. .	....	.	....	. . ..
....	....	. .	. ..	1931	....	....	....

x As part of Evidence Act.

$ Provisions similar in effect are in force.

† In part.

‡ With slight modification.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, SEPTEMBER 4TH, 1951)

10 a.m.–11 a.m.

Opening

The Conference assembled in the Royal York Hotel, Toronto.

The President, Mr. Porter, acted as chairman, introduced the new members, and outlined the work of the meeting as set out in the Agenda (Appendix A, page 29).

The Honourable Dana Porter, K.C., Attorney-General of Ontario, welcomed the members of the Conference to the Province.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the minutes of the 1950 annual meeting as printed in the 1950 Proceedings be taken as read and adopted.

Treasurer's Report

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

Secretary's Report

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

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 1951-52 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 1951 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 1952 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. DESBRISAY.

Canada:

MESSRS. DRIEDGER and O'MEARA.

Manitoba:

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

New Brunswick:

MESSRS. HUGHES and PORTER.

Nova Scotia:

MESSRS. MUGGAH and READ.

Ontario:

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

Prince Edward Island:

MR. LARGE.

Quebec:

MESSRS. BISSON and KER.

Saskatchewan:

MESSRS. LESLIE and WADGE.

FIRST DAY

(TUESDAY, SEPTEMBER 4TH, 1951)

First Session

11 a.m.–12 noon.

Hours of Sitting

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.

Amendments to Uniform Acts

Mr. Treadgold presented his report on Amendments to Uniform Acts (Appendix D, page 37).

After discussion the following resolution was adopted:

RESOLVED that Mr. Treadgold annually request each local secretary to report to him as to the amendments, not recommended by the Conference, made to Uniform Acts in his jurisdiction since the last meeting of the Conference, and that Mr. Treadgold be assigned the duty of consolidating the resulting reports and present the consolidated report to the following meeting.

Companies

Mr. O'Meara, on behalf of the Federal Representatives, made a verbal report as to the work being carried on by various bodies towards a uniform Companies Act.

Discussion of this matter was adjourned until a later day at this meeting.

Second Session

2 p.m.–5 p.m.

Evidence Act (Foreign Affidavits)

Mr. O'Meara, on behalf of the Federal Representatives, made a verbal report, pointing out the request of the Department of External Affairs that sections 58 and 59 of the Uniform Evidence Act, or the Uniform Foreign Affidavits Act, be implemented in the various jurisdictions.

Messrs. Driedger, McKenzie, O'Meara and Rutherford were named to study sections 58 and 59 of the Uniform Evidence Act in the light of the representations of the Department of External Affairs and the discussions at this meeting, and to report thereon to this meeting.

Bills of Sale

Mr. Hughes, on behalf of the New Brunswick Commissioners, presented the report on the Uniform Bills of Sale Act (Appendix E, page 39).

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

SECOND DAY

(WEDNESDAY, SEPTEMBER 5TH, 1951)

Third Session

9 a.m.–12 noon.

Bills of Sale—(continued)

Consideration of the draft Act attached to the New Brunswick report was concluded.

Final disposition was left for consideration after the report on and draft of the Uniform Conditional Sales Act had been dealt with.

Highway Traffic and Vehicles (Uniform Rules of the Road and Financial Responsibilities)

Mr. McKenzie, on behalf of the Alberta Commissioners, presented the report on Uniform Rules of the Road (Appendix F, page 40).

After consideration of the report and further discussion the following resolution was adopted:

RESOLVED: 1. That the draft Rules of the Road part of the Uniform Highway Traffic and Vehicles Act, prepared by the Alberta Commissioners, be referred to a committee of four members, one to be appointed by each of the provinces of Alberta, Nova Scotia, Ontario and Quebec, the member from Ontario to be chairman of the committee.

2. That the Manitoba Commissioners be requested to prepare a draft of the Financial Responsibility part of the Uniform Highway Traffic and Vehicles Act not later than November 1st, 1951, and that the draft so prepared be sent by them to a committee of four members, one to be appointed by each of the provinces of British Columbia, Manitoba, Ontario and Prince Edward Island, the member from Manitoba to be chairman of the committee.

3. That the Attorneys-General of the several provinces which have representatives on either of the committees be requested to facilitate a meeting or meetings of the committees at a suitable time and place; and that the committees complete a revision of the drafts submitted to them not later than January 15th, 1952; and that in their revision they give careful consideration to the draft Uniform Act regulating Traffic on Highways prepared in the United States by the National Conference on Street and Highway Safety in collaboration with the National Conference of Commissioners on Uniform State Laws.

4. That the drafts as so revised be sent forthwith by the respective committees to the following organizations:

(*a*) The Good Roads Association;
(*b*) The Dominion Chamber of Commerce;
(*c*) The All-Canada Insurance Federation;
(*d*) The Automobile Chamber of Commerce;
(*e*) The Royal Canadian Mounted Police;
(*f*) The Association of Chief Constables,

and also to the administrative officials administering motor vehicle legislation in the several provinces and to any other body or person which or whom the respective committees think might be interested; and that the bodies and persons to whom the drafts are sent be requested to forward their comments and criticisms to the respective committees not later than April 1st, 1952, and be advised that the respective committees would be glad to discuss the drafts with their representatives at some time before April 1st, 1952, and at a place to be fixed by the committees.

5. That on completion of any such discussion the committees complete final drafts of the parts referred to them, and, if possible, submit them to the Conference at the 1952 meeting.

Fourth Session

2 p.m.–5 p.m.

Wills Act (Conflict of Laws)

Dr. Falconbridge presented the report of the Ontario Commissioners in respect of the Conflict of Laws provisions of the Uniform Wills Act (Appendix G, page 42).

After discussion the following resolution was adopted:

RESOLVED that the report of the Ontario Commissioners on the Conflict of Laws provisions of the Uniform Wills Act, and the Uniform Wills Act, be referred to the Nova Scotia Commissioners

in consultation with Dr. Falconbridge for incorporation therein of a new Part II (Conflict of Laws) having regard to Dr. Falconbridge's recommendations and the discussion at this meeting, and that the entire Act so amended be revised to bring it into line with the present drafting practices of the Conference, and that the Nova Scotia Commissioners report thereon to the next meeting.

Reciprocal Enforcement of Judgments

Mr. O'Meara presented the report of the Federal and Quebec Representatives and the Ontario Commissioners on the Uniform Reciprocal Enforcement of Judgments Act (Appendix H, page 46).

After discussion the following resolution was adopted:

RESOLVED that the report of the Federal and Quebec Representatives and the Ontario Commissioners be adopted and that those representatives and commissioners prepare a new Uniform Reciprocal Enforcement of Judgments Act in accordance with the recommendations made in the report, and report thereon to the next meeting.

Reciprocal Enforcement of Maintenance Orders

Mr. DesBrisay presented the report of the British Columbia Commissioners on the Uniform Reciprocal Enforcement of Maintenance Orders Act (Appendix I, page 50).

Mr. Rutherford presented the report of the Manitoba Commissioners on the same Act (Appendix J, page 52).

After discussion the following resolution was adopted:

RESOLVED that the Uniform Reciprocal Enforcement of Maintenance Orders Act be referred to the British Columbia Commissioners to revise, incorporating therein appeal provisions and police court procedures as recommended in their report, and also to enlarge the scope of the Act so that reciprocal arrangements can be made with any outside jurisdiction, and to report thereon to the next meeting.

Judicial Decisions affecting Uniform Acts

Dr. Read presented his report on the Judicial Decisions affecting Uniform Acts (Appendix K, page 56), which was received with thanks and commendation to Dr. Read for his efforts.

After discussion the following resolution was adopted:

RESOLVED that Dr. Read continue to prepare an annual report on Judicial Decisions affecting Uniform Acts, the report to contain decisions reported during the calendar year immediately preceding its preparation, that each local secretary inform Dr. Read of any relevant decisions that come to his notice in his province; and that the report be distributed as soon as possible after it is prepared.

Evidence Act (Section 6)

Mr. McKenzie presented the report of the Alberta Commissioners on Section 6 of the Uniform Evidence Act (Appendix L, page 70).

THIRD DAY

(THURSDAY, SEPTEMBER 6TH, 1951)

Fifth Session

9 a.m.–12 noon.

Evidence Act (Section 6)—(concluded)

After discussion of the Alberta Commissioners' report it was decided that no action should be taken due to the differences in procedure in divorce actions between Alberta and other provinces.

Legitimation

Mr. Treadgold presented the report of the Ontario Commissioners on the Uniform Legitimation Act and the legislation on the subject of legitimation (Appendix M, page 74).

A discussion of the report was commenced.

Sixth Session

2 p.m.–5 p.m.

Legitimation—(concluded)

After discussion the following resolution was adopted:

RESOLVED that the Uniform Legitimation Act be referred to the Manitoba Commissioners for revision, incorporating therein the principals of the recommendations in the Ontario Commissioners' report, and for consideration as to the advisability of legislation making children of void marriages legitimate, and for report at the next meeting.

Evidence Act (Foreign Affidavits)—(concluded)

After discussion the following resolution was adopted:

RESOLVED that Mr. O'Meara prepare a redraft of sections 58 and 59 of the Uniform Evidence Act, to accord with the views of the Department of External Affairs and the views expressed at this meeting; that copies of the sections so revised be sent by him to each of the other local secretaries for distribution by them to the members of the Conference in their respective jurisdictions, and that if the sections as so revised are not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1951, they be recommended for enactment in that form.

NOTE:—Copies of revised section 58 were distributed pursuant to this resolution on November 16th, 1951. The changes made in section 58 did not require any change in section 59. No disapprovals having been received, section 58 as so revised is recommended for enactment and is set out as Appendix N, page 84).

Conditional Sales

Mr. Hughes presented the report of the New Brunswick Com, missioners on the Uniform Conditional Sales Act (Appendix O page 85).

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

FOURTH DAY

(FRIDAY, SEPTEMBER 7TH, 1951)

Seventh Session

9 a.m.–12 noon.

Conditional Sales—(concluded)

The consideration of the draft Act attached to the New Brunswick report was concluded.

Assignment of Book Debts,
Bills of Sale,
Bulk Sales, and
Conditional Sales

The following resolution was adopted:

RESOLVED that the draft Bills of Sale Act and Conditional Sales Act attached to the New Brunswick reports be referred back

to the New Brunswick Commissioners to incorporate the amendments made at this meeting and to forward the resulting drafts to the local secretary for Ontario; and that the Bills of Sale Act and Conditional Sales Act be referred to the commissioners for Ontario and Canada for preparation of final drafts in accordance with the conclusions and decisions of the Conference at this and previous meetings, and in so doing the commissioners may make such minor changes in form in those two Acts, as well as in the Uniform Assignment of Book Debts Act and the Uniform Bulk Sales Act, as they consider necessary to secure uniformity of expression, style and arrangement in all four Acts, the final drafts of the four Acts to be completed and submitted to the commissioners for each jurisdiction before June 1st, 1952, and to be submitted to the Conference at the next meeting.

Eighth Session

2 p.m.–5 p.m.

Publication of Recommended Acts

After consideration of the project, having regard to the work done by Mr. Runciman and more particularly to his letter to the Secretary dated August 30th, 1951, the following resolution was adopted:

RESOLVED that the proposal to publish all the recommended Acts in a consolidated form be referred to Mr. Fisher for further consideration of the form the work should take and the financial aspects, Mr. Fisher to report thereon to the next meeting.

Highway Traffic and Vehicles (Title to Motor Vehicles)

The report of the British Columbia Commissioners (Appendix P, page 86) was received and after discussion was referred back to the British Columbia Commissioners for a further report at the next meeting.

Highway Traffic and Vehicles

The following resolution was adopted:

RESOLVED that all reports, together with draft provisions, in connection with the proposed Uniform Highway Traffic and Vehicles Act, required pursuant to resolution of this meeting or pursuant to previous resolution (1948 Proceedings, page 25), be prepared and submitted for discussion at the 1952 meeting.

Trustee Investments

Mr. McKenzie presented the report of the Alberta Commissioners on Trustee Investments (Appendix Q, page 94).

After consideration of the report and the draft provisions attached thereto, the following resolution was adopted:

RESOLVED that the matter of uniform provisions respecting Trustee Investments be referred to the New Brunswick Commissioners to prepare a further draft in the light of the decisions made and views expressed at this meeting, the New Brunswick Commissioners to report thereon to the next meeting.

FIFTH DAY

(SATURDAY, SEPTEMBER 8TH, 1951)

Ninth Session

9.30 a.m.–11 a.m.

Contributory Negligence

Mr. DesBrisay presented the report of the British Columbia Commissioners on the Uniform Contributory Negligence Act (Appendix R, page 125).

After discussion the following resolution was adopted:

RESOLVED that the Uniform Contributory Negligence Act be referred to the British Columbia Commissioners for consideration and redrafting, having regard to the discussions at this meeting, and incorporating in the draft provisions relating to spouses and gratuitous passengers comparable to those now in effect in most provinces.

Companies—(concluded)

The following resolution was adopted:

RESOLVED that, having regard to the desire expressed on behalf of several of the provinces for the early preparation of a draft Uniform Companies Act, the Federal representatives be directed to take appropriate steps toward correlation of the projects now under consideration by the Federal-Provincial Committee on Uniform Company Law and of the Commercial Law Section of the Canadian Bar Association on amendment of the Companies Act (Canada), to the end that a draft Uniform Companies Act may be completed as promptly as possible and presented for the scrutiny of this Conference at its 1952 meeting.

MINUTES OF THE CRIMINAL LAW SECTION

The following members were in attendance:

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

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

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

O. M. M. KAY, K.C., Deputy Attorney-General, representing Manitoba;

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

H. W. HICKMAN, K.C., representing New Brunswick;

J. A. Y. MACDONALD, K.C., Deputy Attorney-General, representing Nova Scotia;

J. P. NICHOLSON, representing Prince Edward Island;

A. J. MACLEOD, representing the Department of Justice, Canada.

Col. Eric Pepler, K.C., acted as chairman and Mr. A. J. MacLeod acted as secretary.

At the request of the Department of Justice, the Criminal Law Section met with the Criminal Code Revision Commission and Committee for consideration and discussion of three Parts of the Commission's draft revision of the *Criminal Code*. The Parts that were discussed related to Summary Convictions (Part XV), Recognizances (Part XXI) and Summary Trial of Indictable Offences (Parts XVI and XVIII). A full discussion of the various sections of the draft revision took place.

At the conclusion of the joint meetings the members of the Revision Commission expressed their great appreciation of the assistance that the members of the Criminal Law Section had rendered, and requested that a minute to that effect be entered in the record of the proceedings.

Mr. J. L. Salterio, K.C., and Mr. A. J. MacLeod were elected chairman and secretary respectively for the ensuing year.

The meeting adjourned to reconvene for the Closing Plenary Session of the Conference on September 8th.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, SEPTEMBER 8TH, 1951)

11 a.m.

Report of Criminal Law Section

Colonel Pepler, 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 the President, Mr. Horace A. Porter, K.C., and Mrs. Porter for their kindness in inviting the members and their wives to their reception on the evening of September 5th, which was greatly appreciated and enjoyed.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to the Hon. Dana Porter and Mrs. Porter for their kindness in inviting the members and their wives to their reception on the evening of September 4th and to the grandstand performance at the Canadian National Exhibition, September 5th, both of which were greatly appreciated and enjoyed.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to the Hon. Mr. Justice Barlow and Mrs. Barlow for their kindness in inviting the members and their wives to dinner at the Granite Club and the Rosedale Golf Club on the evening of September 6th, which was greatly appreciated and enjoyed.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to Mr. Leighton Foster, K.C., and Mrs. Foster for their kindness in inviting the members and their wives to their reception and luncheon on September 9th, which were greatly appreciated and enjoyed.

RESOLVED that the thanks of the members of this Conference be conveyed by the Secretary to the Directors of the Canadian National Exhibition Association for their kindness in supplying the members and their wives with complimentary admission tickets to the Exhibition grounds on September 5th.

Report of Auditors

The auditors reported that they had examined the books of

the Treasurer and the Treasurer's Report and had certified them as being correct. The report was adopted.

Report of Nominating Committee

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

The custom has been to make the nominations so that in the normal course the office of President would in alternate years be held by members of the Civil and Criminal Law Sections of the Conference. This year your committee, with the approval of the Criminal Law Section affected, are submitting a departure from that custom in order to give, we submit, a well-deserved recognition of the excellent services rendered by our Secretary, L. R. MacTavish, K.C., who wishes, after long service, to be relieved of that office.

We therefore submit the following nominations:

Honorary President	Horace A. Porter, K.C.
President.	C. R. Magone, K.C.
1st Vice-President	G. S. Rutherford, K.C.
2nd Vice-President.	L. R. MacTavish, K.C.
Treasurer	A. C. DesBrisay, K.C.
Secretary	D. M. Treadgold, K.C.

The report was adopted and those named were declared elected.

Close of Meeting

A vote of thanks and appreciation was extended on behalf of all the members to L. R. MacTavish, K.C., the retiring Secretary, for his excellent work and effort in that capacity during the past eight years.

A vote of thanks and appreciation was extended on behalf of all the members and their wives to the Ontario Commissioners and their wives for their courtesies during the meeting.

The Secretary was directed to note the appreciation of the members for the efforts and work of Mr. J. P. Runciman, K.C., for many years a member of this Conference, and their regret that he has now retired from the Conference, and the Secretary was directed to advise Mr. Runciman to this effect.

The Secretary was directed to write to the Honourable Mr. Rivard, K.C., advising him of the regret of the members that he was unable to attend the meeting.

The members noted with regret that illness had prevented E. B. MacLatchy, K.C., from attending the meeting and directed the Secretary to write to Mr. MacLatchy to wish him an early recovery.

Mr. Justice Barlow, on behalf of all the members, complimented and thanked Mr. Porter for his work during his year as President.

Mr. Porter thanked the members and turned the chair over to the new President, Mr. Magone, who commented on the work of the Conference and closed the meeting.

APPENDIX A

(*See page 14*)

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.

Uniform Bills of Sale Act—Report of New Brunswick Commissioners (1950 Proceedings, page 28).

Uniform Companies Act—Report of Federal Representatives (1950 Proceedings, page 28).

Uniform Conditional Sales Act—Report of New Brunswick Commissioners (1950 Proceedings, page 28).

Uniform Contributory Negligence Act—Report of British Columbia Commissioners (1950 Proceedings, pages 22, 23).

Uniform Evidence Act—Section 6—Report of Alberta Commissioners (1950 Proceedings, page 23).

Uniform Evidence Act—Foreign Affidavits—Added on the Agenda at the request of the Federal Representatives.

Highway Traffic and Vehicles (1950 Proceedings, page 23).

Judicial Decisions affecting Uniform Acts—Report of Dean Read (1950 Proceedings, page 25).

Uniform Legitimation Act—Report of Ontario Commissioners (1950 Proceedings, page 25).

Publication of Recommended Uniform Acts (1950 Proceedings, page 27).

Uniform Reciprocal Enforcement of Judgments Act—Report of Federal and Quebec Representatives and Ontario Commissioners (1950 Proceedings, page 27).

Uniform Reciprocal Enforcement of Maintenance Orders Act—Report of British Columbia Commissioners (1950 Proceedings, page 24) and added report of Manitoba Commissioners.

Trustee Investments—Report of Alberta Commissioners (added to the Agenda at their request).

Uniform Wills Act—Conflict of Laws Sections—Report of Ontario Commissioners (added to the Agenda at their request).

PART III

CRIMINAL LAW SECTION

At the conclusion of the Opening Plenary Session the members of the Criminal Law Section will withdraw to Private Dining Room 3 and will there engage in discussions with the members of the Federal Criminal Code Revision Commission in connection with the draft Ciminal Code, particularly the procedural sections thereof. These discussions will continue, if necessary, until the Criminal Law Section rejoins the Uniform Law Section for the Closing Plenary Session.

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 14*)

TREASURER'S REPORT
1950–1951

RECEIPTS

Received from retiring Treasurer and deposited in Barclays Bank (Canada) October 3, 1950		$ 989.68
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	
Prince Edward Island	75.00	675.00
Bank Interest November 30, 1950		1.23
Bank Interest May 31, 1951		2.48
		1,668.39

DISBURSEMENTS

Exchange on cheque from retiring Treasurer	1.29
Exchange on Quebec cheque	.15
Clerical Assistance	50.00
National Printers Limited—printing Proceedings of 32nd Annual Meeting, 1950, 103 pages and cover, 107 pages	595.00

Envelopes, typing and checking	20.00		
Sales tax 8%....	49.20		
Mailing.....	14.58		
Exp. chge. Toronto...	.75	679.53	730.97
Cash in Bank August 25, 1951			937.42
		$1,668.39	$1,668.39

A. C. DESBRISAY,
Treasurer.

Vancouver,
August 25th, 1951.

Audited and found correct,

J. EDWARD HUGHES,
D. M. TREADGOLD,
Auditors.

Toronto, September 7th, 1951.

APPENDIX C

(*See page 14*)

SECRETARY'S REPORT
1951

Appreciations

In accordance with the resolutions adopted at the closing plenary session of the 1950 meeting I sent letters of appreciation and the like to all those concerned. In addition, printed copies of the 1950 Proceedings, with appropriate references, were sent in due course to our good friends Mr. Barkdull, Mr. Kuhns and Mrs. Ricker and others who were so kind to us in Washington.

Proceedings

The Proceedings of that meeting were prepared, printed and distributed as usual in accordance with the terms of the resolution in that behalf (1950 Proceedings, page 17).

As most of you know, copies of the Proceedings are distributed to members of the Conference, members of the Council of the Canadian Bar Association, to those whose names have been put on the mailing list by members of the Conference, and to those who have asked for copies. The current mailing list is here. I am sure that it is somewhat out of date. If you would be good enough to check this list at your convenience during this meeting and remove any deadwood you find, it will be appreciated.

In addition I shall appreciate it if you will let me know of any changes that should be made in the Table of Model Statutes on pages 14 and 15.

I endeavour to keep such things up-to-date, but without your co-operation this is difficult to accomplish.

Secretarial Assistance

The cost of secretarial assistance during the past year was $50, as shown by the Treasurer's report. The same amount was expended on this item in the previous year.

Correspondence

In June of this year I received a letter from the Managing Director of the Canadian Warehousemen's Association containing a resolution passed at their annual meeting commending this

Conference for its efforts in connection with the Uniform Warehouse Receipts Act which has been adopted in five provinces, and the Uniform Warehousemen's Lien Act which has been adopted in eight provinces.

Files

The files of correspondence and the like continue to grow and suitable space for filing cases is limited. I take it I have your tacit approval should I find it necessary to reduce the bulk of these papers by discarding those obviously of no further value.

Rules of Drafting

The pamphlet containing the Rules of Drafting published in 1949 is still in remarkable demand. More than 1,500 of the 2,000 copies printed have been distributed, 500 during the past year. Requests for copies continue to come in from various drafting agencies of the United States Congress, from the Institute of Advanced Legal Studies of the University of London (England) and from Oxford University. In addition it may be interesting to note that during the past year from among the many requests for copies are requests from the Government of Madras, India; the Canadian Westinghouse Company Limited; the Attorney-General of Antigua, British West Indies; the Transvaal Provincial Administration, Pretoria, South Africa; the First Parliamentary Draftsman of Northern Ireland; the Attorney-General of British Honduras; the Mutual Life Assurance Company of Canada; the Excise Branch of the Department of National Revenue at Ottawa, and Osgoode Hall Law School.

I would like to take this opportunity of drawing your attention to a note in the current issue of the Journal of Comparative Legislation and International Law published in London by the Society of Comparative Legislation under the editorship of Professor F. H. Lawson of Oxford University. The note was written by Sir Cecil Carr, Counsel to the Speaker of the House of Commons. It reads as follows:

> LEGISLATIVE DRAFTING IN CANADA.—Readers of our annual Summaries of the laws enacted by the provincial Legislatures of Canada will be well aware of the admirable work of the Conference of Commissioners on Uniformity of Legislation in Canada. Had one school of thought prevailed in the discussions which preceded the framing of the British North America Act of 1867, Canada would have had a Federal

unitary legislature to enact uniform law for the whole Dominion. The provinces, however, succeeded in preserving their rights of making law, and by way of compromise, section 94 of the Act gave the Parliament of Canada power "to make provision for the uniformity of all or any of the laws relating to property and civil rights in Ontario, Nova Scotia and New Brunswick", but no such uniform law was to have effect in any province "unless and until it is adopted and enacted as law by the Legislature thereof". In the upshot, uniformity is being slowly reached by the voluntary action of the separate provincial legislatures. At the end of the First World War the Conference of Commissioners on Uniformity of Legislation was, with the encouragement of the Canadian Bar Association, established. It has prepared and recommended some thirty model Bills on subjects ranging from bills of sale, sale of goods, fire and life insurance, partnership, defamation and frustration of contract to evidence and interpretation.

In addition the Conference produced in 1942, and has since re-issued, a booklet containing the rules of drafting which it favours and employs. The 1949 edition (of which a copy, it is stated, may be obtained on request from the secretary to the Conference, Mr. L. R. MacTavish, K.C., Toronto) comprises in a very few pages advice of great value, worthy of the company of Lord Thring's classic "Practical Legislation" or of the late Sir Alison Russell's volume, so often commended in our Journal, "Legislative Drafting and Forms". There are hints in the use of "shall' and "may", on the preference for the present tense and the active mood, on the avoidance of long sentences and the danger of enumerating long lists of particulars. On one minor point alone does there seem to be any difference between the Canadian models and the practice of the official Parliamentary Counsel in England. The lay-out of the former begins with the short title and the interpretation clauses; in United Kingdom Bills these normally are postponed to the end, an arrangement for which the following reason is traditionally given. Since the definitions in the interpretation clause cannot be disposed of until the contents of the Bill are properly settled it was usual at Westminster to move to postpone consideration of that clause until the rest of the clauses had been discussed. In the Victorian heyday of Irish obstruction in the House of Commons, this motion gave a first-class opportunity for filibustering. Thus, it is said, the interpretation clause came to be displaced from

its logical position in the forefront of the Bill. Be that small detail as it may, the public-spirited labours of the Conference are evidently making steady, if slow progress towards the goal of uniformity and good drafting.

In correspondence Professor Lawson said: "I am most grateful to know that the note should have been the means of publicizing the work of Canadian draftsmen. I have lent the booklet to some of my non-legal colleagues who are engaged in re-drafting the college statutes and I think they will benefit very much in consequence."

It will be seen from these random comments that considerable interest is still being taken in our Rules of Drafting in many parts of the world.

Should any of you find time for a "labour of love" may I suggest that you peruse these Rules of Drafting with a view to their improvement for it would appear that a third edition will be required in due course.

Addendum

Perhaps you will pardon me if, in closing this report, I venture to mention the Agenda of the Uniform Law Section. Clearly it is far too long. I urge a drastic reduction in its length for future meetings and also a more deliberate handling of the matters taken up. I feel we are showing a tendency to "do too much too quickly". In an endeavour to "clean up" the Agenda each meeting we are tending to sacrifice quality for quantity which is, I suggest, a trend that should not be allowed to grow.

L. R. MacTavish,
Secretary.

APPENDIX D

(*See page 17*)

AMENDMENTS TO UNIFORM ACTS

REPORT OF D. M. TREADGOLD, K.C.

Pursuant to resolution of the Conference (1949 Proceedings, page 18), I submit the following report as to amendments that have been made to Uniform Acts by the provinces during the past year. No reference is made in the report to amendments that had been recommended by the Conference.

Bills of Sale

Alberta added new provisions dealing with registration of bills of sale of motor vehicles.

Conditional Sales

Alberta added new provisions dealing with registration of conditional sale agreements in respect of motor vehicles. These are somewhat more detailed than the provisions in this respect now in the Uniform Act.

Contributory Negligence

Alberta (section 3(3)) and British Columbia (section 6A) added a provision dealing with cases where the spouse of the injured person was one of the persons found negligent. The same provision had previously been enacted in Manitoba (section 6), Ontario (section 2(3)), and Saskatchewan (section 9).

Alberta (section 3(2)) also added a provision dealing with cases where the injured person was a gratuitous passenger in a motor vehicle the owner or driver of which was one of the persons found negligent. Similar provisions had previously been enacted in British Columbia (section 6), Manitoba (section 5), Ontario (section 2(2)), and Saskatchewan (section 8).

The matters dealt with in these two provisions are already on the Agenda for report by the British Columbia Commissioners.

Reciprocal Enforcement of Maintenance Orders

Manitoba made certain amendments to this Act, which are already on the Agenda for report by the Manitoba Commissioners.

Vital Statistics

Manitoba in adopting the Uniform Act, and Saskatchewan by amendment, made certain changes in this Act. Most of these, however, are of a minor, local or administrative nature, and do not warrant specific reference.

Saskatchewan amended subsection 3 of section 23 to remove the provision that the evidence produced in support of an application to correct an error in a registration must be verified by statutory declaration. Saskatchewan also inserted a subsection in section 31 authorizing the Minister to dispense, either generally or under certain circumstances, with the requirement of his authority for the issue of certificates and certified copies or photographic prints of registrations.

Manitoba added a subsection to section 4 providing that a division registrar, who has knowledge of a birth and is unable to find any of the persons whose duty it is to complete the birth registration form, may complete the form to the extent of his knowledge, and the form shall then constitute the birth registration.

Manitoba completely redrafted the adoption sections of the Act to agree with local requirements and conditions.

In the death registration sections Manitoba added provision for completion of the medical certificate by the division registrar where by reason of distance it is not practicable to have a coroner, medical health officer or doctor complete the certificate, and also added a provision authorizing burial without a burial permit, under certain conditions, where it has been impracticable to obtain the permit due to distance from the division registrar or for some other reason. Provision is also made requiring in certain cases the consent of the recorder to the registration of a death.

Manitoba also authorized the issue by the division registrar of certificates of birth or stillbirth (in the case of legitimate children), marriage and death, while the division registrar is entitled to have the registrations in his possession. Protection is given by a provision that no such certificates are admissible in evidence in any court or in any action or proceeding.

Manitoba also provided for the issue of certified copies or photographic prints of extracts from birth registrations. This was also done in Saskatchewan in 1950 (see 1950 Proceedings, pages 24, 25).

D. M. TREADGOLD.

APPENDIX E

(*See page 18*)

BILLS OF SALE

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

At the 1950 meeting, 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.

We have attended to that duty and herewith submit for your consideration a revised Act.

There are three matters of policy which we feel should be further discussed before the Act is finally approved:

(1) Section 12 demands that the copy filed in the district to which goods are removed shall be "certified as a true copy by the proper officer in whose office, etc". Why impose this burden? If a copy uncertified is filed, that should be notice; if the copy is not a true copy, the onus is on the grantee and he will lose his security as though he had filed no document at all. The same principle occurs in section 15.

(2) Section 18 has been retained in our revised Act, but we feel that this section is something that should be in every Interpretation Act and therefore be superfluous in this Act.

(3) Section 28 relieves the Crown, etc., from the necessity of filing renewal statements. The whole argument in favor of renewal statements was to do away with any necessity to search back more than three years. This argument is destroyed if the Crown is not bound by the general rule. We think the last six words should be deleted from the section.

HORACE A. PORTER,
J. EDWARD HUGHES,
New Brunswick Commissioners.

NOTE:—The draft Act attached to this report is omitted from these Proceedings due to the resolution disposing of the matter appearing on pages 22 and 23.

APPENDIX F

(*See page 18*)

HIGHWAY TRAFFIC AND VEHICLES

(UNIFORM RULES OF THE ROAD)

REPORT OF THE ALBERTA COMMISSIONERS

The following note appears at page 25 of the 1948 Proceedings of the Conference:

> Highway Traffic and Vehicles.—The Honourable J. O. McLenaghen, K.C., Attorney General of Manitoba, who was present at this session, recommended that the Conference undertake the preparation of a Uniform Act dealing with vehicles and highway traffic.
>
> The following resolution was adopted:
>
> RESOLVED that each of the following prepare a report and draft provisions of the subject matter indicated for presentation at the 1949 meeting:
>
> i. registration of vehicles and operators—Ontario;
> ii. title—British Columbia;
> iii. responsibility for accidents—Nova Scotia;
> iv. rules of the road—Alberta;
> v. safety responsibility—Manitoba;
> vi. common carriers—New Brunswick.

Time did not permit consideration of a Uniform Vehicles Act at either the 1949 or the 1950 meeting. The Province of New Brunswick proposes to re-enact its Motor Vehicles Act at the 1952 session of its legislature and requests that consideration be given at the 1951 meeting of the Conference to that portion of the Uniform Vehicles Act dealing with rules of the road. New Brunswick is of the opinion that "it would be conducive to highway safety if the rules of the road were uniform throughout Canada" and that "uniformity has a very practical value in legislation dealing with the movement of traffic on the highways of the provinces, and that the Conference can make a very real contribution to highway safety in this connection."

The Alberta Commissioners have prepared a draft of the provisions dealing with rules of the road, and these draft provisions are attached hereto for consideration by the Conference.

The definitions in the draft are intended to be added to the interpretation sections of the Vehicles Acts of the various provinces, and the remaining sections have been drafted for inclusion as a separate part. The practice of the provinces differs on the question of what provisions should be included under the heading "Rules of the Road". In this draft for instance, we have included provisions dealing with such matters as, speed of vehicles, rules applicable to pedestrians, etc., which in some provinces are dealt with as separate parts.

However, having regard to the division of subject matter made by the 1948 resolution of the Conference, the Alberta Commissioners concluded that these items should be considered as "Rules of the Road".

Respectfully submitted,

H. J. WILSON,
KENNETH A. MCKENZIE,
Alberta Commissioners.

NOTE:—The draft Rules of the Road attached to the Alberta Report are omitted from these Proceedings owing to their tentative nature, to the fact that each member of the Conference has a copy, and to the fact that they were not considered in detail at the meeting. Additional copies may be obtained from the Secretary.

APPENDIX G

(*See page 19*)

WILLS ACT

(CONFLICT OF LAWS SECTIONS)

REPORT OF THE ONTARIO COMMISSIONERS

This matter, which has to do with wills and the conflict of laws, is added to the Agenda at the request of the Ontario Commissioners. It has been brought to their attention by John D. Falconbridge, K.C., for many years secretary and a former president of this Conference.

Inasmuch as the matter is of some complexity and importance, the Ontario Commissioners have invited Dr. Falconbridge to attend and take part in the discussion should the matter be reached at the Toronto meeting next September. He has kindly consented to do so.

The Uniform Wills Act was adopted by the Conference in 1929 (1929 Proceedings, pages 37-47). It was enacted in Saskatchewan in 1931 and in Manitoba in 1936. Consequently it would appear that now is an advantageous time to deal with Dr. Falconbridge's points as the uniform statute has been enacted in only two provinces. Furthermore, it would be relatively simple for the provinces that are not prepared to enact the uniform Act as a whole to bring their existing Wills Acts into line by amendment of the provisions dealing with the conflict of laws and thus achieve uniformity in part at least.

The matter in question is set out in a note under the heading "A Canadian Redraft of Kingsdown's Act" by Dr. Falconbridge in (1946) 62 Law Quarterly Review at page 328 and is fully dealt with in chapter xxiii of Falconbridge's Essays on the Conflict of Laws (1947). See also the article by J. H. C. Morris entitled "The Choice of Law Clause in Statutes" at page 170 of the same volume of the Law Quarterly Review. The following is the note referred to above (it also forms part of chapter xxiii of the Essays referred to above):

A CANADIAN REDRAFT OF LORD KINGSDOWN'S ACT

In view of the fact that Mr. Morris has in his instructive article on the "Choice of Law Clause in Statutes" ((1946) 62 L.Q.R. 170, at p. 185) given wide publicity to the revised version of Lord Kingsdown's Act as adopted by the Commissioners on Uniformity of Legislation in Canada (Conference

Proceedings (1929) 46, 47; Canadian Bar Association Year Book (1929) 332, 333) and has recommended the enactment of legislation in the United Kingdom "along the lines suggested" by the Conference. I venture to make some further observations. I was primarily responsible for the drafting of this revised version and therefore I can with the better grace now propose its further revision. One of the objects of the original revision was not only to rectify the error of Parliament in its reference to "personal estate" instead of movables, but also to restate the provisions of Lord Kingsdown's Act in a statute which should itself state the general rules of the conflict of laws relating to the formal and intrinsic validity of wills. It is, however, obvious that these general rules are not adequately or accurately stated in the revised version of the Conference, and the following new version is therefore submitted. It may at least serve as a useful draft for further consideration. The new version might be enacted either as Part II of an existing Wills Act or as a separate statute, with suitable changes in heading and section numbers as the circumstances may require.

The terms "movable property" and "immovable property" which occur in the Conference version are inconsistent with the distinction between things on the one hand and the property or an interest in things on the other hand, on which I have elsewhere (especially in "Immovables in the Conflict of Laws" (1942) 20 Can. Bar Rev. 1, and in Law of Mortgages (1942) 763, and in Essays on the Conflict of Laws (1947) 433) laid some stress as being essential to an exact statement of conflict rules. Things may be movable or immovable, but the property or an interest in a thing is an intangible concept that cannot itself be described as movable or immovable. If the thing itself in which a person has the property or an interest is intangible, neither thing nor property or interest can be accurately described as movable or immovable, but conventionally an intangible thing is classified as movable in the conflict of laws and therefore in the new version the definition of "interest in movables" includes an interest in an untangible thing.

PART II.—CONFLICT OF LAWS [*or* AN ACT TO AMEND THE WILLS ACT]

1. In this Part [Act]

(*a*) An interest in land includes a leasehold estate as well as a freehold estate in land, and any other estate or interest in land whether the estate or interest is real property or is personal property.

(*b*) An interest in movables includes an interest in any tangible or intangible thing other than land, and includes personal property other than an estate or interest in land.

2. Subject to the other provisions of this Part [Act], the manner and formalities of making of a will, and the intrinsic validity and effect of a will, so far as it relates to an interest in land, shall be governed by the law of the place where the land is situated.

3. Subject to the other provisions of this Part [Act], the manner and formalities of making of a will, and the intrinsic validity and effect of a will, so far as it relates to an interest in movables, shall be governed by the law of the place where the testator was domiciled at the time of his death.

4. As regards the manner and formalities of making of a will, so far as it relates to an interest in movables, a will made within the province shall be

valid and admissible to probate if it is made in accordance with the law in force at the time of the making thereof,

(*a*) of the province under Part I [The Wills Act],

(*b*) of the place where the testator was domiciled when the will was made, or

(*c*) of the place where the testator had his domicile of origin.

5. As regards the manner and formalities of making of a will, so far as it relates to an interest in movables, a will made outside the province shall be valid and admissible to probate if it is made in accordance with the law in force at the time of the making thereof,

(*a*) of the place where the will was made,

(*b*) of the place where the testator was domiciled when the will was made, or

(*c*) of the place where the testator had his domicile of origin.

6. A will shall not be revoked or become invalid and its construction shall not be altered by reason only of any change of domicile of the testator after the making of the will.

7. Nothing herein contained shall be construed so as to preclude resort to the law of the place where the testator was domiciled at the time of the making of a will in aid of the construction of a will relating to either an interest in land or an interest in movables.

8. Nothing herein contained shall be construed so as to preclude the application of the law of the place where land is situated, instead of the law of the domicile of the deceased owner, as regards succession on intestacy or under a will to a thing which in itself is movable because it is not physically attached to or incorporated in the land, but which is so closely connected with the use of the land that succession to it should be governed by the same law as governs succession to the land.

9. Sections 1 to 8 shall apply only to the wills of persons who die after the coming into force of those sections.

SUPPLEMENTARY COMMENTS

Section 6 is a slightly revised version of section 3 of Lord Kingsdown's Act. Opinions differ widely as to the meaning of the latter section, (see Morris (1946) 62 L.Q.R. at pp. 174, 175; cf. Falconbridge (1942) 20 Can. Bar Rev. 25, 26; and cross-references to Westlake, Foote, Dicey and Cheshire) and the question whether it should be substantially revised, or limited in its application, will require further consideration. [Section 3 is fully discussed in Dicey, Conflict of Laws (6th Ed. 1949) 839-842].

Sections 7 and 8 are, it is submitted, essential so as to modify the absolute terms of sections 2 and 3. Specifically section 8 is intended to cover the keys of a house, the title deeds of land, the stones of a dry wall, etc., all of which would otherwise fall within section 3. Obviously the statute should not require a Court to apply the law of the domicile of the deceased owner. In other words, it is desirable that in the case of these movable things there should be a special conflict rule making applicable the law of the situs of the land.

In effect sections 4 and 5 allow the same alternatives for a will made within the province as for a will made outside the province, and if clause (*a*) of section 4 were changed to read "(*a*) the law of the place where the will was made", the two sections might be amalgamated in one section.

It is therefore recommended that consideration be given to substituting the above revision of Lord Kingsdown's Act for sections 34, 35 and 36 (Part II) of the Uniform Wills Act.

The Honourable E. K. Williams, Chief Justice of the Court of King's Bench in Manitoba, in his capacity as Lecturer on Conflict of Laws at the Manitoba Law School, has written the Local Secretary for Manitoba, Mr. Rutherford, and endorsed this recommendation. He says, in part, "I think Dr. Falconbridge's redraft is infinitely preferable and would go so far as to say that if we wish to make our law on this subject simpler and more realistic the change is a necessary one".

F. H. BARLOW,
L. R. MACTAVISH,
C. R. MAGONE,
D. M. TREADGOLD,
Ontario Commissioners.

APPENDIX H

(See page 20)

RECIPROCAL ENFORCEMENT OF JUDGMENTS

REPORT OF THE FEDERAL AND QUEBEC REPRESENTATIVES AND THE ONTARIO COMMISSIONERS

In 1924 the Conference approved a Uniform Act dealing with the reciprocal enforcement of judgments (1924 Proceedings, pages 14, 15, 60-63) and in 1925 the word "and" was substituted for the word "or" in the middle of the third line of subsection 2 of section 3 (1925 Proceedings, page 13). Section 1 of this Act defines "judgment" as meaning "any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the province or territory where it was made, become enforceable in the same manner as a judgment given by a court therein". Section 9 of the Act, which deals with its application, states that "Where the Lieutenant-Governor is satisfied that reciprocal provision has been or will be made by any other province or territory of the Dominion of Canada for the enforcement within that province or territory of judgments made in any superior, county or district court of this province, the Lieutenant-Governor may, by order in council, direct that this Act shall apply to that province or territory, and thereupon this Act shall apply accordingly." It will be noted that the Uniform Act makes no provision for reciprocal arrangements to be made with jurisdictions outside Canada.

This Act was adopted in 1924 in Saskatchewan, in 1925 in Alberta, British Columbia and New Brunswick, in 1929 in Ontario and in 1950 in Manitoba. Thus at the present time reciprocal arrangements for the enforcement of judgments obtained in any of these provinces may be enforced in any other of them if the orders in council that are authorized have been made by each of these provinces.

In 1927 Saskatchewan passed an Act entitled The Judgments Extension Act which was modelled on the Uniform Act of this Conference but related to judgments obtained in the superior court in any part of His Majesty's dominions outside Canada to which the Act might be extended. Under this Act reciprocal

arrangements were made between Saskatchewan and Great Britain.

In 1935 Alberta amended its Reciprocal Enforcement of Judgments Act (the Uniform Act) to enable it to be extended not only to any other province of Canada but also "in the United Kingdom of Great Britain and Northern Ireland or in any of His Majesty's Dominions outside the United Kingdom or in any territory which is under His Majesty's protection or in any territory in respect of which mandate has been accepted by His Majesty or in any Foreign country".

Thus it will be seen that at least two provinces have seen fit to extend the scope of the Uniform Act of 1924.

During the twenties and early thirties the Conference worked on and in 1933 completed a Uniform Foreign Judgments Act (1933 Proceedings, pages 15, 82-86) which dealt with defences to foreign judgments. However, it has been adopted by one province only, Saskatchewan, in 1934.

In 1935 a then member of this Conference, Mr. Douglas Thom, K.C., of Regina, wrote the Secretary of the Conference a letter (1935 Proceedings, pages 24-26) suggesting that the Uniform Act might well be reconsidered in the light of the developments that had occurred in this field. Following discussion of this letter at the 1935 meeting the whole subject was referred to the Ontario commissioners to confer with the representatives of the Dominion and to report thereon the next year (1935 Proceedings, page 14).

At the 1936 meeting (1936 Proceedings, page 14) John E. Read, K.C., one of the Federal representatives, presented a report which was referred back to the Federal and Ontario members with instructions to submit—

(*a*) a report on the advisability of adopting the policy of international reciprocal enforcement of judgments; and

(*b*) a report on the nature and scope of the legislation required to enable the adoption of such a policy; and

(*c*) a report on the present position under the model Acts of 1924 and 1933.

This report was made in 1937 (1937 Proceedings, pages 32, 33) and the following resolution passed:

"RESOLVED that in the opinion of this Conference the adoption of a policy of international reciprocal enforcement of judgments is desirable and that the Dominion representatives be requested to prepare a report on the nature and scope of the legislation

required to enable the adoption of such a policy together with a draft Act thereon."

In 1939 Mr. Read, for the Federal representatives, made a report containing a review of the subject and a draft bill (1939 Proceedings, pages 42-54). It was referred to the Alberta commissioners for consideration and report and in 1941 transferred to the Federal representatives.

The following year Mr. Read made a further report (1942 Proceedings, pages 35-37) and recommended study of the subject by Quebec. This report was adopted. However, owing to the war conditions prevailing it was considered inexpedient to proceed with this matter at that time. In 1946 the Federal and Quebec representatives made a joint report (1946 Proceedings, pages 57, 58) and the following resolution was adopted:

"RESOLVED that the Model Act of 1924 respecting the reciprocal enforcement of judgments interprovincially and the draftUniform Act of 1939 extending the reciprocal enforcement of judgments to His Majesty's dominions outside Canada and to foreign countries be referred to the Dominion and Quebec representatives and the Ontario commissioners to prepare for submission to the next meeting a draft Uniform Act in two parts, Part I dealing with the reciprocal enforcement of judgments interprovincially and Part II extending the reciprocal enforcement of judgments to other parts of His Majesty's dominions and to foreign countries."

And so in effect the matter stands to-day. See 1947 Proceedings, page 19; 1948 Proceedings, page 17; 1949 Proceedings, pages 23, 24; 1950 Proceedings, page 27.

It is regrettable that the Conference has lost the services and counsel of John E. Read, K.C., now a Judge of the International Court of Justice, who was particularly interested in and conversant with this subject. However, the three jurisdictions that have had the matter in hand for some years feel that national and international conditions are now such as to warrant a further attempt to produce a Uniform Act containing the international feature that will be acceptable to all provinces.

While those charged with this task have not been unmindful of the terms of the 1946 resolution quoted above, it would appear that some useful thoughts can be taken from the work of the Conference in connection with the reciprocal enforcement of maintenance orders and particularly the experience of Manitoba and Ontario in enacting Acts based on the Uniform Reciprocal Enforcement of Maintenance Orders Act when both these prov-

inces found it expedient to enlarge the scope of the Uniform Act so as to permit a wider application of its principles. In short, we believe this experience indicates that there need not be two parts to the Uniform Reciprocal Enforcement of Judgments Act, one dealing with the matter interprovincially and the other internationally, because the same procedures apply no matter from what outside jurisdiction the judgment comes or to what outside jurisdiction a local judgment goes.

We submit that all that is required is a broad provision (to take the place of section 9 of the 1924 Uniform Act) which will enable any province that passes the Act to make reciprocal arrangements with any outside jurisdiction it may wish, whether it be another province, another part of the Commonwealth or a foreign state. In addition it will of course be necessary to make the language of the other sections of the Act consistent with the new scope, but it is submitted that nothing further is required and that this would result in a simple, concise Act.

We therefore ask that consideration be given to this matter in the light of these comments and, if agreeable, for instructions to proceed with the drafting of a new Uniform Act in one part which may be made applicable to any jurisdiction within or without Canada with which it is possible and expedient to make reciprocal arrangements.

W. P. J. O'MEARA,
for the Federal Representatives.

T. R. KER,
for the Quebec Representatives.

L. R. MACTAVISH,
for the Ontario Commissioners.

APPENDIX I

(See page 20)

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

With reference to the resolution presented by Mr. Treadgold and adopted by the Commissioners at the 1950 meeting held in Washington, D.C., and found on page 24 of the 1950 Proceedings, the British Columbia Commissioners beg to report as follows:

The Act in British Columbia is known as the "Maintenance Orders (Facilities for Enforcement) Act", adopting the title of the English Act of 1920 in that respect.

The resolution is by way of inquiry as to whether the Uniform Act should be amended in the way that was done in British Columbia by section 5 of chapter 46 of the Statutes of British Columbia, 1950. Section 5 of the amending Act relates to appeals. Prior to the amendment, an appeal was given to the person against whom an order for maintenance was confirmed in the local jurisdiction, but if the Court refused to confirm the provisional order the complainant, or the Attorney-General, had no right of appeal. The amendment referred to provided that where the Court declined to confirm an order, or a part thereof, or varied or rescinded the same, the person in whose favour the provisional order was made, and the Attorney-General, shall have a right of appeal. In other words, the right of appeal was one-sided in favour of the person against whom the provisional order was made, and the British Columbia Commissioners feel that the amendment is a desirable one and recommend it for inclusion in the Uniform Act.

The British Columbia Commissioners also wish to recommend for consideration the inclusion of the amendment also made in 1950 in the British Columbia Act by sections 2, 3 and 4 of said chapter 46, regarding the proper Court in the Province for registration or confirmation of an order made elsewhere, and providing that where the order was not made by a Court of superior jurisdiction it shall be registered, or confirmed, as the case may be, in such Court as is determined by the Attorney-General. This allows the order to be registered or confirmed in the Police Court and makes available the machinery of the Police Court for the enforcement of the order. Prior to this amendment, the order

had to be registered in the County Court and, as the machinery in the County Court was not adequate for enforcing the orders, it was felt that it would be advantageous to register or confirm the order in the Police Court so that the Municipal Police and the Municipal Welfare Organization would be available for enforcement of the order, and this has worked out well in practice. The Commissioners would therefore recommend for consideration the inclusion of a similar amendment in the Uniform Act, although this was not requested in Mr. Treadgold's report.

A. C. DESBRISAY,
E. PEPLER,
British Columbia Commissioners.

APPENDIX J

(*See page 20*)

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

REPORT OF THE MANITOBA COMMISSIONERS

The definition of "reciprocating state" in this Act defines a reciprocating state as being "any part of His Majesty's Dominions outside England and Northern Ireland to which the Imperial Act intituled the Maintenance Orders (Facilities for Enforcement) Act, 1920, extends, or is hereafter extended, and which has been declared under section 12 of this Act to be a reciprocating state for the purpose of this Act".

It will be noted that in order for a state to become a reciprocating state, it is first necessary that an order in council should be passed by the Government of the United Kingdom declaring that state to be a reciprocating state. This having been done, under section 12 of the Act the Lieutenant-Governor in Council of any Canadian province can then declare that state to be also a reciprocating state in respect of the province concerned.

In the operative provisions of the Act England and Northern Ireland are not strictly reciprocating states. The provisions of the Act are made applicable to England and Northern Ireland and to reciprocating states.

It is suggested that the procedure above mentioned is a clumsy one in so far as Canadian provinces are concerned. There would appear to be no reason, for instance, why, if Manitoba wishes to enter into an arrangement whereby Prince Edward Island becomes a reciprocating state, this cannot be arranged between the provinces.

At the 1951 session of the Manitoba Legislature a step was taken with that end in view. The definition of "reciprocating state" was changed so that a reciprocating state is defined as meaning "any part of the British Commonwealth of Nations other than England and Northern Ireland that has been declared under section 12 to be a reciprocating state for the purposes of this Act and also includes the Republic of Ireland if it is declared to be a reciprocating state as aforesaid".

It might be mentioned here that, at the same session of the Legislature, the Manitoba Interpretation Act was amended to

include a definition of "British Commonwealth" that was worked out in conjunction with the officials of the Department of External Affairs. Since the British Commonwealth no longer includes the Republic of Ireland, special mention had to be made of that country. It is noted that in the Province of Ontario the Uniform Act was changed so that practically any country can be declared to be a reciprocating state by order of the Lieutenant-Governor in Council if he is satisfied that reciprocal provisions have been made in that country for the enforcement of maintenance orders made in Ontario.

The Attorney-General of Manitoba has directed the Manitoba Commissioners to call the attention of the Conference to this matter with the suggestion that the Act might be amended to simplify the procedure for declaring any country to be a reciprocating state. Consideration might be given to the question whether it is desirable to provide that a reciprocating state may be any country in the world, or merely countries within the British Commonwealth plus the Republic of Ireland.

Consideration might also be given to changing the Act, as has been done in Ontario, so that in place of having to state in the operative provisions that they apply to England, Northern Ireland and other reciprocating states, it could simply be stated that the provisions apply to reciprocating states, and then England and Northern Ireland could be included among the reciprocating states.

It is also suggested that the Act might be amended in such a way as to facilitate the enforcement of orders made or confirmed as hereinafter mentioned.

There are two types of maintenance orders received from other jurisdictions:

(1) An order under subsection (1) of section 3 of the Act, which order is not a provisional order, but one made pursuant to a statute of the foreign jurisdiction corresponding to the Manitoba Wives' and Children's Maintenance Act.

(2) An order under subsection (1) of section 6 of the Act, which order has been made in the foreign jurisdiction under the statute of that jurisdiction corresponding to The Maintenance Orders (Facilities for Enforcement) Act, 1946, of Manitoba and which is provisional only and of no effect until *confirmed* by a court in Manitoba.

The provisions of the statute with respect to the enforcement of an order of the type mentioned in (1) above are as follows:

> ". . . the order . . . shall from the date of such registration be of the same force and effect and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly." (Sec 3 (1)).

Where the court making such an order in the foreign jurisdiction is not a court of superior jurisdiction the practice in Manitoba is to register the order in a county court. A county court has power under The Wives' and Children's Maintenance Act to make maintenance orders. In addition to this a maintenance order made by a police magistrate may be filed in a county court under subsection (1) of section 28 of that Act, and in both these cases where default occurs on the part of the person against whom such an order has been made, enforcement proceedings on the order may result in the committal of the person in default (subsection (1) of section 27, Wives' and Children's Maintenance Act). Since, therefore, a county court has the power to make a maintenance order and such an order may be enforced by committal in the event of default, it would appear that an order of the type mentioned in (1) above, registered in a county court in Manitoba, can be enforced by committal proceedings.

The provisions of subsection (1) of section 3 above quoted do not, however, appear to apply to orders *confirmed* under section 6, to which reference is made in (2) above, because the quoted provision applies only to orders *registered* in the court. The only provisions for the enforcement of provisional orders *confirmed* under section 6, appear to be found in section 7 which reads as follows:

> 7. (1) A court in which an order has been *registered* under this Act or by which an order has been *confirmed* under this Act, and the officers of such court, shall take all proper steps for enforcing the order.
>
> (2) Every such order shall be enforceable in like manner as if the order were a judgment of the court in which the order is so registered or by which it is so confirmed.

This section refers both to orders that are registered under the Act, as mentioned in section 3, and orders that have been confirmed under the Act (provisional orders of the type mentioned in (2) above, and provided for in section 6). The section limits enforcement proceedings to such proceedings as would be appro-

priate in the case of *a judgment of the court* in which the order is registered or by which it was confirmed. In Manitoba this means the county court. Judgments of that court are not enforceable by committal.

The enforcement of a maintenance order is often a difficult matter when the person against whom it is made has no steady employment and refuses to adopt a responsible attitude towards the order. Such a person often has no assets that can be attached, and his employment may be of such a casual nature that proceedings to attach his wages are very difficult. It is against such persons that the weapon of commitment is of value, because, no matter how irresponsible or hostile he may be with respect to carrying out his domestic obligations, the threat of a gaol sentence for refusal or neglect to do so in most cases has a very chastening effect.

British Columbia, in 1950, amended its statute to provide that enforcement may be had in the same manner as under The Deserted Wives' and Children's Maintenance Act of that province. This permits the taking of committal proceedings upon any order of a court of a reciprocating state registered or confirmed by a court in that province. From experience in Manitoba with this type of legislation it would appear desirable that all types of maintenance orders be enforceable by committal in the event of default. The adoption of this suggestion would, it is true, promote administrative convenience, because difficult cases lead to an endless amount of work in pursuing the defaulter; but the most important consideration is the effectiveness of the legislation in achieving its purpose: namely, the reciprocal enforcement of maintenance orders.

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

APPENDIX K

(*See page 20*)

JUDICIAL INTERPRETATION AND APPLICATION OF UNIFORM ACTS

REPORT OF DR. H. E. READ, O.B.E., K.C.

At the 1950 meeting of the Conference the undersigned was assigned the duty of checking the law reports each year for the purpose of ascertaining whether any judicial decisions were reported that might suggest the advisability of amendments to Uniform Acts recommended by the Conference and he was requested to make an annual report thereon to the Conference (see 1950 Proceedings, page 25). Accordingly there is here presented a summary of the decisions reported between January 1, 1950, and June 30, 1951, in which the Courts have interpreted and applied the various Uniform Acts that have been adopted by provincial legislatures.

No attempt has been made to evaluate these decisions since it is believed that a worthwhile opinion concerning the degree to which a Court may have departed from the purpose and policy of a statute, or otherwise "sabotaged" it, can best be given by the Commissioners who have had it in charge. Your reporter relies upon members of the Conference to draw his attention to any significant case he may have overlooked, to correct any error in stating the effect of a decision and to make criticisms and suggestions that will assist him in fulfilling this assignment more usefully in the future.

HORACE E. READ.

BILLS OF SALE

Sections 9 and 26

Two cases interpreting and applying these sections were reported during 1950.

In *Adkins* v. *National Finance* (1950) 1 W.W.R. 1081 the bill of sale was given to secure a present advance, while in *Jollimore* v. *Bauld and Crouse* (1950) 4 D.L.R. 242, 25 M.P.R. 307, it was given for past advances, "an amount due or accruing due". Both a judge of the Saskatchewan King's Bench in the first-named case and the Supreme Court of Nova Scotia en banc in the second *held*

that the bill of sale was defective in substance because the affidavit of bona fides required by section 9 of the Act stated in each case both that the bill was given for consideration due and owing *and* that it was given for a present advance. The bill was thus invalid in the first case as against an execution creditor and in the second as against a subsequent purchaser from the mortgagor. It was *further held* in both cases that such defect being one of substance could not be characterized as a "defect, irregularity or omission" so as to be cured by section 26.

In the course of his majority judgment in *Jollimore* v. *Bauld and Crouse,* MacDonald J. said at (1950) 4 D.L.R. pp. 250 and 251:

> It is obvious that the Legislature took great care to distinguish between bills of sale given to secure *past debts* on the one hand and those given to secure *present advances* on the other and to require that an affidavit of *bona fides* should contain *whichever* of the two averments is appropriate to the nature of the particular transaction.
>
> It would be consistent with this provision to embody both types of transaction in one document provided the affidavit contained an averment as to the particular consideration (or part of the total consideration) given to secure the past debt and the present advance respectively.
>
> Accordingly the first question is as to whether the present mortgage was given to secure a consideration consisting (1) of a past indebtedness, or (2) of a present advance, or (3) consisting of both in specified amounts. . . .
>
> To support the bill of sale, if at all, recourse must be had to s. 26. This section would protect the present bill of sale only if the affidavit has an infirmity which can be characterized as a "defect, irregularity or omission".
>
> In my view the affidavit here used fails altogether to comply with the provisions of s. 9 *in substance;* and in particular in failing *as a whole* to represent the true character of the transaction (whatever it was) in respect of which it was given. On principle I do not think that the express terms of s. 9 should be whittled down or that s. 26 countenances an affidavit which not only fails to give the precise information required by s. 9 but which in its very prolixity and duplicity is meaningless. Having regard to the general purposes of the legislation, it is clear, I think, that this Court should require a more strict observance of such a basic provision as s. 9 than is here in evidence. It must be remembered also that we are dealing with the validity of an instrument which is declared to be *absolutely void* against certain classes of persons unless registered and that the onus of proof that such an instrument is in conformity with the Act is clearly upon the party alleging its validity: see ss. 3 and 2(a).
>
> Though it may be distinguishable in point of decision, I adopt the general approach of the Court in *Re Kendrew & Kendrew,* (1947)

1 D.L.R. 14, and do so the more readily as I believe we should seek to further that uniformity of interpretation enjoined on Courts by s. 33. (See also *Adkins* v. *National Finance*, (1950) 1 W.W.R. 1081.)

BULK SALES

(1) *Sections 5(1) and 10*

In *Awram* v. *Brunt* (1950) 2 W.W.R. 282, the British Columbia Court of Appeal *held* that failure of the purchaser to demand and receive a declaration regarding creditors pursuant to section 5(1) of the Act (R.S.B.C. 1948, ch. 35) before paying the vendor more than $50 was not a non-compliance with "a provision of the Act" within the meaning of section 10.

Under section 5(1) "it shall be the duty of each purchaser . . . to demand and receive from the vendor . . . a written statement verified by statutory declaration" regarding creditors before paying any part of the purchase price "exceeding fifty dollars". Section 10 reads in part: "Every sale in bulk in respect of which the provisions of this Act have not been complied with shall be deemed to be fraudulent and void as against the creditors of the vendor."

The Court said:

> Reading the Act as a whole, this Court is unable to accept the restriction in sec. 5(1) regarding payment of a sum exceeding $50 as a "provision of the Act" within the meaning of sec. 10 in the circumstances disclosed in this case. If however the language appearing in the statute is inapt enough to permit a contrary interpretation, then, in our judgment, the Legislature could not rationally have intended such an unfortunate *impasse*, and *Stradling* v. *Morgan* (1560) 1 Plowd 190, at 205, 75 E.R. 305, may be invoked to enforce the true and rational purpose of the legislation.

(Note.—*Stradling* v. *Morgan* at 1 Plowd 205 reads: " . . . the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter, they expounded to extend but to some things, . . . which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion.")

Query whether section 10 should be clarified?

(2) *Section 10 (Saskatchewan Act, Section 31)*

In *Dominion Fruit Ltd.* v. *Cove and Beck* (No 2) (1950) 1 W.W.R. 375 the Saskatchewan Court of King's Bench, applying section 31 of the Saskatchewan Bulk Sales Act, R.S.S. 1940, ch. 285, which corresponds to section 10 of the model Uniform Act, *held* that although subsection (1) declares that a sale within that section is void as against creditors of the vendor, it is in no way related to the provision in subsection (2) of the Saskatchewan Act that the purchaser shall continue to be indebted to the vendor, and that such indebtedness therefore may be attached by the creditors of the vendor in the hands of the purchaser.

Query whether owing to difference in wording this decision is now relevant to section 10 of the Act as it now appears in 1950 Proceedings at pages 93, 94?

CONDITIONAL SALES

(1) *Section 10*

In *Industrial Acceptance Corporation Ltd.* v. *La Flamme et al* (1950) O.R. 311, (1950) 2 D.L.R. 822, Schroeder J. in the Ontario High Court, *held* that the Conditional Sales Act has no extra-territorial effect, and is not applicable to assignments of movable property situate in a foreign jurisdiction unless the transaction is within the terms of section 10 of the Act (R.S.O. 1937, ch. 182; now R.S.O. 1950, ch. 61, sec. 11).

Section 10, which requires a conditional sale made outside Ontario of goods situate outside that Province to be registered within twenty days after they have been brought into the Province was interpreted to apply only to such a sale when made to a resident of Ontario. Section 10 therefore does not apply so as to require registration in Ontario when goods are brought into the Province after being sold in a place outside the Province to a buyer who at the time of the sale was a resident at that place.

(2) *Section 2(1) (R.S.O. 1937, ch. 182; now R.S.O. 1950, ch. 61, sec. 2(1))*

In *Industrial Acceptance Corporation Ltd.* v. *Munro and Parker* (1950) O.W.N. 220, (1950) 3 D.L.R. 80, the Ontario Court of Appeal *held* that since the purpose of the Act is to protect purchasers who acquire property on the faith of possession in the vendor, the term "subsequent purchaser" in section 2(1) means any person who purchases at any time after the conditional sale

and not merely one who purchases after expiration of the time for registering the agreement. Consequently where a conditional sale agreement was not filed by the vendor therein and the purchaser therein sold the goods to a second purchaser who took for value without notice before expiration of the time for registering, the second purchaser required a valid title.

DEFAMATION

Tedlie v. *Southam* (No. 2) (1950) 1 W.W.R. 1009 held that The Defamation Act, 1946 Man. ch. 11 is a code, was intended to be complete and exhaustive, and, in so far as it deals with a matter covered by the Act, previous law is inapplicable. Section 11, subsection (3) is clear and unambiguous and must be given its literal meaning that each headline in a newspaper is a report independent of the detailed story that follows it and of every other headline.

DEVOLUTION OF REAL PROPERTY

Section 8

In *In re Rigetti Estate* (1950) 1 W.W.R. 529, Davis J. in the Saskatchewan King's Bench *held*, following *In re Walz* (1923) 3 W.W.R. 1306, that section 8 of the present Saskatchewan Act, R.S.S. 1940, ch. 208, does not change the common law rule governing the order in which the undevised real property of a testator shall be applied in payment of his debts. Section 8 reads:

> 8. In the administration of the assets of a deceased person his real property shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses and with the same incidents, as if it were personal property:
>
> Provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable, as between different beneficiaries, in or toward the payment of funeral and testamentary expenses, debts or legacies, or the liability of real property to be charged with payment of legacies.

LIMITATION OF ACTIONS

Alberta Act, Section 18

Jameson v. *Hyslop* (1950) 2 W.W.R. 1273:

In the Supreme Court of Alberta, McLaurin J. *held* that section 18 of the Act of that Province is broad enough to be given

effect against "crystallized dower rights", so as to cut off a widow's life interest in favour of an adverse possessor who took possession before the death of the widow's husband and had maintained it for over ten years since his death. (Case distinguished where adverse possession was maintained for a period in excess of ten years while the husband was still alive.) Section 18 reads:

> No person shall take proceedings to recover any land but within ten years next after the time at which the right to do so first accrued to some person through whom he claims (hereinafter called "predecessor") or if the right did not accrue to a predecessor then within ten years next after the time at which the right first accrued to the person taking the proceedings (hereinafter called "claimant").

(1) *Sections 70 and 72*

In *Re McGinnis* (No. 1) (1950) 1 W.W.R. 816, (1950) 1 D.L.R. 853, A and B entered a partnership under a firm name and filed a declaration thereof as required by sections 67-69 inclusive of the British Columbia Partnership Act (R.S.B.C. 1948, ch. 247). Later A and B agreed, as recited in a chattel mortgage from A to B, to dissolve their partnership and A continued to carry on business *under the same firm name.* No declaration was filed showing B's withdrawal. A became bankrupt and B claimed as a creditor of the estate.

Wood J., in the Supreme Court, *held* that B's withdrawal resulted in a "Change or alteration in the membership of the firm" within the meaning of section 70 and that consequently the failure to file a declaration thereof required by that section resulted in his still being a partner of A under section 72, which provides that no signer of a declaration of partnership "shall be deemed to have ceased to be a partner" until the new declaration required by section 70 has been filed. Being a partner he could not be a creditor. The Court approved the holding of the Court of Appeal of Ontario in *Bank of Toronto* v. *Nixon* (1879) 4 O.A.R. 346 that sections 70 and 72 do not apply to the total dissolution of a partnership and distinguished that case from the instant one. In that case A and B entered a partnership under a firm name. B withdrew and A entered a partnership with C *under a new and different firm name.* This, said the Court, was a total dissolution and not within the language of section 70, whereas in the instant case where B simply withdrew and A continued to carry on business *under the same firm name* there was "a change or alteration in the membership of the firm" within section 70.

Query whether sections 70 and 72 should expressly be made to

apply to a total dissolution as well as a change or alteration in the membership?

(2) *Sections 2 and 31 applied*

In *Thrush* v. *Read* (1950) O.R. 276, (1950) 2 D.L.R. 392 — the facts were held to disclose all the necessary ingredients of a partnership as defined by section 2 of the Partnership Act (R.S.O. 1937, c. 187) rather than merely co-ownership of property. Accordingly a purchaser of a partner's interest did not become a partner but acquired only the rights set out in section 31 of the Act.

RECIPROCAL ENFORCEMENT OF JUDGMENTS

Jackson v. *Jackson* (1950) 1 W.W.R. 900 — In the Supreme Court of British Columbia, Wood J., on an application under section 7 of the Act (R.S.B.C. 1948, ch. 286) to have set aside the registration of an Ontario alimony judgment that had been ordered *ex parte, held* that the judgment debtor is confined to the ground alleged in his notice of motion, and since he had failed to allege therein a ground mentioned in section 4 of the Act the application must be dismissed.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

(1) *Section 2*

In *Re Kenny* (1951) 2 D.L.R. 98, the Ontario Court of Appeal *held* that section 2 of the Act does not empower a court to enforce a maintenance order rendered without jurisdiction by a reciprocating province or state, and that where that jurisdiction is put in issue in enforcement proceedings the court must determine that question before proceeding to enforce the order. Since jurisdiction to issue a final order under the British Columbia Deserted Wives' and Children's Maintenance Act (R.S.B.C. 1948, ch. 93), pursuant to which the order in question was granted, is in personam and the person against whom it was made was not then resident in or otherwise subject to the personal jurisdiction of British Columbia, the order was a nullity. An enforcement order based thereon in Ontario was therefore also a nullity.

(2) *Sections 5 and 6*

Holland v. *Holland* (1950) 1 W.W.R. 286, in the British Columbia County Court, Shandley C.C.J. *held* that jurisdiction

to issue a provisional order under section 5 of the Act is a special statutory one not requiring domicile or other common law basis of personal jurisdiction over the defendant. Consequently where the complainant was residing in Manitoba and the defendant in British Columbia at the date when a Manitoba Court made the provisional order, which it had competence to make under The Wives' and Children's Maintenance Act (R.S.M. 1940, ch. 235) when read together with section 5 of the Manitoba Maintenance Orders (Facilities for Enforcement) Act, 1946, the Manitoba provisional order was confirmed in British Columbia under section 6 of the reciprocal Act of that Province (R.S.B.C. 1948, ch. 198).

SALE OF GOODS

(1) *Ontario Sections 13 and 15*

In *Egevist Bakeries Inc.* v. *Tizel and Blinik* (1950) O.W.N. 9, affirmed by the Ontario Court of Appeal without written reasons in (1950) O.W.N. 168, where a vendor in Ontario sold f.o.b. in a foreign market with knowledge that he could not lawfully sell in that market until he had discharged some legal condition there and that until he had done so he could be prevented by lawful authority from selling there, it was *held* that he sells subject to the implied condition under section 13(*a*) of the Ontario Sale of Goods Act (R.S.O. 1937, ch. 180; now R.S.O. 1950, ch. 345) that he has the right to sell the goods in the foreign market. Sections 13 and 15 read:

> 13. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is,
>
> (*a*) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
>
> (*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods . . ."
>
> 15. Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:
>
> (*a*) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that

> the goods shall be reasonably fit for such purpose; provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.
>
> (*b*) Where goods are bought by description . . . (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed. . . .

Section 15 was distinguished obiter.

(2) *New Brunswick Section 14 (similar to Ontario Section 15)*

In *Gagnon* v. *Geneau* (1951) 1 D.L.R. 516, the New Brunswick Supreme Court, Appeal Division, *held* that within the meaning of section 14 of the Act of that Province (R.S.N.B. 1927, ch. 149) there was an implied condition that a cow was reasonably fit as a milch cow on the following facts. The purchaser approached the vendor, a dealer in cattle, on different occasions to buy a milch cow. Vendor brought the cow in question to purchaser's home where the latter examined her and later bought her. Owing to being a "self-milker" the cow was not suited for milking. This was not known to either the vendor or purchaser at the time of the sale. The evidence established that the purchaser had relied on the vendor's skill and judgment and not depended on his own examination of the cow.

(3) *Section 1(4)*

In *Day* v. *Myles*, 24 M.P.R. 354, Supreme Court of New Brunswick, Appeal Division, 1949, a written agreement of sale of certain goods from A to B was prepared and signed by A but not signed by B. The price was stated therein to be $3,000. Later B took possession of part of the goods and paid A $100 on account. B claimed a shortage had occurred between the time of his first inspecting the goods and his taking delivery of part of them and refused to pay more than the $100. A thereupon tendered B the $100 and told him he would have to take the $100 and return the goods or "pay in full".

Held that by refusing to take the $100 from A and returning the goods B had agreed to A's terms. There was a completed sale within section 1(4) of the Sale of Goods Act entitling A to recover the balance of $2,900 of the full price in an action for goods sold and delivered.

Section 1(4) reads:

> An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(4) *Manitoba Section 13(3)*

In *Pomehichuk* v. *Gale* (*Gale's Auto Mart*) (1950) 2 W.W.R. 66, in the Manitoba King's Bench, plaintiff sued for the amount of a cheque given for the balance of the price of a second-hand automobile sold by him to the defendant. Payment of the cheque had been stopped and defendant counterclaimed for rescission and return of the initial cash payment. Defendant alleged false representation.

After finding that the representation relied on by defendant had been made and was false and a material inducement to the defendant to make the purchase, it was *held* that he was entitled to repudiate the contract and to judgment on his counterclaim. In holding that plaintiff was not entitled to rely on section 13(3), the court said ((1950) 2 W.W.R. at pp. 70, 71):

> Counsel for the plaintiff argues that even if the representation that the autonobile was purchased from Clement was made and was false (the falsity of it being the only reason for stopping payment of the cheque) it is not in itself a material representation, and that that representation was, at most, a warranty which cannot be treated as a ground for rejecting the automobile and repudiating the contract. He relies on sec. 13(3) of *The Sale of Goods Act*, R.S.M. 1940, ch. 185, which reads as follows:
>
> > "Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller shall only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect."
>
> It is difficult to understand the meaning of that subsection. It is in the same wording as clause (c) of sec. 11 of *The Sale of Goods Act*, 1893, 56 & 57 Vict., ch. 71, and is discussed in *Benjamin on Sales*, 7th ed., pp. 588 and 589. At p. 588, he says:
>
> > "The provisions of clause (c), so far as they relate to the entirety of contracts, mean that, after part acceptance of the benefit of an entire consideration, the buyer cannot repudiate the contract as a whole, and refuse to pay for the goods, or to accept the residue. This was the rule at common law, where a party who had accepted part performance, so that the parties could not be put *in statu quo*, could not repudiate the contract, and recover back any money he had paid. But, in order that the buyer's conduct should have this

effect, it must amount to an acceptance, as distinguished from a mere receipt of the goods."

And at p. 589:

"The case, it would seem, contemplated by the clause is one where the property passes by the buyer's *subsequent* acceptance of the goods by a waiver of the right of rejection."

I am of the opinion that sec. 13(3) of our Act does not affect the case at bar.

Query whether section 13(3) needs to be clarified?

TESTATORS FAMILY MAINTENANCE ACT

(1) *Sections 4 and 13(4)*

Alta. 1947 c. 12 — *Re Ponzir Estate* (1950) 2 W.W.R. 1009 affirmed in (1950) 2 W.W.R. 1201.

(Estate about $1,500 in value. Court held that the fact that the estate was small was no ground for refusing to issue an order under section 4).

(2) *Section 4(1)*

The subsection reads:

Where a testator dies leaving a will and without making therein adequate provision for the proper maintenance and support of his dependants or any of them, a judge on application by or on behalf of the dependants or any of them may in his discretion order that such provision as he deems adequate shall be made out of the estate of the testator for the proper maintenance and support of the dependants or any of them.

In Re Gray Estate (1950) 2 W.W.R. 854 was a decision of Clinton J. Ford, J. in the Supreme Court of Alberta. He *held* that the words "as he deems adequate . . . out of the estate of the testator for the proper maintenance and support of the dependants or any of them" in the above-quoted subsection (Alta. 1947, ch. 12) are the basis of the judges' discretion. In the course of exercising it he must take into consideration all matters which he deems should be fairly taken into account and for that purpose may direct other evidence to be given beyond that adduced by the parties.

In *In re Denton Estate* (1950) 2 W.W.R. 848, the same Judge in applying the same subsection, *held* that an expression in th will of confidence by the testator in his widow should be taken

into consideration by the court in deciding whether the will made adequate provision for dependent children. He concluded, after approaching the problem in the manner followed in *In re Gray, supra,* that the will did not make adequate provision in the instant case.

WILLS

(1) *Section 20 (Sask.)*

In *In re Skude Estate* (1950) 1 W.W.R. 1066, (1950) 3 D.L.R. 494, where a testator purported to devise real property he did not own, Davis J. in the Saskatchewan King's Bench rejected the argument that the testator may have intended to acquire the unowned but devised property knowing that by section 20 of the Wills Act (R.S.S. 1940, ch. 10) his will would not take effect until the date of his death. Section 20 reads:

> Unless a contrary intention appears by the will every will shall be construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator.

The judge said:

> The above provision of *The Wills Act* does not, in my opinion, necessarily imply or even suggest that the testator intended to acquire the unowned property. The oft-quoted statement that all persons are presumed to know the law is erroneous. It may well be (and I should think the chances are) that the testator had never even heard of this provision. The description of unowned property is just as consistent with mistake as with intention to acquire that property.

(2) *Section 20 (Man.)*

In *Re Holland Estate* (1950) 1 W.W.R. 209, 57 Man. R. 415, (1950) 2 D.L.R. 135, a testator made a will leaving his grandson "All Dominion of Canada Bonds (commonly called Victory Bonds) and all war saving certificates." Subsequently he was declared mentally incompetent and his committee bought Dominion of Canada bonds with assets of the estate in which they remained until his death. *Held* that since acts done by the committee in lunacy under the Lunacy Act (R.S.M. 1940, ch. 124) are the same as if done by the lunatic, the effect of section 20 of the Wills Act (R.S.M. 1940, ch. 234) was that the bonds as well as the war savings certificates passed to the grandson.

Section 20 reads:

> Unless a contrary intention appears by the will every will shall be construed with reference to the real and personal property comprised in it to speak and take effect as if it had been executed immediately before the death of the testator.

(3) *Sections 20 and 30 (Man.)*

In *In re Creighton Estate* (1950) 2 W.W.R. 529 where the question was whether a will had lapsed as to the shares of three brothers, beneficiaries thereunder, because they had pre-deceased the testator, Williams C.J.K.B. rejected the argument that section 20 *supra* effected an intestacy. He said, "In my opinion this section has no application here. It refers only to the 'estate' of the testator. . . . The true rule is that *prima facie* a will speaks from the date of its execution except as regards the property comprised in it, the statutory provisions having only this limited effect. . . . I can see nothing in the contract to displace the *prima facie* rule that this will speaks from its execution The estate vested in the brothers and sisters of the testator then living as a class, subject to being divested by the exercise of (a) power of appointment — a contingency that never arose."

The Judge then proceeded to determine whether section 30 of the Act applied to distribution of the estate. Section 30 reads:

> 30. Unless a contrary intention appears by the will, where any person being a child or other issue or the brother or sister of the testator to whom, either as an individual or as a member of a class, any real or personal property is devised, or bequeathed for any estate or interest not determinable at or before the death of that person, dies in the lifetime of the testator, either before or after the making of the will, leaving issue, and any of the issue of that person are living at the time of the death of the testator, the devise or bequest shall not lapse, but shall take effect as if it had been made directly to the persons amongst whom and in the shares in which that person's estate would have been divisible if he had died intestate and without debts immediately after the death of the testator.

He continued at pages 543-44;

> At the time of the execution of the will those in whose favour the power could have been exercised were all the brothers and sisters of the testator except James, long since dead, and Arthur, the donee, who was specifically excluded. But the three brothers, members of the class, predeceased the testator. At common law their shares would not lapse but, the bequest being to a class, the whole would be divisible amongst those who survived the testator.
>
> That was the law of Manitoba until 1936. In that year a new *Wills Act* was passed. It was largely a copy of a draft Act approved by the Conference of Commissioners on Uniformity of Legislation in 1929. During the years that draft was under consideration, sec. 31 of the

Manitoba Act, R.S.M. 1913, ch. 204, and corresponding sections in the Acts of other provinces had been the subject of criticism. This section, which provided that gifts to children or other issue who leave issue living at the testator's death should not lapse, was copied from sec. 33 of the English *Wills Act*, 1837, 7 Wm. & 1 Vict., ch. 26.

In *In re Sinclair; Clark* v. *Sinclair* (1901) 2 O.L.R. 349, Falconbridge C.J.K.B. felt constrained to hold that the similar Ontario section applied only to cases of strict lapse and not to cases of gifts to a class. This principle was followed in a series of cases and *Re Guthrie* (1924) 56 O.L.R. 189, was the occasion of strong recommendations being made to the commissioners.

As a result they recommended a new section which would change the law and make the section applicable to gifts to a class. See *Year Book Canadian Bar Association* (1939) vol. 14, p. 30.

This draft section only applied to the case of children of the testator. The matter received further consideration in Manitoba and when, in 1936 a new *Wills Act* was passed (S.M. 1936, ch. 52) sec. 30 took its present form (see *supra*) applicable to gifts to a class and its benefits extended to brothers and sisters of the testator.

Under the authorities to which I have referred the Court implies a gift to the class; there is, therefore, an implied bequest, a bequest in law, and I am of opinion that sec. 30 applies in such a case.

APPENDIX L

(See page 21)

EVIDENCE ACT (SECTION 6)

REPORT OF THE ALBERTA COMMISSIONERS

The Uniform Evidence Act as adopted by the Conference in 1941 contains the following provision:

> 4. The parties to an action and the persons on whose behalf the same is brought, instituted, opposed or defended, and their wives or husbands, shall, except as hereinafter otherwise provided, be competent and compellable to give evidence on behalf of themselves or of any of the parties.

The Alberta Evidence Act contains a similar provision.

Section 6 of the Uniform Evidence Act as adopted by the Conference in 1941 sets out the exception to the general rule as follows:

> 6. The parties to an action instituted in consequence of adultery and their husbands and wives shall be competent to give evidence in the action, but no witness in such action whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery.

The corresponding provision in the Alberta Evidence Act at that time read as follows:

> 8. The parties to an action or proceeding instituted in consequence of adultery and their husbands and wives shall be competent but not compellable to give evidence, but the husband or wife, if competent only under this Act, shall not be asked or bound to answer any questions tending to show that he or she has been guilty of adultery unless he or she shall have already given evidence in the same action or proceedings in disproof of his or her alleged adultery.

The basic difference between the Uniform provision and the Alberta provision was that in the Uniform Act "no witness" could be interrogated regarding his own adultery, whereas in Alberta it was only "the parties and their husbands or wives" who could not be interrogated.

At the 1945 meeting of the Conference two comprehensive

reports were received, each of which dealt with various aspects of these sections. The report of the Manitoba Commissioners commences in the 1945 Proceedings at page 40 and the report of the Ontario Commissioners on the rule in *Russell* v. *Russell* commences at page 54. As a result of these two reports, section 4 of the Uniform Evidence Act remained unchanged and section 6 was replaced by two new sections reading as follows:

5. Without limiting the generality of section 4, a husband or wife may, in an action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage.

6. No witness in any action, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery.

It is to be noted that the new section 6 is similar to the section 6 recommended in 1941 in so far that it provides that "no witness" could be interrogated regarding his own adultery. Alberta enacted the two new provisions recommended by the Conference and so did all of the other provinces except New Brunswick and Quebec.

The effect of this in Alberta was that witnesses who were formerly compellable to give evidence respecting their own adultery, namely witnesses other than the parties and their husbands and wives, ceased to be compellable.

Shortly after the change the Attorney-General for Alberta began to receive complaints from the members of the legal profession about this new restriction. They took the view that it was a retrograde step and agreed with the opinion of Mr. Justice Bergman in his letter to the Attorney-General of Manitoba referred to in the 1945 report of the Manitoba Commissioners at page 40 of the 1945 Proceedings who stated, "I have never been able to see any logical reason for excusing a witness in a divorce action from answering questions tending to show that he has committed adultery where it is directly in issue, but compelling him to answer such questions if asked in any other form of action."

The 1949 mid-summer Convocation of the Benchers of the Law Society of Alberta passed a resolution requesting the Attorney-General for Alberta to repeal the Alberta provision which is the same as section 6 of the Uniform Evidence Act and to enact

the following provision instead which is practically identical to the section formerly in force in Alberta, namely:

> The parties to an action or proceeding instituted in consequence of adultery and their husbands and wives shall be competent to give evidence upon the issues therein, but the husband and wife if competent, only under this Act, shall not be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless he or she has already given evidence in the same action or proceeding in disproof of his or her alleged adultery.

The Attorney-General for Alberta referred this resolution to the Uniformity Conference and copies of it were circulated to the Commissioners of the various provinces prior to the 1949 meeting. Time did not permit the subject to be dealt with at the 1949 or the 1950 meeting of the Conference, but at page 23 of the 1950 Proceedings the matter was referred back to the Alberta Commissioners for report to the 1951 meeting.

The section requested by the Benchers of the Law Society of Alberta is the same as the former Alberta section except that the words "but not compellable" have been omitted. The effect of these words was that the parties to the action and their husbands and wives were not compellable to answer questions even if the questions were not related to the adultery. The omission of these words makes the section conform with the principle of the 1945 recommendations of the Uniformity Conference. The words "or proceeding" which occurred twice, do not appear to be necessary having regard to the definition of the term "action". The first portion of the proposed section providing that the parties to an action instituted in consequence of adultery and their husbands and wives are competent to give evidence, appears to be adequately covered by sections 4 and 5 and if so can be omitted. The words of the proposed section appear to be more direct and consequently preferable in that they provide that the husband and wife "shall not be asked" rather than "shall (not) be liable to be asked".

Accordingly the substance of the suggestion of the Law Society of Alberta appears to be to repeal section 6 of the Uniform Evidence Act and to replace it with a section reading somewhat as follows:

> The parties to an action instituted in consequence of adultery and their husbands and wives shall not be asked or bound to answer any question tending to show that he or she

has been guilty of adultery unless he or she has already given evidence in the same action in disproof of his or her alleged adultery.

Many of the arguments of the Ontario Commissioners in 1945 for abolition of the rule in *Russell* v. *Russell*, appear to be equally applicable in favour of the suggestion now made. The evidence the witness could give would certainly be relevant. Apart from the evidence of the spouse alleged to have committed the adultery, who is a party or the spouse of a party to the action, it is the "best evidence" available, and would appear to be better than the inferences and conclusions drawn from the evidence of third parties which now have to be relied upon. A rule which makes such a witness not compellable ignores the rights of a wronged spouse, as such a person may be the only available "witness" and frequently would be reluctant to testify unless compelled to do so. Adultery is a question of fact. The present section makes it more difficult for the plaintiff to prove or for the Court to ascertain the true facts by providing that the witness best able to testify as to the fact other than the spouse, who is a party or the spouse of a party, is not compellable.

The change requested is one that has been tested and found satisfactory. The section in question was in force in Alberta without change from 1910 to 1947. The Law Society of Alberta, after applying the section recommended by the Uniformity Conference since 1947, does not find it as effective or desirable as the previous provision in Alberta.

The Uniformity Conference has not previously considered this particular point and is accordingly requested to give its consideration to the recommendation.

Respectfully submitted,

H. J. WILSON,
KENNETH A. MCKENZIE,
Alberta Commissioners.

APPENDIX M

(*See page 21*)

LEGITIMATION

REPORT OF THE ONTARIO COMMISSIONERS

The following note appears at page 25 of the 1950 Proceedings:

Legitimation

The Ontario Commissioners were requested to make a complete study of the legislation on the subject of legitimation, including the Uniform Legitimation Act, 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.

We have therefore made a study of legitimation and we feel that it can best be dealt with in parts.

PART I

THE UNIFORM LEGITIMATION ACT

This Act deals with legitimation *per subsequens matrimonium.* It was adopted by the Conference in 1919 (1919 Proceedings, page 16). In 1920 the subject matter again came up as two of the provinces had expressed disapproval of the draft and had enacted provisions to the same effect but in a longer form (1920 Proceedings, pages 18, 19). However, the Conference approved the short form appearing in the 1919 Proceedings. Actually there seems to be no real difference in the result between the two forms of the Act. The 1919 and 1920 drafts are set out for convenience in the schedule to this report.

The Uniform Act (or legislation having much the same effect) is in force in every province and in England. The legislation is to be found in the following:

1919 Form

Alberta (R.S.A. 1942, c. 300, s. 54)
Manitoba (R.S.M. 1940, c. 118)
Ontario (R.S.O. 1950, c. 203)
Prince Edward Island (1940, c. 12, ss. 2, 3)
Saskatchewan (R.S.S. 1940, c. 236)

1920 Form

British Columbia (R.S.B.C. 1948, c. 183)
New Brunswick (R.S.N.B. 1927, c. 78)

Similar Provisions

Newfoundland (The Legitimacy Act, 1945)
Nova Scotia (1951, c. 3)
Quebec (Civil Code, Articles 237 to 239)
England (1926, 16 and 17 Geo. V, c. 60)

The Uniform Act to date has dealt only with the legitimation of children by the subsequent intermarriage of their parents. The above provisions of all the provinces and England deal directly with this question and make the children in such cases legitimate, with minor variations in those provinces that have not adopted the Uniform Act and in England.

In England, Newfoundland and Quebec the issue of an adulterine connection is not legitimated by the Act. In Ontario such a person is apparently legitimated but does not inherit in competition with the lawful children of either parent. Due to these limitations in the English and Ontario Acts in 1932, the Nova Scotia commissioners were directed to consider and report upon amendments to the Uniform Act in view of the English legislation of 1926. This report was made and it was decided that the Act should not be revised in view of that legislation (1933 Proceedings, pp. 14, 35-41). It was evidently felt at that time that this being social legislation it was "not desirable to limit the operation of the Act . . . as has been done in the English Act or as in the Ontario Act" (p. 41). We find no reason to disagree with this view and therefore do not recommend that any limitations be inserted in the Uniform Act comparable to that in England, Newfoundland or Quebec, or to that in Ontario.

However, this matter does raise a point upon which we feel clarification of the Act may be advisable. In considering the Uniform Vital Statistics Act, the committee of Messrs. Hughes, Rutherford and Treadgold found it necessary to interpret the Legitimation Act and there was some difference in opinion as to whether the words "born out of lawful wedlock" in the Act would in fact include a child born while one of its parents was married to a third person. The committee was not able to find a case directly on the Act but found two cases where the words "born out of wedlock" were interpreted as including such children. These cases were *K* v. *K.*, (1937) 2 W.W.R. 678 (obiter) and *Re Duck-*

worth and Skinkle, (1924) 55 O.L.R. 272, and were cases under The Children of Unmarried Parents Act in Alberta and Ontario respectively. The committee came to the conclusion that the Uniform Act was intended, and would be interpreted, to legitimate such children. However, it would seem that, if the Conference proposes to rewrite the Act to include any of the matters subsequently dealt with in this report, it would be advisable to reword section 2 in the following manner so as to remove all doubt:

2. If a child has heretofore been born or is hereafter born of parents not married to each other, and the parents, after the birth of the child, have heretofore intermarried or hereafter intermarry, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

The next problem is connected with succession. For some time there was doubt as to whether the Uniform Act was broad enough to obtain the desired result in relation to providing the legitimated child with heirs and collateral kindred. Presumably as a result of the case of Re *W.*, (1925) 56 O.L.R. 611, Ontario enacted what is now section 3 of its Legitimation Act, providing that the parents and brothers and sisters of any child legitimated by the Act shall inherit upon his death as though he had been legitimate. The reasoning behind the Re *W.* decision was that the Crown, not being expressly mentioned, was not bound by the Act and since the Crown is entitled to an escheat where an illegitimate dies intestate leaving no issue, the Act could not operate in such a case to provide heirs and thereby do the Crown out of an escheat. If this reasoning is correct, it is submitted that even the Ontario section 3 might not operate because no mention is made of the Crown.

This matter was considered in the report to the Conference in 1933 and the Commissioners made no recommendation of change, presumably being satisfied with the Re *W.* decision. For different reasons we now submit that no change is necessary. The Re *W.* decision was never popular and various writers have doubted that it was good law (See 1 Dominion Law Annotations Revised, p. 903; 2 C.E.D. (Ontario) 1927, p. 684 footnote 2). In addition there is a direct statement in Re *Cummings,* (1938) O.R. 486, that the Uniform Act does provide heirs and the judge (Greene, J.) evidently considered that the Re *W.* case would have been decided the other way if Re *Stone,* (1924) S.C.R. 682 (decided late in 1924) had been cited to the court. Unfortunately

the statement in Re *Cummings* was not essential to the result of the case.

The Stone case was based on an interpretation of the Saskatchewan Devolution of Estates Act which purported to give certain rights of inheritance to illegitimate children. In that case the Supreme Court of Canada found no difficulty in holding that that Act did provide the illegitimate child with heirs and that there was no escheat.

We consider that if a case arose at present the Re *W.* decision would not be followed and that the words "for all purposes" in the Uniform Act are adequate to make the child legitimate in every respect from birth. The Re *W.* decision would virtually frustrate one of the main purposes of the Act, and the most that the Act does is, not to take away a Crown interest, but simply to remove to a small degree the possibility of a future windfall for the Crown. Therefore until some further case indicates clearly that the Re *W.* decision is correct we see no purpose in an amendment to the Act in this respect.

To summarize, our only recommendation in relation to the present Act is that section 2 should be rewritten to read as follows:

2. If a child has heretofore been born or is hereafter born of parents not married to each other, and the parents, after the birth of the child, have heretofore intermarried or hereafter intermarry, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

PART II

Marriage after Decree of Presumption of Death

The problem dealt with in this Part is that of the child of a bigamous (in the civil sense of the word) marriage where the parents have married after the issue of an order declaring that the spouse of one is presumed dead.

British Columbia, Manitoba and Ontario have dealt with the problem in almost exactly the same way. These provinces authorize under their respective Marriage Acts an application to a court for a declaratory order of presumption of death. The evidence to be produced on the application is to show that the absent spouse has been continuously absent from the applicant for at least seven years and has not during that period been heard from or heard of by the applicant or to the applicant's knowledge by any other person, and that the applicant has no reason to

believe the missing spouse is living and that reasonable grounds exist for believing him dead. If the court is satisfied of these facts an order may be made and the applicant can then, subject to certain safeguards, obtain a marriage licence. The provinces then in The Equal Rights for Children Act (R.S.B.C. 1948, c. 46) and Legitimation Acts (S.M. 1946, c. 30, s. 4; R.S.O. 1950, c. 203, s. 5) provide that where the applicant enters into an otherwise valid marriage after obtaining the order, the children of that marriage shall for all purposes be deemed to be and to have been the legitimate children of the persons entering into the marriage although the person presumed dead was in fact alive at the time of the marriage. Ontario and Manitoba then go on to provide that the children shall have the same rights, benefits and obligations under any law or statute in force in the province as they would have had if the person presumed dead had in fact died before the solemnization of the marriage. Ontario, however, limits its application to children conceived before knowledge of the fact that the former spouse is living. British Columbia does not expressly give all rights, benefits and obligations but does give all benefits under the provincial intestate succession laws and makes a special provision relating to the assessment of succession and probate duties. Manitoba has provided that the Crown is bound by its legislation in respect of this matter.

British Columbia deals in the same way with the children of a second marriage which has taken place after official notification that a member of the naval, military or air forces is dead or presumed dead. Ontario deals in the same way with the children of a second marriage which has taken place in the *bona fide* belief of the death of a former spouse and under such circumstances that the crime of bigamy has not been committed. Manitoba does not deal with either of these cases.

Saskatchewan, Alberta and England have provision for obtaining an order of presumption of death on much the same grounds as are required in British Columbia, Manitoba and Ontario. Saskatchewan does not make the children legitimate but provides that they shall have the same rights on intestacy or under The Dependants' Relief Act as they would have had if the person presumed dead had in fact died before the marriage (1944, c. 25, s. 1; 1944, c. 26, s. 1).

The problem does not arise in England because there the application is for a decree of presumption of death *and* of dissolution of the marriage. Since the first marriage is dissolved by the

decree the children of the second marriage will of course be legitimate. Alberta does not, to the best of our knowledge, deal with the legitimacy or rights of children of the second marriage.

The above summary constitutes, to the best of our knowledge, all the law on this subject in Canada and England. None of the other provinces appear to have dealt with the problem.

We would therefore recommend that the Conference consider whether it is desirable that a new part be added to the Uniform Act dealing with any or all of the matters dealt with in the British Columbia, Manitoba and Ontario legislation on the subject. Our own recommendation would be that provincial Marriage Acts should authorize the issue of an order of presumption of death for the purpose of the issue of a marriage licence, and that the Uniform Act should be amended by the addition of a new Part providing for the legitimation for all purposes of the children of a second marriage, although bigamous, which has taken place,

(*a*) after an order of presumption of death has been obtained under the provincial Marriage Act;

(*b*) after official notification has been given that a member of the naval, military or air forces is dead or presumed dead; or

(*c*) in the *bona fide* belief of the death of the former spouse and under such circumstances that the crime of bigamy has not been committed.

In fact, the matters dealt with in clauses *a* and *b* above are simply specific cases that would fall in any event within the scope of clause *c* because the evidence required to obtain an order of presumption of death or the receipt of an official notification of death or presumed death, if proved, would no doubt be a sufficient defence to a criminal charge of bigamy. If this reasoning is correct, clauses *a* and *b* could be omitted. However, we consider that these matters should be dealt with specifically because where the marriage falls within clause *a* or *b*, the matter of proof will be much simpler than what would be required if a person were endeavouring to establish legitimacy under clause *c*.

PART III

Children of Void and Voidable Marriages

A marriage which is void *ab initio* is one which in contemplation of law has never existed. Theoretically at least there is no need to obtain a nullity decree in respect of such marriages. In

practice, however, the parties usually feel that the safe course is to go to the courts. A voidable marriage is one which is good unless legally set aside during the lifetime of both parties. However, when a voidable marriage is set aside in annulment proceedings, the decree relates back to the time of the marriage and has the result that the marriage, in contemplation of the law never existed. There never having been, in law, a marriage, the child of either a void marriage, or a voidable marriage which has been set aside, is illegitimate at common law. (*Newbould* v. *Attorney-General*, (1931) p. 75; *L.* (or *R.*) v. *L.*, (1949) 1 All E.R. 141; *Dredge* v. *Dredge*, (1947) 1 All E.R. 29; *Fleming* v. *Fleming*, (1934) O.R. 588 at p. 592.

To the best of our knowledge there is no legislation in Canada dealing generally with legitimation of the children of void or voidable marriages. The legislation of British Columbia, Manitoba and Ontario summarized in Part II of this report deals with one limited aspect of this question in that it legitimates children of certain bigamous marriages, and bigamous marriages are void *ab initio*. Saskatchewan also deals with inheritance by the children of such marriages. However, no province has dealt with the problem in any other aspect. British Columbia introduced a bill (No. 99) at the 1951 session to give to children of marriages performed in the province and subsequently declared by the Supreme Court of the province to be null and void the status, capacity and all rights and privileges of a child born in lawful wedlock, but this bill was withdrawn on second reading. Had it been enacted it would have covered both void and voidable marriages provided that a decree of nullity had been made.

Subsection 1 of section 4 of the Law Reform (Miscellaneous Provisions) Act, 1949 (c. 100) (England) reads as follows:

> (1) Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, on the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment.

Thus England has legitimated the children of all voidable marriages but has taken no action as yet in relation to void marriages.

There is no need in this report for a detailed study of the law of annulment, especially as there may be variations in that law in the various provinces. However, the five main grounds for annulment are bigamy (Void *ab initio*); impotence (Voidable); lack of

formality in the ceremony (This will be void or voidable depending on the particular lack of formality and the wording of the provincial Act); absence of consent of one of the parties due to minority, duress, mistake, insanity, drunkenness, fraud, etc. (The law does not seem to be completely settled as to whether these are void or voidable; in England they are now apparently voidable); parties within prohibited degrees of consanguinity (Void *ab initio* in provinces where Lord Lyndhurst's Act, which specifically stated that such marriages are void, is in force but apparently voidable elsewhere). Regardless of what marriages are void and what voidable the problem for the Conference to consider at this time is whether the issue of either or both should be legitimate.

The common law relating to illegitimacy has, in recent years, been varied in some degree by the inroads into its old principles resulting from the legislation referred to in Parts I and II of this report. The first really substantial inroad was made in the 1920's with the enactment of the Uniform Act throughout Canada, followed by the English Legitimacy Act of 1926. This has been followed in recent years by the legislation in respect of certain bigamous marriages and it seems to us that the time has now come when the social needs of the time far outweigh the outmoded common law which originated with the idea of keeping intact within the bounds of wedlock the inheritance of large estates and titles. Our progress should now have reached the stage where inheritance (which after all is entirely in the control of the individual who can leave his property by will in any way he sees fit) should take second place to the removal of the social stigma attached to a child who by no stretch of the imagination has any responsibility in the matter.

We therefore recommend,

(*a*) that the Uniform Act be amended by adding provisions comparable to those in England designed to declare that the child of a voidable marriage shall be legitimate for all purposes; and

(*b*) that the Conference consider the legal position of a child of a void marriage and consider whether such a child should be made legitimate for all, or any, purposes.

PART IV

SUMMARY

Our terms of reference were to study legislation on legitimation and to report thereon with a new draft Act, if advisable. In our view it was not advisable to produce a new draft Act with this report. In each of Parts I to III of the report important matters of policy have been raised and we felt rather that these matters should be brought to the attention of the Conference at the 1951 meeting, resolutions in respect of each matter should be passed, and the Act should then be referred to the commissioners of some province with instructions to revise the Act in the light of the decisions made at the 1951 meeting and to submit the revised Act to the 1952 meeting. There seemed to be no point in our submitting a revised Act when we had had no instructions from the Conference as to principles to be followed.

One anomalous situation may result if the Conference decides to amend the Act to legitimate children of voidable marriages, but not those of void marriages. As was pointed out, it appears that in some instances a marriage that is void in one province will be only voidable in another province. Thus if the Uniform Act were so amended and adopted in each province, we might still lack uniformity in the result because, for example, if Lord Lyndhurst's Act is in force in one province and not in another, the child of a marriage within the prohibited degrees of consanguinity would be illegitimate in the former province and legitimate in the latter. However, this difficulty is one which it is not within the powers of the provincial legislatures to overcome.

F. H. BARLOW,
L. R. MACTAVISH,
C. R. MAGONE,
D. M. TREADGOLD,
Ontario Commissioners.

SCHEDULE

1919 PROCEEDINGS—PAGE 53

BILL

AN ACT RESPECTING LEGITIMATION BY SUBSEQUENT MARRIAGE

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

1. This Act may be cited as The Legitimation Act.

2. If the parents of any child heretofore or hereafter born out of lawful wedlock have heretofore intermarried or hereafter intermarry such child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

3. Nothing in this Act shall effect any right, title or interest in or to property if such right, title or interest has vested in any person

(*a*) prior to the passing of this Act in the case of any such intermarriage which has heretofore taken place, or

(*b*) prior to such intermarriage in the case of any such intermarriage which hereafter takes place.

1920 PROCEEDINGS—PAGE 18

BILL

AN ACT RESPECTING LEGITIMATION BY SUBSEQUENT MARRIAGE

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

1. This Act may be cited as The Legitimation Act.

2. (1) Where the parents of any child born out of lawful wedlock have intermarried after the birth of the child and prior to the passing of this Act, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

(2) Nothing in this section shall affect any right, title or interest in or to property, where the right, title or interest has vested in any person prior to the passing of this Act.

3. (1) Where the parents of any child born out of lawful wedlock intermarry after the birth of the child and subsequent to the passing of this Act, the child shall for all purposes be deemed to be and to have been legitimate from the time of birth.

(2) Nothing in this section shall affect any right, title or interest in or to property, where the right, title or interest has vested in any person prior to the intermarriage.

APPENDIX N

(*See page 22*)

EVIDENCE ACT—SECTION 58

ADOPTED UNIFORM SECTION

whom administered outside the province.

58. An oath, affidavit, affirmation or statutory declaration administered, sworn, affirmed or made in any (other) province or in any country other than Canada, before:

(*a*) a judge, a magistrate or an officer of a court of justice or a commissioner authorized to administer oaths in the court of justice of such province or country;

(*b*) the mayor or chief magistrate of any city, borough or town corporate certified under the seal of such city, borough or town corporate;

(*c*) an officer of any of His Majesty's diplomatic or consular services exercising his functions in any country other than Canada, including an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attache, consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul and acting consular agent;

(*d*) an officer of the Canadian diplomatic, consular or representative services exercising his functions in any country other than Canada, including, in addition to the diplomatic and consular officers mentioned in paragraph (*c*), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary;

(*e*) a Canadian Government Trade Commissioner or an Assistant Canadian Government Trade Commissioner exercising his functions in any country other than Canada;

(*f*) a notary public and certified under his hand and official seal; or

(*g*) a commissioner authorized by the laws of (name of the province) to take such affidavits,

shall be as valid and effectual to all intents and purposes as if the oath, affidavit, affirmation or statutory declaration had been duly administered, sworn, affirmed or made in (name of the province) before a commissioner for taking affidavits therein, or other competent authority of the like nature.

APPENDIX O

(See page 22)

CONDITIONAL SALES

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

At the 1950 meeting 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 meeting.

We have attended to that duty and herewith submit for your consideration a revised Act.

Before the Act is finally disposed of, there is one matter of policy that we feel should be considered. Section 16 dealing with powers of resale after a repossession only necessitates a notice to the buyer when "the price of the goods exceeds thirty dollars and the seller intends to look to the buyer for any deficiency on a resale". We believe there is a widespread feeling among both the legal profession and the public that a "seller" should be in no better position than an ordinary mortgagee of land and that a seller should give notice of a proposed resale in every case.

HORACE A. PORTER,
J. EDWARD HUGHES,
New Brunswick Commissioners.

NOTE:—The draft Act attached to this report is omitted from these Proceedings due to the resolution disposing of the matter appearing on pages 22, 23.

APPENDIX P

(*See page 23*)

HIGHWAY TRAFFIC AND VEHICLES

(TITLE TO MOTOR VEHICLES)

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the 1948 meeting the following resolution was adopted:

RESOLVED that each of the following prepare a report and draft provisions of the subject matter indicated for presentation at the 1949 meeting:

i. registration of vehicles and operators—Ontario;
ii. title—British Columbia;
iii. responsibility for accidents—Nova Scotia;
iv. rules of the road—Alberta;
v. safety responsibility—Manitoba;
vi. common carriers—New Brunswick.

The British Columbia Commissioners prepared a report on Title accordingly for the 1949 meeting.

The subject was not reached at either the 1949 or 1950 meeting. At the 1950 meeting the matter was referred back to the respective jurisdictions named in the 1948 resolution for report to the 1951 meeting.

The British Columbia Commissioners have nothing to add to the report already submitted, copy of which is appended hereto.

A. C. DESBRISAY,
E. PEPLER,
British Columbia Commissioners.

TITLE TO MOTOR VEHICLES

At the 1948 meeting of the Commissioners on Uniformity it was resolved that the Commissioners for British Columbia prepare a report and draft provisions relating to the title of motor vehicles.

Unless changes have been made by statute, the common law relating to the title of chattels applies to motor-vehicles. Halsbury, n volume 22, page 395, speaking of chattels says:

> The prima facie presumption of law is that the person who has the de facto possession has the property and accordingly such possession is protected, whatever its origin, against all who cannot prove a superior title. . . . Title to property created merely by the act of reducing a thing into possession necessarily implies a reduction into possession effected by a lawful act. Such an act, if it constitutes a trespass, cannot create a title to property as against the rightful owner.
>
> Until a superior title is shown de facto possession is conclusive evidence of the right to possess. . . .
>
> Physical or de facto possession may be lost by discontinuance of physical control in various ways; but the loss of physical control does not necessarily involve loss of legal possession, and a person entitled to immediate possession who has temporarily parted with de facto possession has the rights and remedies of de facto possession.

The "Sale of Goods Act" (section 60 in the British Columbia Act) provides that where a mercantile agent is, with the consent of the owner, in possession of goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent shall be as valid as if he were expressly authorized by the owner of the goods to make the same: Provided that the person taking under the disposition acts in good faith and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

A car-dealer is either the owner of cars held for sale or is a mercantile agent within the meaning of the "Sale of Goods Act". If a car-dealer is in possession of a new car that has not been registered and for which a licence has never been obtained, a purchaser dealing with him would normally have the benefit of section 60. But if the car was a second-hand car that had been registered and for which a licence and number-plates had been issued, a purchaser would not normally have the benefit of that section.

Nevertheless the registration of a car and the issuance of a licence and number-plates for it in the name of a specified individual is not conclusive evidence of the ownership of the car by that individual. It is true that the "Motor-Vehicle Act" requires the "owner" of a car before it is used or operated on any highway to cause it to be registered and a licence for its operation to be obtained. The application must be signed by the "owner", and the licence-issuer causes the applicant, with a description of the car, to be entered in a file as "owner", and the licence-issuer does not make this registration until he is satisfied of the truth of the facts (including the facts of ownership) stated in the application. Registration, however, is not for the purpose of guaranteeing title.

It is related to the maintenance of a record of cars entitled to use the highway and to the collection of revenue. Number-plates facilitate police control and furnish evidence of payment of licence fees.

In the case of *Cummings* v. *Stein* tried recently in Windsor, Ontario, before the Hon. Mr. Justice Trealeaven, the facts were as follows: Alex Cummings of Vancouver Island rented a U-drive car with a B.C. licence to one Lloyd Nobles for three weeks. Nobles took the car to Ontario, and there he sold it fraudulently. Eventually it was purchased by an innocent purchaser, Stein, from one Chalmers. The car was registered in Ontario and an Ontario licence obtained. Cummings located the car and sued Stein for recovery of possession. Stein brought in Chalmers as a third party. Judgment was given for possession against Stein, who obtained a judgment for damages against Chalmers.

It has been suggested that the law be amended so that when a car is registered and a licence issued there be also issued a certificate of title having the effect of guaranteeing the title of the person in whose name the car is registered. In Nova Scotia, upon registration, there is issued under the hand and seal of the Registrar of Motor-vehicles a certificate of registration in which it is stated that the holder of the certificate has satisfied the Registrar that he is the owner of the vehicle within the meaning of the "Motor-vehicle Act" and in which there purports to be set forth the liens against the motor-vehicle.

The British Columbia Commissioners recommend against the government issuing anything in the nature of a certificate of title. It is impossible, no matter how complete an investigation is made, to reach certainty that a person who applies for registration is in fact the owner of the car and that there are no encumbrances against the car. Thus a car registered in Saskatchewan was mortgaged to the Household Finance and the mortgage was duly filed. Subsequently the car was brough into British Columbia. In due course application was made for registration in British Columbia. The Superintendent of Motor-vehicles made his usual investigation, then granted registration and issued a licence and number-plates. The car passed through the hands of several owners before the Household Finance located it. The Household Finance was entitled to enforce its mortgage which was registered only in Saskatchewan. To have issued a certificate of title in British Columbia guaranteeing title would merely have shifted the loss from one innocent party to another.

A registration system can be so arranged that from the date of the first registration in the province there can be obtained a complete history of the car regardless of the number of persons in whose names it is registered from time to time. That is a matter for consideration under the heading of registration.

There is, however, another matter that must be considered under the heading of title, namely, encumbrances or liens. These arise by way of mortgages, conditional sales agreements, and liens for money owing for work done on a car. In some provinces, for instance, British Columbia, liens of the latter type are not merely possessory liens. They may be secured, when possession of a car has been surrendered, by the registration of an affidavit of lien. The following are the sections of the British Columbia "Mechanics' Lien Act" relating to this type of lien:

39. If a garage-keeper, before surrendering possession of a motor-vehicle, obtains from the person at whose request he has bestowed money or skill or materials upon it an acknowledgement of indebtedness by requiring that person to sign an invoice or other statement of account, he shall not, by surrendering possession of the motor-vehicle, lose any lien for the indebtedness (if any) acquired by him thereon; but unless, in the meantime, he causes an affidavit of lien to be filed in the office of the Superintendent at Victoria, the lien shall, on the expiration of ten days after possession is surrendered, cease to exist.

40. An affidavit of lien may be made by the garage-keeper or by any person acting for him, and it may be based on information and belief, the source of the information being given. In the affidavit of lien the affiant shall:

(*a*) State the name, description, and address of the garage-keeper and of the person against whom the lien is claimed:

(*b*) Set forth a copy of the acknowledgment of indebtedness:

(*c*) Give a description of the motor-vehicle on which the lien is claimed, including the number of the licence for the operation of the motor-vehicle (hereinafter called the "licence number") and the engine and serial number:

(*d*) State that the garage-keeper claims a lien on the motor-vehicle. 1939, c. 32, s. 3.

41. At the time of the filing of the lien the garage-keeper shall cause to be paid to the Superintendent a fee of fifty cents. 1939, c. 32, s. 3.

42. Upon the filing of every affidavit of lien the Superintendent shall forthwith assign to it a distinctive filing number and shall cause the names of the garage-keepers and of the person against whom the claim is made to be entered alphabetically in an index-book to be kept by him, distinguishing the names of garage-keepers from the names of those against whom claims are made, and entering with each name the distinctive filing number; and the Superintendent shall also forthwith, add to the record of the licence number maintained by him for the motor-vehicle against which the lien is claimed the filing number of the affidavit

of lien, the date of the filing, and a memorandum that a lien is claimed against that motor-vehicle. 1939, c. 32, s. 3.

43. Upon the filing of any affidavit of lien pursuant to this Act, the lien shall continue for a further period of ninety days from the date of filing and shall cease to exist upon the expiration of that period, unless, in the meantime, the motor-vehicle has been seized pursuant to the provisions of section 53, in which case the lien shall continue so long as the motor-vehicle remains in the possession of the Sheriff or of the garage-keeper, but the Superintendent shall cancel the registration of the lien in his records. 1939, c. 32, s. 3.

44. Where any charge, encumbrance, or mortgage on or claim to a motor-vehicle is created after a garage-keeper who has acquired a lien pursuant to section 38 has surrendered possession of the motor-vehicle and before the filing of an affidavit of lien in respect thereof, that charge, encumbrance, mortgage, or claim, if created in good faith and without express notice of the lien of the garage-keeper, shall have priority over that lien. 1939, c. 32, s. 3.

45. At any time while the lien of a garage-keeper is subsisting the garage-keeper may issue a warrant addressed to the Sheriff of the county or district in which the motor-vehicle subject to the lien is for the time being, directing the Sheriff to seize the motor-vehicle within ninety days after the date of the filing of the lien and to return the same to the garage-keeper; and it shall be the duty of the Sheriff, upon receipt of the warrant and of his fees, and he is empowered by himself or his deputy or officer, to seize within the said period of ninety days the motor-vehicle if it is found in the county or district for which the Sheriff is appointed and to deliver it to the garage-keeper. 1939, c. 32, s. 3.

46. When a motor-vehicle has been delivered to a garage-keeper pursuant to section 53, the garage-keeper shall have power to sell the motor-vehicle in the manner provided and subject to the same conditions as to advertisement and otherwise as are contained in section 38. 1939, c. 32, s. 3.

The British Columbia Commissioners recommend that if a garage-keeper's lien is thought desirable, sections similar to the British Columbia sections should be inserted in the model "Mechanics' Lien Act".

With regard to encumbrances or liens created pursuant to the "Conditional Sales Act" or the "Bills of Sale Act" it is desirable that registration should be effected at a central office, preferably the office of the Registrar of Motor-vehicles, and not at other offices scattered throughout the Province.

With regard to conditional sales the relevant provisions are to be found in section 6 of "The Conditional Sales Act" at page 85 of the 1947 Proceedings. The corresponding section of the British Columbia Act is as follows:

3. (8) In this subsection "motor-vehicle" means any automobile, locomobile, motor-cycle, or other vehicle propelled by any power other than

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

(*a*) The original or a true copy shall be filed with the Superintendent of Motor-vehicles at Victoria, irrespective of the residence of the buyer or the place at which the goods were delivered or to which they are removed;

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

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

but where the original or a true copy of the writing evidencing a conditional sale within the scope of clause (*b*) is duly filed as provided in clause (*a*) in respect of the motor-vehicle or motor-vehicles comprised therein, but is not duly filed as provided in clause (*b*), it shall nevertheless be deemed for all purposes of this Act to be sufficiently filed in respect of every motor-vehicle comprised therein; and where the original or a true copy is duly filed as provided in clause (*b*) in respect of the other goods comprised therein, but is not duly filed as provided in clause (*a*), it shall nevertheless be deemed for all purposes of this Act to be sufficiently filed in respect of all the goods comprised therein other than motor-vehicles. R.S. 1936, c. 48, s. 3; 1945, c. 14, s. 2.

With regard to bills of sale the uniform Act still requires registration at various offices scattered throughout the province. British Columbia, however, has provided for central registration at the office of the Superintendent of Motor-vehicles at Victoria. The provisions are contained in section 13 of the "Bills of Sale Act", which reads as follows:

13. (1) In this section:

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

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

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

(*a*) The bill of sale, or a true copy thereof, shall within the period of ten days in case the motor-vehicle comprised therein is within the limits of the County of Victoria, the County of Nanaimo, the County of Vancouver, or the County of Westminster, and in all other cases within the period of twenty-one days after the making thereof next ensuing, be registered by the filing of the bill of sale or copy thereof, as the case may be, together with such affidavits and documents as are by this Act required in respect of registration generally, in the office of the Superintendent of Motor-vehicles at Victoria instead of a County Court registry, but where the bill of sale comprises more than one motor-vehicle, and the period limited for registration under this clause in respect of one or more of the motor-vehicles is longer than the period so limited in respect of the other motor-vehicle or motor-vehicles, the period for registration of that bill of sale under this clause shall be the longer period so limited;

(*b*) In case the bill of sale also comprises personal chattels other than motor-vehicles, it shall in addition to the registration required by clause (*a*) be registered within the period, in the manner, and in the office or offices in which it would except for this section be required to be registered under this Act in respect of the other personal chattels so comprised therein.

(3) Where a bill of sale within the scope of clause (*b*) of subsection (2) is duly registered as provided in clause (*a*) of that subsection in respect of the motor-vehicle or motor vehicles comprised therein, but is not duly registered as provided in said clause (*b*), it shall nevertheless be deemed for all purposes of this Act to be sufficiently registered in respect of every motor-vehicle comprised therein; and where the bill of sale is duly registered as provided in said clause (*b*) in respect of the personal chattels comprised therein other than motor-vehicles, but is not duly registered as provided in said clause (*a*), it shall nevertheless be deemed for all purposes of this Act to be sufficiently registered in respect of all the personal chattels comprised therein other than motor-vehicles.

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

(5) In the case of a bill of sale within the scope of this section made by any person to the Canadian Farm Loan Board established under the "Canadian Farm Loan Act" of the Dominion as grantee, the period within which the bill of sale or copy thereof shall be filed for purposes of registration pursuant to this section shall in all cases be thirty days after the making of the bill of sale next ensuing, instead of the period of ten

days or twenty-one days prescribed by subsection (2). R.S. 1936, c. 23, s. 13; 1945, c. 4, ss. 2, 3.

On July 29th, 1949, the Dominion Acceptance Ltd. of Toronto wrote to the British Columbia Superintendent of Motor-vehicles as follows:

> The retail Credit Granters' Association of Toronto have become interested in the clear-cut manner in which we have heard that all encumbrances against motor vehicles are registered and reported in your province and I have been delegated to write you to try to obtain more complete information, with a view to endeavouring to have changed our antiquated registration-by-county method of recording.

The British Columbia Commissioners recommend that section 13 of the British Columbia Act be adopted by way of an amendment to the Uniform Act.

A. C. DESBRISAY,
J. P. HOGG,
British Columbia Commissioners.

APPENDIX Q

(*See page 24*)

TRUSTEE INVESTMENTS

REPORT OF THE ALBERTA COMMISSIONERS

Requests have been received for the amendment of the provisions governing the investments in which trustees are authorized to invest. Such requests originate largely from two sources.

Firstly, persons charged with the administration of trust funds who are interested in the revenue yielded from their investments may desire to invest in securities not designated in the Act. Such securities are usually those regarded by investors as sound investments productive of a good revenue over a period of years. Trustees are anxious to invest in such securities as they increase their over-all investment yield.

Secondly, persons or corporations with securities to sell who are desirous of gaining access to that considerable portion of the market which invests in "trustee investments" may request amendments to broaden the Act to include their securities.

Perhaps the investments authorized for trustees should be broadened. In some cases the holders of funds which were once restricted to "trustee investments" have now been authorized to invest in investments authorized for insurers under The Canadian and British Insurance Companies Act, 1932. The investments authorized under this latter Act are broader and they appear to be amended more frequently in the light of changing investment conditions.

In any event it appears desirable, in the public interest, that the investments authorized for trustees should be uniform in all provinces. Trustees in one province may hold funds on behalf of persons in another province and similarly beneficiaries in one province may have interests in trust funds held in another province. The Attorney-General for Alberta accordingly suggests that this Conference prepare and recommend for enactment uniform provisions relating to trustee investments.

We have examined the trustee investment provisions of the various provinces. These provisions are set out in Schedule "A" to this report.

It is to be noted that there is already a considerable degree of uniformity. For instance, all provinces include Dominion Gov-

ernment issues as trustee investments although there are variations in the wording of the sections in the several provinces. The same is true of securities which are guaranteed by the Dominion Government and of Provincial Government issues and of Provincial Government guarantees, etc.

To facilitate comparisons of the provisions of the various provinces the words of the Alberta statute authorizing investment in each particular type of security were summarized and then lettered A, B, C, etc. The words relating to each type of security were then compared with the corresponding words in the statutes of the other provinces and any variation discovered was listed and numbered. For instance, the letter C is used to designate the provision relating to securities guaranteed by the Dominion Government; the letter C alone designates the Alberta provision respecting Dominion Government guarantees and C(1), C(2) and C(3), etc., designate the variations found in other provinces. Those comparisons are set out in Schedule "B" to this report.

Schedule "C" shows in tabular form the provisions designated by letter and number that are in force in each province with respect to each type of investment. It is apparent from this Schedule that in the case of Dominion Government securities and Dominion Government guarantees four of the provinces now use the same wording and the remainder use somewhat different wording.

For instance, in the case of guarantees the wording is variously expressed as follows:

(*a*) Securities, the principal and interest of which are guaranteed;

(*b*) Securities guaranteed;

(*c*) Securities of the payment of principal and interest payable thereunder is guaranteed.

In Alberta there are numerous school debenture issues where the province guarantees the payment of interest only. Such issues may be trustee securities under the wording contained in clause (*b*) but would certainly be excluded by the wording in clauses (*a*) and (*c*).

The greatest variation between provinces is found in the provisions respecting corporate securities which are approved for trustee investments. These variations are set out in Schedule "D".

We have prepared draft uniform provisions respecting trustee investments to facilitate consideration and discussion by the Conference. These provisions are attached hereto as Schedule "E".

In this draft we have divided corporate securities into two classes. The securities of a corporation declared to be an approved corporation under section 3 are those securities which practically all provinces would now accept as trustee investments. Under section 4, on the other hand, the Lieutenant-Governor in Council is given a wide discretion as to the securities which may be declared to be approved securities. This is intended to enable each province to continue to designate as trustee investments certain securities which are already trustee investments by virtue of statute or order in council in that province, or which it may be desired to approve for trustee investments.

Respectfully submitted,

H. J. WILSON,
KENNETH A. MCKENZIE,
Alberta Commissioners.

SCHEDULE "A"

REVISED STATUTES OF NOVA SCOTIA, 1923, CHAPTER 212, SECTIONS 3 TO 5, as amended by 1939, chapter 39; 1942, chapter 26; 1948, chapter 34; 1950, chapter 28:

3. (1) A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the times in a state of investment or not, in manner following, that is to say:

(*a*) in the Dominion Savings' Bank;

(*b*) in the debentures or bonds of the Dominion, of the province, or of any city, town or municipality in the province, or in any debentures or bonds if payment of the principal and interest payable thereunder is guaranteed by the Dominion or the province or any city, town or municipality in the province, or if the loan or debt contracted by means of the issue of the debentures or bonds and the interest thereon are a lien and charge upon the money, funds, revenues, property and assets of any city, town, or municipality in the province;

(*c*) in mortgages of real property or in the deposit receipts of any bank to which the provisions of The Bank Act of the Dominion of Canada apply, provided such bank has been carrying on business for at least ten years and

has a reserve equal to at least forty per cent of the paid up capital stock;

(*d*) in bonds or debentures secured by a mortgage of real property;

(*e*) in the investment certificates of a Trust Company, if such certificate by its terms, evidences an investment of the amount received for such certificate in investments or securities which are authorized for the investment of trust funds in Nova Scotia, or in a fund consisting only of such investments or securities and guarantees payment of the amount received with interest thereon by the Trust Company; provided that the Trust Company issuing such certificate is a Trust Company approved by the Governor in Council under the provisions of Chapter 214 of the Revised Statutes, 1923;

(*f*) in bonds or debentures issued under the authority of Chapter 72 of the Revised Statutes, 1923, "The Provincial Exhibition Act";

(*g*) in bonds of the Sisters of Charity bearing date the first day of July, A.D. 1937, secured by a Deed of Trust to the Eastern Trust Company, Trustee, bearing the same date and thereby constituted a first mortgage upon the lands and real estate belonging to the Sisters of Charity in the Province of Nova Scotia;

(*h*) in bonds of the Young Women's Christian Association of Halifax bearing date the second day of March, A.D. 1936, secured by a Deed of Trust to the Nova Scotia Trust Company, Trustee, bearing the same date and thereby constituted a first mortgage upon the lands and real estate belonging to the Young Women's Christian Association of Halifax;

(*i*) in bonds of the Sisters of Saint Martha bearing date the second of January, A.D. 1939, secured by a Deed of Trust to the Eastern Trust Company, Trustee, bearing the same date and thereby constituted a first mortgage and charge upon the lands and real estate owned by the Sisters of Saint Martha situate in the Town of Glace Bay;

(*ii*) in bonds of the Sisters of Saint Martha which may be issued in the year A.D. 1942, for the purpose of defraying all or any part of the cost of erecting, altering or adding to any hospital in the City of Sydney provided,

(a) such bonds are secured by a deed of trust to a trust company approved by the Governor in Council; and

(b) such deed of trust constitutes a first mortgage and charge upon the lands and real estate of the Sisters of Saint Martha, situate in the City of Sydney; and

(c) the aggregate par value of the bonds so issued does not exceed two hundred thousand dollars; and

(d) the Governor in Council approves;

(iii) in bonds of St. Andrew's Church, Sydney, which may be issued in the year A.D. 1948 for the purpose of defraying all or any part of the cost of erecting and equipping a new Church Hall in the City of Sydney provided:

(a) such bonds are secured by a deed of trust to a trust company approved by the Governor in Council; and

(b) such deed of trust constitutes a first mortgage and charge upon the lands and real estate of St. Andrew's Church, Sydney, situate in the City of Sydney and in the Municipality of the County of Cape Breton; and

(c) the aggregate par value of the bonds so issued does not exceed two hundred and fifty thousand dollars; and

(d) the Governor in Council approves;

(iv) in bonds of the Sisters of Saint Martha which may be issued in the year A.D. 1950, for the purpose of defraying all or any part of the cost of erecting, altering or adding to Saint Martha's Hospital in the Town of Antigonish provided:

(a) such bonds are secured by a deed of trust to a trust company approved by the Governor in Council; and

(b) such deed of trust constitutes a first mortgage and charge upon the lands and real estate of the Sisters of Saint Martha situate in the Town of Antigonish and used in connection with said hospital; and

(c) the aggregate par value of the bonds so issued does not exceed six hundred thousand dollars; and

(d) the Governor in Council approves;

(*j*) in such other securities as are authorized by a general order of the Supreme Court; or

(*k*) in such other securities as the court or a judge upon application in any particular case selects as fit and proper

(2) A trustee may also, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in the debentures and deposits of the company incorporated by the Acts 62-63 Victoria, Chapter 101, passed by the Parliament of Canada, and amendments thereto, and may also from time to time vary any such investment.

(3) The mortgages or other securities, or the cash deposited by said company from time to time with the Provincial Treasurer, under Chapter 4 of the Acts of Nova Scotia for the year 1903-4, as amended by Chapter 12 of the Acts of Nova Scotia for the year 1906, in addition to being held as a security under the provisions of section 11 of said last-mentioned Act, shall also be held as security to the holders of such debentures issued to purchasers of the same residing within the Province of Nova Scotia.

4. (1) A trustee may, under the powers of this chapter, invest in any of the securities mentioned in the next preceding section, notwithstanding that the same may be redeemable and that the price exceeds the redemption value.

(2) A trustee may retain until redemption any redeemable stock, fund or security, which has been purchased in accordance with the powers of this chapter.

5. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee but subject to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust fund.

REVISED STATUTES OF NEW BRUNSWICK, 1927, CHAPTER 175, SECTIONS 3 TO 9, as amended by chapter 38 of the Statutes of New Brunswick, 1934:

3. Trustees or executors having trust money in their hands which it is their duty or which it is in their discretion to invest

at interest may at their discretion deposit the same in any bank duly chartered to do banking business in Canada and having an agency in the Province, or invest the same in any stock, bonds, debentures or securities of the Government of Canada or of any Province of Canada, or in the bonds or debentures of any corporation if said bonds or debentures are guaranteed both as to principal and interest by the Dominion or any Province of Canada, or of any municipality or city or school district of this Province, or in securities which are a first charge on land held in fee simple or in the investment certificates of a trust company, if each such certificate by its terms evidences an investment of the amount received for such certificate in investments or securities which are authorized for the investment of trust funds in New Brunswick, or in a fund consisting of only such investments or securities, and guarantees payment of the amount received with interest thereon by the trust company; provided that the trust company issuing such certificates is a trust company approved by the Governor in Council under the provisions of chapter 177 of the Revised Statutes, 1927; provided that such investments are in other respects reasonable and proper, and such trustees or executors may also at their discretion call in any trust funds invested in any other securities than as aforesaid and invest the same in any such stock, bonds, debetures or securities aforesaid, and also from time to time at their discretion vary any such investment as aforesaid for others of the same nature.

4. The powers conferred by sections 3 to 9 are in addition to the powers conferred by the instrument, if any, creating the trust. Provided that nothing in section 8 contained shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

5. (1) A trustee may, unless expressly forbidden by the instrument, if any, or authority creating the trust, invest any trust funds in his hands in terminal debentures or debenture stock of any corporation incorporated under the laws of the Parliament of Canada, or of the Legislature of this Province, complying with and fulfilling the hereinafter specified conditions, provided such investment is in other respects reasonable and proper, and the debentures are registered and are transferable only on the books of the corporation in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid.

(2) Such corporation shall have a subscribed permanent capital of not less than three hundred thousand dollars, on which there has been paid not less than one hundred and twenty thousand dollars, and if more than seventy-five per centum of said subscribed capital is paid in, then such corporation must have a reserve fund set aside out of the profits of the corporation of not less than twenty-five per centum of its paid-up capital, and its stock must have a market value of not less than seven per centum premium.

(3) Such corporation shall by its charter be authorized to lend money upon mortgage on real estate, or for that purpose and other purposes.

(4) Such corporation shall have obtained and hold an unrevoked order of the Governor in Council approving of such corporation and authorizing and approving investments by trustees in the debentures thereof under the provisions of this chapter.

(5) Before the Governor in Council makes an order allowing or approving of such investments in any such corporations, the corporation applying for such order shall deposit with the Provincial Treasurer such sum, and increase or decrease the amount of such deposit from time to time, as the Governor in Council shall by order fix. In fixing the amount to be so deposited, regard shall be had to the amount of trust funds invested or likely to be invested by trustees in the Province, and to the proportion which the assets of the company bear to its liabilities, and to the security afforded trustees by the corporation apart from such deposit. Such deposit shall remain in the hands of the Provincial Treasurer for the protection of trustees investing in such company under this chapter, and notwithstanding any order authorizing the investment by trustees in the debentures of such company is revoked, such deposit shall not be returned to the company so long as any investments made by trustees in the debenture of such company under the provisions of this chapter remain outstanding.

(6) Upon receiving a deposit made by any such corporation under the provisions of this chapter, the Provincial Treasurer shall deliver to the corporation a receipt therefor and pay half yearly to such corporation interest on the amount at any time so on deposit at the rate of three per centum per annum.

6. No revocation by the Governor in Council of any order in council previously made approving of or allowing investments in the debentures or debenture stock of any corporation shall affect the propriety of investments made before such revocation.

7. Every corporation subject to the provisions of this chapter, shall transmit on or before the first day of March in each year to the Provincial Secretary a statement in duplicate to the 31st day of December inclusive of the previous year, verified by the oath of the president or vice-president and the manager, setting out the capital stock of the corporation and the proportion thereof paid up, the assets and liabilities of the corporation, the amount and nature of the investments made by the corporation both on its own behalf and on behalf of others, and the average rate of interest derived therefrom, distinguishing the classes of securities, and also the extent and value of the lands held by it, and such other details as to the nature and extent of the business of the corporation as the Provincial Secretary requires, and in such form and with such details as he from time to time requires; but the corporation shall in no case be bound to disclose the name or private affairs of any person who has dealings with it.

8. (1) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able, practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) This section shall apply to a loan upon any property on which the trustee can lawfully lend.

9. When a trustee has improperly advanced trust money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

REVISED STATUTES OF ONTARIO, 1937, CHAPTER 165, SECTIONS 26 AND 27, as amended by section 43 of chapter 89 of the Statutes of Ontario, 1946:

26. (1) A trustee having money in his hands which it is his duty, or which it is in his discretion to invest at interest, may invest the same in the debentures, bonds, stock or other securities of, or guaranteed by the Government of the Dominion of Canada, or of or guaranteed by any province of Canada, or of the Government of the United Kingdom, or of any municipal corporation in Canada, including debentures issued for public, separate, high or vocational school purposes or guaranteed by any municipal corporation in Ontario, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property situated in such province and collectable by or through the municipality in which such property is situated, in the same manner and with the same rights of enforcing payment, as in the case of general municipal taxes in such municipalitiy, or in securities which are first hypothecs upon real estate in the Province of Quebec or first charges upon real estate held in fee simple in any other province of the Dominion of Canada, or in the bonds or debentures issued by any incorporated company, in respect of which bonds or debentures annual or semi-anual subsidy payments sufficient to pay both principal and interest thereof are, by virtue of any general Act of the Dominion of Canada, payable by the Government of the Dominion of Canada to a trust company as trustee for the holders of such bonds or debentures, provided such investments are in other respects reasonable and proper, or he may entrust the same to a trust company incorporated or registered under the laws of Ontario for guaranteed investment as set out in The Loan and Trust Corporations Act, provided that it has been approved by the Lieutenant-Governor in Council.

(2) Subject to the proviso in subsection (1) any money already invested in any such stock, debentures or securities shall be deemed to have been lawfully and properly invested.

27. (1) A trustee may deposit money with any of the societies or companies hereinafter mentioned, or may invest any money which it is his duty, or which it is in his discretion, to invest at interest, in terminable debentures or debenture stock of any such society or company, provided that such deposit or investment is in other respects reasonable and proper, and that the debentures are registered and are transferable only on the books of the society

or company in his name as trustee for the particular trust estate for which they are held, and that the deposit account in the society's or company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit receipt or pass book is not transferable by endorsement or otherwise,—

(*a*) any loan corporation registered under The Loan and Trust Corporations Act and having a paid-up capital and reserve fund amounting in the aggregate to not less than $600,000, the reserve fund being not less than $150,000; or

(*b*) any society or company heretofore incorporated under Chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under Chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn therefrom of not less than $200,000, and a reserve fund of not less than fifteen per centum of its paid-up capital, and the stock of which has a market value of not less than seven per centum premium.

(2) Clauses (*a*) and (*b*) shall not apply to any society or company which has not the approval of the Lieutenant-Governor in Council as one coming within the provisions of such clauses and as one in the debentures or debenture stock of which trustees may invest or with which they may deposit money.

(3) Such approval shall not be given with respect to any society or company which does not appear to have kept strictly within its legal powers as to borrowing and investing.

(4) (Repealed by section 43 of chapter 89 of the Statutes of Ontario, 1946.)

REVISED STATUTES OF SASKATCHEWAN, 1940, CHAPTER 112, SECTIONS 3, 4 AND 5, as amended by chapter 40 of the Statutes of Saskatchewan, 1947:

3. (1) Trustees, having money in their hands which it is their duty, or which it is in their discretion, to invest at interest, may, subject to the terms of the trust, invest the same in,—

(*a*) securities which are a first charge upon land in any province in Canada;

(*b*) the stock, funds or Government securities of Canada or of any province of Canada, or guaranteed thereby respectively, or the public stock, funds or Government

securities of or securities guaranteed by the United Kingdom or the United States of America, or the bonds or debentures of any municipal corporation, school district or drainage district in Saskatchewan, or debentures issued under The Rural Telephone Act;

provided that such investments are in other respects reasonable and proper.

(2) Trustees may from time to time vary or transpose any securities in which money in their hands is invested, whether under the authority of this Act or otherwise, into or for any other securities of a nature authorized by this Act.

(3) Money already invested as authorized by subsection (1) shall be held and taken to have been lawfully and properly invested.

4. (1) A trustee may, unless expressly forbidden by the instrument, if any, creating the trust, deposit trust funds in his hands with or invest such funds in terminable debentures or debenture stock of the hereinafter mentioned societies and companies, provided that such deposit or investment is in other respects reasonable and proper, that the debentures are registered and are transferable only on the books of the society or company in his name as trustee for the particular trust estate for which they are held and that the deposit account in the company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit, receipt or pass book is not transferable by indorsement or otherwise.

(2) An incorporated society or company authorized to lend money upon mortgages on real estate and having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn amounting to at least $400,000 and a reserve fund of not less than twenty-five per cent of its paid-up capital, and the stock of which has a market value of not less than seven per cent premium, shall be a society or company within the meaning and intent of subsection (1).

(3) The trustees may from time to time vary any such investments.

(4) No deposits or investments shall be made under the authority of this section with or in the debentures of any such society or company which has not obtained an order of the Lieutenant Governor in Council approving of deposits with or investment in the debenture thereof, and such approval shall not be

granted to any society or company which does not appear to have kept strictly within its legal powers in relation to borrowing and investment.

(5) The Lieutenant Governor in Council may at any time revoke an order in council approving of deposits with or investments in the debentures or debenture stock of any society or company, and such revocation shall not affect the propriety of deposits or investments made before the revocation.

5. The powers hereby conferred are in addition to the powers conferred by the instrument, if any, creating the trust:
Provided that nothing herein contained shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

REVISED STATUTES OF ALBERTA, 1942, CHAPTER 215, SECTIONS 3 AND 4, as amended by chapter 63 of the Statutes of Alberta, 1947:

3. (1) Trustees having trust money in their hands which it is their duty or which it is in their discretion to invest at interest shall be at liberty at their discretion to invest the same in any stock, debentures or securities of the Government of the Dominion of Canada or of any of the provinces of Canada or any debentures or securities the payment of which is guaranteed by the Government of the Dominion of Canada or of any province of Canada or in the debentures of any city, town, village, municipal district, municipal hospital district, school division or school district in the Province.

(2) Trustees shall also be at liberty to invest any trust funds in their hands in securities which are a first charge on land held in fee simple provided that such investments are in other respects reasonable and proper.

(3) Subject to the provisions of subsection (7) of this section trustees shall also be at liberty to deposit trust funds with and to invest trust funds in terminable debentures or debenture stock of any approved corporations:
Provided that such deposit or investment shall be in other respects reasonable and proper and that the debentures are registered and are transferable only on the books of the corporation in their name as the trustees for the particular trust estate for which they are held:

Provided further that the deposit account in the corporation's ledger shall be in the name of the trustees for the particular trust estate for which it is held:

Provided further that the right to the moneys secured by or mentioned in the deposit receipt or pass book shall not be transferable by indorsement or otherwise.

(4) Any corporation,

(*a*) which has power to lend money upon mortgages or real estate; and

(*b*) which has a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom, amounting to at least five hundred thousand dollars; and

(*c*) which has a reserve fund amounting to not less than twenty-five per cent of its paid up capital; and

(*d*) whose stock has a market value which is not less than seven per cent in excess of the par value thereof;

shall be an approved corporation within the meaning of the next preceding subsection.

(5) Trustees shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than those authorized by this section, and to invest the same in any stock, debentures, or securities aforesaid, and also from time to time at their discretion to vary any investments as aforesaid, for others of the same nature; and any moneys already invested in any such stock, debentures or securities as aforesaid shall be held and taken to have been lawfully and properly invested.

(6) No deposits or investments shall be made under the authority of this Act with or in the debentures or debenture stock of any society or company which has not obtained the order of the Lieutenant Governor in Council approving of deposits with or investments in the debentures or debenture stock thereof:

Provided that the approval shall not be granted to any society or company which does not appear to the satisfaction of the Lieutenant Governor in Council to have kept strictly within its legal powers in relation to borrowing and investment.

(7) The Lieutenant-Governor in Council, if he deems it expedient, may at any time revoke any order in council previously made approving of deposits with or investments in the debentures or debenture stock of any society or corporation and such revocation shall not affect the propriety of deposits or investments made before the revocation.

4. The powers hereby conferred are in addition to the powers conferred by the instrument, if any, creating the trust:

Provided that nothing herein contained shall authorize any trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms directed to do by the instrument creating the trust.

REVISED STATUTES OF BRITISH COLUMBIA, 1948, CHAPTER 345, SECTION 15, as amended by chapter 74 of the Statutes of British Columbia, 1950:

15. Trustees having trust-money in their hands which it is their duty to invest at interest or in the purchase of real estate shall be at liberty, at their discretion, unless expressly forbidden by the instrument (if any) creating the trust,—

(*a*) to invest the same,

(i) in any parliamentary stock or public funds or Government securities of the United Kingdom, or the Dominion, or any Province of the Dominion, or in securities the principal and interest of which are guaranteed by the Government of the United Kingdom, or the Dominion, or any Province of the Dominion;

(ii) in any securities of any municipality in the Province;

(iii) in any securities issued by any Board of School Trustees under the "Public Schools Act";

(iv) on first mortgage of real estate in the Province;

(v) in the bonds, debentures or other securities of any loan company approved by the Lieutenant-Governor in Council under section 3 of "The Trust Companies Act";

(*b*) to call in any trust funds invested in any other securities than as aforesaid, and to invest the same in any such securities as aforesaid;

(*c*) from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature.

REVISED STATUTES OF MANITOBA, 1940, CHAPTER 221, SECTION 63, as amended by chapter 58 of the Statutes of Manitoba, 1948:

63. (1) In this section "securities" includes bonds, debentures, shares, stock and all documents under seal evidencing the corporate liability of or an interest in the property or undertaking of any company.

(2) Trustees having trust money in their hands, which it is their duty or which it is in their discretion to invest at interest, shall be at liberty at their discretion to invest it,

(*a*) in any stock, debentures or securities issued or guaranteed by the Government of Canada, or of this province or of any of the other provinces of Canada, or issued by any municipality or school district in the province or by the governing board of a hospital district established under The Health Services Act or by the Greater Winnipeg Water District, or in the public stocks or funds or Government securities of, or securities, the payment of which is guaranteed by the Government of the United Kingdom of Great Britain;

(*b*) in securities which are a registered first charge or mortgage on improved lands held in fee simple;

(*c*) in the guaranteed trust certificates of a trust company;

(*d*) in the terminable first debentures of a loan company;

(*e*) in first mortgage bonds of any company incorporated under the laws of the Dominion of Canada or of any of the provinces of Canada.

(3) All such investments shall in other respects be reasonable and proper and shall be respectively subject to the following conditions:

(*a*) with respect to investments in guaranteed trust certificates or terminable first debentures as aforesaid, that the trust company or loan company issuing the same is incorporated under the laws of the Dominion of Canada or of any of the provinces of Canada and carries on business in this province and has a capitalized fixed and permanent stock not liable to be withdrawn therefrom amounting to at least four hundred thousand dollars, with not less than four hundred thousand dollars paid-up thereon, and a reserve fund of not less than twenty-five per cent of its paid-up capital and provided that the loan

or trust company obtains the approval of the Lieutenant-Governor-in-Council as coming within the provisions hereof and as one in the debentures, debenture stock or guaranteed trust certificates of which trustees may invest money as aforesaid. Any order-in-council made under the authority hereof may at any time be revoked;

(*b*) with respect to investments in first mortgage bonds as aforesaid, that the bonds form part of an issue of bonds approved by The Municipal and Public Utility Board as a suitable investment for trust funds. Any such approval may be revoked by that board at any time;

(*c*) with respect to investments which are a registered first charge or mortgage on lands held in fee simple as aforesaid the trustee making the investment or loan shall act upon a report as to the value of the property made by a person whom the trustee reasonably believes to be an able, practical surveyor or valuer instructed and employed independently of any owner of the property and that the investment or loan does not exceed one-half of the value of the property as stated in the report and that the investment or loan was made under the advice of the surveyor or valuer expressed in the report. Where a trustee has advanced trust money on a mortgage security which would have been at the time of investment a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(4) None of the powers by this section conferred shall take effect or be exercisable by virtue of this Act by any guardian, executor, administrator or trustee if it is expressly declared in the deed, will or other instrument creating the guardian, executor, administrator or trustee that he shall not have such power.

(5) No guardian, executor, administrator or trustee shall be liable for any breach of trust by reason only of his continuing to hold an investment which has ceased to be one authorized by the instrument of trust or by the general law.

(6) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement,

(*a*) for the reconstruction of the company, or for the winding-up or sale or distribution of the assets of the company;

(*b*) for the sale of all or any part of the property and undertaking of the company to another company;

(*c*) for the amalgamation of the company with another company; or

(*d*) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them;

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(7) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in the company, they may as to all or any of the securities, either exercise the right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or assign for the best consideration that can be reasonably obtained the benefit of the right or the title thereto to any person, including any beneficiary under the trust without being responsible for any loss occasioned by any act or thing so done by them in good faith; but the consideration for any such assignment shall be held as capital money of the trust.

(8) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

SCHEDULE "B"

—A—

DOMINION GOVERNMENT ISSUES

A. Any stock, debentures or securities of the Government of the Dominion of Canada:

(1) Any parliamentary stock or public funds or Government securities of the Dominion of Canada.

(2) Debentures or bonds of the Dominion of Canada.

(3) Stock, funds or Government securities of the Dominion of Canada.

— B —

PROVINCIAL ISSUES

B. Any stock, debentures or securities of any of the Provinces of Canada:

(1) Any parliamentary stock, as public funds or Government security of any of the provinces of Canada.

(2) Debentures or bonds of the province.

(3) Stock, funds or Government securities of any of the provinces of Canada.

— C —

DOMINION GUARANTEES

C. Debentures or securities the payment of which is guaranteed by the Government of the Dominion of Canada:

(1) Securities, the principal and interest of which are guaranteed by the Government of the Dominion of Canada.

(2) Any stock, debentures or securities guaranteed by the Government of Canada.

(3) Stock, funds or government securities of Canada or guaranteed thereby.

(4) Debentures or bonds, if where payment of the principal and interest payable thereunder is guaranteed by the Dominion.

(5) Bonds and debentures of any corporation if said bonds or debentures are guaranteed both as to principal and interest by the Dominion.

(6) Debentures, bonds, stock or other securities guaranteed by the Government of the Dominion of Canada.

— D —

PROVINCIAL GUARANTEES

D. Debentures or securities, the payment of which is guaranteed by any of the provinces of Canada:

(1) Securities, the principal and interest of which are guaranteed by the Government of any province of the Dominion.

(2) Stock, debentures or securities guaranteed by this province or of any of the provinces of Canada.

(3) Stock, funds or government securities of any province of Canada as guaranteed thereby respectively.

(4) Debentures or bonds, if payment of the principal and interest payable thereunder is guaranteed by the "Province".

(5) Bonds and debentures of any corporation if said bonds or debentures are guaranteed both as to principal and interest by any province of Canada.

(6) Debentures, bonds, stocks or other securities guaranteed by any province of Canada.

— E —

UNITED KINGDOM ISSUES AND GUARANTEES

E. (1) Any parliamentary, stock or public funds or Government securities of the United Kingdom:

(a) Securities the principal and interest of which are guaranteed by the Government of the United Kingdom.

(2) The public stocks or funds or Government securities of the Government of the United Kingdom of Great Britain:

(a) The public stocks or funds or Government securities the payment of which is guaranteed by the United Kingdom of Great Britain.

(aa) The public stocks or funds or Government securities guaranteed by the United Kingdom of Great Britain.

(3) Debentures, bonds, stocks or other securities of the Government of the United Kingdom:

(a) Debentures, bonds, stocks or other securities guaranteed by the Government of the United Kingdom.

— F —

MUNICIPAL ISSUES AND GUARANTEES

F. Debentures of any city, town, village, municipal district, municipal hospital district, school division, or school district in the province:

(1) Any securities of any municipality in the province.

(2) Any stock, debentures or securities issued by any municipality or school district in the province, or by the governing board of a hospital district.

(3) Bonds or debentures of any municipal corporation, school district or drainage district in Saskatchewan, or debentures issued under the Rural Telephone Act.

(4) In the debentures or bonds of any city, town or municipality in the province:

(a) Any debentures or bonds if payment of the principal and interest payable thereunder is guaranteed by any city, town, or municipality in the province.

(b) If the loan or debt contracted by means of the issue of the debentures or bonds and the interest thereon are a lien and charge upon the money, funds, revenues, property, and assets of any city, town, or municipality in the province.

(5) Debentures and bonds of any municipality or city or school district of this province.

(6) Debentures, bonds, stock or other securities of any municipal corporation in Canada, or guaranteed by any municipal corporation in Canada, including debentures issued for public, separate, high or vocational school purposes or guaranteed by any municipal corporation in Ontario, or secured by or payable out of rates or taxes levied under the law of any province of Canada on property situated in such province and collectable by or through the municipality in which such property is situated, in the same manner and with the same rights of enforcing payment, as in the case of general municipal taxes in such municipality.

— G —

ISSUES AND GUARANTEES OF THE UNITED STATES OF AMERICA

G. (1) The public stock, funds or Government securities of the United States of America:

(a) The public stock, funds or securities guaranteed by the United States of America.

— H —

BANK DEPOSITS

H. (1) In any bank duly chartered to do banking business in Canada and having an agency in the province.

(2) Deposit receipts of any bank to which the provisions of the Bank Act of the Dominion of Canada apply, provided such bank has been carrying on business for at least ten years and has a reserve equal to at least 40% of its paid-up capital stock.

— I —

REAL ESTATE SECURITIES

I. Securities which are a first charge on land held in fee simple provided that such investments are in all other respects reasonable and proper:

(1) On first mortgage of real estate in the Province.

(2) Securities which are a registered first charge or mortgage on improved lands held in fee simple.

(3) Securities which are a first charge upon land in any province in Canada (reasonable and proper).

(4) Mortgages of real property.

(5) Bonds or debentures secured by a mortgage of real property.

(6) Securities which are first hypothics upon real estate in the Province of Quebec.

— J —

DEPOSITS WITH APPROVED CORPORATIONS

J. To deposit with any approved corporations (reasonable and proper) provided that the Deposit Account in the corporation's ledger shall be in the name of the trustees for the particular trust estate for which it is held, that the right to the monies shall not be transferable by endorsement or otherwise:

(1) May deposit money with any of the societies or companies registered under The Loan and Trust Corporations Act (Ontario) and having paid up capital and reserve fund

amounting in the aggregate to not less than $600,000, the reserve fund being not less than $150,000, or any society or company incorporated under chapter 164 of of the Revised Statutes of Ontario, 1877, or the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn therefrom of not less than $200,000, and a reserve fund of not less than 15% of its paid-up capital, and the stock of which has a market value of not less than 7% premium. (Must be approved by the Lieutenant Governor in Council and as in J above.)

— K —

SECURITIES OF APPROVED CORPORATION

K. In terminable debentures or debenture stock of any approved corporation:

(1) In the bonds, debentures or other securities of any approved loan companies.

(2) In the terminable first debentures of a loan company.

(3) In the first mortgage bonds of any company incorporated under the laws of the Dominion of Canada or of any of the Provinces of Canada as approved for investments.

(4) In the guaranteed trust certificates of a trust company (as approved for investments).

(5) In terminable debentures of debenture stock of (approved) societies and companies.

— L —

MISCELLANEOUS

L. (1) In any securities issued by any Board of School Trustees under the "Public School Act".

(2) Bonds or debentures issued under the authority of
(a) the Provincial Exhibition Act; and
(b) bonds of
(i) Sisters of Charity bearing date 1st of July 1937 constituting a first mortgage on lands of Sisters of Charity in Nova Scotia,
(ii) Young Women's Christian Association of Halifax dated 2nd of March 1936, constitu-

ting a first mortgage on lands of Young Women's Christian Association in Nova Scotia,

(iii) Sisters of St. Martha dated 2nd of January, 1939, and constituting a first mortgage on lands of Sisters of St. Martha in Nova Scotia,

(iv) Sisters of St. Martha dated 1942 constituting a first mortgage on lands of Sisters of St. Martha in Nova Scotia,

(v) St. Andrew's Church, Sydney, dated 1948 constituting a first mortgage on lands of St. Andrew's Church in Nova Scotia.

(3) In the Dominion Savings Act.

SCHEDULE "C"

INVESTMENTS	ALTA.	B.C.	MAN.	SASK.	N.S.	ONT.	N.B.
Government Securities and Guarantees	A B C D	A (1) B (1) E (1) C (1) D (1) E (1)(a)	A B C (2) D (2) E (1) E (1)(a)	A (3) B (3) C (6) D (6) E (2) E (2)(aa) G (1) G (1)(a)	A (2) B (2) C (4) D (4)	A B C (2) D (2) E (3) E (3)(a)	A B C (5) D (5)
Local Government Securities and Guarantees	F	F (1) L (1)	F (2)	F (3)	F (4) F (4)(a) F (4)(b)	F (5) F (6)	F (4)
Securities or Real Estate	I	I (1)	I (2)	I (3)	I (4) I (5)	I (3) I (6)	I
Securities of Corporations	K	K (1)	K (2) K (3) K (4)	K (5)	K (4)	K (1) K (5)	K C (5) D (5)
Banks					H (2)		H (1)
Deposits	J			J	H (2)	J (1)	H (1)
Miscellaneous Investments					L (2) L (2)(a) L (2)(b) L (3)		

SCHEDULE "D"

REQUIREMENTS FOR APPROVED CORPORATION

Alberta:

Any corporation:

(*a*) which has power to lend money upon mortgages or real estate, and

(*b*) which has a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn therefrom amounting to at least $500,000, and

(*c*) which has a reserve fund amounting to not less than 7 per cent in excess of the par value thereof.

Order of the Lieutenant Governor in Council required approving of deposits or investments in such corporations, and must keep within its legal powers of borrowing and investing.

Manitoba:

(1) incorporated under laws of Dominion of Canada, or

(2) any of the provinces of Canada, and

(3) carries on business in Manitoba, and

(4) has a capitalized fixed and permanent stock not liable to be withdrawn therefrom, amounting to at least $400,000 paid-up thereon, and a reserve fund of not less than 25 per cent of its paid-up capital, and

(5) obtains approval of the Lieutenant Governor in Council.

Saskatchewan:

Society or company (incorporated) which:

(1) is authorized to lend money upon mortgages on real estate, and

(2) having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn amounting to at least $400,000 and a reserve fund of not less than 25 per cent of its paid-up capital, and the stock of which has a market value of not less than 7 per cent premium.

New Brunswick:

"Such corporation", i.e., one which:

(1) incorporated under the laws of the Parliament of Canada, or

(2) of the Legislature of New Brunswick, and which has

(*a*) a subscribed permanent capital of not less than $300,000, on which there has been paid not less than $120,000, and if more than 75 per cent of the said subscribed capital is paid in, then such corporation must have a reserve fund set aside out of the profits of the corporation of not less than 25 per cent of its paid-up capital, and its stock must have a market value of not less than 7 per cent premium.

(*b*) must be authorized by its charter to lend money upon mortgage on real estate, or for that purpose and other purposes.

(*c*) must be approved by Order in Council.

(*d*) must deposit with the Provincial Treasurer such sum as the Lieutenant Governor in Council shall fix.

(*e*) must transmit annually to the Provincial Treasurer a statement of capital stock, proportion paid up, assets and liabilities, amount and nature of investments, and average rate of interest, extent and value of its lands, and other details of its business.

Ontario:

(*a*) Any loan corporation registered under The Loan and Trust Corporations Act and having a paid-up capital and reserve fund amounting to not less than $600,000, the reserve fund being not less than $150,000.

(*b*) Any society or corporation incorporated under chapter 164 of the Revised Statutes of Ontario, 1877, or chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid-up and permanent stock not liable to be withdrawn therefrom of not less than $200,000 and a reserve fund of not less than 15 per cent of its paid-up capital, and the stock of which has a market value of not less than 7 per cent premium, and approved by the Lieutenant-Governor in Council.

SCHEDULE "E"

INTERPRETATION

erpretation

1. In this Act and in any order made hereunder,

curities"

(*a*) "securities" includes stock, debentures, bonds and shares.

TRUSTEE INVESTMENTS

2. A trustee having trust money in his hands which it is his duty or which it is in his discretion to invest at interest may, in his discretion, and if such investments in all other respects are reasonable and proper, invest the same in, Trustee investments

(*a*) securities of, Government issues

(i) the Government of the Dominion of Canada,

(ii) The Government of any province of Canada,

(iii) any municipal corporation in any province of Canada,

(iv) the Government of the United Kingdom,

(v) the Government of the United States of America;

(*b*) securities where payment of the principal and interest thereunder is guaranteed by, Government guarantees

(i) the Government of the Dominion of Canada, or

(ii) the Government of any province of Canada, or

(iii) any municipal corporation in any province of Canada, or

(iv) the Government of the United Kingdom, or

(v) the Government of the United States of America;

(*c*) securities issued for school, hospital, irrigation or drainage purposes which are secured by or payable out of taxes or rates levied under the law of any province of Canada; payable out of taxes

(*d*) securities which are a first charge on land held in fee simple; charges on land

(*e*) mortgages of real property where the loan does not exceed one-half of the value of the property as established by competent and independent valuation; mortgages

(*f*) deposits, deposits

(i) in any bank to which the provisions of the Bank Act of the Dominion of Canada apply, or

(ii) in a corporation declared to be an approved corporation under section 3;

(*g*) securities of a corporation declared to be an approved corporation under section 3, and securities approved by the Lieutenant-Governor in Council under section 4; approved corporation and approved securities

(*h*) the guaranteed trust certificates of a trust company incorporated or registered under the laws of the province. guaranteed trust certificates

Approved corporations

3. Any corporation,

(*a*) which has power to lend money upon mortgages or real estate; and

(*b*) which has a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom amounting to at least five hundred thousand dollars; and

(*c*) which has a reserve fund amounting to not less than twenty-five per cent of its paid-up capital; and

(*d*) whose stock has a market value which is not less than seven per cent in excess of the par value thereof; and

(*e*) which satisfies the Lieutenant-Governor in Council that it is keeping strictly within its legal powers in relation to borrowing and spending,

shall be declared by order of the Lieutenant-Governor in Council to be an approved corporation.

Approved securities

4. Where a corporation fails to comply with one or more of the requirements of section 3, if such corporation satisfies the Lieutenant-Governor in Council that,

(*a*) it is keeping strictly within its legal powers in relation to borrowing and lending;

(*b*) its securities are in the opinion of the Lieutenant-Governor in Council in all respects fit and proper investments for trustees;

(*c*) its paid up capital, reserves and revenues are such that its securities are as fully secured in the opinion of the Lieutenant-Governor in Council as other approved investments, or its securities are fully secured by a mortgage or hypothec upon its real estate to a trustee, and the securities issued do not exceed such proportion of the value of the real estate as the Lieutenant-Governor in Council deems proper,

the Lieutenant-Governor in Council, in his discretion, may declare the securities of the corporation to be approved securities for investment by trustees.

Revocation of approved cororation or approved securities

5. The Lieutenant-Governor in Council may revoke at any time any order in council declaring a corporation to be an approved corporation under section 3, or declaring securities to be approved securities under section 4, and such revocation shall not affect the propriety of investments made before the revocation.

6. Where a trustee,

Investments to be in trustee's name

(*a*) invests trust money in deposits under clause *f* of section 2, the trustee shall require the account in the bank's or corporation's ledger to be in the name of the trustee for the particular trust estate for which it is held and the deposit receipt or passbook shall not be transferable by indorsement or otherwise;

(*b*) invests in the securities of an approved corporation or in approved securities, the trustee shall require the securities to be registered in the name of the trustee for the particular trust estate for which the securities are held, and the securities shall be transferable only on the books of the corporation in his name as trustee for the trust estate.

Instrument creating the trust

7. (1) The powers conferred by this Act relating to trustee investments are in addition to the powers conferred by the instrument, if any, creating the trust.

(2) Nothing contained in this Act relating to trustee investments shall authorize a trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms directed to do by the instrument creating the trust.

Variation of investments

8. (1) A trustee, in his discretion, from time to time may,

(*a*) call in any trust funds invested in any other securities than those authorized by this Act and invest the same in any securities authorized by this Act; and

(*b*) vary any investments authorized by this Act for others of the same nature.

Liability of trustee

(2) No trustee shall be liable for any breach of trust by reason only of his continuing to hold an investment which has ceased to be one authorized by the instrument of trust or by the general law.

Exchange of securities

9. (1) Where a trustee holds securities of an approved corporation or approved securities, the trustee may concur in any scheme or arrangement,

(*a*) for the reconstruction of the company, or for the winding-up or sale or distribution of the assets of the company;

(*b*) for the sale of all or any part of the property and undertaking of the company to another company;

(*c*) for the amalgamation of the company with another company; or

(*d*) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities, or any of them,

in like manner as if he were entitled to such securities beneficially, with power to accept any securities or any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities.

Liability of trustee

(2) The trustee shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which he could have properly retained the original securities.

Assignment of right to exchange securities

10. If any conditional or preferential right to subscribe for any securities in any company is offered to a trustee in respect of any holding in the company, he may, as to all or any of the securities, either exercise the right and apply capital money subject to the trust in payment of the consideration, or renounce the right, or assign for the best consideration that can be reasonably obtained the benefit of the right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by him in good faith, but the consideration for any such assignment shall be held as capital money of the trust.

Consent to change of investment

11. The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

APPENDIX R

(See page 24)

CONTRIBUTORY NEGLIGENCE

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

At the 1950 meeting it was 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.

The original Uniform Contributory Negligence Act was adopted in 1924 and an amended Act was adopted in 1935 by the Conference.

The Uniform Act was adopted, in some cases with amendment, by Alberta, British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan. Ontario has an Act cited as The Negligence Act, and Manitoba "The Tortfeasors and Contributory Negligence Act".

For convenience we have used the British Columbia Act with amendments to date as the basis for comparison with the Acts in the other provinces.

Section 2 of the British Columbia Act is exactly as in the Acts of Nova Scotia, Saskatchewan, Alberta, Prince Edward Island and New Brunswick, and reads:

Section 2—British Columbia

Where by the fault of two or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each person was at fault: Provided that:

(*a*) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

(*b*) Nothing in this section shall operate so as to render any person liable for any damage or loss to which his fault has not contributed. R.S. 1936, c. 52, s. 2.

In the Ontario Act the corresponding provisions are:

Section 4—Ontario

In any action for damages which is founded upon the fault or negligence of the defendant if fault or negligence is found

on the part of the plaintiff which contributed to the damages, the court shall apportion the damages in proportion to the degree of fault or negligence found against the parties respectively.

Section 5—Ontario

If it is not practicable to determine the respective degree of fault or negligence as between any parties to an action, such parties shall be deemed to be equally at fault or negligent.

And see Section 4, Manitoba.

Section 3—British Columbia

The awarding of damage or loss in every action to which section 2 applies shall be governed by the following provisions:

(*a*) The damage or loss (if any) sustained by each person shall be ascertained and expressed in dollars:

(*b*) The degree in which each person was at fault shall be ascertained and expressed in the terms of a percentage of the total fault:

(*c*) As between each person who has sustained damage or loss and each other person who is liable to make good the damage or loss, the person sustaining the damage or loss shall be entitled to recover from that other person such percentage of the damage or loss sustained as corresponds to the degree of fault of that other person:

(*d*) As between two persons each of whom has sustained damage or loss and is entitled to recover a percentage thereof from the other, the amounts to which they are respectively entitled shall be set off one against the other; and if either person is entitled to a greater amount than the other he shall have judgment against that other for the excess. R.S. 1936, c. 52, s. 3.

This provision is not found in the Acts of the other provinces.

Section 4—British Columbia

Unless the Judge otherwise directs, the liability for costs of the parties to every action shall be in the same proportion as their respective liability to make good the damage or loss; and the provisions of section 3 governing the awarding of damage or loss shall apply, mutatis mutandis, to the awarding of costs, with the further provision that where, as between two

persons, one is entitled to a judgment for an excess of damage or loss and the other to a judgment for an excess of costs there shall be a further set-off of the respective amounts and judgment shall be given accordingly. R.S. 1936, c. 52, s. 4.

The Nova Scotia and New Brunswick Acts contain an identical provision which is section 4 in each Act:

> Unless the Judge otherwise directs, the liability for costs of the parties shall be in the same proportion as the liability to make good the loss or damage.

In the Ontario Act the corresponding provision is section 8, and in the Manitoba Act, section 8. Prince Edward Island and Alberta have no such provision.

Section 5—British Columbia

> Where damage or loss has been caused by the fault of two or more persons, the Court shall determine the degree in which each person was at fault, and except as provided in section 6 and 6*a* where two or more persons are found at fault they shall be jointly and severally liable to the person suffering the damage or loss, but as between themselves, in the absence of any contract express or implied, they shall be liable to make contribution to and indemnify each other in the degree in which they are respectively found to have been at fault. R.S. 1936, c. 52, s. 5.

This section was amended in 1951 by the inclusion of the words "except as provided in sections 6 and 6*a*". This section is found in substantially the same form in the other Acts and in section 3 of the Ontario Act.

Section 6—British Columbia

> Notwithstanding anything contained in this Act, where damage or loss has been caused by the fault of two or more persons, and where one of these persons is relieved of liability for the whole or any part of that damage or loss by virtue of section 82 of the "Motor-vehicle Act", no contribution or indemnity in respect of the damage or loss relieved against shall be recoverable from the person so relieved; but the Court nevertheless shall determine the degree in which each person was at fault, and every person at fault, other than the person so relieved, shall be liable to the persons suffering the loss or damage relieved against in the degree only to which he is found to have been at fault, and for a proportion of the dam-

age or loss relieved against equivalent to the degree of fault. The Court may determine the degree of fault notwithstanding that any party who is relieved from liability by virtue of said section 82 is not a party to the action. This section shall not affect any portion of the damage or loss in respect of which there is no relief by virtue of said section 82. 1938, c. 10, s. 2.

This section is not found in the other Acts, but see section 8, Saskatchewan, and section 5, Manitoba.

Section 6a—British Columbia

In any action founded upon fault or negligence and brought for loss or damage resulting from bodily injury to or the death of any married person, where one of the persons found to be at fault or negligent is the spouse of such married person, no damages, contribution, or indemnity shall be recoverable for the portion of loss or damage caused by the fault or negligence of such spouse, and the portion of the loss or damage so caused by the fault or negligence of such spouse shall be determined although such spouse is not a party to the action.

This section is not found in the other Acts, but see section 9, Saskatchewan, and section 5, Manitoba.

Section 7—British Columbia

In every action the amount of damage or loss, the fault (if any), and the degrees of fault shall be questions of fact. R.S. 1936, c. 52, s. 6.

This section, with identical wording, appears in Acts of Saskatchewan, Alberta and Prince Edward Island. The corresponding section in the Nova Scotia and New Brunswick Acts reads as follows:

Section 3—New Brunswick and Nova Scotia

In actions tried with a jury the amount of damage, the fault (if any), and the degrees of fault shall be questions of fact for the jury.

In the Ontario Act it is section 8 and reads as follows:

Where the damages are occasioned by the fault or negligence of more than one party, the Court shall have power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just.

In Manitoba it is section 7.

Section 82, The Motor Vehicles Act, R.S.B.C. 1948, chapter 227, referred to in section 6 of the British Columbia Contributory Negligence Act reads as follows:

> No action shall lie against either the owner or the driver of a motor-vehicle or of a motor-vehicle with a trailer attached by a person who is carried as a passenger in that motor-vehicle or trailer, or by his executor or administrator or by any person who is entitled to sue under the "Families Compensation Act", for any injury, loss, or damage sustained by such person or for the death of such person by reason of the operation of that motor-vehicle or of that motor-vehicle with trailer attached by the driver thereof while such person is a passenger on or is entering or alighting from that motor-vehicle or trailer, unless there has been gross negligence on the part of the driver of the vehicle and unless such gross negligence contributed to the injury, loss, or damage in respect of which the action is brought; but the provisions of this section shall not relieve:
>
> (*a*) Any person transporting a passenger for hire or gain; or
>
> (*b*) Any person, to whose business the transportation of passengers is normally incidental, transporting a passenger in the ordinary course of the transporter's business,
>
> from liability for injury, loss, or damage to such passenger, or arising from the death of such passenger. 1938, c. 42, s. 3; 1940, c. 32, s. 9; 1941-42, c. 25, s. 4; 1947, c. 62, s. 12.

The following sections are found in the Ontario Highway Traffic Act, R.S.O. 1950, chapter 167:

> 50. (1) The owner of a motor vehicle shall be liable for loss or damage sustained by any person by reason of negligence in the operation of the motor vehicle on a highway unless the motor vehicle was without the owner's consent in the possession of some person other than the owner or his chauffeur, and the driver of a motor vehicle not being the owner shall be liable to the same extent as the owner.
>
> (2) Notwithstanding subsection 1, the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for compensation, shall not be liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from the motor vehicle. R.S.O. 1937, c. 288, s. 47.

51. (1) When loss or damage is sustained by any person by reason of a motor vehicle on a highway, the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle shall be upon the owner or driver.

(2) This section shall not apply in case of a collision between motor vehicles on the highway nor to an action brought by a passenger in a motor vehicle in respect of any injuries sustained by him while a passenger. R.S.O. 1937, c. 288, s. 48.

The Contributory Negligence Acts of the other provinces contain provisions not found in the British Columbia Act, as follows:

Section 5—Prince Edward Island

The Judge shall not submit to the jury any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof unless in his opinion there is evidence upon which the jury could reasonably find that the Act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous with it.

Section 6—Prince Edward Island

When it appears that a person not a party to an action is or may be wholly or partly responsible for the damages claimed he may be added as a party defendant upon such terms as may be deemed just.

Saskatchewan and Alberta

The following clauses appear in each Act:

Section 5—Saskatchewan and Alberta

Where the trial is before a judge with a jury the judge shall not submit to the jury any question as to whether, notwithstanding the fault of one party, the other could have avoided the consequences thereof unless in his opinion there is evidence upon which the jury could reasonably find that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous with it.

Section 6—Saskatchewan and Alberta

Where the trial is before a judge without a jury the judge shall not take into consideration any question as to whether,

notwithstanding the fault of one party, the other could have avoided the consequences thereof unless he is satisfied by the evidence that the act or omission of the latter was clearly subsequent to and severable from the act or omission of the former so as not to be substantially contemporaneous therewith.

Section 7—Saskatchewan and Alberta

When it appears that a person not a party to an action is or may be wholly or partly responsible for the damages claimed, he may be added as a party defendant upon such terms as are deemed just.

Section 8—Saskatchewan

Where no caused of action exists against the owner or driver of a motor vehicle by reason of subsection (2) of section 140 of the Vehicles Act, no damages or contribution or indemnity shall be recoverable from any person for the portion of the damage or loss caused by the negligence of such owner or driver and the portion of the damage or loss so caused by the negligence of such owner or driver shall be determined although such owner or driver is not a party to the action.

Section 9—Saskatchewan

In any action founded upon negligence and brought for damage or loss resulting from bodily injury to or the death of any married person, where one of the persons found to be negligent is the spouse of such married person, no damages, contribution or indemnity shall be recoverable for the portion of damage or loss caused by the negligence of such spouse, and the portion of the loss or damage so caused by the negligence of the spouse shall be determined although the spouse is not a party to the action.

The British Columbia Commissioners make no recommendations.

Some cases in which contributory negligence Acts have been considered are:

Scribner v. *Hoey* (1940) 15 MPR 154 (NBCA).

Schiffner v. *Canadian Pacific Railway* (1951) 2 W.W.R. (N.S.) 193 Sask.)

Henshall v. *Hall* (1951) 2 W.W.R. (N.S.) 614 (B.C.)

See also cases abridged in 29 Canadian Abridgement, col. 162-173.

See Canadian Abridgement Consolidation—1936-1945, col. 4842-4854.

ERIC PEPLER,
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British Columbia Commissioners.

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