1958

PROCEEDINGS

OF THE

FORTIETH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION IN CANADA

HELD AT

NIAGARA FALLS, ONTARIO

SEPTEMBER 2ND TO SEPTEMBER 6TH, 1958

MIMEOGRAPHING AND DISTRIBUTING OF REPORTS

By resolution of the Conference, the Commissioners who are responsible for the preparation of a report are also responsible for having the report mimeographed and distributed. Distribution is to be made at least three months before the meeting at which the report is to be considered.

Experience has indicated that from 60 to 75 copies are required, depending on whether the report is to be distributed to persons other than members of the Conference.

The local secretary of the jurisdiction charged with preparation and distribution of the report should send enough copies to each other local secretary so that the latter can give one copy to each member of the Conference from his jurisdiction. Three copies should be sent to the Secretary of the Conference and the remaining copies should be brought to the meeting at which the report is to be considered.

To avoid confusion or uncertainty that may arise from the existence of more than one report on the same subject, all reports should be dated.

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CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA

OFFICERS OF THE CONFERENCE, 1958-59

Honorary President.....H. E. Read, Q.C., Halifax.

President.....E. C. Leslie, Q.C., Regina.

1st Vice-President.....J. A. Y. MacDonald, Q.C., Halifax.

2nd Vice-President.....J. F. H. Teed, Q.C., Saint John.

Treasurer.....G. R. Fournier, Q.C., Quebec.

Secretary.....H. F. Muggah, Q.C., Halifax.

LOCAL SECRETARIES

Alberta.....H. J. Wilson, Q.C., Edmonton.

British Columbia.....Gerald H. Cross, Victoria.

Canada.....W. P. J. O'Meara, Q.C., Ottawa.

Manitoba.....G. S. Rutherford, Q.C., Winnipeg.

New Brunswick.....M. M. Hoyt, B.C.L., Fredericton.

Newfoundland.....P. L. Soper, LL.B., St. John's.

Nova Scotia.....H. F. Muggah, Q.C., Halifax.

Ontario.....W. C. Alcombrack, Toronto.

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

Quebec.....Chas. Coderre, Q.C., 159 Craig St. West, Montreal.

Saskatchewan.....J. H. Janzen, Q.C., Regina.

COMMISSIONERS AND REPRESENTATIVES OF THE PROVINCES AND OF THE DOMINION

Alberta:

W. F. BOWKER, Q.C., LL.B., Dean, Faculty of Law, University of Alberta, Edmonton.

J. W. RYAN, Legislative Counsel, Edmonton.

H. J. WILSON, Q.C., Deputy Attorney-General, Edmonton.
(*Commissioners appointed under the authority of the Revised Statutes of Alberta, 1955, c. 350.*)

British Columbia:

P. R. BRISSENDEN, Q.C., 717 Pender Street West, Vancouver.

GERALD H. CROSS, Legislative Counsel, Victoria.

G. P. HOGG, Assistant Deputy Attorney-General, Victoria.

G. D. KENNEDY, S.J.D., Deputy Attorney-General, Victoria.
(*Commissioners appointed under the authority of the Revised Statutes of British Columbia, 1948, c. 350.*)

Canada:

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

A. J. MACLEOD, Q.C., Advisory Counsel, Department of Justice, Ottawa.

W. P. J. O'MEARA, Q.C., Assistant Under Secretary of State and Advisory Counsel, Ottawa.

Manitoba:

IVAN J. R. DEACON, Q.C., 212 Avenue Bldg., Winnipeg.

ORVILLE M. M. KAY, C.B.E., Q.C., Deputy Attorney-General, Winnipeg.

G. S. RUTHERFORD, Q.C., Legislative Counsel, Winnipeg.
(*Commissioners appointed under the authority of the Revised Statutes of Manitoba, 1954, c. 275.*)

New Brunswick:

H. W. HICKMAN, Q.C., Department of Attorney-General, Fredericton.

M. M. HOYT, B.C.L., Legislative Counsel, Department of Attorney-General, Fredericton.

R. D. MITTON, Q.C., Moncton.

JOHN F. H. TEED, Q.C., Royal Securities Bldg., Saint John.

(Commissioners appointed under the authority of the Statutes of New Brunswick, 1918, c. 5.)

Newfoundland:

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

C. J. GREENE, Q.C., Assistant Deputy Attorney-General, St. John's.

H. G. PUDDESTER, Q.C., LL.B., Deputy Attorney-General, St. John's.

P. L. SOPER, LL.B., Legal Assistant, Attorney-General's Department, St. John's.

Nova Scotia:

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

HENRY F. MUGGAH, Q.C., Legislative Counsel, Halifax.

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

(Commissioners appointed under the authority of the Statutes of Nova Scotia, 1919, c. 25.)

Ontario:

W. C. ALCOMBRACK, Municipal Legislative Counsel, Toronto.

HON. MR. JUSTICE F. H. BARLOW, Osgoode Hall, Toronto.

W. B. COMMON, Q.C., Deputy Attorney-General, Toronto.

L. R. MACTAVISH, Q.C., 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, Q.C., 294 Richmond St., Charlottetown.

F. A. LARGE, Q.C., Royal Bank Chambers, Charlottetown.

J. P. NICHOLSON, Crown Prosecuter, 90 Great George St., Charlottetown.

D. O. STEWART, Q.C., Summerside.

(*Commissioners appointed under the authority of the Revised Statutes of Prince Edward Island, 1951, c. 168.*)

Quebec:

EMILE COLAS, 276 St. James St. W., Montreal.

G. R. FOURNIER, Q.C., 65 St. Anne St., Quebec.

THOMAS R. KER, Q.C., 360 St. James St. W., Montreal

HON. ANTOINE RIVARD, Q.C., Solicitor General, Quebec.

Saskatchewan:

J. H. JANZEN, Q.C., Legislative Counsel, Regina.

E. C. LESLIE, Q.C., 504 Broder Bldg., Regina.

R. S. MELDRUM, Q.C., Deputy Attorney-General, Regina.

MEMBERS EX OFFICIO OF THE CONFERENCE

Attorney-General of Alberta: Hon. E. C. Manning.

Attorney-General of British Columbia: Hon. Robert W. Bonner, Q.C.

Attorney-General of Canada: Hon. E. D. Fulton, Q.C.

Attorney-General of Manitoba: Hon. S. R. LYON.

Attorney-General of New Brunswick: Hon. R. G. L. FAIRWEATHER.

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

Attorney-General of Nova Scotia: Hon. R. A. Donahoe, Q.C.

Attorney-General of Ontario: Hon. A. Kelso Roberts, Q.C.

Attorney-General of Prince Edward Island: Hon. A. W. Matheson, Q.C.

Attorney-General of Quebec: Hon. Maurice L. Duplessis, Q.C.

Attorney-General of Saskatchewan: Hon. Robert A. Walker, Q.C.

PRESIDENTS OF THE CONFERENCE

SIR JAMES AIKINS, K.C., Winnipeg	1918–1923
MARINER G. TEED, K.C., Saint John	1923–1924
ISAAC PITBLADO, K.C., Winnipeg	1925–1930
JOHN D. FALCONBRIDGE, K.C., Toronto	1930–1934
DOUGLAS J. THOM, K.C., Regina	1935–1937
I. A. HUMPHRIES, K.C., Toronto	1937–1938
R. MURRAY FISHER, K.C., Winnipeg	1938–1941
F. H. BARLOW, K.C., Toronto	1941–1943
PETER J. HUGHES, K.C., Fredericton	1943–1944
W. P. FILLMORE, K.C., Winnipeg	1944–1946
W. P. J. O'MEARA, K.C., Ottawa	1946–1948
J. PITCAIRN HOGG, K.C., Victoria	1948–1949
HON. ANTOINE RIVARD, K.C., Quebec	1949–1950
HORCE A. PORTER, K.C., Saint John	1950–1951
C. R. MAGONE, Q.C., Toronto	1951–1952
G. S. RUTHERFORD, Q.C., Winnipeg	1952–1953
L. R. MACTAVISH, Q.C., Toronto	1953–1955
H. J. WILSON, Q.C., Edmonton	1955–1957
H. E. READ, Q.C., Halifax	1957–1958
E. C. LESLIE, Q.C., Regina	1958–

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.
1952. August 26-30, Victoria.
1953. September 1-5, Quebec.
1954. August 24-28, Winnipeg.
1955. August 23–27, Ottawa.
1956. August 28–Sept. 1, Montreal.
1957. August 27-31, Calgary.
1958. September 2-6, Niagara Falls.

Due to war conditions the annual meeting of the Canadian Bar Association scheduled to be held in Ottawa in 1940 was cancelled and for the same reason no meeting of the Conference was held 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 and the Yukon Territory in recent years. As a matter of interest, therefore, these have been noted in the Table appearing on pages 14 and 15.

H.F.M.

TABLE OF

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

Line	Title of Act	Conference	Adopted Alta.	B.C.	Man.	N.B.	Nfld.	N.S.
1	Assignments of Book Debts	1928	'29, '58*	....	'29, '51*	1931	1950‡	1931
2								
3	Bills of Sale	1928	1929	....	1929	....	....	1930
4	Bulk Sales	1920	1922	1921	'21, '51*	1927	....	——$
5								
6	Conditional Sales	1922	....	1922	....	1927	....	1930
7								
8	Contributory Negligence	1924	1937*	1925	....	1925	1951*	'26, '54*
9	Corporation Securities Registration	1931	....	....	....	....	....	1933
10	Defamation	1944	1947	....	1946	1952‡	...	....
11	Devolution of Real Property	1927	1928	...	...	1934†	....	....
12	Evidence	1941	....	....	....	....	....	....
13								
14	Foreign Affidavits	1938	'52, '58*	1953	1952	1950x	1954*	1952
15	Judicial Notice of Statutes and							
16	Proof of State Documents	1930	....	1932	1933	1931	..	....
17	Officers, Affidavits before	1953	....	....	....	....	1954	....
18	Photographic Records	1944	1947	1945	1945	1946	1949	1945
19	*Russell* v. *Russell*	1945	1947	1947	1946	....	..	1946
20	Fire Insurance Policy	1924	1926	1925	1925	1931	1954‡	1930
21	Foreign Judgments	1933	...	....	....	1950‡	...	....
22	Frustrated Contracts	1948	1949	.	1949	1949	1956	.. .
23	Highway Traffic and Vehicles—							
24	Rules of the Road	1955	1958†	1957†	..	....	..	....
25	Interpretation	1938	1958*	....	1939‡	....	1951‡	...
26								
27	Intestate Succession	1925	1928	1925	1927‡	1926	1951	....
28	Landlord and Tenant	1937		....	...	1938	....	....
29	Legitimation	1920	1928	1922	1920	1920	——$	——$
30	Life Insurance	1923	1924	1923	1924	1924	1931	1925
31	Limitation of Actions	1931	1935	...	32, '46‡	....	..	....
32	Married Women's Property	1943	....	....	1945	1951$	..	....
33	Partnership	....	1899°	1894°	1897°	1921°	1892°	1911°
34	Partnerships Registration	1938	....	.	...	. ..	. .	....
35	Perpetuities and Accumulations							
36	re Pension Trusts	1954	1958	...	....	....	....	....
37	Proceedings Against the Crown	1950	....	....	1951	1952†	....	1951$
38	Reciprocal Enforcement of Judgments	1924	'25, '58*	1925	1950	1925	....	....
39	Reciprocal Enforcement of Maintenance							
40	Orders	1946	'47, '58*	'46, '58*‡	1946	1951‡	1951‡	1949
41	Regulations	1943	....	1958‡	1945‡	....	...	....
42	Sale of Goods	....	1898°	1897°	1896°	1919°	....	1910°
43	Service of Process by Mail	1945	——$	1945	——$	....	....	....
44	Survivorship	1939	1948	'39, '58*‡	1942	1940	1951	1941
45	Testators Family Maintenance	1945	1947‡	....	1946	....	. ..	....
46	Trustee Investments	1957	....				.. .	1957†
47	Vital Statistics	1949	. .		1951‡	.	....	1952‡
48	Warehousemen's Lien	1921	1922	1922	1923	1923	....	1951
49	Warehouse Receipts	1945	1949	1945‡	1946‡	1947	....	1951
50	Wills	1929	...	....	1936	1952‡	....	....
51	Conflict of Laws	1953	....	. ..	....	....	....	....

* Adopted as revised.

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

$ Provisions similar in effect are in force.

MODEL STATUTES

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

Line		Adopted						Remarks
	Ont.	P.E.I	Que.	Sask.	Can.	N.W.T.	Yukon	
1 –	1931	1931	....	1929	....	1948	1954‡	Am. '31; Rev. '50 & '55; Am. '57
2 –								
3 –	. .	1947	....	1929	....	1948‡	1954‡	Am. '31 & '32; Rev. '55
4 –	.	1933	...	....	....	1948	....	Am '21, '25, '39 & '49; Rev. '50
5 –								
6 –	.	1934	.	....	...	1948‡	1954‡	Am. '27, '29, '30, '33, '34 & '42; Rev. '47 & '55
7 –								
8 –	.. .	1938*	.. .	1944*	....	1950*‡	1955‡	Rev. '35 & '53
9 –	1932	1949	....	1932	....	....	....	.....
10 –	....	1948	.. .	....	....	1949*‡	1954	Rev. '48; Am. '49
11 –	....	....	....	1928	....	....	1954	.....
12 –	.. .	....	.. .	..	...	1948*‡	1955‡	Am. '42, '44 & '45; Rev. '45; Am. '51, '53 & '57
13 –								
14 –	'52, '54*	....	....	1947	1943	1948	1955	Am. '51; Rev. '53
15 –								
16 –	.	1939	....	....	....	1948	1955	Rev. '31
17 –	1954	....	....	....	....	....	1955	....
18 –	1945	1947	....	1945	1942$	1948	1955	....
19 –	1946	1946	....	1946	....	1948	1955	....
20 –	1924	1933	....	1925	....	....	....	Stat. Cond. 17 not adopted
21 –	.	..	....	1934	....	....	....	.....
22 –	1949	1949	...	....	....	....	....	....
23 –								
24 –	....	.	....	.	.	. .	....	Rev. '58
25 –	....	1939	....	1943	....	1948*‡	1954*	Am. '39; Rev. '41; Am. '48; Rev. '53
26 –								
27 –	. .	1944‡	....	1928	....	1949‡	1954‡	Am. '26, '50 & '55
28 –	.	1939	...	....	....	1949‡	1954‡	Recomm. withdrawn '54
29 –	1921	1920	——$	1920	....	1949‡	1954†	....
30 –	1924	1933	....	1924	....	....	....	.....
31 –	.	1939‡	....	1932	....	1948†	1954*	Am. '32, '43 & '44
32 –	....	....	....	....	....	1952†	1954†	.....
33 –	1920°	1920°	....	1898°	....	1948°	1954°	.....
34 –	.. .	. ..	....	1941†	....	....	....	Am. '46
35 –								
36 –	1954	....	....	....	....	....	....	Am. '55
37 –	1952‡	....	....	1952‡	....	....	....	.....
38 –	1929	....	....	1924	....	....	....	Am. '25; Rev. '56
39 –								
40 –	1948‡	1951‡	1952$	1946$	....	1951†	1955‡	Rev. '56
41 –	1944‡	....	....	....	1950$	....	. ..	.....
42 –	1920°	1919°	....	1896°	....	1948°	1954°	.....
43 –	.	. .	....	——$	....	....	....	.....
44 –	1940	1940	....	1942	....	....	....	Am. '49, '56 & '57
45 –	....	....	....	....	....	....	....	Am. '57
46 –		....	....	....	....	. ..	....	.....
47 –	1948$	1950‡	....	1950$	....	1952	1954‡	Am. '50
48 –	1924	1938	....	1922	....	1948	1954	.....
49 –	1946‡	.. .	....	....	....	....	....	.....
50 –	....	....	....	1931	....	1952	1954‡	Am. '53.
51 –	1954	....	....	....	....	....	....	.....

x As part of Commissioners for taking Affidavits Act.
† In part.
‡ With slight modification.

MINUTES OF THE OPENING PLENARY SESSION

(TUESDAY, SEPTEMBER 2ND, 1958)

10 a.m.–11 a.m.

Opening

The Conference assembled in The Sheraton Brock Hotel, Niagara Falls.

The President of the Conference, Mr. Read, acted as chairman, introduced the new members and outlined the proposed work of the meeting as set out in the Agenda (Appendix A, page 37).

In his opening remarks, the President expressed pleasure that all provinces and the Dominion were represented at the meeting, reviewed briefly the activities of the Conference over the past year, and voiced the hope that this year's meeting would be pleasant and profitable. He re-affirmed the view of his predecessor, Mr. Wilson, that matters of consequence or matters involving substantial questions of principle should be considered and dealt with by the Conference in plenary session rather than by a section or a committee. In addition, he made mention of former members of the Conference who had retired during the preceding year, particularly Mr. A. C. DesBrisay, who had been elevated to the Bench in British Columbia, and Messrs. Fisher, Salterio, and Wadge, who had retired. He said that he felt that he expressed the feeling of all members of the Conference in wishing these former members continued health and happiness.

Minutes of Last Meeting

The following resolution was adopted:

RESOLVED that the minutes of the 1957 annual meeting as printed in the 1957 Proceedings be taken as read and adopted.

Treasurer's Report

The Treasurer, Mr. Fournier, presented his report (Appendix B, page 39). Messrs. Ryan and Cross were appointed auditors and the report was referred to them for audit and for report to the closing plenary session.

Secretary's Report

The Secretary, Mr. Muggah, presented his report (Appendix C, page 41).

Nominating Committee

The President next named a committee, consisting of Messrs. Rutherford (*Chairman*), O'Meara, MacTavish, Mitton and Carter, to make recommendations respecting officers of the Conference for 1958-1959 and to report thereon at the closing plenary session.

Publication of Proceedings

The following resolution was adopted:

RESOLVED that the Secretary prepare a report of the meeting in the usual style, have the report printed and send copies thereof to the members of the Conference and those others whose names appear on the mailing list of the Conference, and that he make arrangements to have the 1958 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association.

Some discussion was had on the suggestion that there be printed in the Proceedings a list of all Presidents of the Conference. It was agreed that such a list should be published and the Secretary instructed accordingly.

Law Reform

Dean Bowker reported orally that the Committee on Law Reform was continuing to follow developments in the Canadian Bar Association and elsewhere in the field of law reform, but at this time had no recommendations or suggestions to make respecting action by the Conference on the subject.

Next Meeting

The Secretary read a letter from The Honourable R. A. Donahoe, Attorney-General of Nova Scotia, inviting the Conference to hold its 1960 meeting in Nova Scotia and assuring the Conference that if the invitation was accepted his Government would do all that it could to contribute to the success of the meeting. After some discussion, it was decided to defer the decision until the closing plenary session.

MINUTES OF THE UNIFORM LAW SECTION

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

Alberta:

Messrs. W. F. BOWKER and J. W. RYAN.

British Columbia:

Messrs. P. R. BRISSENDEN and G. H. CROSS.

Canada:

Messrs. E. A. DRIEDGER and W. P. J. O'MEARA.

Manitoba:

Messrs. I. J. R. DEACON, G. S. RUTHERFORD and R. H. TALLIN.

New Brunswick:

Messrs. M. M. HOYT, R. D. MITTON and J. F. H. TEED.

Newfoundland:

MR. P. L. SOPER.

Nova Scotia:

Messrs. H. F. MUGGAH and H. E. READ.

Ontario:

The Honourable Mr. Justice F. H. BARLOW and Messrs. W. C. ALCOMBRACK and L. R. MACTAVISH.

Quebec:

Messrs. EMILE COLES and G. R. FOURNIER.

Saskatchewan:

Messrs. W. G. DOHERTY, J. H. JANZEN and E. C. LESLIE.

FIRST DAY

(TUESDAY, SEPTEMBER 2ND, 1958)

First Session

11 a.m.–12.15 p.m.

The first meeting of the Section was convened immediately after the close of the opening plenary session. The President, Mr. Read, acted as chairman of the session.

Hours of Sittings

The following resolution was adopted:

RESOLVED that this Section of the Conference sit from 9.30 a.m. to 12 noon and from 2 p.m. to 5 p.m. daily during this meeting.

Legislative Assembly

Mr. Ryan, on behalf of the Alberta Commissioners, reported orally that the Commissioners were continuing their study of the subject in accordance with the resolution passed at the 1957 meeting, but had no formal report to make at this session. It was agreed that the Alberta Commissioners should continue to deal with the matter in accordance with the resolution passed at the 1957 meeting.

Amendments to Uniform Acts

Pursuant to the resolution passed at the 1955 meeting (1955 Proceedings, page 18) Mr. Alcombrack presented the report on Amendments to Uniform Acts (Appendix D, page 43).

Following discussion of the report, the following resolution was adopted:

RESOLVED that Mr. Alcombrack's report on Amendments to Uniform Acts be received and that the thanks of the Conference be extended to him for his work.

Judicial Decisions affecting Uniform Acts

Dean Read presented his annual report on Judicial Decisions affecting Uniform Acts (Appendix E, page 46).

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

RESOLVED that the report of Dean Read on Judicial Decisions affecting Uniform Acts be received with thanks and that the Conference record its opinion that no amendments to Uniform Acts are required by reason of the cases referred to in the report.

Second Session

2 p.m.–5 p.m.

Bills of Sale Act

Conditional Sales Act

Mr. Ryan presented the report of the Alberta Commissioners on these Acts (Appendix F, page 56).

After consideration of the report, the following resolution was adopted:

RESOLVED that the matter of amendments to the Bills of Sale Act and the Conditional Sales Act be referred back to the Alberta Commissioners for further study and for a report at the next meeting of the Conference with draft Acts incorporating the changes agreed upon at this meeting and any other changes that the Alberta Commissioners, as a result of their additional study, feel should be made.

Partnership Act

Pursuant to a resolution passed at the 1957 meeting of the Conference, Mr. Hoyt presented the report of the New Brunswick Commissioners on the subject (Appendix G, page 65).

The meeting, after discussion, resolved that the report be adopted.

Bulk Sales

Mr. Ryan submitted the report of the Alberta Commissioners (Appendix H, page 68). The Conference then proceeded to consider the report, together with the report and draft Act submitted by the Alberta Commissioners at the 1957 meeting (1957 Proceedings, Appendix N, page 97). Mr. MacTavish reported that a special committee had been set up in Ontario to make a study of legislation relating to bulk sales and that there was a possibility that the committee would be recommending new legislation in the near future. It was agreed, however, to proceed with consideration of the draft Act that had been prepared by the Alberta Commissioners.

SECOND DAY

(WEDNESDAY, SEPTEMBER 3RD, 1958)

Third Session

9.30 a.m.–12 noon.

Bulk Sales—(concluded)

Consideration and discussion of the draft Act was concluded and the following resolution adopted:

RESOLVED that the Bulk Sales Act be referred back to the Alberta Commissioners for redrafting in the light of the deci-

sions made at this meeting and for a report at the 1959 meeting with their recommendations respecting additional amendments in the light of further developments in Ontario.

Innkeepers

Mr. Muggah presented the report of the Nova Scotia Commissioners (Appendix I, page 70) and consideration of the report and the draft Act was commenced.

Fourth Session

2 p.m.–5 p.m.

Intestate Succession

Mr. Kennedy presented his report (Appendix J, page 75) on the subject, which had been added to the Agenda at his suggestion.

After consideration of Mr. Kennedy's report, the following resolutions were adopted:

RESOLVED that Sections 16 and 17 of the Uniform Intestate Succession Act be replaced by the following section:

> **16.** For the purposes of this Act, an illegitimate child shall be treated as if he were the legitimate child of his mother.

RESOLVED that the Uniform Intestate Succession Act as amended by the Conference since 1950, including the amendments agreed upon at this meeting, be reprinted in the Proceedings.

NOTE:—In accordance with this resolution, the Uniform Intestate Succession Act, as amended to date, is printed as Appendix K, page 78.

Reciprocal Enforcement of Judgments
Reciprocal Enforcement of Maintenance Orders

Mr. Kennedy presented a report (Appendix L, page 81) outlining the difficulties that had been encountered in attempting to carry out the directions of the Conference at the 1957 meeting (1957 Proceedings, page 25) and drawing attention to other respects in which the Acts should be amended.

After some discussion, the following resolution was adopted:

RESOLVED that the Uniform Reciprocal Enforcement of Judgments Act and Reciprocal Enforcement of Maintenance Orders Act be referred back to the British Columbia Commissioners for incorporation in them of the changes agreed upon at this meeting;

that copies of the draft Acts, as so revised, be sent to each of the local secretaries for distribution by them to members of the Conference in their several jurisdictions; and that if the Acts 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, 1958, they be recommended for enactment in that form.

NOTE:—Copies of the revised drafts were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1958. The draft Acts as adopted and recommended for enactment are set out in Appendix M, page 90.

Survivorship

Mr. Kennedy submitted his report (Appendix N, page 104) on this subject, which had been added to the Agenda at his suggestion.

Following discussion, the following resolution was adopted:

RESOLVED that the Commissioners for Ontario be requested to study Mr. Kennedy's report on the Survivorship Act and report to the Conference at the 1959 meeting with a new draft Act if they considered it advisable.

Legitimation

Mr. Bowker presented the report of the Alberta Commissioners (Appendix O, page 110) and consideration of the report was commenced.

THIRD DAY

(THURSDAY, SEPTEMBER 4TH, 1958)

Fifth Session

9.30 a.m.–12 noon

Highway Traffic and Vehicles (Rules of the Road)

Mr. Alcombrack presented the report of the Ontario Commissioners and consideration of it was begun. During consideration of this report, Mr. A. G. MacNab, Registrar of Motor Vehicles of Ontario, and Mr. R. H. Humphries, Solicitor of the Department of Transport of Ontario, attended the sessions and participated in discussions.

Sixth Session

2 p.m.–4.15 p.m.

Highway Traffic and Vehicles (Rules of the Road)—(continued)

Consideration of the report of the Ontario Commissioners occupied the whole of this session.

FOURTH DAY

(FRIDAY, SEPTEMBER 5TH, 1958)

Seventh Session

9.30 a.m.–12 noon

Highway Traffic and Vehicles (Rules of the Road)—(concluded)

This whole session was occupied with a study of the Ontario report and at the conclusion of the session the following resolution was adopted:

RESOLVED that the Conference record its appreciation of the work of the Ontario Commissioners and those who assisted and advised them in the preparation of the report on Highway Traffic and Vehicles (Rules of the Road) Act.

AND IT IS FURTHER RESOLVED that the draft Act, as set out in the Ontario report, be referred back to the Ontario Commissioners to incorporate in it the changes agreed upon at this meeting; that copies of the draft as so revised be sent to each of the local secretaries for distribution by them to members of the Conference in their several jurisdictions; and that if the draft as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1958, it be recommended for enactment in that form.

NOTE:—Copies of the revised draft were distributed in accordance with the above resolution. Disapprovals by two or more jurisdictions were not received by the Secretary by November 30, 1958. The draft as adopted and recommended for enactment is set out in Appendix P, page 128.

Eighth Session

2 p.m.–5 p.m.

Legitimation—(concluded)

Following further consideration and discussion of the report of the Alberta Commissioners, the following resolution was adopted:

RESOLVED that the report of the Alberta Commissioners on the subject of legitimation be referred to the British Columbia Commissioners for study and, if they consider it advisable, for revision of the draft Act contained in the Alberta report, and distribution of the revised draft to all members of the Conference by the 1st day of June, 1959; and that the Conference consider at the 1959 meeting the report and draft Act prepared by the Alberta Commissioners and the report and draft Act prepared by the British Columbia Commissioners.

Innkeepers—(continued)

Consideration of the report of the Nova Scotia Commissioners was resumed and continued for some time during this session.

Companies

Mr. O'Meara submitted the following report on the work of the Federal-Provincial Committee on Uniformity of Company Law:

The Federal-Provincial Committee on Uniformity of Company Law at its meeting in Ottawa, December 2 to 6, 1957, agreed upon the content of the first draft Uniform Companies Act for the Letters Patent jurisdictions. The adaptations of principle necessary for the draft to be recommended to the provinces proceeding by way of Memoranda and Articles of Association were agreed upon in substance and the representatives of those jurisdictions undertook to complete their draft Act accordingly.

The Committee unanimously decided that in order to facilitate constructive comments, these two draft uniform Acts ought to be printed and distributed among interested groups or individuals. Unfortunately, some unavoidable delays were encountered in preparing the draft for the Memoranda and Articles jurisdictions. Accordingly, since the Committee had directed, again unanimously, that both drafts should be printed for simultaneous distribution, it was not possible to circulate copies in the early spring, as had been hoped. However, some weeks ago distribution was effected and arrangements were completed for panel discussions on both drafts at next week's meetings of the Canadian Bar Association.

Because of the detailed discussion involved in deciding upon various matters of policy to be recommended in the draft Acts, it was found impractical to devote the requisite time, at this stage, to refined matters of drafting. Two of the three members

of this Conference, who were designated a committee to study the draft uniform Act and to report thereon at this meeting, submitted comments and constructive suggestions, but, so far as I am aware, a full report has not been completed. Moreover, it has been felt that a committee comprising only three commissioners, all representing jurisdictions which proceed toward incorporation by the grant of Letters Patent, could hardly be expected to accept the responsibility for recommendations with respect to the Memoranda and Articles draft. In these circumstances, and having in mind the likelihood of constructive criticism resulting from the panel discussions at the Canadian Bar Association meeting and helpful suggestions from private sources, I would recommend that two separate committees of commissioners be appointed to collaborate with the Federal-Provincial Committee in such revision of the first two draft uniform Acts as may be found desirable.

The Conference may well feel inclined to reappoint the commissioners for Manitoba and Ontario, together with the Federal representatives, to collaborate, in necessary revision of the Letters Patent draft uniform Act, with representatives of other provinces which follow the memoranda and articles procedure, to similarly co-operate in the revision of that draft. Detailed arrangements for both meetings of the representatives of this Conference and the sections of the Federal-Provincial Committee might, I suggest, be worked out through correspondence with those concerned with the respective projects.

Following discussion of the report, the following resolution was adopted:

RESOLVED that Mr. O'Meara's report respecting the Federal-Provincial Committee on Uniformity of Company Law be received and that his recommendation be adopted.

In accordance with this resolution, the following committees were appointed to examine the draft uniform Acts and to collaborate with the Federal-Provincial Committee in such revision of them as may be found desirable:

Letters Patent, draft Act—

Messrs. MacTavish, Rutherford and Driedger.

Memorandum and Articles of Association, draft Act—

Messrs. Brissenden, Ryan and Janzen.

FIFTH DAY

(SATURDAY, SEPTEMBER 6TH, 1958)

Ninth Session

9 a.m.–10.15 a.m.

Mechanics' Lien

Mr. Hoyt presented the report of the New Brunswick Commissioners (Appendix Q, page 157) in accordance with the decision of the Conference at the 1957 meeting (1957 Proceedings, page 29).

Following discussion of the report, the following resolution was adopted:

RESOLVED that the Commissioners for the Province of Saskatchewan be requested to prepare and submit, at the next meeting of the Conference, a draft Uniform Mechanics' Lien Act.

Innkeepers—(concluded)

Upon conclusion of consideration of the report of the Nova Scotia Commissioners on this subject, the following resolution was adopted:

RESOLVED that the draft of the Uniform Innkeepers Act be referred back to the Nova Scotia Commissioners for revision in accordance with the changes agreed upon at this meeting; that the draft as so revised be sent to each of the local secretaries for distribution by them to the Commissioners in their respective jurisdictions; and that if the draft as so revised is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November, 1958, it be recommended for enactment in that form.

NOTE:—The draft revised Act not having been distributed before the 30th day of November, 1958, no recommendation respecting the Act has been made by the Conference.

Foreign Torts

Dean Read reported orally that some progress had been made on the study of this subject and recommended that work on it be continued. He expressed the hope that he would be able to submit a written report before the next meeting of the Conference.

Domicile

Mr. Cross stated that the British Columbia Commissioners were not yet prepared to make a report on the subject of Domicile, and it was agreed that they should continue their study in ac-

cordance with the resolution passed at the 1957 meeting (1957 Proceedings, page 29).

Legislative Assembly

Mr. Ryan, on behalf of the Alberta Commissioners, reported that they were proceeding in accordance with the resolution passed at the 1957 meeting (1957 Proceedings, page 25), and it was agreed that they should continue to do so.

Highway Traffic and Vehicles (Responsibility for Accidents)

It appearing that time would not permit consideration of this subject, it was agreed that consideration of it be deferred until the next meeting of the Conference.

Permanent Staff

Following some consideration of a suggestion by Mr. Rutherford that the Conference explore the possibility of obtaining funds to engage a full-time draftsman and secretary, it was agreed that Mr. Rutherford be asked to obtain the views of the members of the Conference on the feasibility of such a course and that the matter be again considered at the next meeting.

Presumption of Death

Mr. Cross suggested that the Conference consider the advisability of making a study of the need for a uniform Act on the subject of presumption of death and, if considered advisable, recommend an Act. The following resolution was adopted:

RESOLVED that the British Columbia Commissioners be asked to study the matter of legislation respecting presumption of death and to report at the next meeting of the Conference with a draft Act if they considered one advisable.

Printing of Uniform Acts

It was suggested by Mr. Fournier that all uniform Acts adopted and recommended by the Conference be consolidated and printed in one volume.

Following considerable discussion, it was agreed that the suggestion be referred to the Secretary and former secretary for consideration, report and recommendation at the next meeting of the Conference.

Vital Statistics

The Secretary read a letter from the Vital Statistics Council recommending an amendment of the definitions of "birth" and

"stillbirth", as contained in the Uniform Vital Statistics Act.

The following resolution was adopted:

RESOLVED that the recommendation of the Vital Statistics Council for amendment of the definitions of "birth" and "stillbirth" in the Uniform Vital Statistics Act be referred to the Manitoba Commissioners for study and report at the next meeting.

Eye Banks

Mr. MacTavish reported, briefly, on correspondence that he had had with local secretaries on the subject of legislation relating to the establishment of eye banks and facilities for the preservation and use of other types of tissue. It was resolved that the subject be referred to the Ontario Commissioners for examination and report at the next meeting with a draft Act if they considered it advisable.

Expropriation

Some discussion arose on a suggestion that the Conference prepare a Uniform Expropriation Act. Mr. Driedger stated that the subject was presently being studied by officers of the Government of Canada and it was agreed that the Conference defer action until next year and request Mr. Driedger to make a report at the 1959 meeting on the status of the Dominion Act.

MINUTES OF THE CRIMINAL LAW SECTION

The following members attended:

GILBERT D. KENNEDY, Deputy Attorney General, representing British Columbia;

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

R. S. MELDRUM, Deputy Attorney General, representing Saskatchewan;

O. M. M. KAY, C.B.E., Q.C., Deputy Attorney General, representing Manitoba;

W. B. COMMON, Q.C., Deputy Attorney General, representing Ontario;

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

D. O. STEWART, Q.C., Crown Prosecutor, Prince County, representing Prince Edward Island;

H. P. CARTER, Q.C., Director of Public Prosecutions, Department of the Attorney General, representing Newfoundland;

A. J. MACLEOD, Q.C., Director, Criminal Law Section, Department of Justice, and

J. C. MARTIN, Q.C., of that Department, representing the Department of Justice of Canada;

G. R. FOURNIER, Q.C., attended the Conference as a representative of Quebec. He did not personally attend the session of the Criminal Law Section, but delivered to the Secretary comments (written) from the Department of the Attorney General upon matters included in the Agenda;

THE HONOURABLE A. KELSO ROBERTS, Q.C., Attorney General of Ontario, and the Honourable S. R. Lyon, Attorney General of Manitoba, attended several sessions of the Section.

Chairman—W. B. COMMON, Q.C.

Secretary —A. J. MACLEOD, Q.C.

The Secretary reported receipt of a telegram from H. W. Hickman, Q.C., expressing regret that circumstances had arisen that made it impossible for him to attend as the representative of New Brunswick.

The Criminal Law Section considered numerous matters that were raised in the working papers that had been prepared, and

also several suggestions advanced by members at the first session. However, in accordance with the method adopted in last year's minutes, what follows reports the conclusions reached by the Section, reference to those suggestions that were not recommended being omitted except where it is desired to record that a particular matter was discussed.

Except where stated otherwise, references to sections are to sections of the Criminal Code.

Prohibition against Driving

The Commissioners approved a suggestion from the Canadian Highway Safety Conference that s. 225(3) be amended to make the offence punishable on indictment as well as on summary conviction.

This led to further discussion of s. 221(2) from which the consensus of opinion appeared to be that it should contain the words "on the highway". No conclusion was reached but it was decided that the Minutes should show that the matter was discussed and that they should show also that there was reference to *R.* v. *Irwin* (1957) O.W.N. 506, in which it was held that "an order made pursuant to subsection (1)", as mentioned in s. 225(3), means an order prohibiting driving on a highway, and that it is not an offence under s. 225(3) to drive on a road that is not a highway, while licence is suspended.

Uniform Highway Traffic Act

Further discussion of s. 221(2) came later but may be mentioned here. The Ontario Commissioners, with reference to the draft Uniform Traffic (Rules of the Road) Act, desired the opinion of the Criminal Law Section upon sections 9, 10 and 14 of that Act. The proposed s. 10 reads as follows:

> **10.**—(1) Where an accident occurs on a highway, every person who was in charge of a vehicle and was directly or indirectly a party to the accident shall,
>
> (*a*) remain at or immediately return to the scene of the accident;
>
> (*b*) render all reasonable assistance to any person involved in the accident; and
>
> (*c*) give in writing upon request to anyone sustaining loss or injury or to any traffic officer or to any witness his name and address, the name and address of the re-

gistered owner of the vehicle, the number of the driver's licence, and the registration number of the motor vehicle.

(2) Where an accident results in damage to an unattended vehicle or to property upon or adjacent to a highway, the driver of every vehicle involved in the accident shall take reasonable steps to locate and notify the owner of, or a person who has a right to control, the unattended vehicle or the property of the circumstances of the accident, and give to him the name and address of the driver, the registration number of the vehicle and the number of the driver's licence.

The Commissioners were of the opinion that s. 10(1) (*a*) and (*b*), with some change in phraseology, should replace s. 221(2) in the Criminal Code, and that s. 10(1) (*c*) and (2) above should remain in the Highway Traffic Act.

Section 9 above-mentioned reads as follows:

9. Except with lawful authority, a person shall not alter, injure or remove or attempt to alter, injure or remove a traffic-control device or any part thereof.

After some discussion, the Commissioners concluded that this section is *intra vires* of the Provincial Legislature.

Section 14 above-mentioned reads as follows:

14.—(1) A written report or statement made or furnished under section 10, 11, 12 or 13,

(*a*) is not open to public inspection; and

(*b*) is not admissible in evidence for any purpose in a trial arising out of the accident, except to prove,

(i) compliance with this section, or

(ii) falsity in a prosecution for making a false statement in the report or statement;

but the Registrar shall on the request of a person involved in the accident or his solicitor disclose to him the names and addresses of persons referred to in the report or statement.

The Commissioners were of opinion that consideration of this section should await the decision of the Supreme Court of Canada upon the reference by the Government of Saskatchewan concerning the constitutional validity of s. 92(4) of the Vehicles Act, 1957, of that Province.

The Commissioners met with the Uniform Law Section and reported these conclusions:

Previous Convictions

A question, with particular reference to s. 222 and s. 223, was discussed as to how long a previous conviction should stand as a basis for a heavier penalty if a comparable crime is later committed. The consensus was that this should be dealt with as an administrative matter and not by amendment to the law.

New Trials on Appeal in Cases under Part XVI

The Commissioners were of the opinion that s. 592(5) should be amended to apply "except in proceedings under s. 467" thus to preclude an implication that there should be an election in cases where the magistrate has absolute jursidiction. At the same time, the Commissioners repeated their opinion that s. 469 should be amended to permit a magistrate to hold a preliminary hearing and send for trial a case in which he has absolute jurisdiction.

Jurisdiction of Justices

The Commissioners considered the judgment of the Supreme Court of Canada delivered in June, 1958, in *R.* v. *Larson*. They recommended that s. 697(5) be amended to provide that a justice who is waiving jurisdiction shall specify the location of the summary conviction court to which the waiver is made rather than a named person, also that consideration be given to combining subsections (4) and (5).

Corruption in Office

The Commissioners requested that the Department of Justice circulate to them, before February 28th, 1959, a redraft of sections 99 to 104, with particular reference to points of law arising in proceedings in progress in the courts of British Columbia, and to a suggestion that s. 104 be amended to include school trustees and other persons concerned with school administration.

Theft of Television Signals

A resolution of the National Community Antenna Television Association was brought before the meeting. It urged amendment of s. 273 to make it a criminal offence for a non-subscriber to steal television signals from a community antenna. The Commissioners were of opinion that the Association should approach the Department of Transport and clear away technical difficulties before asking that the criminal law be amended.

Summary Conviction Appeals

The Commissioners recommended that s. 723(1) be amended to read: "Where an appellant has complied with sections 722 *and 724*, the appeal court *or a judge thereof* shall set down the appeal," etc. The first change would require it to be shown that security has been posted, and the second would obviate the decision in New Brunswick, in *Hodgins* v. *R.*, that the appellant may only make his application for setting a date for trial during a regular sitting of the court.

The Commissioners expressed the opinion that where the accused has pleaded guilty in the summary conviction court he should not be permitted to appeal other than against sentence unless the appeal court, upon cause shown, permits him to withdraw his plea.

Crimes Committed on Aircraft

The Commissioners considered a memorandum prepared in the Department of Justice seeking an expression of views concerning jurisdiction of Canadian courts in relation to crimes committed aboard aircraft. Their conclusions were as follows:

1. The present law concerning jurisdiction over offences committed in the air over Canada should be preserved.
2. Jurisdiction should be limited to those offences committed outside of Canada in the course of a flight that ends in Canada, that would be indictable offences if committed in Canada.
3. Canada should not legislate to give Canadian courts jurisdiction over offences committed outside of Canada in the course of a flight that begins in Canada but does not end in Canada.
4. The commander of an aircraft should have the powers of a peace officer during flight.

Breach of Recognizance on Suspended Sentence

There was a suggestion that s. 639 be amended to provide that a person alleged to have broken a recognizance on suspended sentence may be brought before any magistrate for sentence with the consent of the court that originally suspended sentence. The purpose would be to avoid the necessity of returning such a person to the original court if he is a substantial distance away from it. The Commissioners recommended that the section be amended to clarify it in this respect.

Recognizance Binding over Person Convicted

The Commissioners recommended that the court that binds over a convicted person under s. 637 should have the same power to impose conditions as exists under s. 638 (suspended sentence).

They recommended further that s. 718 be amended to include breach of a recognizance entered into under s. 637.

Remand for Mental Examination

The Commissioners approved a suggestion that s. 451 be amended to extend to magistrates trying summary conviction or summary trial cases the power to remand the accused for observation. They recommended further that a superior court judge be empowered to order that a person who has been committed for trial be committed to a mental institution for examination for a period not exceeding ninety days.

Addresses of Counsel

The Commissioners recommended that s. 555 be amended to require that the addresses of counsel be taken down by the stenographer, not necessarily to be transcribed, and that s. 588(2) be amended to provide for a transcript of those addresses where an issue upon an address is raised on appeal.

Officers of Section

The Criminal Law Section appointed Dr. Gilbert Kennedy to be its Chairman for 1958-59, and Mr. A. J. MacLeod, Q.C., to be its Secretary.

MINUTES OF THE CLOSING PLENARY SESSION

(SATURDAY, SEPTEMBER 6TH, 1958)

10.15 a.m.–11.30 a.m.

The Plenary Session resumed with the President, Mr. H. E. Read, in the chair.

Report of Criminal Law Section

Mr. Common, Chairman of the Criminal Law Section, presented his report on the work of the Section (Appendix R, page 160).

Appreciations

The following resolution was moved by Mr. Bowker, seconded by Mr. O'Meara, and unanimously adopted:

RESOLVED that this Conference express its sincere appreciation:

(*a*) to the Niagara Parks Commission for the cocktail party at the Refectory on Tuesday evening;

(*b*) to The Honourable A. Kelso Roberts and Mrs. Roberts for the delightful dinner on Tuesday evening;

(*c*) to His Honour Judge Harold L. Fuller and Mrs. Fuller for their gracious hospitality at their home in Fonthill when members of the Conference and their wives were guests at a buffet supper on Wednesday evening;

(*d*) to the Nova Scotia Commissioners for their enjoyable luncheon in the Sheraton-Brock Hotel on Friday noon;

(*e*) to the Niagara Falls Bridge Commission, Mr. Kaumeyer and Mr. MacInnes for the reception in the Carillon Tower on Friday afternoon, and to the Commission and Dr. Kleinschmidt for the delightful carillon programme;

(*f*) to the Ontario Commissioners for their excellent arrangements for the meeting and the wonderful social programme; for the cocktail party on Thursday afternoon; and for the series of events for the ladies that covered all of the points of interest and beauty on the entire length of the Niagara River.

AND BE IT FURTHER RESOLVED that the Secretary of the Conference be directed to send a copy of this resolution to the interested parties.

Report of Auditors

Mr. Cross reported that he and Mr. Ryan had examined the books of the Treasurer and the Treasurer's Report and had found them to be correct and had so certified.

Report of Nominating Committee

Mr. Rutherford, Chairman of the Nominating Committee named at the opening plenary session, submitted the following nominations for the officers of the Conference for the year 1958-1959:

Honorary President	H. E. READ, Q.C., Halifax
President	E. C. LESLIE, Q.C., Regina
1st Vice-President	J. A. Y. MACDONALD, Q.C., Halifax
2nd Vice-President	J. F. H. TEED, Q.C., Saint John
Treasurer.	G. R. FOURNIER, Q.C., Quebec
Secretary.	H. F. MUGGAH, Q.C., Halifax

The report of the Committee was adopted and those named were declared elected.

Next Meeting

The following resolution was adopted:

RESOLVED that the next meeting of the Conference be held at Victoria during the five days, exclusive of Sunday, immediately preceding the 1959 meeting of The Canadian Bar Association.

It was agreed that the Conference could not accept the invitation of the Government of Nova Scotia to hold the 1960 meeting in Halifax and that the Attorney General of Nova Scotia should be advised that the Conference regretted that it was unable to accept the invitation.

Close of Meeting

Mr. Justice Barlow, on behalf of the members of the Conference, thanked the retiring President, Mr. Read, for his efforts during his term of office. The change in office between Dean Read and his successor as President, Mr. Leslie, then took place with an exchange of sentiments of appreciation for past support and assistance and of assurances of continued endeavours and co-operation.

At 11.30 a.m. the meeting adjourned.

APPENDIX A

(*See page 16*)

AGENDA

PART I

OPENING PLENARY SESSION

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

PART II
UNIFORM LAW SECTION

1. Amendments to Uniform Acts—Report of Mr. Alcombrack (see 1955 Proceedings, page 18).
2. Bills of Sale and Conditional Sales—Report of Alberta Commissioners (see 1957 Proceedings, page 21).
3. Bulk Sales—Report of Alberta Commissioners (see 1957 Proceedings, page 25).
4. Domicile—Report of British Columbia Commissioners (see 1957 Proceedings, page 29).
5. Federal-Provincial Committee on Uniformity of Company Law—Report of Special Committee (see 1957 Proceedings, page 23).
6. Foreign Torts—Report of Special Committee (see 1957 Proceedings, page 26).
7. Highway Traffic and Vehicles (Responsibility for Accidents)—Report of Nova Scotia Commissioners (see 1957 Proceedings, page 28).
8. Highway Traffic and Vehicles (Rules of the Road)—Report of Ontario Commissioners (see 1957 Proceedings, page 25)
9. Innkeepers—Report of Nova Scotia Commissioners (see 1957 Proceedings, page 24).

10. Intestate Succession—at the suggestion of Dr. Kennedy.
11. Judicial Decisions affecting Uniform Acts—Report of Dr. Read (see 1951 Proceedings, page 21).
12. Legislative Assembly—Report of Alberta Commissioners (see 1957 Proceedings, page 25).
13. Mechanics' Liens—Report of New Brunswick Commissioners (see 1957 Proceedings, page 29).
14. Partnerships—Report of New Brunswick Commissioners (see 1957 Proceedings, page 28).
15. Reciprocal Enforcement of Judgments—Report of Dr. Kennedy (see 1957 Proceedings, page 25).
16. Survivorship—at the suggestion of Dr. Kennedy.
17. New Business.

PART III

CRIMINAL LAW SECTION

The Criminal Law Section will discuss proposals that, since the last meeting, have been received in the Department of Justice for amendment of the Criminal Code. Working papers have been distributed.

PART IV

CLOSING PLENARY SESSION

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

APPENDIX B

(*See page 16*)

TREASURER'S REPORT

1957—1958

Balance on hand November 27th, 1957 (transferred to us by cheque from retiring Treasurer) (on deposit in The Royal Bank of Canada, 65 St. Anne St., Quebec City). . .		$ 4,769.15

RECEIPTS

Contributions from:		
Quebec Bar (year 1957)	$ 50.00	
Government of Quebec	200.00	
Government of Prince Edward Island. . . .	100.00	
Government of British Columbia.	200.00	
Government of Alberta	200 00	
Government of Manitoba.	200.00	
Government of Newfoundland	200.00	
Government of Saskatchewan	200.00	
Government of Ontario	200.00	
Government of New Brunswick	200.00	
Government of Nova Scotia	200 00	
Government of Canada	200.00	
Quebec Bar (year 1958)	50.00	
	———	2,200.00
Bank interest—April 24th, 1958		32.44
Rebate of Sales Tax		172.08

DISBURSEMENTS

Janitor for Conference	$	25.00
Wm. McNab & Son re: printing of Agenda for Conference. (1957)		17.60

T. J. Moore & Co. Ltd. re: rubber stamp for signature. . .			4.10
Clerical assistance, Honorariums			125.00
National Printers Limited re: printing of 300 Booklets— Rules Respecting the Organization and Procedures of Uniform Law Section.			133.85
Bank Service charge			0.90
National Printers Limited re:			
Printing proceedings 39th Annual Meeting 1957 .	$1,590.00		
Manilla Envelopes	2.75		
Typing & checking envelopes	8.00		
	$1,600.75		
Sales tax	160.08		
Mailing.	18.08		
Express charges . . .	3.55		
			1,782.46
McNab & Son re: printing of Agenda for Conference (1958).			17.60
CASH IN BANK			5,067.16
		$ 7,173.67	$7,173.67

Audited and found correct, 6 Sept., 1958,

(signed) G. W. CROSS,
J. W. RYAN,
Auditors.

APPENDIX C

(*See page 16*)

SECRETARY'S REPORT

1958

Proceedings

The Proceedings of the 1957 meeting were prepared, printed and distributed among the members of the Conference and those on the Conference mailing list. The resolution of the Conference (1957 Proceedings, page 17) directed that the Secretary make arrangements to have the 1957 Proceedings printed as an addendum to the Year Book of the Canadian Bar Association. In response to a request that he arrange such printing, the Secretary of the Canadian Bar Association advised that the Association had decided against printing the report of the Proceedings of the Conference as an addendum to the annual proceedings of the Association. He had been instructed, however, to obtain sufficient copies of the Proceedings to be able to forward one to each member of the Council of the Association. Arrangements were made to enable him to obtain the necessary number of copies of the Proceedings from the printers.

Distribution by the Bar Association of copies of the Proceedings to members of the Council reduced the requirements for Conference purposes by 275 copies. There had been a similar reduction in the order for the 1956 Proceedings and even with that reduction a stock of 150 copies remained on hand after ordinary distribution. Accordingly, I reduced the order for the 1957 Proceedings to 350 copies which, I felt, would be adequate for the mailing list and ordinary requests for extra copies.

Organization and Procedure of Uniform Law Section

In accordance with instructions given at the 1957 meeting (1957 Proceedings, page 26) a supply of 300 copies of the Rules of Procedure of the Uniform Law Section, as adopted at the 1954 meeting of the Conference, was printed. Copies of the pamphlet have been distributed among the members of the Conference and to other interested persons upon their request.

Sales Tax

An application was made for the refund of sales tax, totalling $172.08, paid on the printing of the 1957 Proceedings and of the booklet containing the Rules of Procedure of the Uniform Law Section, and in due course the refund was received.

Secretarial Assistance

In accordance with a decision of the Conference at the 1956 meeting (1956 Proceedings, page 33), an honorarium of $50.00 was paid to the Secretary's secretary and a similar amount was paid to Mr. V. J. Johnson of the Office of the Legislative Counsel, Ontario, for assistance in the printing, proofreading and distribution of the Proceedings. In this connection, I feel that mention should be made of the very valuable assistance given by Mr. Johnson in arranging for the printing, proofreading and distribution of the Proceedings. Miss Lynch, my secretary, has also been extremely helpful and has performed a great deal of additional work in connection with the Conference efficiently and without complaint. I feel that the honoraria to them are more than merited.

Rules of Drafting

Early this year Professor Robert F. Reid, of Osgoode Hall Law School, requested permission to include the Rules of Drafting of the Conference in a book of cases and materials on Administrative Law and Legislation to be used in Osgoode Hall Law School. After discussing the request with the President and the Vice-President, I advised Professor Reid that we saw no objection to his use of the material. Professor Reid indicated that he was seeking the permission of Messrs. Runciman and Silk who had prepared the material at the request of the Conference.

HENRY F. MUGGAH,
Secretary.

APPENDIX D

(*See page 19*)

AMENDMENTS TO UNIFORM ACTS

1958

REPORT OF W. C. ALCOMBRACK

Bills of Sale

The Uniform Act provides for the place where a bill of sale is to be registered if it covers a motor vehicle. A question arose in Manitoba as to whether the provision referred to a bill of sale that covered a motor vehicle only or a bill of sale that covered a motor vehicle and other chattels. Manitoba, therefore, amended its Act to provide that a bill of sale that covered a motor vehicle and other chattels was registerable as to the motor vehicle in Winnipeg and as to the other chattels in the district in which they were situated.

Bulk Sales

British Columbia amended its Bulk Sales Act, which is the original Uniform Act, in two respects. Section 3 of the Act, which is the section indicating the persons to whom the Act applies, was amended to include motels, auto courts and apartment houses. This amendment was made necessary by the doubts that have been expressed in the courts as to what category these establishments might fall in. Section 5 of the Act provides that "a purchaser may before obtaining a statement pay to the vendor a sum not exceeding $50 on account of the purchase price". British Columbia amended its provision to provide for the payment of an amount not exceeding 5 per cent of the purchase price.

Devolution of Real Property

Saskatchewan amended its Act to authorize personal representatives to lease real property for any term, not exceeding three years, "with the concurrence of the adult persons beneficially interested, with the approval of the Official Guardian on behalf of infants and, in the case of a lunatic, with the approval of the Administrator of Estates, if any infants or lunatics are so interested" as an alternative to the present provision which requires the approval of the court.

Highway Traffic and Vehicles (Rules of the Road)

British Columbia, which adopted the Uniform Rules of the Road in 1957 with certain changes, made numerous amendments in 1958 which can be discussed at the time the report of the Ontario Commissioners in this regard is dealt with by the Conference.

Alberta adopted the provisions of the Uniform Rules of the Road dealing with traffic signal devices.

Interpretation

Manitoba amended its Public Works Act to permit the Minister to authorize certain persons on his departmental staff to sign contracts, leases and other documents that are normally required to be signed by the Minister. As a result of this, Manitoba amended its Interpretation Act to provide that words in any Act of the Legislature granting to or vesting in a Minister of the Crown any power or authority or referring to him by name of his office extend to and include any person to whom the Minister may have, as authorized by statute, delegated power or authority if the power or authority so granted or vested in him is included in the power or authority so delegated.

Reciprocal Enforcement of Maintenance Orders

British Columbia repealed its present provisions and adopted the revised Uniform Reciprocal Enforcement of Maintenance Orders Act with the addition of the following provision:

> "the designation of a court by the Attorney-General for any purpose under this Act does not prevent the Attorney-General from designating another court with respect to the same order."

Regulations

British Columbia substantially adopted the Uniform Regulations Act. The major change from the Uniform Act is that subsection 2 of section 3, which provides that a regulation not filed is not in effect, was omitted.

Manitoba amended its Regulations Act by adding more detail and by giving authority for revision as well as consolidation.

Survivorship

British Columbia repealed its Commorientes Act and adopted the Uniform Survivorship Act with a change in wording in subsections 3 and 4. Subsection 4 of the Uniform Act reads as follows:

> "Where a will contains a provision for a substitute personal representative in case of the occurrence of any of the following circumstances . . . ."

British Columbia substituted the following wording:

> "Where a will contains a provision for a substitute personal representative operative upon the occurrence of any of the following circumstances . . . ."

This was an attempt to obviate any argument which might be presented that in order to invoke these provisions the will would have to express that the substitute personal representative would be appointed in case of the occurrence of any of the circumstances, naming them all.

Alberta made no amendments to Uniform Acts not approved by the Conference but adopted the following:

Revised Assignment of Book Debts Act
Revised Foreign Affidavits
Revised Interpretation Act
Revised Reciprocal Enforcement of Judgments Act
Revised Reciprocal Enforcement of Maintenance Orders Act
Uniform Pension Trusts (Uninsured)
Uniform Rules of the Road re Traffic Signal Devices only

W. C. ALCOMBRACK.

APPENDIX E

(See page 19)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

1957

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

This report is submitted in response to the resolution of the 1951 meeting requesting that an annual report be continued to be made covering judicial decisions affecting Uniform Acts reported during the calendar year preceding each meeting of this Conference. Some of the cases reported in 1957 applying Uniform Acts have not been included since they involved essentially questions of fact and raised no significant question of interpretation. It is hoped that Commissioners will draw attention to omission of relevant decisions reported in their respective Provinces during 1957 and will draw attention to any errors in stating the effect of decisions in this report. The cases are reviewed here for information of the Commissioners.

HORACE E. READ

CONDITIONAL SALES

New Brunswick Section 14

In *LaBelle* v. *Traders Finance Corp. Ltd.* (1957) 9 D.L.R. (2d) 275, a decision of the Appeal Division of the Supreme Court of New Brunswick, a conditional sale buyer of an automobile defaulted and the seller repossessed and resold. The seller sued to recover the amount of a deficiency. The seller was successful at the trial but the decision was reversed unanimously on appeal.

The car was repossessed "early in September". On September 8, the seller sent a registered letter to the buyer telling of repossession and intention to resell. On December 9, the seller sent another registered letter giving notice of repossession and intention to resell. On December 17 the car was sold at public auction by the Sheriff without the knowledge of the buyer.

The conditional sale contract contained a deficiency clause to the effect that the buyer would make up any deficiency between net proceeds of a resale and balance of purchase price unpaid.

The buyer's defense and the main ground of his appeal was that the seller had not brought himself within the provisions of section 14 of the Conditional Sales Act, R.S.N.B. 1952, c. 34. *Inter alia* s. 14 provides:

> 14.—(3) Where the goods are not redeemed within the period of twenty days and the seller intends to look to the buyer . . . for any deficiency on a resale, the seller may sell the goods by public auction at any time after the expiration of that period after notice in writing of the intention to sell has been given to the buyer. . . .
>
> (4) The notice shall contain;
>
> (*a*) . . .
>
> (*b*) An itemized statement of the amount due. . . .
>
> (*c*) . .
>
> (*d*) A statement that unless the amount as stated in the notice is paid within the time mentioned the goods will be sold at public auction at a time and place specified therein, and that the seller intends to look to the buyer . . . for any deficiency on the resale.

Chief Justice McNair for the Court found that the first notice did not comply with subsection (4) because it lacked an itemized statement of the amount due, and it said the car would be sold "either by private sale or advertised and sold by public auction". The second notice, although it corrected these two deficiencies, nevertheless failed to fulfill the statutory requirements since it did not specify the time and place of intended sale. In argument before the Court, counsel for the seller admitted that if the provisions of section 14 applied the seller had lost his contractual rights, but he contended that the section has no application in a case where the conditional sale contract contains deficiency clause.

Of this contention Chief Justice McNair said at 9 D.L.R. (2d) p. 279:

> The proposition is a startling one which would, if sound, quite change the character of this type of legislation, long held to exist primarily for the protection of buyers. The result would be, first, that where the contract contains a deficiency clause the seller can repossess, resell and sue for deficiency provided only that he complies with the provisions of the contract, if any, regulating the conduct of the sale; and, secondly, that where the contract contains no deficiency clause the seller can, by virtue of the present statute, repossess, resell and sue for any deficiency provided he complies with the provisions of the statute.
>
> While the present s. 14 differs in some features from the corresponding s. 10 of the 1927 Act, I find nothing in it to indicate that its dominant purpose is other than the protection of the purchaser. In my view its clear meaning is that there can be no recovery by a seller of a deficiency resulting from a repossession and resale unless (1) the contract contains

a deficiency clause and (2) repossession and resale are conducted in strict compliance with the provisions of the Section.

British Columbia

In *General Securities Ltd.* v. *Lyons* (1957) 22 W.W.R. 145, 8 D.L.R. (2d) 652, a decision of the British Columbia Court of Appeal, a conditional sales contract was signed and dated May 20, 1948. The buyer defaulted in June 1949, the seller repossessed in February 1950, completed the resale in August 1953 and commenced an action against the buyer for a deficiency in November 1955. A clause in the contract provided that "The purchaser agrees to pay any deficiency that may remain after the application of the proceeds of any sale hereunder to the payment of said indebtedness." The buyer pleaded the Statute of Limitations. The seller argued that time did not begin to run against him until the security (a truck and trailer) was resold in 1953, because his right of recovery was not ascertained until then. The decision of the Court was that it began to run against his claim for the balance of the original price, in June 1949 when the buyer defaulted. A clause which permits the original right of action to be asserted, notwithstanding resale, does not create a new cause of action.

The decision of the Court is summed up in the words of Mr. Justice Sidney Smith:

> Perhaps I may mention in closing a remark made by my brother Bird during the hearing, namely, that appellant's (seller's) argument involves the rather startling result that appellant could buy [repossess] a motorcar, keep it for 30 years, then sell after notice, and still sue for deficiency without fear of the Statute of Limitations . . . I cannot believe that that is the law.

RECIPROCAL ENFORCEMENT OF JUDGMENTS

Manitoba Section 2

In *Re Paslowski* v. *Paslowski*, (1957) 22 W.W.R. 586, application was made under Section 3 of the Reciprocal Enforcement of Judgments Act, R.S.M. 1954, c. 221, to register a Saskatchewan judicial separation decree which ordered the defendant to pay the plaintiff maintenance monthly. The application was dismissed by Chief Justice Williams who held that the definition of "judgment" contained in clause (*a*) of subsection (1) of section 2 of the Act plainly confines its meaning to final judgments for the payment of money only, and excludes judgments which in addition give other relief. "The Act does not contemplate registration of

part of a judgment only and . . . does not contemplate that a judgment for divorce or for judicial separation pronounced by a foreign court could be registerable under the Act merely because it contains also an order for payment of money." Also, since under Saskatchewan law a maintenance order may be varied or modified from time to time by the court which made it, the order in the instant case was not a final judgment. The Chief Justice made the following comment at 22 W.W.R. 586:

> The Act has been subjected to much criticism and the commissioners are now studying it with a view to certain amendments.
>
> One of the amendments approved by the commissioners would add to the . . . definition of judgment the words—
>
> "but does not include an order for the payment of money as alimony or as maintenance for a wife or former wife or a child, or an order made against a putative father of an unborn child for the maintenance or support of the mother thereof."
>
> The stated reason why the commissioners approved the proposed amendment was that maintenance and alimony orders are dealt with under another Act, The Maintenance Orders (Facilities for Enforcement) Act.

SURVIVORSHIP

Ontario Section 1

In *Re Topliss and Topliss* (1957) 10 D.L.R. (2d) 654, the Court of Appeal for Ontario determined the correlation between the *Survivorship Act* and the *Insurance Act.* Section 1 of the *Survivorship Act,* R.S.O. 1950, c. 382 is as follows:

> (1) Where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other, or others, such deaths shall, subject to subsections 2 and 3, for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the older.
>
> (2) This section shall be read and construed subject to section 183 of the Insurance Act and section 36 of the Wills Act.

Section 183 of the *Insurance Act* reads: "Where the person whose life is insured and any one or more of the beneficiaries perish in the same disaster, it shall be *prima facie* presumed that the beneficiaries died first."

In this case an insured husband and his younger wife who was his beneficiary under life insurance policies died intestate in a common disaster under circumstances rendering it uncertain

which survived the other. The Court of Appeal affirmed the decision of Mr. Justice Aylen at the trial, 7 D.L.R. (2d) 719, that the proceeds were properly payable to the husband's estate under the Insurance Act, but that in the distribution of the assets the Survivorship Act applied so as to entitle the wife's estate to share in the proceeds of the insurance. In reaching this conclusion Mr. Justice Aylen refused to follow *Re Law* [1946] 2 D.L.R. 378, 62 B.C.R. 380, a case where on essentially identical facts a single Judge of the Supreme Court of British Columbia held that the *Survivorship Act* by its own terms is expressly to be construed subject to the Insurance Act so that the statutes are not complementary and not to be read together or applied jointly and consequently the *Insurance Act* is the "predominant or controlling Act" and the insurance proceeds do not become part of the general assets of the husband's estate. Mr. Justice Aylen said:

> With respect, I do not believe that the reasoning in the Law case is sound because I think that when the Survivorship Act made s-s. (1) "subject to section 183 of the Insurance Act and section 36 of the Wills Act", it meant only that the Survivorship Act should not be construed so as to interfere in any way with the operation of those sections of the Insurance Act and the Wills Act. Section 183 of the Insurance Act simply makes the proceeds of the insurance policies an asset of the estate of Albert William Topliss and those proceeds should be dealt with in the same manner as any other asset of that estate and made subject to creditors of the estate. Under the Survivorship Act, and Annie May Topliss being younger than her husband, the estate of Annie May Topliss will take the same share as if Annie May Topliss had survived her husband.
>
> I have also been referred by counsel for the applicant to an article by Gilbert D. Kennedy of the Faculty of Law of the University of British Columbia which is to be found in the Canadian Bar Review, vol. 24, 1946, pp. 721 et seq., in which the decision in the Law case is fully discussed and criticized. I fully agree with Professor Kennedy's reasoning and particularly when he points out that s. 183 of the Insurance Act has spent itself once it provides to whom the insurance money is to be payable—in this case to the estate of Albert William Topliss; and also when Professor Kennedy points out that there is nothing in s. 183 of the Insurance Act (I am quoting the section of our own statute) which in any way suggests that it can affect the rights of the beneficiary of an estate as opposed to the rights of a beneficiary of an insurance policy.

In the Court of Appeal, Mr. Justice Roach for the Court, commented further:

> At the moment of the husband's death each of the policies became a policy payable on its maturity, to the estate of the husband by virtue of ss. 168 (4) (*d*) and 183 of the Insurance Act and the insurers were required in due course to pay the proceeds of those policies to the re-

presentative of the husband's estate. The situation was exactly as if the policies in the first instance had been payable to the insured's estate. Once those proceeds had been paid to the husband's estate then s. 183 had served its purpose and its effect had been spent. Having received those proceeds, regardless of their source, the administrator of the husband's estate in the discharge of his duties as such, would be required to distribute them and the other assets of the estate after payment of debts and succession duties, if any, to the persons entitled under the Devolution of Estates Act, R.S.O. 1950, c. 103. At that point the question arises who survived the husband? Was the wife one of the survivors? To answer that question the administrator would turn to the Survivorship Act and applying it, would proceed on the presumption that the husband had predeceased his wife and the share of his estate to which she would have been entitled would become payable to the representative of her estate.

In my respectful opinion there is really no conflict between the two statutory provisions. The provision in the Insurance Act serves its purpose; the provision in the Survivorship Act serves its purpose. The purpose of the Insurance Act is to determine to whom the proceeds of the policy in the circumstances, shall be paid; the purpose of the Survivorship Act is to determine to whom the assets of the estate should be distributed.

TESTATORS FAMILY MAINTENANCE

Alberta

In 1956 the Saskatchewan Court of Appeal held that the Testators Family Maintenance Act creates no vested right in a dependant, and consequently no right to maintenance survives his death. (See 1957 Proceedings p. 57.) In Alberta, in 1957, in *Re McMaster Estate* (1957) 21 W.W.R. 603, 10 D.L.R. (2d) 436, Mr. Justice Egbert agreed. After the proceedings were launched on behalf of a widow, she died before the application was heard. Her executor secured a determination by the Court of the question: "Does the death of the applicant herein . . . determine all her right to the relief claimed . . . ?" In holding that it does, Mr. Justice Egbert agreed with the Saskatchewan Court, and refers approvingly to the dissenting opinion of Mr. Justice McDonald of the Court of Appeal of British Columbia in *Barker* v. *Westminister Trust Company* [1941] 4 D.L.R. 514, as follows:

> In his opinion the Act does not create a legal right but provides for a bounty in the discretion of the Court, and there being no legal right there was nothing which could pass to the personal representative. He points out that the question is not whether the proceedings constituted an actio personalis perishing with the party, but whether the

> peculiar and anomalous powers given by the Act are such that they can or should be exercised in favour of anyone rather than the petitioner himself. He asks how can the Court be asked to meet the needs of a person who no longer needs anything? How can the Court properly provide for the maintenance of a person who can no longer be maintained? And he is definite in his conclusion that the Act can be invoked only by living persons for whose proper maintence and support adequate provision has not been made.

Mr. Justice Egbert distinguished *Re McCaffery* [1931] 4 D.L.R. 930, O.R. 512, where a widow's application had been heard during her lifetime and she had died before judgment was rendered in her favor. There the Court of Appeal for Ontario allowed a payment to her estate of a sum fairly representing the maintenance she would have been entitled to between the date of the testator's death and her own death, had judgment been delivered at the time of the hearing.

Saskatchewan Section 8

Subsection (1) of section 8 of the Dependants' Relief Act, R.S.S. 1953, c. 121 authorizes the court to make an order for maintenance where the court is of the opinion "that reasonable provision has not been made for the dependant". Subsection (6) reads:

> 8. (6) The court shall also have regard to the testator's reasons, so far as ascertainable, for making the dispositions made by his will, or for not making any provision or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the testator and dated, provided that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

In *Re Rusk Estate* (1957) 21 W.W.R. 68, 6 D.L.R. (2d) 700, the testator left his widow an amount that in the opinion of the Court of Appeal for Saskatchewan did not make reasonable provision for her. He had left the bulk of his estate to his children. The Court reversed the trial judge who held that the entire will indicated that the testator had "disposed of his estate as a wise and just husband and father and reasonable provision has been made for the applicant (widow)". With reference to subsection (6) the trial Judge said:

> On the facts and having in mind the pertinent sections of the Act I find, without hesitation, that the children are entitled to share in the bounty of their father, all having helped to build the estate and at least as to

two of them the testator had a moral duty as no doubt he considered to make some provisions for them.

Mr. Justice Culliton, for the Court of Appeal, said:

I do not read the judgment of the learned chamber judge to be a finding that the provision made for the maintenance of the applicant by the will, alone, is reasonable; but rather the provision is reasonable because sound reasons have been established, as provided for in subsec. (6), for the testator making the disposition he did in his will and for not making any further provision for the applicant.

With respect I cannot agree with his conclusion. The material discloses no more than that the children of the deceased were devoted children, fully aware of their filial obligations. The only inference that can be drawn is that the deceased was anxious to recognize in his will the devotion and kindness of his children. As laudable as such an intention may be, it is, in my opinion, neither a justification for the failure of the testator to make reasonable provisions for the maintenance of the applicant nor a reason within subsec. (6) precluding the court from now so doing.

The court also held that consideration must be given not only to the applicant's immediate requirements for maintenance, but also to her requirements for future maintenance, "difficult as it is to determine with all the probabilities and uncertainties."

WILLS

Saskatchewan Sections 2 and 6

In *Re Violet Bennie Estate* (1957) 22 W.W.R. 118, Mr. Justice Taylor, in the Queen's Bench, held that a holograph will cannot validly operate as a codicil to a formally executed will, since the term "holograph will" as used in subsection (2) of section 6 of the Wills Act R.S.S. 1953, c. 120, does not include within its meaning the definition of "will" set out in section 2 of the Act. Saskatchewan enacted the Uniform Wills Act, in 1931, including both provisions that were considered in this case. The views expressed by Mr. Justice Taylor in the course of his reasons for judgment and his method of interpretation ought to be carefully considered. He said:

In 1931 . . . ch. 34, an Act to be cited as the Wills Act of 1931, "An Act to make uniform the law respecting wills," was passed. The enactments during the many years from which this legislation was taken had uniformly contained an interpretation clause as follows:

2. In this Act, unless the context otherwise requires "will" includes a testament, a codicil, and appointment by will or writing in the nature of a will in exercise of a power and any other testimentary disposition.

The requirements for the execution of a will had been set out in the 1930 revision and in previous Acts respecting the execution of wills and were carried into the Act of 1931 verbatim. This interpretation section was not new legislation, the reference was to RSS, 1930, ch. 90, sec. 2 (b). In 1931 a new subsection, designated as "new" (2), was added to sec. 6:

> (2) A holograph will wholly in the hand writing of the testator and signed by him may be made, without any further formality or any requirement as to the presence of or attestation or signature by any witness.

The question now to be determined is whether the wording in this subsec. (2) "a holograph will" carries with it the definition that "will" includes a testament, a codicil, etc., as above quoted. Does the definition of the word "will" include a holograph codicil to a will? It will be noted that if such had been the intention of the legislature, the intention could have been expressed by referring to a holograph will or holograph codicil to a will. I note particularly that in the definition clause the word "will" is set apart as I have written it; and this singles it out specifically.

This legislation introducing holograph wills into the law set aside long settled provisions of the law. The advisability of seeking legal assistance and of great care in the making of a will in the formal manner and with the requirements settled through a series of decisions had been emphasized for many years.

It will be noticed in the new section that the plain purpose of the legislation is to provide for a new type of document termed a holograph will. It is going a long way indeed for the judicial body to import anything into this new creation "holograph will," anything not expressly expressed.

This case at bar would particularly point the extent now argued to be covered by the legislation. No legislature would ever have knowingly passed legislation to authorize an old lady in the physical and mental condition of the testatrix to execute a holograph codicil to a will previously drawn by counsel. In effect when too feeble in mind and body to consult counsel then the court, it seems to me, would be doing by judicial decision exactly what the legislature refrained from doing. . . .

To hold now that the definition of a "will," which had theretofore been strictly confined to a will or a codicil properly executed as then known to the law when the section was passed, should now without any express legislation include a new document designated as a holograph will is extending the meaning and intent of the definition section to cover a field over which there had been no intention whatsoever to legislate.

No reference is made by Mr. Justice Taylor to the considered opinion of Mr. Justice Egbert in *In re Ferguson-Smith Estate* (1954) 13 W.W.R. 387 that a will executed before witnesses can be effectively revoked or altered by a holographic codicil.

The reasoning of Mr. Justice Taylor does not appear to be applicable to the Revised Uniform Wills Act adopted by the Commissioners in 1957. Although the definition of "will" remains

the same, the new section 7, replacing the former subsection (2) of section 6, does not contain the words "holograph will", but reads, "7. A testator may make a valid will wholly by his own handwriting and signature, without formality, and without the presence, attestation or signature of a witness." (See 1957 Proceedings, pp. 135 and 136.)

Saskatchewan Section 6

Subsection (2) of Section 6 of the *Wills Act* was again construed and applied in *Re Laver Estate* (1957) 21 W.W.R. 209, where the testator used a printed will form, filling in the blanks in his own handwriting, and affixed his signature at the end. Having found a testamentary intention from the circumstances surrounding the completion of the document, Mr. Justice Davis, in the Queen's Bench, upheld the will since after eliminating all of the printed words the following remained in his handwriting over his signature: "I give, devise and bequeath all my estate both real and personal to James William Tandy." The Judge quoted with approval the statement of Chief Judge Sissons of the Alberta District Court in *Re Ford Estate* (1954) 13 W.W.R. 604 that, "It is the holograph will, not the form, which must be wholly in the handwriting of the testator and signed by him." (See 1955 Proceedings, p. 104.)

APPENDIX F

(*See page 19*)

BILLS OF SALE ACT
CONDITIONAL SALES ACT

REPORT OF ALBERTA COMMISSIONERS

At the 1957 meeting six matters were referred to the Alberta Commissioners (1957 Proceedings, page 21):

A

"To consider particularly the advisability of repealing subsection (2) of section 4 of The Bills of Sale Act and of shortening the period for registration of instruments under The Bills of Sale Act and The Conditional Sales Act."

At the time of preparing this report the Alberta Commissioners have nothing to add to the tentative recommendation in last year's report (1957 Proceedings, page 65). They are aware that there is a difference of opinion on these questions and will reconsider them when the opinion of the Bars of all provinces have been received. We propose, however, to review here the history of section 4, subsection (2). When the conference was studying the subject in 1925, most provincial statutes dealt in separate sections with chattel mortgages and other bills of sale. A typical statute requires mortgages to be filed within thirty days and also says that "every mortgage shall only operate and take effect upon, from and after the day and time of filing thereof". Then there is a separate section dealing with sales of chattels providing that the bill of sale must be filed within thirty days and that "otherwise the sale shall be absolutely void as against subsequent purchasers and mortgagees or execution creditors of the maker". The difference in wording between the two sections is obvious. It is hard to explain the phrase "shall operate and take effect from the time of filing". Was the mortgage void prior to filing? If so, against whom? If not, what is its effect? Perhaps it was intended to establish priorities. The Acts were not all identical and a report to the commissioner in 1925 (1925 Proceedings, page 70) seems accurate:

> In Manitoba and Nova Scotia, instruments of sale or mortgage, and in Alberta, New Brunswick and Saskatchewan chattel mortgages,

become operative and take effect, except as between the parties thereto, from and after the time of registration. In British Columbia a registered instrument is declared to have priority over an unregistered instrument and as among registered instruments priority is determined by the dates of registration. In Ontario all instruments, when registered, operate and take effect from the day and time of execution and not from the date of registration.

In 1928 the uniform Act was adopted. It lumps together in the same section sales of chattels and chattel mortgages and makes them all void as against creditors and as against subsequent purchasers or mortgagees in good faith unless registered within the statutory period. Then comes the provision that is now section 4, subsection (2), providing that the sale or mortgage shall as against creditors and such subsequent purchasers or mortgagees take effect only from the time of the registration of the bill of sale. This was done deliberately. The covering report says: (1928 Proceedings, page 26)

9. It will be observed that whereas in Ontario the Bills of Sale and Chattel Mortgage Act adopts the principle that the bill of sale takes effect from the day of its execution, provided it is registered within the short period allowed by the Act, the proposed uniform Bills of Sale Act adopts the principle that in certain circumstances the bill of sale takes effect only from the time of its registration, provided it is registered within the period of time prescribed by the Act, this period of time being, however, considerably longer than that allowed by the Ontario Act.

One point that we did not consider in our report last year but that has been brought to our attention by the British Columbia section of the Canadian Bar Association is this: Does section 4 subsection (2) mean that until registration the bill of sale is not effective as against creditors? If so, it is not effective as against existing creditors at all. On the other hand it might merely mean that in competition with an execution creditor, an execution that is filed before registration has priority over the bill of sale.

B

"To Make a Study of the Provisions of All Provincial Acts Dealing With the Same Subject Matter as Subsection (2) of Section 4 of The Bills of Sale Act and Dealing With Registration Periods."

I. *Provisions of all Acts Dealing with the Same Subject Matter as Section 4, Subsection (2).*

Every common law province except British Columbia and Ontario has section 4 subsection (2) either as it appeared in the 1928 uniform Act or in the 1955 uniform Act where it became a separate subsection.

British Columbia's Act provides:

> 18. Every bill of sale which is registered in accordance with the provisions of this Act shall, subject to the provisions of this Act, have and take precedence and priority over any unregistered bill of sale of the same personal chattels.
>
> . . . . .
>
> 20. When two or more bills of sale comprising in whole or in part any of the same personal chattels are registered in accordance with the provisions of this Act, they shall, as between themselves and with respect to such chattels, subject to a contrary intention appearing from the bills of sale themselves, have priority in the order of the dates of registration thereof respectively, and not according to the dates of execution of the bills of sale.

Ontario's Act which on this point goes back to 1863 says:

> 12. Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof.

This was originally passed to permit a mortgagee who had filed within the statutory period to have priority over a writ of execution filed after the mortgage was executed but before it was filed. (Barron and O'Brien, 3rd ed., page 442 and 443)

II. *Registration Periods.*

1. Bills of Sale Act,

(i) Original Registration.

The uniform provision allowing thirty days from execution is in force in every province except British Columbia and Ontario, though in Alberta, where there is a central registry for itinerant machines, the period for filing in central registry is twenty-one days. In British Columbia the period is five days in municipalities that have a registration office and twenty-one days in others. In the case of motor vehicles there is a central registry and the period is five days for four populated counties and ten in the other. In Ontario the period is five days except in Haliburton where it is ten.

(ii) Re-registration on Removal to Another District.

The period in the uniform Act is thirty days after the grantee

has notice of permanent removal. Alberta, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island have the uniform provision. Newfoundland and Saskatchewan have a central registry for all bills of sale and therefore have no provision. British Columbia appears to have none. Ontario's period is two months from the date of removal.

(iii) Registration on Removal into the Province.

In the uniform Act the period is thirty days after the grantee has notice of removal. This is in effect in Alberta (except in the case of itinerant machines where the bill of sale is filed in central registry and the period is twenty-one days after notice of removal), Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island and Saskatchewan. British Columbia and Ontario appear to have no provision.

2. Conditional Sales Act,

(i) Original Registration.

Under the uniform Act the document must be executed within ten days after delivery and must be registered within thirty days of execution. This is in effect in British Columbia, New Brunswick, Newfoundland and Saskatchewan. In Prince Edward Island the period of thirty days is reduced to twenty. In Alberta and Nova Scotia the writing must be signed prior to or at the time of delivery and the period is thirty days in Alberta (twenty-one for itinerant machines) and is twenty in Nova Scotia. In Ontario the period is ten days from execution of the contract but the Act is silent as to the time limit for executing the contract. Manitoba has no Conditional Sales Act.

(ii) Re-registration on Removal to Another District.

The uniform Act allows thirty days after the seller has notice of removal. Alberta and New Brunswick have the uniform provision. British Columbia, Nova Scotia and Prince Edward Island vary it by providing a twenty-day period. Ontario seems to have no provision. Newfoundland and Saskatchewan require none because of the central registry for all conditional sales.

(iii) Registration on Removal Into the Province.

The uniform Act allows thirty days after the seller has notice of removal. Alberta has the uniform provision (except in the case of itinerant machines where the case is twenty-one days). So do New Brunswick, Nova Scotia and Newfoundland. British Columbia and Prince Edward Island reduce the period to twenty days after knowledge of removal. In Ontario the period is twenty days

after the goods are brought into the province and in Saskatchewan it is thirty days.

C

"To Obtain the Views of Members of the Bars of all Provinces about the Need or Desirability of the Repeal of Subsection (2) of Section 4 of The Bills of Sale Act and of Shortening the Period for Registration Under Both Acts."

The secretary of the Alberta Commissioners has written to all the secretaries of all the Law Societies to obtain the views of those Societies. Some secretaries have acknowledged receipt but we doubt that opinions will be received from many provinces prior to the 1958 meeting.

D

"To Consider the Need for Clarification and Amendment of Section 9 of The Bills of Sale Act and of Section 6 and Related Sections of The Conditional Sales Act."

Section 9 of the uniform Bills of Sale Act provides for registering a bill of sale, the subject of which is a motor vehicle, in a central registry rather than the registry of a registration district as is the case with bills for other chattels. It is an exception to the general provision but it fails to express any rule where the bill of sale concerns both a motor vehicle or vehicles and another chattel or chattels. It is therefore doubtful what the Act requires in such a case. (In Newfoundland and Saskatchewan there is a central registry for all bills of sale so that there is no need of amending these provincial Acts.)

Where the bill of sale relates to both a motor vehicle and another chattel, the bill might be registered in one registry only, in which case the matter of valid registration for the vehicle or chattel in the other registry becomes of importance. Both these matters are provided for in some jurisdictions where central registration for bills of sale concerning motor vehicles only is provided, for example, Alberta (R.S.A. 1955, c. 23, Sections 11 and 12) and British Columbia (R.S.B.C. 1948, c. 28, s. 13).

By chapter 4 of 1958, Manitoba, which the year before adopted the uniform Bills of Sale Act, amended its Act to make provision for the composite bill of sale and its registration. As Manitoba had

adopted the most recent uniform Act, its amendments have been taken as the model for the amendments recommended by us to the uniform Act.

The same situation arises under section 5 of The Conditional Sales Act and a similar provision is considered necessary. Both recommended amendments are set out in the Appendix hereto. In the case of the Saskatchewan and Newfoundland Acts, the problem does not arise because of the central registry therein for all conditional sales.

E

"To Consider in Consultation with the Quebec Representatives the Matters Referred to in Mr. Soper's Memorandum."

We wrote to the Quebec Commissioners setting out our views. At the time of preparing this report there has not been sufficient time for a reply from the Quebec Commissioners.

F

"To Submit to the Next Meeting of the Conference a Report Containing the Recommendations Respecting Amendment of Both Acts with a Draft Amending Act or Acts."

We have submitted our recommendations respecting "D" above. Our recommendations respecting "E" will have to await word from Quebec and our final recommendation re "A" will have to await word from the Law Society.

All of which is respectfully submitted.

H. J. WILSON, Q.C.,
W. E. BOWKER, Q.C.,
J. W. RYAN,
Alberta Commissioners.

APPENDIX

A. *Bills of Sale Act* (Uniform)

1. Section 9 of the Act is amended by adding thereto the following subsection:

(3) The description of a motor vehicle in a bill of sale shall include the engine number and the serial number of the vehicle.

NOTE:—Man. 1958, c. 4, s. 2; cf. Alta. and B.C. where only serial number is required.

2. The Act is amended by adding thereto, immediately after section 9, the following:

Registration in case of motor vehicle and other chattels

9a. (1) Where the subject of a bill of sale is a motor vehicle and other chattels, registration of the bill of sale shall, subject to subsections (2) and (3), be effected as to the motor vehicle in the manner prescribed in section 9, and as to the other chattels in the manner prescribed in section 8.

Omission to register in respect of other chattels

(2) Where a bill of sale to which subsection (1) applies is registered in the manner prescribed in section 9 in respect of a motor vehicle comprised therein, but is not registered in the manner prescribed in section 8 as to the other chattels comprised therein, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of the motor vehicle.

Omission to register in respect of motor vehicle

(3) Where a bill of sale to which subsection (1) applies is registered in a manner prescribed in section 8 in respect of the chattels other than a motor vehicle comprised therein, but is not registered in the manner prescribed in section 9 as to a motor vehicle comprised therein, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of those other chattels.

Manner of registration

(4) In a case to which subsection (1) applies registration may be effected by filing the original bill of sale in one of the registration districts in which it is required to be registered, and by filing in the other registration district in which it is required to be registered a duplicate original thereof or a copy thereof certified by the proper officer of the registration district in which the original bill of sale is registered.

3. Section 10 of the Act is amended by repealing subsection (5) and by substituting therefor the following:

(5) Where the subject of a bill of sale is a motor vehicle only, the renewal statement shall be registered in the office of the . . . . . in (*name of capital city*).

(5a) Where the subject of a bill of sale is a motor vehicle and other chattels, the renewal statement shall be registered in respect of the motor vehicle as prescribed in subsection (5), and in respect of the other chattels as prescribed in subsections (3) and (4), and subsections (2) and (3) of section 9a apply thereto, mutatis mutandis.

4. Section 12 of the Act is amended by repealing subsection (2) and by substituting therefor the following:

(2) Where the bill of sale is a motor vehicle only, the copies of the bill and other documents shall be registered in the office of the . . . in (*name of capital city*).

(3) Where the subject of the bill of sale is a motor vehicle and other chattels, the copies of the bill and other documents shall be registered in the manner prescribed in subsection (1) of section 9a for the registration of such bills of sale, and subsections (2) and (3) of section 9a apply thereto, mutatis mutandis.

NOTE:—The prepared amendments 2, 3 and 4 above not required in Newfoundland or Saskatchewan.

B. *Conditional Sales Act* (Uniform)

1. Section 6 of the Act is amended by adding thereto the following:

(3) The description of a motor vehicle in the writing evidencing the conditional sale shall include the engine number and the serial number of the vehicle.

2. The Act is amended by adding thereto, immediately after section 5, the following:

Registration in case of motor vehicle and other chattels

5A. (1) Where the subject of a conditional sale is a motor vehicle and other chattels, registration of the conditional sale shall, subject to subsections (2) and (3), be effected as to the motor vehicle in the manner prescribed in section 5, and as to the other chattels in the manner prescribed in section 4.

Omission to register in respect of other chattels

(2) Where a conditional sale to which subsection (1) applies is registered in the manner prescribed in section 5, in respect of a motor vehicle comprised therein, but is not registered in the manner prescribed in section 4 as to the other chattels comprised therein, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of the motor vehicle.

Omission to register in respect of motor vehicle

(3) Where a conditional sale to which subsection (1) applies is registered in the manner prescribed in section 4, in

respect of the chattels other than a motor vehicle comprised therein, but is not registered in the manner prescribed in section 5 as to a motor vehicle comprised therein, it shall be deemed for the purposes of this Act to be sufficiently registered in respect of those other chattels.

Manner of registration

(4) In a case to which subsection (1) applies, registration may be effected by filing the original writing evidencing the conditional sale in one of the registration districts in which it is required to be registered, and by filing in the other registration district in which it is required to be registered a duplicate original thereof or a copy thereof, certified by the proper officer of the registration district in which the original writing is registered.

3. Section 6 of the Act is amended by repealing subsection (2) and by substituting therefor the following:

(2) Where the subject of the agreement is a motor vehicle only, a copy of the agreement shall be registered in the office of. . . . . .in (*name of capital city*).

(3) Where the subject of the agreement is a motor vehicle and other chattels, the copies of the agreement shall be registered in the manner prescribed in subsection (1) of section 5A for the registration of such conditional sales, and subsections (2) and (3) of section 5A apply thereto, mutatis mutandis.

4. Section 11 of the Act is amended by repealing subsection (5) and by substituting therefor the following:

(5) Where the subject of a conditional sale is a motor vehicle only, the renewal statement shall be registered in the office of the. . . . . in (*name of capital city*).

(5a) Where the subject of a conditional sale is a motor vehicle and other chattels, the renewal statement shall be registered in respect of the motor vehicle as prescribed in subsection (5) and in respect of the other chattels as prescribed in subsections (3) and (4), and subsections (2) and (3) of sec- 5A apply thereto, mutatis mutandis.

NOTE:—Amendments 2, 3 and 4 above not required in Newfoundland or Saskatchewan.

APPENDIX G

(*See page 20*)

THE PARTNERSHIP ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

To the Conference of Commissioners on
Uniformity of Legislation in Canada:

At the 1957 session of the Conference following discussion on suggestions for changes in existing Partnership Acts, the following resolution was adopted:

> RESOLVED that the question of the desirability of the Conference considering changes to Partnership Acts be referred to the New Brunswick Commissioners for study and report at the next meeting of the Conference with a draft Act if, in their opinion, changes are desirable.

The suggestions for changes relate to subsections (1) and (2) of section 37 of the New Brunswick Partnership Act. These subsections are substantially the same as subsections (1) and (2) of section 36 of the Partnership Act, 1890, (Imp.), and are as follows:

> (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.
>
> (2) An advertisement in The Royal Gazette, or the filing of a certificate under the Partnerships Registration Act in the registry office for the county in which the principal place of business of the firm is situate, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised or certified.

The suggestions for changes are as follows:

> "You will notice that persons dealing with the firm after a change can fall into one of two groups, namely, the group consisting of those who have dealt with the firm before the change and the group consisting of those who have dealt with the firm only after the change. The notice and certification under subsection (2) does not apply to persons falling in the first group. As the persons doing business before the change are most likely to make up the majority of the persons doing

business after the change, it would seem most important that the notice and certification should affect these persons.

This section has been discussed with some other members of the profession and they all agree that the effect of the advertising or filing should not be limited to persons who had not been dealing with the firm before the change and that the section should be revised so that such action would constitute notice to all persons."

Pursuant to the recommendation of the Conference in 1919, the Partnership Act, 1890, (Imp.), which codified the general English law of partnership, was adopted in New Brunswick, Ontario and Prince Edward Island in 1920, at the instance of the Commissioners from those Provinces respectively. The result is that the statute is now in force in all the provinces of Canada, except Quebec.

The suggestions for changes are not consistent with the English law of partnership. In Farrar vs. Delfinne, 1845, 1 C & K, 580, Cresswell, J. said, "If there has been a general notice, that would have been sufficient for all but actual customers; these, however, must have had some kind of actual notice".

In Tower Cabinet Company vs. Ingram, 1949, 2 K.B., 397, Linskey, J. said, "Even in that case (Farrar vs. Delfinne) Cresswell, J. laid considerable stress on the question of actual notice".

Lindley on Partnership, 11th edition at page 77 says, "It frequently happens that after a dissolution of partnership, one or more of the partners continue to carry on the business of the late firm under the old name. In applying the doctrine of holding out to the retiring partner in such cases, it must be remembered that a person who deals with a firm after a change in its constitution is entitled to treat all apparent members of the old firm and all persons whom he knows to have been members of the old firm as continuing to be members until he has notice to the contrary. Notice in the Gazette is sufficient notice in the case of persons who had no dealings with the firm before the date of the dissolution or change, but in the case of those who had such dealings notice in fact must be proved".

Concerning the effect of filing a certificate under the Partnerships Registration Act, Lindley's reference at page 82 to the Registration of Business Names Act, 1916, (Imp.), is to the point. After referring to the Act as one which will no doubt greatly reduce the risk of any person, who is not a partner, being held out as one, he says, "It is apprehended, however, that the registra-

tion under this Act of a change in the firm will not, of itself, be notice of that change either to the former customers of the firm or even to the general public, for though an index of all the firms, and a file of all the particulars, which have to be registered are kept, and are open to public inspection, they are not published, and can only be inspected on payment of a fee".

In view of the above authorities, it would not appear desirable for the Conference to consider changes to the Partnership Acts as a result of the suggestions discussed at the 1957 meeting.

Dated at Fredericton this 16th day of May, 1958.

M. M. HOYT,
for the New Brunswick Commissioners.

APPENDIX H

(See page 20)

THE BULK SALES ACT

REPORT OF ALBERTA COMMISSIONERS

At the 1956 Conference it was resolved that the matter of a Uniform Bulk Sales Act be referred to the Alberta Commissioners for study of the work already done by the Conference and report at the next meeting with a draft Act.

The report of the Alberta Commissioners was distributed to the 1957 Conference together with a draft Act (1957 Proceedings, Appendix N, page 97) and after some discussion it was decided to defer consideration of the report until the 1958 meeting (1957 Proceedings, page 25)

During the discussion of the Alberta report at the 1957 meeting, we were asked to consider the possibility of having the sale in bulk go ahead, where there are only a small number of creditors, without resorting to trustees. For instance, where the buyer holds back enough money to satisfy the seller's creditors as shown by the seller's affidavit, it might be possible to accelerate the selling process without any danger to the seller's creditors.

In principle, we do not see any objection to reducing the red-tape involved in a sale in bulk where it may be done without involving the creditors in any extra hazard. Section 6, subsection (1), clause (*a*) of the draft Act indicates a method whereby waivers, consents and trustees may be dispensed with. On the other hand, we have no wish to introduce into the bulk sales concept such a procedure as a hold-back, which would inevitably give rise to complications as great as the waivers, consent and trustee provisions. The buyer holding back moneys would, presumably, have to become trustee for all creditors and not simply for creditors shown in the seller's statement.

We think that, in the circumstances put to us at the 1957 meeting, the draft already provides a means of circumventing the trustee provisions by a careful use of the provisions of section 6 (1) (*a*). That imperative alternative is not, in terms, restricted to the seller. It therefore appears that the provision might be made use of by a would-be buyer of stock in bulk, under the terms of the sale agreement, to pay out all the creditors shown in the seller's statement. If this were done, the Act would

have been complied with and section 10 would not operate against the buyer.

Until the matter can be discussed again by the Conference we are unable to suggest any solution to this problem by way of an addition to the draft Act.

Since the last meeting of the Conference in 1957, the Canadian Bar Journal, Volume 1, No. 2, April 1958, has published an article by F. M. Catzman, Q.C., on the Ontario Bulk Sales Act in which reference to the Uniform Act is made (page 50).

All of which is respectfully submitted.

H. J. WILSON, Q.C.,
W. F. BOWKER, Q.C.,
J. W. RYAN,
Alberta Commissioners.

APPENDIX I

(*See page 21*)

UNIFORM INNKEEPERS ACT

REPORT OF NOVA SCOTIA COMMISSIONERS
1958

In accordance with the instructions given at the 1957 meeting of the Conference (1957 Proceedings, page 23), a further draft of this Act is submitted for consideration.

The following is a summary of the principal differences between this draft and the one considered at the 1957 meeting.

In Section 1, the definition of "innkeeper" has been enlarged with the intent that the term should include any person who would be an innkeeper at common law, any person who offered sleeping accommodation to the general public without special contract even though meals were not provided, and any person who kept a motel or similar establishment. The form of the definition follows substantially the definition of innkeeper at common law, as found in 18 Halsbury, Second Edition, page 136, and the description of an innkeeper contained in the report of the Law Reform Committee of Great Britain to the Lord Chancellor in April, 1954. This report forms the basis for the English Hotel Proprietors Act, 1956, which includes, in Section 1(3), a definition of "hotel" in terms that are similar to Section 2(*b*)(i).

Since this new definition makes the Act applicable to persons who are not innkeepers at common law and, consequently, not subject to the liabilities of an innkeeper in respect of the guests' goods, it seemed necessary to impose liability expressly. Accordingly, an attempt has been made in Sections 3 and 4 to limit the liability of an innkeeper to that set out in the Act and to impose upon the innkeeper, as now defined, the liabilities set out in the Act. Existing Acts merely deal with the liability of a person who is an innkeeper at common law. This draft attempts to remove the common law liability of an innkeeper and to declare the liabilities of innkeepers as defined.

Section 4 is designed to repeat the general proposition that an innkeeper is liable as such for loss of or damage to his guests' property. It is based substantially on common law as set out in the volume of Halsbury quoted above, at pages 150, 154 and 156.

The report of the Law Reform Committee states the proposition thus:

> "At common law an innkeeper is under a strict liability to answer for the loss of all goods brought to the inn by a traveller in the sense in which that term has been defined by the courts. He is, in effect, an insurer of his guests' goods against loss and it is immaterial whether the goods are lost by theft, through the negligence or default of another guest or by the acts of the innkeeper's own servants."

Section 5 is an adaptation of Section 2 of the English Act, which limits the innkeeper's liability to a guest to goods brought by a guest who has registered and within a period that is related to the time for which the guest is registered.

Sections 6 and 10(2) are designed to relieve the innkeeper of liability for a motor car or its contents and to prevent the innkeeper from seizing them to satisfy his account against the guest.

Section 7 is quite similar to the provisions of the new English Act. It is designed to limit the absolute liability of the innkeeper but to preserve the right of the guest to recover if the loss or damage was due to the act or default of the innkeeper or his servants. The English Act of 1863, the Acts of Ontario, New Brunswick, Newfoundland and Nova Scotia and the Civil Code of Quebec limit the absolute liability to amounts varying from $40.00 to $150.00. The existing Acts of Manitoba, Saskatchewan, Alberta and British Columbia and the Ordinances of the Northwest Territories completely remove the absolute liability but leave the innkeeper liable if the guest establishes fault on his part.

Section 8 is common to all Acts and makes it a condition precedent to limitation or removal of liability that notice of Statutes be given to guests.

Section 9 is an attempt to spell out the defences that are open to an innkeeper in any case. The common law is stated in similar terms at page 156 of Halsbury.

The succeeding Sections, dealing with the lien of an innkeeper and a lodging-house keeper, are substantially the same as in the previous draft.

Respectfully submitted,

H. E. READ,
J. A. Y. MACDONALD,
H. F. MUGGAH,
Nova Scotia Commissioners.

AN ACT RESPECTING INNKEEPERS AND LODGING-HOUSE KEEPERS

BE IT ENACTED. . .

1. This Act may be cited as the Innkeepers Act.

2. In this Act:

(*a*) "inn" means a place of which an innkeeper is the keeper;

(*b*) "innkeeper" means a person who would be an innkeeper by common law, and includes,

(i) the keeper of a house or place who holds out that, to the extent of his available accommodation, he will provide, without special contract, sleeping accommodation to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities offered and who is in a fit state to be received, and

(ii) the keeper of a motel, auto court or tourist cabin;

(*c*) "vehicle" includes a motor vehicle as defined in the . . . Act, a horse and carriage, and chattels used in connection with a vehicle.

3. Except as provided in this Act, an innkeeper is not liable, as an innkeeper, for loss of or damage to property brought to the inn by a guest.

4. Subject to this Act, an innkeeper is liable, as an innkeeper, for loss of or damage to property brought to the inn by a guest.

5. Without prejudice to any other liability incurred by him with respect to property brought to the inn by a guest, an innkeeper is not liable, as an innkeeper, for loss of or damage to property brought to the inn by a guest except where,

(*a*) at the time of the loss or damage sleeping accommodation at the hotel had been engaged by or for the guest; and

(*b*) the loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which the guest was a guest at the inn and entitled to use accommodation so engaged.

6. Without prejudice to any other liability of his with respect thereto, an innkeeper is not liable, as an innkeeper, for loss

of or damage to a vehicle brought to the inn by a guest or to property left in such a vehicle.

7. The liability of an innkeeper, as an innkeeper, for loss or damage to the property of a guest is limited to one hundred dollars in respect of any one article and five hundred dollars in the aggregate, except where the guest establishes that,

(*a*) the property was lost or damaged through the wilful act, default or neglect of the innkeeper or his servant; or

(*b*) the property was deposited by or on behalf of the guest expressly for safe custody with the innkeeper or his servant authorized or appearing to be authorized for the purpose, and, if so required by the innkeeper or his servant, in a container fastened or sealed by the depositor; or

(*c*) the property was offered to the innkeeper or his servant for deposit for safe custody and the innkeeper or his servant refused to receive it, or, through the default of the innkeeper or his servant, was unable to receive it.

8. An innkeeper is not entitled to the benefit of section 7 unless at the time the property in question was brought to the inn a copy of that Section, printed in plain type, was conspicuously displayed in all bedrooms ordinarily used by guests and in a place where it could conveniently be read by his guests at or near the reception office or desk or, where there is no reception office or desk, at or near the main entrance to the inn.

9. An innkeeper is not liable, as an innkeeper, for loss of or damage to property of a guest if the innkeeper establishes that,

(*a*) the loss or damage was due to the misconduct or negligence of the guest or his servant or a person accompanying the guest or an act of God or the Queen's enemies; or

(*b*) the guest had assumed exclusive charge and custody of the property or the room in which the property was at the time of the loss or damage.

10.—(1) Subject to subsection (2), an innkeeper or a lodging-house keeper has a right to detain any property brought to the inn or house by a guest or lodger for his charges for food, accommodation or services furnished to the guest or lodger or on his account.

(2) Without prejudice to any other right that he has with respect thereto, an innkeeper or a lodging-house keeper as such is not entitled to detain a vehicle of a guest or its contents.

11.—(1) Where an innkeeper's or lodging-house keeper's charges for food, accommodation or services remain unpaid for one month, the innkeeper or lodging-house keeper, in addition to all other remedies provided by law, may sell by public auction any property that he has detained pursuant to Section 10.

(2) Before making a sale under this Section, the innkeeper or lodging-house keeper shall give not less than one week's notice of the intended sale by advertisement in a newspaper published or circulating in the place where the inn or lodging house is kept.

(3) The advertisement shall state the name of the guest or lodger, the amount of his indebtedness, the time and place of sale, a description of the property to be sold, and the name of the auctioneer.

(4) The innkeeper or lodging-house keeper may apply the proceeds of the sale in payment of the amount due him and the costs of the advertising and sale, and shall pay over the surplus, if any, to the person entitled to it.

APPENDIX J

(*See page 21*)

UNIFORM INTESTATE SUCCESSION ACT

SECTIONS 16 AND 17
(1950, pp. 48-52; am. 1955, p. 24)

REPORT OF DR. KENNEDY

At common law, an illegitimate child was, for inheritance purposes, the child of no one. He could inherit from no one and no one inherited from him other than a spouse and lawful issue. No change was made in the Statute of Distribution of 1670 in England. Since then, however, partial modifications have been adopted in most jurisdictions. The uniform Act deals with some of the issues. Sections 16 and 17 read as follows:

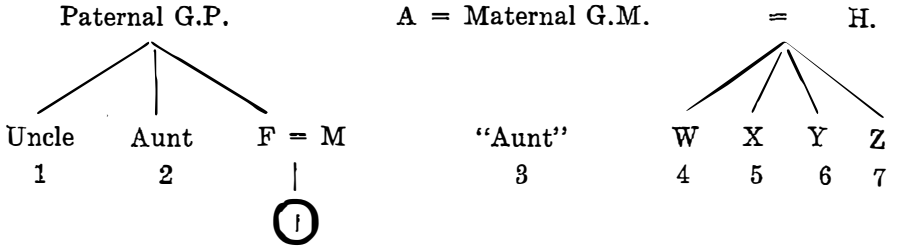
> **16.** Illegitimate children and their issue shall inherit from the mother as if the children were legitimate, and shall inherit through the mother, if dead, any real or personal property which they would have taken if the children had been legitimate.
>
> **17.** If an intestate, being an illegitimate child, dies leaving no widow or issue, his estate shall go to his mother, if living, but if the mother is dead his estate shall go to the other children of the same mother in equal shares, and if any child is dead the children of the deceased child shall take the share their parent would have taken if living:
>
> Provided that where the only persons entitled are children of deceased children of the mother, they shall take per capita.

Section 17 provides for succession *to* an illegitimate child, and in effect allows succession as if the child had been legitimate but only to the extent of benefiting the mother and other descendants of that mother. It is not clear whether illegitimates and those claiming through illegitimates can so inherit; my own view is that they may. See section 16.

Section 16 provides for succession *by* an illegitimate child and his issue. He inherits from the mother or, if she is dead, through the mother, in each case as if legitimate.

Inheritance *by* the issue (whether illegitimate as well as legitimate is not stated) of an illegitimate is, under section 16, from

the mother of the illegitimate or through her where she is dead, again in each case as if the illegitimate were legitimate. There is no comparable provision in section 17 for succession *to* the lawful issue of an illegitimate. See Re Carlson (1957) 11 D.L.R. (2d) 485 (Sask. C.A.). The facts are best illustrated by diagram.



NOTE:—The Intestate was a legitimate child. F, M and the grandparents are dead.

The claimants: 1 & 2: paternal uncle and aunt;
3: maternal "aunt", illegitimate child of intestate's maternal "grandmother";
4 – 7: maternal "uncles" and "aunts", legitimate children of intestate's maternal "grandmother".

Section 17 is of no help to claimants Nos. 3-7 because (a) it deals with succession to illegitimates only, not to legitimate offspring of illegitimates; and (b) even if the intestate had been illegitimate, the benefits of section 17 are limited to the mother of the intestate and the other children (including illegitimate?) of the same mother. Section 16 deals only with inheritance by illegitimates and their issue, not inheritance from them. The claimants here were not claiming as illegitimates or lawful issue of illegitimates, except claimant No. 3. The court ruled in favour of claimants Nos. 1 and 2 only, to the exclusion of all others. It might be thought that No. 3 might have a technical claim on this last basis. She is an illegitimate who may under section 16 inherit from the mother as if legitimate, and "through the mother, if dead, any real and personal property which (she) would have taken if (she) had been legitimate." But even as a legitimate child of GM she could not inherit from I because of M's illegitimacy.

The real difficulty with sections 16 and 17 today is that they endeavour to spell out specific instances when inheritance by, from or through an illegitimate may occur. The same problem faced those who interpreted early adoption legislation. The solution now achieved for adoption in England, Saskatchewan and British Columbia, and by Ontario at its most recent session, is to deal with status, not with specific instances of inheritance.

Some other Canadian jurisdictions as well as other parts of the Commonwealth are approaching this solution. I recommend to the Conference consideration of a general rule under which an illegitimate person shall be deemed to be the legitimate child of its mother for all purposes of distribution of estates under the uniform Intestate Succession Act. Such a rule would not interfere with the existing relationship between the illegitimate and the father. Further, such a rule would conform to the rule for testate succession enunciated by this Conference last year when we adopted section 34 of the new uniform Wills Act:

> **34.** In the construction of testamentary dispositions, except when a contrary intention appears by the will, an illegitimate child shall be treated as if he were the legitimate child of his mother.

A possible replacement for sections 16 and 17 would read:

> **16.** For the purposes of this Act, an illegitimate child shall be treated as the legitimate child of his mother.

Respectfully submitted,

GILBERT D. KENNEDY.

APPENDIX K

(*See page 21*)

INTESTATE SUCCESSION ACT

(The following is the form of the Act adopted by the Conference in 1950 as amended by the Conference in 1955 and 1958)

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

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

1. This Act may be cited as The Intestate Succession Act.

2. In this Act,

(*a*) "estate" includes both real and personal property;

(*b*) "issue" includes all lawful lineal descendants of the ancestor.

3. This Act shall apply only in cases of death after its commencement.

4.—(1) If an intestate dies leaving a widow and one child, one-half of his estate shall go to the widow.

(2) If he leaves a widow and children, one-third of his estate shall go to the widow.

(3) If a child has died leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.

5. If an intestate dies leaving issue, his estate shall be distributed, subject to the rights of the widow, if any, per stirpes among such issue.

6.—(1) If an intestate dies leaving a widow but no issue, his estate, where the net value thereof does not exceed $20,000, shall go to his widow.

(2) Where the net value exceeds $20,000, the widow shall be entitled to $20,000 and shall have a charge upon the estate for that sum, with legal interest from the date of the death of the intestate.

(3) Of the residue of the estate, after payment of the sum of $20,000, and interest, one-half shall go to the widow and one-half to those who would take the estate, if there were no widow, under section 7, 8, 9 or 10, as the case may be.

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

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

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

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

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

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

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

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

the child and his descendants shall be entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement equal as nearly as can be estimated.

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

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

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

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

16. For the purposes of this Act, an illegitimate child shall be treated as if he were the legitimate child of his mother.

17. The estate of a woman dying intestate shall be distributed in the same proportions and in the same manner as the estate of a man so dying, the word "husband" being substituted for "widow", the word "her" for "his", the word "she" for "he", and the word "her" for "him" where such words respectively occur in sections 4, 5, 6, 7, 8, 9, 10, and 12.

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

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

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

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

APPENDIX L

(*See page 21*)

UNIFORM RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT
UNIFORM RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

REPORT OF DR. KENNEDY

These uniform Acts were approved at the 1956 Conference. In 1957, notice was taken of the use of the word "jurisdiction" in the statutes, occasionally in the same sentence, in two different senses: sometimes in reference to a political territory, and in other cases to the authority of the court over the subject matter. The 1957 Conference resolved that the Judgments Act be amended "by substituting another expression for the word 'jurisdiction' where it occurs in a number of places in the Act, so that the word will be used in one sense only throughout the Act" and I was requested to make the changes. As amended the Act was to be printed in the proceedings.

My examination of the two statutes (and it was my belief that the two should be examined even though no formal mention may have been made of the second) revealed that the problem existed in both Acts, though not as seriously in the second, that four words had been used in the Acts:—jurisdiction, country, place and state (the latter two in the second Act only), that a definition of "reciprocating state" appears in the second Act ("means a jurisdiction declared under section 14 to be a reciprocating state") but no definition appears in the first Act of any of the words, and that the words "territorial jurisdiction" which we had discussed as a possible solution also provided difficulty because the territorial limits of a county or other lesser court might not extend to the limits of the province or other political entity which we had in mind, and because these words failed to refer to the entity rather than jurisdictional limits of a court.

I suggested to the Secretary that we use the word "country" for "jurisdiction" when referring to a territory or state and, in the light of the fact that the second Act had a definition of the words "reciprocating state", that we substitute the words "reciprocating country" and provide, in the first Act a definition of

"country" and "reciprocating country". Further, that "country" be substituted for "jurisdiction" when used in that sense in both Acts (eleven places in the first Act, three in the second). I further noted four other matters which I thought ought to be attended to at the same time. The Secretary quite properly thought that in the light of the addition of the second Act, the added matters and some difficulties he foresaw in the use of the word "country", that I should report to the whole Conference this year. I readily agreed and am now pleased to do so.

On further reflexion and discussion locally, I now recommend for the consideration of the Conference:

(*a*) The substitution of the word "territory" for the word "jurisdiction" wherever the latter has been used in the sense of the former, namely,

Judgments Act:—s. 2(1) (a), lines 6 and 8;
s. 2(1) (c), line 3;
s. 2(2), line 5;
s. 3(1), line 2;
s. 3(6) (b), line 3 only;
s. 3(6) (c), beginning of line 5 only;
s. 11(1), lines 2 and 5;
s. 11(2), lines 2 and 5.

Maintenance Act:—
s. 2(e), line 1;
s. 14(1) (2), line 2 in each case.

NOTE:—Instead of the word "territory" the word "state" might be substituted in each of places just listed. However, in most cases the word "territory" reads better than the word "state" and I therefore prefer the word "territory". If "state" is used the next recommendation need not be considered.

(*b*) Substitute in the Maintenance Act for the word "state" wherever used the word "territory". This includes the definition section and would change the words "reciprocating state" to "reciprocating territory". I make the recommendation for the sake of uniformity in the two statutes as I prefer to use either the word "territory" or the word "state" in both statutes and not one in one and the other in the other. The changes occur as follows:—

s. 2(e), lines 1 and 2;
s. 3(1), lines 3 and 5;
s. 3(3), line 8;
s. 4, lines 5 and 9;
s. 5(1), lines 4 and 11;
s. 5(3)(b), line 2;
s. 5(4), line 2;
s. 5(7), line 7;

s. 6(1)(a), line 2;
s. 6(8), line 7;
s. 8, line 3;
s. 10, line 2;
s. 11, line 2;
s. 14(1), line 5;
s. 14(2), line 4.

(*c*) The third recommendation is that the word "place" in section 2(c), line 3 of the Maintenance Act, be changed to "territory". There seems to be no explanation of the use of the word "place" in this one situation.

(*d*) Further carrying out the principle of uniformity of language, the word "country" in line 8 of section 3(2) of the Judgments Act should be changed to "territory". This recommendation assumes that some word is needed at this place and is subject to the next recommendation.

(*e*) Further in the sake of uniformity may I draw attention to the following phrases appearing in the two statutes:

"under the *laws* of the *country* of the original court": s. 3(2), line 8, JA.

"under the *law* of the original court": s. 3(6)(a)(ii), line 1, JA.

"According to the *law* in force in the *place* where the maintenance order was made": s. 2(c) MA.

"Under the *law* in force in the *jurisdiction* where it was made": s. 2(1)(a), lines 5 to 6, JA.

These four quotations illustrate some of the difficulty in selecting suitable words. Under recommendations already made in paragraphs (*a*) and (*c*) above, the word "jurisdiction" in the fourth quotation and the word "place" in the third quotation would have been changed to "territory" or "state". The same is true of the word "country" in the recommendation in paragraph (*d*) above, but subject to a suggestion now made that the phrase containing the word "country" in this paragraph be changed to read "under the law of the original court". If this suggestion were adopted then the word "country" would disappear and no substitute for it would be needed. The suggestion would also make the word "laws" singular to conform to its use in the other cases quoted. In any case there should be a separate recommendation with respect to "law" if the recommendation as to the deletion of the word "country" or its substitute is not adopted.

(*f*) Earlier I referred to four additional matters about which I had written to the Secretary last Fall.

(1) It is my belief that the definitions of "judgment"

in the JA and "maintenance order" in the MA operate to exclude affiliation orders from both Acts. Is this intended? This result would seem to come about by the exclusion from the definition of "judgment" in the JA of orders for alimony or for maintenance of a wife, a former wife or a child or an order made against a putative father of an unborn child for the maintenance or support of the mother. This specific exclusion does not include an affiliation order in so far as it is an order for the maintenance of the illegitimate child as I assume that the exception excepting orders for maintenance of a wife, former wife or a child refers to legitimate children only, and the order with respect to the putative father refers to the maintenance of the mother only. However, under the Judgments Act no order for registration is to be made if the judgment debtor would have a good defence if an action were brought on the original judgment: s. 3(6)(g), and it is my understanding that any order which is not final, that is an order which is variable at least as to the future amounts such as an affiliation order, was not the subject of a common law action on a foreign judgment and the debtor therefore would have had a good defence if an action had been brought on the original judgment. On the other hand, the definition of "maintenance orders" specifically excludes affiliation orders. I do not understand the partial exclusion of some of those orders from the definition in the one Act and the full exclusion of such orders from the definition in the other Act. While, as I have suggested, the operation of the Acts is to exclude all such orders from both Acts, should we so exclude them?

(2) The definitions just referred to of "judgment" and "maintenance order" do not coincide in a further particular, namely the exclusion from one of the orders for the payment of money as "alimony or as maintenance for a wife or *former wife* or a child". The other, I believe, is meant to take up what was excluded from "judgment" but merely refers to an order other than an order of affiliation for the periodical payment of money towards the maintenance of the wife or any other dependant of the person against whom the order was made. In a jurisdiction where both of these statutes are adopted the court would probably and quite properly look at the two statutes together, see that one referred to alimony as distinct from maintenance, and to wife as distinct from former wife, while the other did not make the same distinctions but merely referred to maintenance and to wife. Should we clarify this

situation so that a court does not hold that an order for alimony in favour of a former wife is excluded from both Acts? I recommend that the language of exclusion in the definition of "judgment" be used as the language of inclusion in the definition of "maintenance order".

(3) The schedule in the Judgments Act, paragraph (6) is, I suggest, misleading in that it asks for the amount of the "Claim" in the original court—a matter which, I suggest, is totally irrelevant. What is relevant is the "Claim as allowed" or something to that effect. The certificate deals with both defended and undefended cases and in either case the amount allowed might be well below that claimed. The meaning is reasonably clear to those of us in Canada who are working with the Act, but the certificate is to be given by the original court, a foreign court in some cases, and I recommend that the language be clarified for the use of the foreign court.

(4) Section 3 of the Judgments Act deals with the requirement of a certificate from the original court. The section sets out the fact that the applicant for registration shall produce the certificate and what it shall contain as set out in the schedule. Suppose an applicant in the Province of Nova Scotia was seeking to enforce a judgment obtained in the Province of Ontario. The judgment creditor must produce from a court in the Province of Ontario the certificate as required in Section 3 and submit this certificate with his application to the Nova Scotia court. The section makes clear what is to be produced to the Nova Scotia court, the registering court. Should the original court be given power to issue this certificate? My own view is that a court in a province or territory such as Ontario which adopts this uniform Act would, under this Act and by implication, have the power to issue the certificate which the Act adopted in Nova Scotia requires the judgment creditor to produce. It is true that the adoption of the Act in Nova Scotia cannot operate to bind the Ontario courts or vice versa, and because of this there may be some doubt as to whether the statute operates both ways, not only to require the judgment creditor to produce the certificate but to empower the courts of the same province or territory to issue the certificate when the situation is reversed. Might this point be clarified by the enactment of a simple provision, possibly a separate section between sections 3 and 4, reading somewhat as follows:

"Where the original court is a court in the province or territory of (insert name of enacting territory), that court has jurisdiction to issue the certificate referred to in section 3."

(*g*) There are a few other small points which I will recommend be considered in the reprint of the statute:

(1) The exception in the definition of "judgment" in the Judgments Act excepting orders for maintenance of the mother against putative fathers of unborn children presently deals only with orders made against the putative father of an unborn child and apparently does not deal with an order made against the father of an illegitimate child for the same purpose—maintenance of the mother. I have already noted the question of the maintenance of the child. Could the word "unborn" be omitted, and if thought necessary something added to indicate, after "child" in either or both places where it is used, that illegitimate children are to be included?

(2) Should the last word in section 3(1) be omitted, namely, the word "accordingly"? The section reads in short "Where judgment has been given in a court in a reciprocating jurisdiction (territory) the judgment creditor may apply . . . to have the judgment registered . . . and on any such application the courts may order the judgement to be registered accordingly."

(3) Should the last word in section 3(2) be changed from "dismissed" to "disposed of"? The section deals with occasions when the application for registration may be made ex parte and concludes with these words "and in which, under the laws of the country of the original court, the time within which an appeal may be brought against the judgment has expired and no appeal is pending or an appeal has been made and has been dismissed." May there not be occasions where an appeal has been made and allowed and yet allowed in part only?

(4) The phrase "conflict of laws" is used in section 3(6)(a)(i) as an adjectival phrase modifying the word "rules" and should be hyphenated. Further, in clause (ii) of the same paragraph I suggest the deletion of the word "alleged" where it appears in lines 3 and 4.

(5) I suggest the deletion of the last two lines of clause (a) of section 3(6) and reading "or without such jurisdiction and without such authority".

(6) I suggest the addition of the word "had" before the word "agreed" in line 5 of section 3(6)(c). The language would then read:—

> "(6) No order for registration shall be made if it is shown . . . that,
>
> (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or *had* agreed to submit to the jurisdiction of that court; or".

(7) I recommend the deletion of the word "original" in line 2 of section 3(6)(g). The language presently reads:—

> "(6) No order for registration shall be made if it is shown . . . that,
>
> (g) the judgment debtor would have a good defence if an action were brought on the original judgment".

Section 12 which preserves the action at common law reads:—

> "Nothing in this Act deprives the judgment creditor of the right to bring an action on his judgment or on the original cause of action . . .".

Further, "judgment" is defined in section 2.

(8) In section 4 the date for selecting the rate of exchange is the date of "the *entry* of the judgment in the original court". Other occasions when it is necessary to secure a date or refer to a date for purposes of time appear in section 3(1): "within six years after the date of the judgment"; and in section 7(1)(a): "within one month after the registration". The comparable provision in the Maintenance Act dealing with selection of a date for rate of exchange purposes is contained in section 3(3) and refers to "the date of the order of the court in the reciprocating state". There is in this case no reference to the entry of the order. I suggest the deletion from section 4 of the Judgments Act of the words "of the entry" in the words "On the basis of the rate of exchange prevailing at the date of the entry of the judgment in the original court". This recommendation is simply for uniformity with the other references in the Act. I should also note that one of the items required in the scheduled certificate is the date of the entry of the judgment, but nowhere is the date of the judgment itself required so far as the certificate is concerned.

(9) There is a typographical error in line 4 of section 11(1): "reciprocal" should read "reciprocating". This section deals with the power of the L.G. in C. to make orders where a foreign state has made comparable provisions and then reads:—

> "He may by order declare it to be a *reciprocal* jurisdiction for the purposes of this Act."

In all other places in this and the Maintenance Orders Act the word used is "reciprocating" including the next subsection dealing with the power of the L.G. in C. to revoke the orders so made.

(10) May I draw attention to one other matter in connection with the scheduled certificate. The first numbered item requires a certifying officer to state the date of issue of the writ of summons and that proof was furnished to the court of service upon the defendant by delivery of a copy to him and leaving it with him and "exhibiting the original thereof to him at the time of the service". It is my understanding that it is not always necessary to exhibit the original, the original is not always exhibited in ordinary common law practice, and that we might be imposing a hardship on those who seek to enforce a judgment from another province or territory by allowing enforcement only in those cases where it can be shown that the original was exhibited at the time of service. I recommend the deletion of the following words from paragraph (1):—"and exhibiting the original thereof to him at the time of the service". A further amendment might be made in paragraph numbered (4) in the scheduled certificate. This paragraph deals with appeals and requires the certifying officer to certify that the time for appeal has expired and that no appeal is pending, or that an appeal against the judgment was made and was dismissed and that the time for any further appeal has expired and that no further appeal is pending. I would suggest the addition, after the word "pending" just referred to of the words "or as the case may be". The addition would allow for cases where an appeal has been made and allowed in whole or in part.

(*h*) A final point which I should mention is in connection with the Maintenance Act. We have run into difficulties in British Columbia on occasions in connection with the designation by the Attorney-General of one court as the court under the Act and then finding that the person against whom the order was made

had moved to another part of the Province. The power of the Attorney-General to designate a new court had been questioned and in order to avoid this problem in the future we inserted, when adopting the new Act this year, the following section immediately following section 8 of the Uniform Act:—

> "8A. The designation of a court by the Attorney-General for any purpose under this Act does not prevent the Attorney-General from designating another court with respect to the same order."

After the above recommendations have been dealt with by the Conference I suggest that the two Acts be reprinted in this year's Proceedings as amended.

All of which is respectfully submitted,

GILBERT D. KENNEDY.

APPENDIX M

(*See page 22*)

AN ACT TO FACILITATE THE RECIPROCAL ENFORCEMENT OF JUDGMENTS

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

Short title

1. This Act may be cited as "The Reciprocal Enforcement of Judgments Act".

Interpretation

2.—(1) In this Act,

'judgment"

(*a*) "judgment" means a judgment or order of a court in a civil proceeding, whether given or made before or after the commencement of this Act, whereby a sum of money is made payable, and includes an award in an arbitration proceeding if the award, under the law in force in the state where it was made, has become enforceable in the same manner as a judgment given by a court in that state, but does not include an order for the periodical payment of money as alimony or as maintenance for a wife or former wife or reputed wife or a child or any other dependant of the person against whom the order was made;

'judgment creditor"

(*b*) "judgment creditor" means the person by whom the judgment was obtained, and includes his executors, administrators, successors, and assigns;

'judgment debtor"

(*c*) "judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the state in which it was given;

'original court"

(*d*) "original court" in relation to a judgment means the court by which the judgment was given;

'registering court"

(*e*) "registering court" in relation to a judgment means the court in which the judgment is registered under this Act.

(2) All references in this Act to personal service mean actual delivery of the process, notice, or other document, to be served, to the person to be served therewith personally; and service shall not be held not to be personal service merely because the service is effected outside the state of the original court.

Application for registration of judgment

3.—(1) Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to the

Court (name of appropriate court in province)

within six years after the date of the judgment to have the judgment registered in that court, and on any such application the court may order the judgment to be registered.

Application *ex parte*

(2) An order for registration under this Act may be made *ex parte* in any case in which the judgment debtor,

(*a*) was personally served with process in the original action; or

(*b*) though not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court,

and in which, under the law in force in the state where the judgment was made, the time within which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been made and has been disposed of.

Certificate from original court required

(3) In a case to which subsection (2) applies, the application shall be accompanied by a certificate issued from the original court and under its seal and signed by a judge thereof or the clerk thereof.

Form of certificate

(4) The certificate shall be in the form set out in the Schedule, or to the like effect, and shall set forth the particulars as to the matters therein mentioned.

Notice of application in other cases

(5) In a case to which subsection (2) does not apply, such notice of the application for the order as is required by the rules or as the judge deems sufficient shall be given to the judgment debtor.

Conditions of registration

(6) No order for registration shall be made if it is shown by the judgment debtor to the court to which application for registration is made that,

(*a*) the original court acted either

(i) without jurisdiction under the conflict-of-laws rules of the court to which application is made, or

(ii) without authority, under the law in force in the state where the judgment was made, to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor; or

(*b*) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the

state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court; or

(*c*) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the state of that court or had agreed to submit to the jurisdiction of that court; or

(*d*) the judgment was obtained by fraud; or

(*e*) an appeal is pending or the time within which an appeal may be taken has not expired; or

(*f*) the judgment was in respect of a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or

(*g*) the judgment debtor would have a good defence if an action were brought on the judgment.

Method of registration

(7) Registration may be effected by filing the order and an exemplification or a certified copy of the judgment with the (proper officer) of the court in which the order was made, whereupon the judgment shall be entered as a judgment of that court.

Jurisdiction to issue certificate

4. Where the original court is a court in the Province (or Territory) of . . . .(*insert name of enacting province or territory*) that court has jurisdiction to issue a certificate for the purposes of registration of a judgment in a reciprocating state.

Conversion to Canadian currency

5. Where a judgment sought to be registered under this Act makes payable a sum of money expressed in a currency other than the currency of Canada, the registering court, or, where that court is the (Supreme) Court, the (registrar) of that court, shall determine the equivalent of that sum in the currency of Canada on the basis of the rate of exchange prevailing at the date of the judgment in the original court, as ascertained from any branch of any chartered bank; and the registering court or the (registrar), as the case may be, shall certify on the order for registration the sum so determined expressed in the currency of Canada; and, upon its registration, the judgment shall be deemed to be a judgment for the sum so certified.

Where judgment is in a language other than (English)

6. Where a judgment sought to be registered under this Act is in a language other than the (English) language, the judgment

or the exemplification or certified copy thereof, as the case may be, shall have attached thereto for all purposes of this Act a translation in the (English) language approved by the court, and upon such approval being given the judgment shall be deemed to be in the (English) language.

Effect of registration

7. Where a judgment is registered under this Act,

(*a*) the judgment, from the date of the registration, is of the same force and effect as if it had been a judgment given (or entered) originally in the registering court on the date of the registration and proceedings may be taken thereon accordingly, except that where the registration is made pursuant to an *ex parte* order, no sale or other disposition of any property of the judgment debtor shall be made under the judgment before the expiration of the period fixed by clause (*b*) of subsection (1) of section 8 or such further period as the registering court may order;

(*b*) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and

(*c*) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy thereof from the original court and of the application for registration, are recoverable in like manner as if they were sums payable under the judgment if such costs are taxed by the proper officer of the registering court and his certificate thereof is endorsed on the order for registration.

Ex parte orders

8.—(1) Where a judgment is registered pursuant to an *ex parte* order,

(*a*) within one month after the registration or within such further period as the registering court may at any time order, notice of the registration shall be served upon the judgment debtor in the same manner as a (writ of summons or statement of claim) is required to be served; and

(*b*) the judgment debtor, within one month after he has had notice of the registration, may apply to the registering court to have the registration set aside.

(2) On such an application the court may set aside the registration upon any of the grounds mentioned in subsection (6) of section 3 and upon such terms as the court thinks fit.

Application for garnishment order

9.—(1) At the time of, or after, making an application under section 3, the applicant may further apply, *ex parte*, to the registering court for an order that all debts, obligations, and liabilities owing, payable, or accruing due to the judgment debtor from such person as may be named in the application be attached.

Making of garnishing order

(2) A judge of the registering court, upon considering the application for registration of the judgment and the certificate of the original court accompanying it, and upon production of such further evidence as he may require, may, if he deems it proper, make the order mentioned in subsection (1); and the order when made shall be deemed to be a garnishment order before judgment, and the rules of the registering court with respect to such garnishment orders shall apply thereto.

NOTE:—The inclusion of section 9 to be optional in each adopting province; and, if adopted, the wording to be varied to suit the procedure in the courts of the province.

Rules of practice

10. Rules of court may be made respecting the practice and procedure, including costs, in proceedings under this Act; and, until rules are made under this section, the rules of the registering court, including rules as to costs, mutatis mutandis, apply. (This section to be changed to suit the rule-making procedures in the province.)

Exercise of powers

11. Subject to the rules of court, any of the powers conferred by this Act on a court may be exercised by a judge of that court.

Reciprocating jurisdictions establishment

12.—(1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement therein of judgments given in (name of province), he may by order declare it to be a reciprocating state for the purposes of this Act.

Disestablishment

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1) and thereupon the state with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act.

Saving

13. Nothing in this Act deprives a judgment creditor of the right to bring action on his judgment, or on the original cause of action,

(*a*) after proceedings have been taken under this Act; or

(*b*) instead of proceeding under this Act,

and the taking of proceedings under this Act, whether or not the judgment is registered, does not deprive a judgment creditor of

the right to bring action on the judgment or on the original cause of action.

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

SCHEDULE

Under The Reciprocal Enforcement of Judgments Act of the Province of

CERTIFICATE.

CANADA
Province of
(or as the case may be)

To all to whom these Presents shall come .. .GREETING: It is hereby certified that, among the records enrolled in the court of. . . . . at . . . ., before the Honourable .... a Justice (Judge) of the said Court, in the Procedure Book there is record of an action, numbered as No.

BETWEEN:

. . . . . .
Plaintiff(s)

and

.. ..
. .. .
Defendant(s)

1. The writ of summons (statement of claim) (or as the case may be) was issued on the . . .day of. . . . . .19..., and proof was furnished to this court that it was served on the defendant by delivery of a copy thereof to him and leaving it with him.
2. No defence was entered, and the judgment was allowed by (proof, default, or order).... . . . .
. . . . . .

or

2. A defence was entered and judgment was allowed at the trial (or as the case may be).. . . . . .
. . . .
3. Judgment was given on the. day of. .19
4. Time for appeal has expired and no appeal is pending (or An appeal against the judgment was made and was dismissed by the Court of Appeal and the time for any further appeal has expired and no further appeal is pending, or as the case may be.)

5. Further details if any.

6. Particulars:

Claim as allowed.....	$
Costs to judgment.....	$
Subsequent costs.....	$
Interest	$
	$———————
Paid on.....	$
And the balance remaining due on said judgment for debt, interest and costs is the sum of.....	$———————

All and singular which premises by the tenor of these presents we have commanded to be certified.

IN TESTIMONY WHEREOF we have caused the Seal of our said Court at.....to be hereunto affixed.

WITNESS, The Honourable. .....a Justice (Judge) of our said Court at.....this..... day of .....A.D. 19. ..

SEAL

A Justice (Judge) of the Court of
or
Clerk of the Court of

AN ACT TO FACILITATE THE ENFORCEMENT OF MAINTENANCE ORDERS

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

Short title

1. This Act may be cited as "The Reciprocal Enforcement of Maintenance Orders Act".

Interpretation

2. In this Act,

"certified copy"

(*a*) "certified copy", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"court"

(*b*) "court" means an authority having statutory jurisdiction to make maintenance orders;

"dependant"

(*c*) "dependant" means a person that a person against whom a maintenance order is sought or has been made is liable to maintain according to the law in force in the state where the maintenance order is sought or was made;

"maintenance order"

(*d*) "maintenance order" means an order for the periodical payment of money as alimony or as maintenance for a wife or former wife or reputed wife or a child or any other dependant of the person against whom the order was made; and

"reciprocating state"

(*e*) "reciprocating state" means a state declared under section 15 to be a reciprocating state.

ENFORCEMENT OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

Enforcement (province) of maintenance orders made elsewhere

3.—(1) Where, either before or after the coming into force of this Act, a maintenance order has been made against a person by a court in a reciprocating state, and a certified copy of the order has been transmitted by the proper officer of the reciprocating state to the Attorney-General, the Attorney-General shall send a certified copy of the order for registration to the proper officer of a court in (province) designated by the Lieutenant-Governor in Council as a court for the purposes of this section, and on receipt thereof the order shall be registered.

Effect of registration

(2) An order registered under subsection (1) has, from the date of its registration, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so registered, and that court has power to enforce the order accordingly.

Conversion to Canadian currency

(3) A maintenance order that makes payable sums of money expressed in a currency other than the currency of Canada shall not be registered under subsection (1) until the court in which it is sought to register the order, or, where that court is the (Supreme) Court, the (registrar) of that court, has determined the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the court or the (registrar), as the case may be, shall certify on the order the sums so determined expressed in the currency of Canada and, upon the registration of the order, it shall be deemed to be an order for the payment of the sums so certified.

MAINTENANCE ORDERS AGAINST NON-RESIDENTS

Transmission of maintenance orders made in (province)

4. Where, either before or after the coming into force of this Act, a court in (province) has, on the application of a dependant who is resident in the province, made a maintenance order against a person and it is proved to the court that the person against whom the order was made is resident in a reciprocating state, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney-General for transmission to the proper officer of the reciprocating state.

Provisional maintenance orders against person residing outside (province)

5.—(1) Where an application is made to a court in (province) by a dependant who is resident in the province, for a maintenance order against a person and it is proved that that person is resident in a reciprocating state, the court may, in the absence of that person and without service of notice on him, if after hearing the evidence it is satisfied of the justice of the application, make any maintenance order that it might have made if a summons had been duly served on that person and he had failed to appear at the hearing; but an order so made is provisional only and has no effect until it is confirmed by a competent court in the reciprocating state.

NOTE:—In this subsection and elsewhere in the draft where the word "summons" is used, each province should use the term appropriate to its own courts.

Depositions and transcripts

(2) Where the evidence of a witness who is examined on an application mentioned in subsection (1) is not taken in shorthand, the evidence shall be put into the form of a deposition; and the deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

Preparation of statements and transmission of documents to Attorney-General

(3) Where an order has been made pursuant to subsection (1),

(*a*) the court shall prepare,

(i) a statement showing the grounds on which the making of the order might have been opposed if the person against whom the order was made had been duly served with a summons and had appeared at the hearing, and

(ii) a statement showing the information that the court possesses for facilitating the identification of the person against whom the order was made and ascertaining his whereabouts; and

(*b*) the court shall send to the Attorney-General for transmission to the proper officer of the reciprocating state,

(i) a certified copy of the order,

(ii) the depositions or a certified copy of the transcript of the evidence, and

(iii) the statements referred to in clause (*a*).

Power to take new evidence on renvoy

(4) Where a provisional order made under this section has come before a court in a reciprocating state for confirmation, and the order has by that court been remitted to the court in (province) that made the order for the purpose of taking further evidence, the court in (province) shall, after giving the notice prescribed by the rules, proceed to take the evidence in like manner, and subject to the like conditions, as the evidence in support of the original application.

Further powers on renvoy

(5) Where upon the hearing of the evidence taken under subsection (4) it appears to the court in (province) that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence, if it was taken in shorthand, shall be sent to the Attorney-General and dealt with in like manner as the depositions or transcript of the original evidence.

Power of original court to vary or rescind.

(6) The confirmation of an order made under this section does not affect any power of the court that originally made the order to vary or rescind the order, but an order varying an original order has no effect until it is confirmed in like manner as the original order.

Transmission of varying or rescinding order

(7) Where, after an order made under this section is confirmed, the court that originally made the order makes a varying or rescinding order, that court shall send a certified copy thereof, together with the depositions or a certified copy of the transcript

of any new evidence adduced before the court, to the Attorney-General for transmission to the proper officer of the reciprocating state in which the original order was confirmed.

Right of appeal

(8) An applicant for a provisional order under this section has the same right of appeal, if any, against a refusal to make the order as he would have had against a refusal to make a maintenance order if a summons had been duly served on the person against whom the order is sought to be made.

CONFIRMATION OF MAINTENANCE ORDERS MADE IN RECIPROCATING STATES

Confirmation of maintenance orders made outside (province)

6.—(1) Where,

(*a*) a maintenance order has been made by a court in a reciprocating state and the order is provisional only and has no effect until confirmed by a court in (province);

(*b*) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is received by the Attorney-General; and

(*c*) it appears to the Attorney-General that the person against whom the order was made is resident in (province),

the Attorney-General may send the documents to a court designated by the Lieutenant-Governor in Council as a court for the purposes of this section; and upon receipt of the documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

Right of defence on application for confirmation

(2) At a hearing under this section the person on whom the summons was served may raise any defence that he might have raised in the original proceedings if he had been a party thereto, but no other defence; and the statement from the court that made the provisional order, stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings, is conclusive evidence that those grounds are grounds on which objection may be taken.

Power to confirm with or without modification

(3) Where, at a hearing under this section, the person who was served with the summons does not appear or, having appeared, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order, either without modification or

with such modifications as the court, after hearing the evidence, considers just.

Power to remit to court that made provisional order

(4) Where the person against whom a summons was issued under this section appears at the hearing and satisfies the court that, for the purpose of any defence, it is necessary to remit the case to the court that made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Variation or rescission of order that has been confirmed

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court; and where, on an application for rescission or variation, the court is satisfied that it is necessary to remit the case to the court that made the order for the purpose of taking further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

Right of appeal

(6) Where an order has been confirmed under this section, the person bound thereby has the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order if the order had been an order made by the court confirming the order.

(7) An order confirmed under this section has, from the date of its confirmation, the same force and effect, and, subject to this Act, all proceedings may be taken thereon, as if it had been an order originally obtained in the court in which it is so confirmed, and that court has power to enforce the order accordingly.

Conversion to Canadian currency

(8) Where an order sought to be confirmed under this section makes payable sums of money expressed in a currency other than the currency of Canada, the confirming court, or where that court is the (Supreme) Court, the (registrar) of that court, shall determine the equivalent of those sums in the currency of Canada on the basis of the rate of exchange prevailing at the date of the provisional order of the court in the reciprocating state, as ascertained from any branch of any chartered bank; and the confirming court or the (registrar), as the case may be, shall certify on the order when confirmed the sums so determined expressed in the currency of Canada, and the order when confirmed shall be deemed to be an order for the sums so certified.

GENERAL

Enforcement of order

7. 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 the court, shall take all proper steps for enforcing the order.

Transmission of documents by A.G. to reciprocating state

8. Where under this Act a document is sent to the Attorney-General for transmission to the proper officer of a reciprocating state, the Attorney-General shall transmit the document accordingly.

Designation of another court by Attorney-General

9. The designation of a court by the Attorney-General for any purpose under this Act does not prevent the Attorney-General from designating another court with respect to the same order.

Rules of practice

10. The Lieutenant-Governor in Council may make rules prescribing the practice and procedure, including costs, under this Act.

NOTE:—To be varied to suit the requirements of each adopting province.

Proof of documents signed by officer of court

11. A document purporting to be signed by a judge or officer of a court in a reciprocating state shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to be evidence

12. Depositions or transcripts from shorthand of evidence taken in a reciprocating state, for the purposes of this Act, may be received in evidence before the Courts in (province) under this Act.

Where order in foreign language

13. Where a maintenance order sought to be registered or confirmed under this Act is in a language other than the (English) language, the maintenance order or a certified copy thereof shall have attached thereto, for all purposes of this Act, a translation in the (English) language approved by the court; and upon such approval being given the maintenance order shall be deemed to be in the (English) language.

Saving

14. Nothing in this Act deprives a person of the right to obtain a maintenance order instead of proceeding under this Act.

Designation of reciprocating states

15.—(1) Where the Lieutenant-Governor in Council is satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement therein of maintenance orders made within (province), the Lieutenant-Governor in Council may by order declare it to be a reciprocating state for the purposes of this Act.

(2) The Lieutenant-Governor in Council may revoke any order made under subsection (1); and thereupon the state with respect to which the order was made ceases to be a reciprocating state for the purposes of this Act. Revocation of designation

16. This Act shall be so interpreted as to effect its general purpose of making uniform the law of the provinces that enact it. Uniform interpretation

APPENDIX N

(*See page 22*)

UNIFORM SURVIVORSHIP ACT

REPORT OF DR. KENNEDY

The uniform Act was adopted in 1939 and amended in 1949. The revision as amended appears in the 1949 Proceedings at page 43. Further amendments were made in 1956 and 1957. British Columbia had adopted the original Act in 1939 and had amended its Act in 1953 by the addition of section 2(4) and in doing so anticipated the amendments recommended by the Conference in different language in 1956. As British Columbia had not enacted any of the other amendments recommended by the Conference up until this year all earlier amendments, together with the new language for subsection (4) of section 2, with a very slight modification, were included in this year's re-enactment of the survivorship legislation by British Columbia. Those responsible for the British Columbia legislation this year noted a considerable difference in language between subsection (3) recommended in 1939 (amended 1949) and subsection (4) recommended in 1956. It was felt that the language of subsection (4) was an improvement on the language of subsection (3) and that if the Conference were today recommending the statute for the first time or doing a complete revision of the statute it would probably make the language of (3) and (4) more or less uniform. With this in mind British Columbia departed in subsection (3) from the language of the uniform draft and used as a model the language of subsection (4) recommended by the Conference. Subsection (3) it will be recalled deals with the exception where a testator provides for a gift over in case of the death of a beneficiary, while subsection (4) deals with the exception where a testator provides for a substitutional appointment of a personal representative should the original person named predecease him or die in circumstances rendering it uncertain which of them survived the other.

So far I am merely reporting on action taken by British Columbia at its latest session. I should also report that in re-enacting this legislation British Columbia added to the statute three further sections dealing with a slightly different problem—namely the presumption of death—and renamed the statute the "Survivorship and Presumption of Death Act". However, the

basic provisions of the Conference's uniform Survivorship Act are retained.

Shortly after British Columbia's new legislation received third reading I received a copy of suggestions from a member of the Bar about the failure of the new subsection (3) to cover all possible situations that may arise in circumstances of joint disaster in relation to wills. The problem was a matter of substance and related not merely to one of drafting, and I therefore requested that the Secretary place this Act on the agenda. At this stage I think it would be wise to set out the existing subsections (3) and (4) of the Uniform Act followed by British Columbia's subsections (3) and (4):

Uniform Act

2.—(3) Where a testator and a person who, if he had survived the testator, *would have been a beneficiary of property under the will,* die at the same time or in circumstances rendering it uncertain which of them survived the other, and the will contains provision for the disposition of the property in case that person had not survived the testator, or died at the same time as the testator or in circumstances rendering it uncertain which survived the other, then for the purpose of that disposition the will shall take effect as if that person had not survived the testator or died at the same time as the testator or in circumstances rendering it uncertain which survived the other as the case may be. (1939, Am. 1949).

(4) Where a will contains a provision for a substitute personal representative in case of the occurrence of any of the following circumstances, namely, that an executor named in the will

(*a*) does not survive the testator,

(*b*) dies at the same time as the testator, or

(*c*) dies in circumstances rendering it uncertain which of them survived the other,

if the testator and any executor named in the will die at the same time or in circumstances rendering it uncertain which of them survived the other or if the named executor does not survive the testator, then, for the purposes of probate, the case for which the will provides shall be deemed to have occurred. (1956)

British Columbia's Legislation

3.—(3) Where a will contains a provision for the disposition of property operative upon the occurrence of any of the following circumstances, namely, that a person named *as a beneficiary* in the will,

(*a*) does not survive the testator; or

(*b*) dies at the same time as the testator; or

(*c*) dies in circumstances rendering it uncertain which of them survived the other;

and where the person would have been a beneficiary of property under the will had he survived the testator, if the testator and the person die at the same time or in circumstances rendering it uncertain which of them survived the other, or if the person does not survive the testator, then, for the purpose of that disposition, the case for which the will provides shall be deemed to have occurred.

(4) Where a will contains a provision for a substitute personal representative operative upon the occurrence of any of the following circumstances, namely, that an executor named in the will,

(*a*) does not survive the testator; or

(*b*) dies at the same time as the testator; or

(*c*) dies in circumstances rendering it uncertain which of them survived the other;

and if the testator and the executor named in the will die at the same time or in circumstances rendering it uncertain which of them survived the other, or if the named executor does not survive the testator, then, for the purposes of probate, the case for which the will provides shall be deemed to have occurred. (1958, c. 57)

The point which is raised in connection with British Columbia's new subsection (3) and which is equally applicable to the uniform subsection (3) is that it deals with the situation only where the testator *and a beneficiary* are involved in the circumstances listed. It would appear that the subsection is not operative where the persons whose order of death is important but uncertain are not testator and beneficiary but testator and a named person other than a beneficiary but upon whose death in a certain order other persons are dependent for taking a benefit. It has been suggested to me that if subsection (3) is intended to cover all possible situations that may arise in circumstances of joint dis-

asters then the words italicized in the British Columbia version should be deleted. "Let us assume a testator provides in his will that his estate is to go to A's children if A survives him but if he does not then to B's children, and A and the testator die in a plane crash together. A is not named as a beneficiary in the will but the will does contain a provision for the disposition of property as above noted operative if the person named does not survive the testator."

Subsection (3) of the Uniform Act is subject to the same difficulty because it is limited to the situation where a testator and a person who, if he had survived the testator, "would have been a beneficiary of property under the will".

There may be some question of how often such a problem arises. I suggest that so far as possible our uniform Acts should endeavour to cover all situations particularly in relation to wills where draftsmen may wish to rely on the complete coverage of the survivorship legislation rather than having to draft their own clauses in each case. Further, I have been surprised in the last few years about the number of cases in which provision is made for a gift dependent upon whether a certain person survives or does not survive another, yet in which that person is not a beneficiary. I would recommend to the Conference that consideration be given to the elimination of the provision presently limiting subsection (3) to death of testator and beneficiary. Implementation of this recommendation might require a complete rewriting of the uniform subsection (3). It would merely require the elimination of the words italicized in British Columbia's subsection (3). In view, however, of remarks made earlier about British Columbia's selection of the new subsection (3), it may be that the Conference would wish to give consideration to a redraft of subsection (3) of the Uniform Act along the lines of the Uniform Act's subsection (4) as British Columbia has already done.

The implementation of the recommendation contained in the preceding paragraph would not, however, even yet cover all situations in wills where it is important to determine the order of death. For example, there may be a gift to the issue of A if A dies leaving issue but if he dies without issue then a gift to B. If A and his sole issue die in the same plane crash it becomes important to determine their order of death. As the issue will be younger the general presumption will prevail and he will be presumed to have survived the older. This type of case is not within subsection (3) because the testator is not involved as one of the persons whose

order of death is important. Yet this is a further type of case which ought to come within subsection (3) not within the general rule in subsection (1). The operation of the general rule by having the younger survive and giving the gift to the younger, namely the issue of A, now dead, largley defeats the intention of the testator. I raise for the Conference's consideration the question whether this additional problem might be solved by the substitution for the words "the testator" of the words "another person". Certain other minor changes might be necessary in the language of the section which would then read:

> (3) Where a will contains a provision for the disposition of property operative upon the occurrence of any of the following circumstances, namely that a person named in the will,
>
> (*a*) does not survive another person; or
>
> (*b*) dies at the same time as another person; or
>
> (*c*) dies in circumstances rendering it uncertain which of them survived the other,
>
> if the other person and the person named die at the same time or in circumstances rendering it uncertain which of them survived the other or if the named person does not survive the other person then for the purpose of that disposition, the case for which the will provides shall be deemed to have occurred.

We have also received a suggested change in language in British Columbia's new subsection (4) which for these purposes is practically identical with the uniform subsection (4). That change would substitute for the last thirteen words which read in either version "the case for which the will provides shall be deemed to have occurred" of the words "the provision becomes operative". The reason for the suggested change is to tie the governing part of the subsection into the same language as the opening part which in the British Columbia version reads as follows:

> Where a will contains a provision for a substitute personal representative *operative upon* the occurrence of any of the following circumstances, namely, . . ."

(The opening words of the uniform subsection are the same except for the italicized words "operative upon" which read "in case of".) The suggestion appears particularly appropriate in the case of the British Columbia version and would be equally applicable to British Columbia's subsection (3). I draw this suggestion also to the attention of the Conference.

If, as a result of this report changes are made I would recommend that the whole Act, which is very short, as amended to date be set out in the report of the Conference at the same time changing the language from the draftsman's former use of "shall" to his modern use of the present tense in all subsections.

All of which is respectfully submitted,

GILBERT D. KENNEDY.

APPENDIX O

(*See page 22*)

LEGITIMATION

REPORT OF THE ALBERTA COMMISSIONERS

At the 1954 meeting the following resolution was adopted (1954 Proceedings, page 21):

> RESOLVED that the draft uniform Legitimation Act attached to the Manitoba Report be referred to the Alberta Commissioners for the incorporation therein of the changes made at this meeting, for further study and for report to the next meeting with a revised draft Act.

In 1956 the Alberta Commissioners asked for instructions on a number of points and the matter was referred back (1956 Proceedings, page 27). The Alberta Commissioners have prepared a draft Act which is attached as Schedule A.

It might help to review the history of the subject of legitimation in the Conference. In 1919 the Conference considered a draft Act to provide for legitimation by subsequent marriage and also to declare legitimate the children of a bigamous marriage entered into in good faith and in the belief that the first spouse was dead (1919 Proceedings Canadian Bar Association, page 274). The meeting revised the draft and dropped the second provision (page 277). When the draft was circulated for approval some members disapproved of the form and in 1920 a new draft was presented (1920 Proceedings Canadian Bar Association, page 322). The Conference adopted the 1919 form (page 311). Some provinces enacted the 1919 uniform Act and some the 1920 version Act. Nova Scotia's Act took a different form.

In 1932 the Conference appointed the Nova Scotia Commissioners to report on possible amendments to the uniform Act, in the light of the English Legitimation Act of 1926 (1932 Proceedings, pages 19 and 20). Mr. Sidney Smith reporting in 1933 for the Nova Scotia Commissioners recommended no change in the uniform Act (1933 Proceedings, page 35).

In 1950 the report on amendments to the uniform Act called attention to the fact that Ontario had in 1950 dealt with the children of a marriage that took place after an order presuming death of an earlier spouse and that since 1927 Ontario had declared legitimate the children of a marriage entered into bona

fide in the belief that the first spouse was dead (1950 Proceedings, page 85).

The Conference requested the Ontario Commissioners to make a complete study of the question of legitimation (1950 Proceedings, page 25).

The main recommendations of the Ontario Commissioners were:

1. To continue to include in legitimation by subsequent marriage the children of adulterine connection.
2. To avoid the phrase "born out of wedlock" because this phrase might exclude children of an adulterine connection.
3. To make sure the legitimated child is provided with kin so as to exclude any claim of the Crown.
4. To make legitimate the children of void marriages in the following threee cases:
   (*a*) where there has been a declaration presuming death,
   (*b*) where notification of death has been given by the armed services, and
   (*c*) where there is bona fide belief in the death of the first spouse.
5. To provide that children of voidable marriages be legitimated as provided by the English Act of 1949. (Now Matrimonial Causes Act, 1950.)
6. To study the legal position of children of void marriages generally and to consider whether to legitimate them.

The subject was referred to the Manitoba Commissioners (1951 Proceedings, page 21). In 1954 the Manitoba Commissioners brought forward a draft Act (1954 Proceedings, page 115). It deals with three main cases:

1. Legitimation by subsequent marriage.
2. Legitimation of the children of a void marriage in the three cases specified in the Ontario report.
3. In other cases where a marriage is declared void to provide that the court could declare the children legitimate where either parent believed at the time of conception that the marriage was valid.

During discussion of the Manitoba draft two opinions emerged—void and voidable marriages should be distinguished and consideration should be given to provide for a conflicts rule; i.e.,

what test should be applied to determine when to recognize a foreign legitimacy or legitimation?

In 1956 the Alberta Commissioners raised a number of problems which were then discussed in general terms.

The new draft embodies all of the Ontario recommendations. In the case of void marriages our recommendation embodies *all* void marriages made in good faith and, of course, includes the three specific cases referred to in the Ontario report; it also abolishes the Wright-Grove rule and establishes a statutory rule of conflicts.

The draft Act prepared by the Alberta Commissioners is attached as Schedule "A" to this report. The sections thereof are discussed here together with the problems or difficulties that each section was designed to overcome.

Section 1

This section is the short title and it is recommended that the original short title be retained.

Section 2

This section is an interpretation section and is related to the terminology used in sections 6 to 9 of the attached draft. The defined terms will be discussed in the sections in which they occur.

Section 3

> 3. Where a decree of nullity is granted in respect of a voidable marriage, a child who would have been the legitimate or legitimated child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the decree continues to be their legitimate child notwithstanding the annulment.

This section is derived from the Matrimonial Causes Act, 1950, of the United Kingdom, (1950, c. 25, s. 9). As this provision is designed to preserve to a person the status of legitimacy that was held immediately before the annulment decree, it differs from the other provisions of the draft whereby the status of legitimacy is bestowed either by the provision or by an event that under the terms of the Act has the effect of making legitimate a person who would theretofore have been a bastard child. For that reason section 3 precedes the other legitimating provisions of the draft Act.

Because of its retrospective effect an annulment decree in the case of a voidable marriage bastardizes the children born of that

marriage who would before a decree, and if no decree were made, have been legitimate children. This section would prevent the bastardizing effect of an annulent decree and would continue the status of legitimacy acquired by birth within the voidable marriage by giving to a decree of annulment the same effect, in this respect, as follows from a divorce decree.

Although the recommended provision follows the English model it makes a reference to a "legitimated" child that is not found in the English provision. This reference should make it abundantly clear that section 3 extends to the status acquired by a child whose parents intermarry after the birth of the child and thereby legitimate the child by the subsequent marriage, which is later found to have been voidable.

Section 4

> 4. Where the parents of an illegitimate person marry or have married one another, before or after the commencement of this Act, then, *if the father of the illegitimate person was or is at the date of the marriage domiciled in (Alberta), the marriage renders* that person, *if living*, legitimate from the time of his birth.

This section follows substantially the present English and Newfoundland provisions, except as to the time from which the legitimation is effective. (*The English provision is 1926, c. 50, s. 1(1); the Newfoundland provision is R.S.N. 1952, c. 164, s. 3(1).*)

This provision authorizes legitimation by subsequent marriage and we recommend it as a substitute for the present uniform provision. (In 1933 the Nova Scotia Commissioners recommended that the uniform Act be not changed after reviewing it in the light of the English Legitimacy Act of 1926 (1933 Proceedings, page 35). The proposed draft provision departs from that recommendation, but it is considered that there is sufficient justification for this course.)

In studying the legitimation statutes to obtain a conflicts rule, two separate observations of judges in two provinces brought to our attention a difficulty inherent in the uniform provision. In *Re W 56 O.L.R. 611* at page 612 Riddell J. commented:

> . . . quoad any property in the province there can be no doubt that the Legislature of the province has power of declaring that any person is legitimate, and of determining the succession or devolution of any property, and this notwithstanding In Re Wright's Trust (1856), 2 K & J 595. The question is, has the Legislature by the statute just mentioned, effectively declared that the property of N.W. shall be disposed of as though he were from and after the first of July 1921 legitimate?
>
> I have no difficulty from (sic) one anomalous result of giving full

effect to the Act, namely, that N.W. would be illegitimate in England and legitimate in Ontario:

In Re Jamieson (Gregory) (Alberta Appellate Division). *63 D.L.R. 365 at page 367 Stuart J.A.* commented:

> Our legislature only enacts laws for this Province, and even with respect to the statute creating legitimacy per subsequens matrimonium I should have some doubt as to how far it could apply, until at least a domicile is acquired here, to a foreign birth followed, for example, by a foreign marriage or how far other courts might be induced by the comity principle to recognize the status ascribed to the child by our statutes even after birth or domiciliation here.

It will be seen that the two observations refer to different aspects of legitimation: Riddell J. was speaking of capacity or incidents of the status, while Stuart J. was primarily concerned with the status acquired by legitimation. The authorities in the conflict of laws are concerned with the difference between status and the incidents ascribed to or following from the status. A perusal of the Newfoundland and the English statutes will show that the draftsmen of these statutes were very careful to give status first and then to describe in detail the results following from that status. The draftsman of the Nova Scotia statute was also careful to make this distinction. The uniform Act does not. Our draft does. Section 4 creates status but does not purport to have the effect of giving to the person on whom the status is bestowed the incidents of legitimation outside the province. Other jurisdictions should recognize the status created by section 4 but they might apply their own law in determining the incidents that flow from the status.

In order to obtain the recognition of status elsewhere there must be some relationship to the province creating the status. There is not such expressed relationship in the uniform Act. This means either that the uniform Act requires no relationship or alternatively that it requires the relationship laid down by the Wright-Grove rule, viz., that the father of the child must be domiciled both at the time of the birth and of the marriage in a jurisdiction that recognizes legitimation by subsequent marriage.

The first of these alternatives seems to be favoured by Falconbridge and *In Re W.* The other is applied *In Re Levy. (N.S.) 20 M.P.R. 309 (1947).* In our opinion the latter is the sounder view. If the Act does not specify some other connecting factor then the Wright-Grove rule applies to section 4 in the absence of some other judicially created rule. It is agreed that the Wright-Grove rule is undesirable. In our opinion a better rule is domicile of the

father at the time of the marriage. This is what the English Act provides and by expressing it explicitly all doubt is removed. This is our reason for incorporating the English provision.

Another matter of less immediate importance, but dealt with by Newfoundland and England in their provision for bestowing status upon the offspring of a subsequent marriage, is not mentioned by the uniform Act, That is the peculiar situation that arises when at the time of the subsequent marriage of the parents of a child, that child is deceased. In point of status only, it would seem a completely futile gesture to bestow legitimation upon a deceased person, and a waste of the legislative power.

There is only one situation where it would have any significance and that is when the deceased child left a spouse or issue. However, in that case it is only necessary to remove the consequences of bastardy for the surviving spouse or issue of the deceased illegitimate person. They would then stand in the same position as though the deceased had been legitimated. This is done in a following section. Under Quebec law the position at the present time is clear; the subsequent marriage does not legitimate a deceased child who dies without issue. (*Orrell* vs. *Tkachena (1942 Que. K.B. 621)*.)

Section 5(1)

5. (1) Where after the commencement of this Act a person is born of parents who before his birth contracted a marriage that is void under the law of (Alberta), then, that person is legitimate from the time of his birth, if

(*a*) the void marriage was entered into before a person entitled to solemnize marriages under the law in force at the place where it was entered into and was registered or recorded in substantial compliance with that law;

(*b*) at least one party to the void marriage entered into the form of marriage in good faith and in ignorance that any impediment existed in fact or in law that rendered the marriage void; and

(*c*) the father of that person is domiciled in (Alberta) at the date of that person's birth.

This subsection is intended to confer legitimacy upon the children of certain putative marriages; it is not intended to have any application to births before the commencement of the Act. Three conditions are necessary before a legitimation could be effected under this provision, namely: (1) that the apparent marriage be regular in form so that it gives to all the world every appearance of a valid marriage; (2) that one party at least to the apparent marriage be acting in good faith and in ignorance of

any impediment to a valid marriage, at the time of the attempted marriage; and (3) that there be a relationship of persons concerned to the legitimating jurisdiction so that no question would arise as to the intent and extent of the legitimating provision.

The first two of these requirements follow in substance the civil law rules with respect to the legitimating effect of putative marriage. A putative marriage has been defined as follows:

> A putative marriage is one contracted in the bona fide belief on the part of one, or both, of the parties that they are free to marry, whereas there is in fact an impediment to the marriage. In these circumstances, although there is no marriage, yet by reason of the good faith of one or both of the parties, the children procreated before the impediment is discovered are according to the institutional writers entitled to the status of legitimacy, . . .

(*Gloag and Henderson, Introduction to the Law of Scotland as quoted at page 770 Conflicts of Laws, 2nd. Ed. Falconbridge*).

The Quebec Civil Code refers to the subject of legitimation by putative marriage in Article 164 as follows:

> 164. If good faith exist on the part of one of the parties only, the marriage (*the putative marriage*) produces civil effects in favour of such party alone and in favour of the children issue of the marriage.

(*The bracketed words are added*). *Civil Code of Lower Canada, Jolinson, 1923 at page 48.*

Under Scots law as interpreted by the House of Lords, a putative marriage must be a regular one and the error involved must be one of fact and not an error of law. This is not so in the case of Quebec law as interpreted by the Supreme Court of Canada in *Stephens* v. *Falchi* (*1938 S.C.R. 354*), where an error of law did not prevent the void marriage being given effect to as a putative marriage. We have attempted to preserve the broader concept for the purposes of legitimating offspring.

The desire to legitimate children of void marriages is based upon two premises: (1) the parties thereto may have very good reasons for thinking that they are competent to marry because of belief in the death of a previous spouse, or because they are unaware of facts making their marriage void; (2) the marriage gives to the outside world the appearance of legitimacy so far as any children of that marriage are concerned, and this appearance continues so long as it is not destroyed by a public pronouncement or some public display of the voidness of the marriage.

It seems just and desirable to give to the child the status that it purports to have.

We think that the Ontario recommendation to make legitimate the children of void marriages in three specific cases is based on the above reasoning. The only difference is that we have broadened the provision to include *all* cases where one party has acted in good faith. The effect of this, combined with section 3 would give the status of legitimacy to the offspring of voidable or void marriages, without regard to the difference between void and voidable marriages arising from the fact that Lord Lyndhursts' Act is not in force in all provinces.

Section 5(2)

(2) Where after the commencement of this Act a person is born of parents who after his birth contract a marriage that is void under the law of (Alberta), that person, if living, is legitimated from the time of the void marriage, if

(*a*) the void marriage was entered into before a person entitled to solemnize marriages under the law in force at the place where it was entered into and was registered or recorded in substantial compliance with that law;

(*b*) at least one party to the void marriage entered into the form of marriage in good faith and in ignorance that any impediment existed in fact or in law that rendered the marriage void; and

(*c*) the father of that person is domiciled in (Alberta) at the date of the void marriage.

This subsection is not intended to have any application to events occurring before the commencement of the provision. Where applicable the provision would permit of legitimation by a subsequent void marriage, that is to say, it would enable the principle of section 4 to apply to void marriages meeting the required conditions discussed under subsection (1) of this section.

When persons who are the parents of illegitimate children enter into a form of marriage, the marriage, even though void, has the outward appearance of legitimating the children of the parties. That is, section 4 would appear to apply and the children would appear to have been legitimated. This appearance would only be destroyed in the public mind by a pronouncement of a public nature that the marriage is a nullity. In these circumstances it seems desirable to remove the stigma of bastardy from the innocent children. The subsequent void marriage that purports to be a real marriage is a convenient means of effecting that purpose. It will be observed that there is no legitimation back to the date of birth under this section. Because of the nature of the event, it seemed desirable to have the legitimation coincide with the event. However, we hold no firm convictions on this point

and would see no great difficulty in making the legitimation retroactive as in section 4.

Section 5(3)

(3) Subsection (1) does not apply to legitimate a person born more than eleven months after a finding is made by a court, in the jurisdiction in which his mother resides or is domiciled, in a civil or criminal proceeding, either on the issue of the void marriage or incidental to a proceeding in the court, that the marriage of his parents is void.

This subsection gives a purely arbitrary rule for preventing the application of subsection (1) in circumstances where the apparent cloak of wedlock has been publicly removed so that to the world at large there is no longer any apparent legitimacy of the offspring of the irregular relationship. It seems desirable to apply an arbitrary period of time rather than a rule that operates by reference to the time of conception or to a state of mind or knowledge in either of the parties at any particular period. The rule suggested is simply a rule of convenience, and easier of determination than a state of mind or state of knowledge of either or both parties at any period.

General

Sections 3, 4 and 5 apply to status only. The following sections relate to the incidents to be given to the status by the domestic law, to recognition of foreign acquired status, to incidents to be attached in cases where the status of legitimacy is not given, and to other miscellaneous matters.

Section 6

6. (1) A legitimated person and his spouse, children or more remote issue are entitled to take any interest,

(*a*) in the estate of an intestate dying after the date of legitimation;

(*b*) under any disposition coming into operation after the date of legitimation,

in like manner as if the legitimated person had acquired legitimacy by birth in lawful wedlock.

(2) Where the right to property depends on the relative seniority of the children of any person, and those children include one or more persons legitimated by subsection (2) of section 5, the legitimated person shall rank as if he had been born on the day when he became legitimate by virtue of this Act, and if more than one legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority.

(3) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall be given effect subject to the terms of the disposition and to the provisions therein contained.

Subsection (1) of this section gives a legitimated person and the spouse, children or more remote issue a right of succession to property. A "legitimated person" is a defined term under section 2(*c*) of the draft and does not include a person whose legitimacy is continued under section 3. Since some legitimation relates back to the date of birth while the legitimation itself occurs upon the happening of a subsequent event, such as the marriage of the parents, the incidents attached to the legitimation must also have a starting point. This is obtained by reference to "the date of legitimation". The date of legitimation is defined in section 2(*a*) for each type of legitimation. By separating status from incidents in this manner, it is not necessary to make provisions concerning vested interests acquired before or after the date of legitimation.

Subsection (2) applies only to a case, which might arise under section 5, subsection (2), whereby the seniority of certain legitimated persons would be computed from the same date. It follows upon the English and Newfoundland provisions but is made applicable to the only circumstances in which it is thought that it could arise under the draft Act attached hereto.

This subsection would disappear if section 5(2) were removed or altered to effect the legitimation from the date of birth, under that subsection.

Subsection (3) makes it clear that the provisions above apply only if and so far as a contrary intention is not expressed in a disposition.

Section 7

> 7. Where a legitimated person or a child or more remote issue of the legitimated person, dies intestate in respect of all or any of his property, the same persons are entitled to the same interests therein as they would have been entitled to take if the legitimated person had acquired legitimacy by birth in lawful wedlock.

This section supplements the provisions of section 6 in respect of the incidents attached to legitimation. It has the effect of giving the legitimated person brothers and sisters, and other relatives for succession purposes.

Section 8

> 8. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents, whether valid or void, leaving any spouse, children or remoter issue living at the date of the marriage, then, if that person would, if living at the time of the marriage

of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person apply as if the deceased illegitimate person had been a legitimated person and the date of the valid or void marriage of his parents had been the date of legitimation.

Section 8 deals with the case of an illegitimate person who has died before his parents entered into a form of marriage that would, had he been living at the time, have legitimated him. Where such a deceased person leaves a spouse or issue then this Act could apply with respect to the taking of interest in property by such survivors as if the deceased illegitimate person had been legitimated by the subsequent void or voidable marriage of his parents. The provision is necessary because of the exclusion of deceased persons from the legitimating provisions of section 4 and section 5, subsection (2).

Section 9

9. A legitimated person has the same rights and is under the same obligation in respect of the maintenance and support of himself or of any other person as if he had been born in lawful wedlock and, subject to this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child apply in like manner in the case of a legitimated person.

This section states other results arising out of the legitimation of a person and is derived from the Newfoundland and English provision.

Section 10

10. (1) Where pursuant to the law of any foreign country or any other province or any territory of Canada an illegitimated person became legitimated, if the father of the illegitimate person was or is domiciled in that foreign country, province or territory at the time of the marriage or void marriage or other event or formality by virtue of which the illegitimate person became legitimate, then, that person, if living, shall be recognized in (Alberta) as having been so legitimated from the date of the marriage or other event or formality, as the case may be, notwithstanding that his father was not at the time of the birth of that person domiciled in a country, province or territory in which legitimation by subsequent marriage or void marriage, or by the other event or formality, was permitted by law.

(2) Where pursuant to the law of any foreign country or any other province or any territory of Canada, a person who is the issue of a void marriage is given the status of legitimacy, if the father of that person was domiciled in that foreign country, province or territory at the time of the birth of that person, then, that person shall be recognized in (Alberta) as having been legitimate from the time of his birth.

(3) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remote issue of a legitimated person apply in the case of a person recognized as being legitimate under this section, or who would, had he survived the marriage or void marriage of his parents, have been so recognized, and this Act shall, accordingly, be given effect as if references therein to a legitimated person included a person so recognized as being legitimate.

This section provides a conflicts rule for the recognition in a province of a legitimation acquired by a person elsewhere under a foreign law. While it is modelled upon the Newfoundland and English provision it has been extended to permit a province to recognize as legitimate a person legitimate by a void marriage, and by acknowledgment of the male parent, where that act or event would permit the legitimation of the child in the foreign country of the father's domicile. The provision abolishes the Wright-Grove double test in conflict cases and substitutes the single test of the father's domicile at the happening of the legitimating event. Subsection (2) of this section states the results in the domestic jurisdiction of recognizing a foreign legitimation in the domestic jurisdiction.

Section 11

11. (1) Where before or after the commencement of this Act the parents of an illegitimate person intermarried after his birth while the father of the illegitimate person was domiciled in a country, province or territory by the laws of which the illegitimate person would not have been legitimated by the subsequent marriage of his parents, then, if that illegitimate person dies domiciled in (Alberta) he shall for all purposes of the law of succession to property in (Alberta), be treated as legitimate.

(2) Nothing in this section affects any right, title or interest in or to property, if the right, title or interest vested in any other person before the death of the illegitimate person.

Section 11 has no precedent in other statutes so far as we know. It has only one object and that is to apply the incidents of legitimation to a person who is in the same circumstance as those mentioned *In Re W*, that is to say, to a person whose only relationship with the legitimating jurisdiction would have been his domicile in that jurisdiction at the time of his death. The section does not legitimate such a person but it applies the incidents of legitimation to him if he dies domiciled in a province.

While we are not entirely convinced of the need or desirability for this section we suggest it only for the purpose of giving the same effect as a legitimation to the situation described *In Re W*, if the Conference is of the opinion that it is desirable to do so.

Section 12

12. (1) Where a decree of annulment of a marriage is granted by any judge of the (court) in respect of a void marriage, the judge shall find whether or not any child of the persons who contracted the void marriage was legitimated by this Act, and shall so declare.

(2) Either of the parents of, or any issue of, a child in respect of which legitimacy is claimed, or the child, may at any time by petition (or as required in any jurisdiction) apply to a judge of the (court) for a declaration that the child is legitimate or was legitimated under this Act, and if the judge is satisfied that such is the case he may so declare.

(3) A declaration made pursuant to this section is, when all times for appeal have expired, conclusive as to the matters stated therein.

It is considered that while a legitimation may be acquired or conferred by the provisions of section 4 or 5, there is always the possibility of the legitimation being denied until the facts are established at some later date. This section will provide a method of obtaining conclusive proof of a legitimated status, which would settle the question of the legitimacy or legitimation of the persons described in the declaratory order.

Sections 13 and 14

These sections, which are not quoted hereunder but may be found in the Schedule "A" have been discussed in previous reports, and are included *ex abundanti cautela.*

All of which is respectfully submitted,

H. J. WILSON, Q.C.,
W. F. BOWKER, Q.C.,
J. W. RYAN,
Alberta Commissioners.

SCHEDULE "A"

Short title

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

Interpretation

2. In this Act,

"date of legitimation"

(*a*) "date of legitimation" means

(i) in reference to a legitimation effected by section 4, the date of the marriage leading to the legitimation,

(ii) in reference to a legitimacy established by subsection (1) of section 5, the date of birth of the legitimate person,

(iii) in reference to a legitimation effected by subsection (2) of section 5, the date of the void marriage leading to the legitimation;

"disposition"

(*b*) "disposition" means the assurance of any interest in property by any instrument, whether inter vivos or by will;

"legitimated person"

(*c*) "legitimated person" means a person legitimated under section 4 or 5.

(cf. R.S.N. 1952, c. 164, s. 2; 1926, c. 20, s. 11 (Imp))

Legitimacy under voidable marriage

3. Where a decree of nullity is granted in respect of a voidable marriage, a child who would have been the legitimate or legitimated child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the decree continues to be their legitimate child notwithstanding the annulment.

(1950, c. 25, s. 9 (Imp.))

Legitimation per subsequens matrimonium

4. Where the parents of an illegitimate person marry or have married one another, before or after the commencement of this Act, then, if the father of the illegitimate person was or is at the date of the marriage domiciled in (Alberta), the marriage renders that person, if living, legitimate from the time of his birth.

(cf. Nfld. R.S. 1952, c. 164, s. 3(1); 1926, c. 60, s. 1(1) (Imp.))

Legitimation under putative marriage

5.—(1) Where after the commencement of this Act a person is born of parents who before his birth contracted a marriage that is void under the law of (Alberta), then, that person is legitimate from the time of his birth, if

(*a*) the void marriage was entered into before a person entitled to solemnize marriages under the law in force at the place where it was entered into and was registered or recorded in substantial compliance with that law;

(*b*) at least one party to the void marriage entered into the form of marriage in good faith and in ignorance that any impediment existed in fact or in law that rendered the marriage void; and

(*c*) the father of that person is domiciled in (Alberta) at the date of that person's birth.

Legitimation by subsequent putative marriage

(2) Where after the commencement of this Act a person is born of parents who after his birth contract a marriage that is void under the law of (Alberta), that person, if living, is legitimated from the time of the void marriage, if

(*a*) the void marriage was entered into before a person entitled to solemnize marriages under the law in force at the place where it was entered into and was registered or recorded in substantial compliance with that law;

(*b*) at least one party to the void marriage entered into the form of marriage in good faith and in ignorance that any impediment existed in fact or in law that rendered the marriage void; and

(*c*) the father of that person is domiciled in (Alberta) at the date of the void marriage.

Exception

(3) Subsection (1) does not apply to legitimate a person born more than eleven months after a finding is made by a court, in the jurisdiction in which his mother resides or is domiciled, in a civil or criminal proceeding, either on the issue of the void marriage or incidental to a proceeding in the court, that the marriage of his parents is void.

Succession by and through legitimated person

6.—(1) A legitimated person and his spouse, children or more remote issue are entitled to take any interest

(*a*) in the estate of an intestate dying after the date of legitimation;

(*b*) under any disposition coming into operation after the date of legitimation,

in like manner as if the legitimated person had acquired legitimacy by birth in lawful wedlock.

(2) Where the right to property depends on the relative seniority of the children of any person, and those children include one or more persons legitimated by subsection (2) of section 5, the legitimated person shall rank as if he had been born on the day when he became legitimate by virtue of this Act, and if more than one legitimated person became legitimated at the same time, they shall rank as between themselves in order of seniority.

(3) This section applies only if and so far as a contrary intention is not expressed in the disposition, and shall be given effect subject to the terms of the disposition and to the provisions therein contained.

(cf. Nfld. R.S. 1952, c. 164, s. 4; cf. 1926, c. 60, s. 3(Imp.))

Succession on intestacy of legitimated person or issue

7. Where a legitimated person or a child or more remote issue of the legitimated person, dies intestate in respect of all or any of his property, the same persons are entitled to take the same interests therein as they would have been entitled to take if the legitimated person had acquired legitimacy by birth in lawful wedlock.

(Nfld. R.S. 1952, c. 164, s. 5; 1926, c. 60, s. 4 (Imp.))

Succession by or through illegitimate

8. Where an illegitimate person dies after the commencement of this Act and before the marriage of his parents, whether valid or void, leaving any spouse, children or remoter issue living at the date of the marriage, then, if that person would, if living at the time of the marriage of his parents, have become a legitimated person, the provisions of this Act with respect to the taking of interests in property by, or in succession to, the spouse, children and remoter issue of a legitimated person apply as if the deceased illegitimate person had been a legitimated person and the date of the valid or void marriage of his parents had been the date of legitimation.

(cf. Nfld. R.S. 1952, c. 164, s. 6; 1926, c. 60, s. 5 (Imp.))

Rights and obligations

9. A legitimated person has the same rights and is under the same obligation in respect of the maintenance and support of himself or of any other person as if he had been born in lawful wedlock and, subject to this Act, the provisions of any Act relating to claims for damages, compensation, allowance, benefit or otherwise by or in respect of a legitimate child apply in like manner in the case of a legitimated person.

(Nfld. R.S. 1952, c. 164, s. 7; 1926, c. 60, s. 6(1) (Imp.))

Recognition of foreign legitimation

10.—(1) Where pursuant to the law of any foreign country or any other province or any territory of Canada an illegitimated person became legitimated, if the father of the illegitimate person was or is domiciled in that foreign country, province or territory at the time of the marriage or void marriage or other event or formality by virtue of which the illegitimate person became legitimate, then, that person, if living, shall be recognized in (Alberta) as having been so legitimated from the date of the marriage or other event or formality, as the case may be, notwithstanding that

his father was not at the time of the birth of that person domiciled in a country, province or territory in which legitimation by subsequent marriage or void marriage, or by the other event or formality, was permitted by law.

(2) Where pursuant to the law of any foreign country or any other province or any territory of Canada, a person who is the issue of a void marriage is given the status of legitimacy, if the father of that person was domiciled in that foreign country, province or territory at the time of the birth of that person, then, that person shall be recognized in (Alberta) as having been legitimate from the time of his birth.

(3) All the provisions of this Act relating to legitimated persons and to the taking of interests in property by or in succession to a legitimated person and the spouse, children and remote issue of a legitimated person apply in the case of a person recognized as being legitimate under this section, or who would, had he survived the marriage or void marriage of his parents, have been so recognized, and this Act shall, accordingly, be given effect as if references therein to a legitimated person included a person so recognized as being legitimate.

(cf. Nfld. R.S. 1952, c. 164, s. 8; 1926, c. 60, s. 8 (Imp.))

Deceased domiciled illegitimate of foreign father

11.—(1) Where before or after the commencement of this Act the parents of an illegitimate person intermarried after his birth while the father of the illegitimate person was domiciled in a country, province or territory by the laws of which the illegitimate person would not have been legitimated by the subsequent marriage of his parents, then, if that illegitimate person dies domiciled in (Alberta) he shall for all purposes of the law of succession to property in (Alberta), be treated as legitimate.

(2) Nothing in this section affects any right, title or interest in or to property, if the right, title or interest vested in any other person before the death of the illegitimate person.

Declarations of legitimacy

12.—(1) Where a decree of annulment of a marriage is granted by any judge of the (court) in respect of a void marriage, the judge shall find whether or not any child of the persons who contracted the void marriage was legitimated by this Act, and shall so declare.

(2) Either of the parents of, or any issue of, a child in respect of which legitimacy is claimed, or the child, may at any time by petition (or as required in any jurisdiction) apply to a judge of the (court) for a declaration that the child is legitimate or was

legitimated under this Act, and if the judge is satisfied that such is the case he may so declare.

(3) A declaration made pursuant to this section is, when all times for appeal have expired, conclusive as to the matters stated therein.

Effect on adoption proceedings

13. Where, under any Act of the Province relating to adoption, a child that was born illegitimate has been placed for adoption with, and is in the custody of, adopting parents before the date of the legitimation of the child, and whether or not an order or decree of adoption has been made,

(*a*) the father of the child is not, by reason only of the legitimation of the child, entitled to claim any right of custody or guardianship of the child; and

(*b*) no consent is required from the father before the making of a final order or decree of adoption or to render valid an order of adoption made before the date of legitimation of the child.

Crown bound

14. The Crown is bound by this Act for all purposes affecting the succession to property.

Uniform construction

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

APPENDIX P

(*See page 23*)

RULES OF THE ROAD

INTERPRETATION

1. In this Part,

(*a*) "built-up district" means a part of a highway that is designated a built-up district by a traffic authority and marked in accordance with section . . . . ;

(*b*) "centre line", except on a one-way roadway, means,

(i) the centre of a roadway measured from the curbs or, in the absence of curbs, from the edges of the roadway, or

(ii) where on a laned roadway there are more lanes available for traffic in one direction than the other direction, the line dividing the lanes for traffic in different directions;

(*c*) "controlled-access highway" means a highway,

(i) on to which persons have a right to enter from abutting land, and

(ii) from which persons have a right to enter on to abutting land,

only at fixed locations;

(*d*) "crosswalk" means,

(i) any part of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by signs or by lines or other markings on the surface, or

(ii) the part of a roadway at an intersection that is included within the connection of the lateral lines of the sidewalks on the opposite sides of a highway, measured from the curbs or, in the absence of curbs, from the edges of the roadway;

(*e*) "Department" means the Department of (appropriate Provincial Department);

(*f*) "driver" means a person who drives or is in actual physical control of a vehicle;

(*g*) "emergency vehicle" means a vehicle used,

(i) for police duty,

(ii) by a fire department,

(iii) as an ambulance, or

(iv) for purposes related to maintenance of a public utility and designated as an emergency vehicle by a traffic authority;

(*h*) "highway" includes any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place that is publicly maintained, any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles;

(*i*) "intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of two or more adjoining roadways, and, where a highway is divided into two or more roadways 30 feet or more apart, every crossing of each roadway of the divided highway by an intersecting roadway is a separate intersection, and, where a highway is divided into two or more roadways less than 30 feet apart, the intersections where an intersecting roadway crosses the roadways of the divided highway and the area between such intersections on the intersecting roadway are deemed to be one intersection;

(*j*) "laned roadway" means a roadway that is divided into two or more marked lanes for vehicular traffic;

(*k*) "Minister" means the Minister of (appropriate Provincial Minister);

(*l*) "motor vehicle" means a vehicle that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires;

(*m*) "municipality" means a municipal corporation;

(*n*) "owner", as applied to a vehicle, means,

(i) the person who holds the legal title to the vehicle,

(ii) a person who is a conditional vendee, a lessee or a mortgagor, and is entitled to be and is in possession of the vehicle, or

(iii) the person in whose name the vehicle is registered;

(*o*) "park", when prohibited, means the standing of a vehicle, whether occupied or not, except when standing temporarily for the purpose of and while actually engaged in loading or unloading;

(*p*) "pedestrian" means a person afoot, or an invalid or child in a wheelchair or carriage;

(*q*) "provincial highway" means a highway within "Province" that is not under the jurisdiction of a municipality and is not privately owned;

(*r*) "Registrar" means the Registrar of Motor Vehicles;

(*s*) "roadway" means the part of a highway that is improved, designed or ordinarily used for vehicular traffic, but does not include the shoulder, and, where a highway includes two or more separate roadways, the term "roadway" refers to any one roadway separately and not to all of the roadways collectively;

(*t*) "safety zone" means an area officially set apart within a roadway for the exclusive use of pedestrians, and protected or marked or indicated by adequate signs so as to be clearly visible;

(*u*) "school bus" means a motor vehicle used for conveyance of children to or from school by or under a contract with the authority in charge of the school;

(*v*) "sidewalk" means the part of a highway adjacent to a curb or side of a roadway that is improved in such a manner as to clearly indicate it is for the use of pedestrians;

(*w*) "stop" or "stand" means,

(i) when required, a complete cessation from movement, and

(ii) when prohibited, the stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a traffic officer or traffic-control device;

(*x*) "through highway" means a highway or part of a highway the entrances to which at intersections are controlled by stop signs or yield signs erected under this Act;

(*y*) "traffic" includes pedestrians, ridden or herded animals, vehicles, street-cars and other conveyances, either singly or together, while using a highway for purposes of travel;

(NOTE:—Traffic authority should be defined for the purposes of each jurisdiction.)

(*z*) "traffic-control device" means a sign, signal, marking or device not inconsistent with this Part placed or erected by

authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic;

(*za*) "traffic-control signal" means a traffic-control device, whether manually, electrically or mechanically operated, by which traffic is directed to stop and to proceed;

(*zb*) "traffic officer" means a person lawfully authorized to direct or regulate traffic or to make arrests for violations of traffic regulations;

(*zc*) "vehicle" means a device in, upon or by which a person or thing is or may be transported or drawn upon a highway, except a device designed to be moved by human power or used exclusively upon stationary rails or tracks;

(*zd*) "urban district" means a city, town, village or built-up district.

(NOTE:—The definitions should be examined in each jurisdiction to ascertain whether other legislation on which they may be dependent is required or is adequate.)

APPLICATION

2. Unless the context otherwise requires,

(*a*) the provisions of this Part relating to the operation of vehicles refer only to the operation of vehicles upon a highway;

(*b*) this Part does not apply to persons, vehicles and other equipment while actually engaged in highway construction or maintenance work upon, under or over the surface of a highway while at the site of the work when it is reasonably necessary for the purposes of such construction or work that this Part be not complied with or contravened; and

(*c*) a person riding an animal or driving an animal-drawn vehicle upon a highway has all the rights and is subject to all the duties that a driver of a vehicle has under this Part.

3.—(1) Notwithstanding anything in this Part, but subject to subsections 2 and 3, the driver of an emergency vehicle, when responding to, but not when returning from, an emergency call or alarm, or when in pursuit of an actual or suspected violator of the law, may,

(*a*) exceed the speed limit;

(*b*) proceed past a red traffic-control signal or stop sign without stopping;

(*c*) disregard rules and traffic-control devices governing direction of movement or turning in specified directions; and

(*d*) stop or stand.

(2) The driver of an emergency vehicle shall not exercise the privileges granted by subsection 1 unless he is sounding an audible signal by bell, siren or exhaust whistle and is showing a flashing red light.

(3) The driver of an emergency vehicle exercising any of the privileges granted by subsection 1 shall drive with due regard for safety having regard to all the circumstances of the case, including,

(*a*) the nature, condition and use of the highway;

(*b*) the amount of traffic that is on or might reasonably be expected to be on the highway; and

(*c*) the nature of the use being made of the emergency vehicle at the time.

(4) The driver of an ambulance is deemed to be responding to an emergency call from the time he receives such call until he arrives at the destination of his passenger.

4. Where a traffic officer reasonably considers it necessary,

(*a*) to ensure orderly movement of traffic; or

(*b*) to prevent injury or damage to persons or property; or

(*c*) to permit proper action in an emergency,

he may direct traffic according to his discretion, notwithstanding anything in this Part, and every person shall obey his directions.

5. Except when otherwise directed by a traffic officer, the driver of a vehicle and a motorman of a street-car shall obey the instructions of an applicable traffic-control device.

6. In section 7, "driver of a vehicle" includes a motorman of a street-car and "vehicle" includes a street-car.

7. Except when otherwise directed by a traffic officer, drivers and pedestrians shall obey the instructions of a traffic-control signal in accordance with the following provisions:

(1) When a green light alone or "go" signal is shown at an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the intersection and facing the light or signal,

(i) may proceed across the intersection or turn left or right, subject to a traffic-control device prohibiting a left or right turn or both, and

(ii) shall yield the right-of-way, if turning left or right, to other traffic lawfully within the intersection or within an adjacent crosswalk at the time the light or signal is shown; and

(*b*) a pedestrian facing the light or signal may proceed across the roadway, subject to a pedestrian-control signal directing him otherwise, and while so proceeding across the roadway has a right-of-way over all vehicles.

(2) When a green light alone or "go" signal is shown at a place other than an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the light or signal,

(i) may proceed to pass the light or signal, and

(ii) shall yield the right-of-way to any pedestrian still in the roadway or on a crosswalk in the vicinity of the light or signal when it is shown after the pedestrian entered the roadway or crosswalk; and

(*b*) a pedestrian facing the light or signal may proceed across the roadway, subject to any pedestrian-control signal directing him otherwise, and while so proceeding across the roadway has a right-of-way over all vehicles.

(3) When a yellow or amber light alone is shown at an intersection by a traffic-control signal following a green light or "go" signal,

(*a*) the driver of a vehicle approaching the intersection and facing the light shall stop the vehicle at a clearly marked stop line, or if none, then immediately before entering the crosswalk on the near side of the intersection, or if none, then immediately before entering the intersection unless a stop cannot be made in safety; and

(*b*) a pedestrian facing the light shall not commence to cross the roadway until a pedestrian or traffic-control signal permitting him to enter the roadway is shown; and

(*c*) a pedestrian still in the roadway or on a crosswalk in the vicinity of the light when the light is shown after he entered the roadway or crosswalk shall proceed across the

roadway and has a right-of-way for that purpose over all vehicles.

(4) When a yellow or amber light is shown at a place other than an intersection by a traffic-control signal following a green light or "go" signal,

(*a*) the driver of a vehicle approaching the light shall stop the vehicle at a clearly marked stop line, or if none, then immediately before entering the cross walk on the near side of the light, or if none, then immediately before reaching the light unless a stop cannot be made in safety; and

(*b*) a pedestrian facing the light shall not commence to cross the roadway until a pedestrian or traffic-control signal permitting him to enter the roadway is shown; and

(*c*) a pedestrian still in the roadway or on a crosswalk in the vicinity of the light when the light is shown after he entered the roadway shall proceed across the roadway and has a right-of-way for that purpose over all vehicles.

(5) When a red light alone or "stop" signal is shown at an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the intersection and facing the light or signal,

(i) shall stop the vehicle at a clearly marked stop line, or if none, then immediately before entering the crosswalk on the near side of the intersection, or if none, then immediately before entering the intersection, and

(ii) shall not proceed until a traffic-control signal permitting the movement of the vehicle in the intersection is shown; and

(*b*) a pedestrian facing the light or signal shall not commence to cross the roadway until a pedestrian or traffic-control signal permitting him to enter the roadway is shown.

(6) When a red light alone or "stop" signal is shown at a place other than an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the light or signal shall stop the vehicle at a clearly marked stop line, or if none, then immediately before entering the crosswalk on the near side of the light or signal, or if none, then immediately before reaching the light or signal and shall not proceed until a traffic-control signal permitting him to pass the light or signal is shown; and

(*b*) a pedestrian facing the light or signal shall not commence to cross the roadway until a pedestrian or traffic-control signal permitting him to enter the roadway is shown.

(7) When a green arrow or a green arrow in conjunction with a red light or a red light with a green arrow is shown at an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the intersection and facing the arrow,

(i) may cautiously enter the intersection to make only the movement indicated by the arrow, and

(ii) shall yield the right-of-way to other traffic lawfully within the intersection or within an adjacent crosswalk; and

(*b*) a pedestrian facing the arrow shall not commence to cross the roadway until a pedestrian or traffic-control signal permitting him to enter the roadway is shown.

(8) When a red flashing light is shown at an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the intersection and facing the light,

(i) shall stop the vehicle at a clearly marked stop line, or if none, then immediately before entering the crosswalk on the near side of the intersection, or if none, then immediately before entering the intersection, and

(ii) having stopped, shall yield the right-of-way to traffic within the intersection or within an adjacent crosswalk, and

(iii) having yielded, may proceed with caution; and

(*b*) a pedestrian facing the light may proceed across the roadway with caution.

(9) When a red flashing light is shown at a place other than an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the light,

(i) shall stop the vehicle at a clearly marked stop line, or if none, then immediately before reaching the crosswalk on the near side of the light, or if none, then immediately before reaching the light, and

(ii) having stopped, shall yield the right-of-way to all pedestrians in the roadway or in a crosswalk in the vicinity of the light, and

(iii) having yielded, may proceed with caution; and

(*b*) a pedestrian facing the light may proceed across the roadway with caution.

(10) When a yellow or amber flashing light is shown at an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the intersection and facing the light,

(i) may enter the intersection only with caution, and

(ii) shall yield the right-of-way to all traffic within the intersection within an adjacent crosswalk; and

(*b*) a pedestrian facing the light may proceed across the roadway with caution.

(11) When a yellow or amber flashing light is shown at a place other than an intersection by a traffic-control signal,

(*a*) the driver of a vehicle approaching the light,

(i) may pass the light only with caution, and

(ii) shall yield the right-of-way to all pedestrians in the roadway or in a crosswalk in the vicinity of the light; and

(*b*) a pedestrian facing the light may proceed across the roadway with caution.

(12) When the word "walk" is shown by a pedestrian-control signal, a pedestrian facing the signal may proceed across the roadway in the direction of the signal and while so proceeding across the roadway has a right-of-way over all vehicles.

(13) When the word "wait" or "stop" or the words "don't walk" is or are shown by a pedestrian-control signal,

(*a*) a pedestrian facing the signal shall not commence to cross the roadway until the word "walk" is shown by a pedestrian-control signal; and

(*b*) a pedestrian proceeding across the roadway when the word "wait" or "stop" or the words "don't walk" is or are shown after he entered the roadway shall proceed across the roadway and has a right-of-way for that purpose over all vehicles.

8. Subclause i of clause *a* of paragraph 1 and paragraph 7 of section 7 do not apply so as to prohibit a trolley bus or streetcar that forms part of a municipal transportation system turning at an intersection in the direction determined by the proper municipal authority.

9. No person shall erect or maintain upon or in view of a highway a device that purports to be, resembles or interferes with the effectiveness of a traffic-control device unless he is authorized to do so by a traffic authority.

10. No person shall place or maintain commercial advertising upon a traffic-control device.

11. Except with lawful authority, no person shall alter, injure or remove or attempt to alter, injure or remove a traffic-control device or any part thereof.

ACCIDENTS

12.—(1) Where an accident occurs on a highway, every person who was in charge of a vehicle and was directly or indirectly a party to the accident, upon request, shall give to anyone sustaining loss or injury, to any person at the scene of the accident and to any traffic officer his name and address, the name and address of the registered owner of the vehicle, the number of the driver's licence, and the registration number of the vehicle.

(NOTE:—See Criminal Code s. 221 (2) re failing to stop at scene of accident.)

(2) The driver of a vehicle that collides with an unattended vehicle shall stop and either locate and notify the driver or owner of the unattended vehicle of the name and address of the driver, the number of the driver's licence and the registration number of the vehicle striking the unattended vehicle or shall leave in a conspicious place in the vehicle struck a written notice giving the name and address of the driver, the number of the driver's licence and the registration number of the vehicle striking the unattended vehicle.

(3) The driver of a vehicle involved in an accident resulting in damage to property upon or adjacent to a highway, other than a vehicle under subsection 2, shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the driver, the number of the driver's licence and the registration number of the vehicle.

13.—(1) Subject to subsection 2, where an accident results in injury or death to a person or in property damage to an apparent extent of 100 dollars or more, the driver shall forthwith make a written report, in the form prescribed by the Registrar, to a police officer having jurisdiction where the accident occurred.

(2) Where the driver is incapable of making the report re-

quired by subsection 1 and there is another occupant of the vehicle capable of making the report, the occupant shall make the report required to be made by the driver.

(3) Where no report has been made under subsection 1 or 2 and the driver or occupant is not the owner of the vehicle, the owner shall forthwith after learning of the accident make the report.

(4) Where the driver is alone, is the owner, and is incapable of making the report required by subsection 1, he shall make the report forthwith after becoming capable of making it.

14.—(1) A traffic officer who has witnessed or investigated an accident shall forthwith forward to the Registrar a written report in the form prescribed by the Registrar setting forth full particulars of the accident including the names and addresses of the persons involved and the extent of the personal injuries or property damage.

(2) Where a report has been made under section 12, 13 or this section, the Registrar may require the driver involved or a traffic officer or person having knowledge of the accident to furnish additional information or to make a supplementary report.

15.—(1) Where a motor vehicle that shows evidence of having been involved in a serious accident or having been struck by a bullet is brought into a public garage, parking station, parking lot, used-car lot or repair shop, the person in charge of the place into which the vehicle is brought shall forthwith report that fact to the nearest provincial or municipal police officer, giving the name and address of the owner or operator and also the permit number and a description of the vehicle.

(2) A coroner or other official performing like functions, who investigates or holds an inquest or inquiry respecting the death of a person from an accident in which a vehicle or street-car was involved, shall immediately upon the conclusion of his investigation, inquest or inquiry make a written report to the Registrar giving the time and place of the accident, the name of the person killed, and the name and address of the driver of the vehicle involved.

16.—(1) Subject to subsection 2, a written report or statement made or furnished under section 13, 14 or 15,

(*a*) is not open to public inspection; and

(*b*) is not admissible in evidence for any purpose in a trial arising out of the accident, except to prove,

(i) compliance with section 13, 14 or 15, as the case may be, or

(ii) falsity in a prosecution for making a false statement in the report or statement.

(2) Where a person or an insurance company has paid or may be liable to pay for damages resulting from an accident in which a motor vehicle is involved, the person and insurance company, and any solicitor, agent or other representative of the person or company, is entitled to such information as may appear in any report made under section 13, 14 or 15 in respect of,

(*a*) the date, time and place of the accident;

(*b*) the identification of vehicles involved in the accident;

(*c*) the name and address of any parties to, or involved in, the accident;

(*d*) the names and addresses of witnesses to the accident;

(*e*) the names and addresses of persons or bodies to whom the report was made;

(*f*) the name and address of any police officer who investigated the accident;

(*g*) the weather and highway conditions at the time of the accident;

(*h*) the estimate of damages sustained by any person involved in the accident.

(3) A person shall not make a false statement in a report made or purporting to be made under section 12, 13, 14 or 15.

(4) In a prosecution for violation of section 13, 14 or 15, a certificate purporting to be signed by the Registrar that any report therein required has or has not been made is *prima facie* proof of the facts stated in the certificate.

(5) In a prosecution for failure to make a report required by section 12, 13, 14 or 15 in respect of an accident, the place of the offence shall be deemed to be the place where the accident occurred.

SPEED RESTRICTIONS

17.—(1) In this section, "drive carelessly" means drive without due care and attention or without reasonable consideration for other persons using the highway.

(2) No driver shall drive a vehicle carelessly.

(3) No driver shall drive a vehicle at a greater rate of speed than,

(*a*) except as provided in clause *b*, 30 miles an hour within an urban district; or

(*b*) the maximum rate designated by signs erected along the highway under section . . .; or

(*c*) 50 miles an hour in other locations.

18.—(1) No driver shall drive a vehicle at such a slow rate of speed as to impede or block the normal and reasonable movement of traffic then existing, except when it is necessary to do so for safe operation or to comply with this Part.

(2) Where a driver drives a vehicle at such a slow rate of speed that he impedes or blocks the normal and reasonable movement of traffic then existing, a traffic officer may require him to increase his rate of speed or to remove the vehicle from the highway.

DRIVING ON RIGHT SIDE OF ROADWAY—
OVERTAKING AND PASSING

19.—(1) No driver shall drive a vehicle to the left of the centre line of the roadway except,

(*a*) when overtaking and passing another vehicle proceeding in the same direction; or

(*b*) when the roadway to the right of the centre line is obstructed by a parked vehicle or other object; or

(*c*) when the roadway to the right of the centre line is closed to traffic; or

(*d*) upon a one-way roadway.

(2) The driver of a vehicle who is proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall drive in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left-hand turn at an intersection or into a private road or driveway.

(3) A driver of a vehicle when passing around a rotary traffic island shall drive to the right of the island.

20. The driver of a vehicle on a laned roadway,

(*a*) may drive from one lane to another where one or more broken lines only exist between lanes;

(*b*) except as provided in clauses *c* and *d*, shall not drive from

one lane to another where such action necessitates the crossing of a solid line;

(*c*) when a solid line and a broken line exist together, may, with caution, cross the solid line from the lane in which the broken line is located, and re-cross;

(*d*) may, with caution, cross a solid line when necessary to turn left into a private road or driveway or when necessary on entering the roadway from a private road or driveway;

(*e*) shall not drive from one lane to another without first signalling his intention to do so in the manner prescribed by sections 34 and 35;

(*f*) when approaching an intersection and intending to turn left or when intending to turn left into a private road or driveway, shall travel in the left-hand lane available to traffic moving in the direction of the travel of the vehicle;

(*g*) when approaching an intersection intending to turn right, shall travel in the lane nearest to the right-hand side of the roadway and may pass another vehicle travelling in the same direction in a lane to his left;

(*h*) shall not use the centre lane of a three-lane roadway except when passing another vehicle proceeding in the same direction or when approaching an intersection where he intends to turn to the left or when such lane is designated for traffic moving in the direction of travel of the vehicle;

(*i*) except as provided in section 23, when overtaking another vehicle that is travelling in the same direction in a place where there are two or more lanes available to traffic moving in that direction, shall in passing keep to the left of the other vehicle and to the right of the centre line;

(*j*) where a traffic-control device directs slow-moving traffic to use a designated lane, when driving slowly, shall use that lane only;

(*k*) when being overtaken by another vehicle travelling in the same direction, shall allow that vehicle to pass and shall travel in the lane nearest to the right-hand side of the roadway or in a manner that allows the overtaking vehicle free passage to the left in a lane available to traffic moving in the direction of the travel of the vehicle.

21.—(1) The driver of a vehicle shall keep to his right when he is meeting another vehicle that is moving.

(2) The driver of a vehicle upon a roadway that has a width for only one line of traffic in each direction shall, when meeting another vehicle that is moving, give to the other vehicle at least one-half of the roadway as nearly as possible.

22.—(1) Except as provided in section 23, the driver of a vehicle overtaking another vehicle,

(*a*) when reasonably necessary to ensure safe operation, shall sound an audible signal;

(*b*) shall not pass such vehicle without first signalling his intention to do so in the manner prescribed by sections 32 and 33;

(*c*) shall pass to its left at a safe distance; and

(*d*) shall not return to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle,

(*a*) upon hearing the audible signal, shall give way to the right in favour of the overtaking vehicle; and

(*b*) shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

23.—(1) The driver of a vehicle shall not overtake and pass upon the right of another vehicle, except,

(*a*) when the vehicle overtaken is making a left turn or its driver has signalled his intention to make a left turn; or

(*b*) when on a laned roadway there are one or more unobstructed lanes available to traffic moving in the direction of travel of the vehicle; or

(*c*) upon a one-way roadway where the roadway is of sufficient width for two or more lines of moving vehicles and is free from obstructions.

(2) Notwithstanding subsection 1, the driver of a vehicle shall not overtake and pass another vehicle upon the right,

(*a*) when the movement cannot be made safely; or

(*b*) by driving off the roadway.

24. No driver shall drive a vehicle to or upon the left side of the centre line of a roadway in overtaking and passing another vehicle unless the left side is clearly visible and is free of oncoming

and overtaking traffic for a sufficient distance to permit overtaking and passing to be completely made without interfering with the safe operation of another vehicle.

25.—(1) No driver shall drive a vehicle to or upon the left side of the centre line of a roadway other than a one-way roadway,

(*a*) when approaching the crest of a grade or upon a curve in the roadway where the driver's view is obstructed within such distance as to create a hazard; or

(*b*) when approaching within 100 feet of or traversing an intersection or level railway crossing; or

(*c*) when the driver's view is obstructed upon approaching within 100 feet of a bridge, viaduct or tunnel.

(2) Notwithstanding subsection 1, a driver may with caution drive a vehicle to the left side of the centre line of a roadway under the circumstances mentioned in subsection 1 when a left turn is made at an intersection or into a private road or driveway.

26.—(1) Where all or a part of a highway has been marked by a sign as a zone in which passing is prohibited or a zone limited to driving on the right-hand side of the roadway, a driver shall obey the instructions on the sign.

(2) Where the Minister or a traffic authority has designated and marked by signs a roadway for one-way traffic, a driver on that roadway shall drive only in the direction designated.

27.—(1) No driver of a vehicle shall follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles, and the amount and nature of traffic upon and the condition of the roadway.

(2) The driver of a commercial motor vehicle or a motor vehicle that is drawing another vehicle when upon a roadway outside an urban district and when following a commercial motor vehicle or motor vehicle drawing another vehicle, unless he intends to overtake and pass the vehicle ahead, shall, if conditions permit, have not less than 200 feet between his vehicle and the vehicle ahead.

(3) The driver of a motor vehicle in a caravan or motorcade, other than a funeral procession, outside an urban district shall leave sufficient space between his vehicle and another vehicle or combination of vehicles to enable a vehicle to enter and occupy that space without danger.

28. Where a highway has been divided into two roadways by an intervening space or a physical barrier or clearly indicated dividing section constructed so that it impedes vehicular traffic, no driver shall drive a vehicle over, across or within the intervening space, barrier or dividing section, except at a crossover or intersection established by a traffic authority.

29.—(1) Where on a controlled-access highway there is a sign indicating a location at which vehicles are permitted to enter, no driver shall drive a vehicle onto the highway except at that location.

(2) Where on a controlled-access highway there is a sign indicating a location at which vehicles are permitted to leave, no driver shall drive a vehicle from the highway except at that location.

TURNING, STARTING AND SIGNALS

30.—(1) When a driver intends to turn right at an intersection, he shall approach the intersection and make the turn as close as practicable to the right-hand curb or edge of the roadway.

(2) When a driver intends to turn left at an intersection where traffic is permitted to move in both directions on each roadway entering the intersection, he shall,

(*a*) approach the intersection in the part of the right-half of the roadway that is nearest its centre line or on a laned roadway in the extreme left-hand lane available to traffic moving in the direction of travel of the vehicle;

(*b*) keep to the right of the centre line at the place where it enters the intersection;

(*c*) after entering the intersection, make a left turn so as to leave the intersection at a point to the right of and as close as practicable to the centre line of the roadway being entered; and

(*d*) when practicable, make the left turn in the part of the intersection to the left of the centre of the intersection.

(3) When a driver of a vehicle intends to turn left at an intersection from a one-way roadway into a roadway on which traffic is permitted to move in both directions, he shall approach the intersection as close as practicable to the left-hand curb or edge of the roadway and after entering the intersection shall make the left turn so as to leave the intersection at a point to the right of

and as close as practicable to the centre line of the roadway being entered.

(4) When a driver of a vehicle intends to turn left at an intersection from a roadway on which traffic is permitted in both directions into a one-way roadway, he shall approach the intersection in the part of the right-half of the roadway that is nearest its centre line or on a laned roadway in the extreme left-hand lane available to traffic moving in the direction of travel of the vehicle and after entering the intersection shall make the left turn by passing as close as practicable to the left-hand curb or edge of the roadway being entered.

(5) When a driver of a vehicle intends to turn left at an intersection from a one-way roadway into another one-way roadway, he shall approach the intersection as close as practicable to the left-hand curb or edge of the roadway and after entering the intersection shall make the left turn by passing as close as practicable to the left-hand curb or edge of the roadway being entered.

(6) Where at an intersection there is a traffic-control device indicating the course to be travelled by drivers turning at the intersection, no driver shall turn a vehicle at the intersection in a manner other than as directed by the traffic-control device.

31. No driver shall turn a vehicle so as to proceed in the opposite direction,

(*a*) unless he can do so without interfering with other traffic; or

(*b*) when he is driving,

(i) upon a curve,

(ii) upon an approach to or near the crest of a grade where the vehicle cannot be seen by the driver of another vehicle approaching from either direction within 500 feet,

(iii) at a place where a sign prohibits making a U-turn.

32. No person shall cause a vehicle that is stopped, standing or parked to move unless the movement can be made with reasonable safety.

33.—(1) No driver shall turn a vehicle at an intersection unless the vehicle is in the position upon the roadway required by section 30.

(2) No driver shall turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course, or

move right or left upon a roadway unless the movement can be made with reasonable safety.

(3) Where traffic may be affected by turning a vehicle, no driver shall turn a vehicle without giving the appropriate signal under sections 34 and 35.

(4) Where a signal of intention to turn right or left is required, a driver shall give the signal continuously for sufficient distance before making the turn to warn traffic.

(5) When there is an opportunity to give a signal, no driver shall stop or suddenly decrease the speed of a vehicle without first giving the appropriate signal under sections 34 and 35.

34.—(1) Subject to subsection 2, where a signal is required, a driver shall give it by means of,

(*a*) his hand and arm; or

(*b*) a signal lamp of a type specified in section .....; or

(*c*) a mechanical or electrical device of a type specified in section .....

(2) When a vehicle is constructed or loaded in a manner that makes a signal by hand and arm not visible both to its front and rear, a driver shall give signals as provided by clause *b* or *c* of subsection 1.

35.—(1) When the driver of a left-hand drive vehicle gives a signal by hand and arm, he shall do so from the left side and shall signify,

(*a*) a left turn, by extending his left hand and arm horizontally from the vehicle;

(*b*) a right turn, by extending his left hand and arm and out upward from the vehicle; and

(*c*) a stop or decrease in speed, by extending his left hand and arm out and downward from the vehicle.

(2) No driver of a right-hand drive vehicle shall drive upon a highway unless,

(*a*) the vehicle is equipped with a mechanical or electrical device of a type specified in section .....; or

(*b*) there is prominently displayed on the rear of the vehicle in bold face letters not less than two inches in height and of a color contrasting with that of the vehicle the words "Right-Hand Drive Vehicle".

RIGHT-OF-WAY

36. In sections 37 to 39, the expression "driver of a vehicle" includes a motorman of a street-car, and "vehicle" includes a street-car.

37. Except as provided in section 39,

(*a*) a driver approaching an intersection shall yield the right-of-way to traffic that has entered the intersection from a different highway;

(*b*) when two vehicles enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

38. When a driver is within an intersection and intends to turn left, he shall yield the right-of-way to traffic that is approaching from the opposite direction and is within the intersection or so close that it constitutes an immediate hazard, but, having yielded and given a signal as required by sections 34 and 35, he may make a left turn and traffic approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn.

39.—(1) Where a driver who is about to enter a through highway has stopped in compliance with section 55,

(*a*) he shall yield the right-of-way to traffic that has entered the intersection upon the through highway or is approaching so closely thereon that it constitutes a hazard; and

(*b*) having yielded, he may proceed with caution, and traffic approaching the intersection on the through highway shall yield the right-of-way to the vehicle proceeding into or across the highway.

(2) A driver approaching a yield sign shall slow down to a speed reasonable for the existing conditions, or shall stop if necessary as provided in section 56, and shall yield the right-of-way to a pedestrian crossing the roadway on which he is driving and to traffic in the intersection or approaching on the intersecting roadway so closely that it constitutes a hazard and, having yielded, he may proceed with caution.

40. When a driver is about to enter or cross a highway from a private road, alley, building, driveway or lane, he shall yield the right-of-way to traffic approaching on the highway so closely that it constitutes a hazard.

41. Upon the immediate approach of an emergency vehicle giving an audible signal by a bell, siren or exhaust whistle, and showing a visible flashing red light,

(*a*) except when otherwise directed by a traffic officer, a driver shall yield the right-of-way and shall immediately drive to a position parallel to and as close as practicable to the right-hand curb or edge of the roadway, clear of an intersection, and shall stop and remain in that position until the emergency vehicle has passed; and

(*b*) except when otherwise directed by a traffic officer, the motorman of a street-car shall immediately stop the street-car clear of an intersection and remain in that position until the emergency vehicle has passed.

PEDESTRIANS' RIGHTS AND DUTIES

42. Except when a traffic authority has otherwise provided, where traffic-control signals are operating, pedestrians shall comply with them in the manner provided in section 7.

43.—(1) Subject to section 44, where traffic-control signals are not in place or not in operation when a pedestrian is crossing the roadway within a crosswalk and the pedestrian is upon the half of the roadway upon which the vehicle is travelling or is approaching so closely from the other half of the roadway that he is in danger, a driver shall yield the right-of-way to the pedestrian.

(2) No pedestrian shall leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impracticable for the driver of the vehicle to yield.

(3) Where a vehicle is stopped at a crosswalk to permit a pedestrian to cross the roadway, the driver of a vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

44. When a pedestrian is crossing a roadway at a point other than within a crosswalk, he shall yield the right-of-way to a driver.

45. Notwithstanding sections 42, 43 and 44, a driver shall,

(*a*) exercise due care to avoid colliding with a pedestrian who is upon a highway;

(*b*) give warning by sounding the horn when necessary; and

(*c*) observe proper precaution upon observing a child or an apparently confused or incapacitated person who is upon a highway.

46.—(1) Where there is a sidewalk that is reasonably passable on either or both sides of a highway, a pedestrian shall not walk on a roadway.

(2) Where there is no sidewalk, a pedestrian walking along or upon a roadway or the shoulder thereof shall when practicable walk only on the left side of the roadway or the shoulder of the highway facing traffic approaching from the opposite direction.

(3) No person shall be on a roadway for the purpose of soliciting a ride, employment or business from the occupant of a vehicle.

BICYCLES AND PLAY VEHICLES

47.—(1) Except as provided in this section, a person riding a bicycle upon a highway has the same rights and duties as a driver.

(2) A person who is riding a bicycle,

(*a*) shall not ride on a sidewalk;

(*b*) subject to clause *a*, shall ride as near as practicable to the right-hand curb or edge of a roadway;

(*c*) shall not ride abreast of any other person who is riding a bicycle upon a roadway;

(*d*) shall keep at least one hand on the handle bars;

(*e*) shall not ride other than upon or astride a regular seat of the bicycle;

(*f*) shall not use the bicycle to carry more persons at one time than the number for which it is designed and equipped; and

(*g*) shall not ride a bicycle on a highway where signs prohibit their use.

(3) No person riding a bicycle shall ride it upon a roadway if there is a usable path intended for the use of bicycles adjacent to the roadway.

(4) No person riding upon a bicycle, coaster, sled, toboggan or play vehicle or upon roller skates or skis shall attach it or them or himself to a street-car or vehicles upon a roadway.

STREET-CARS AND SAFETY ZONES

48.—(1) No driver shall overtake and pass upon the left, or drive upon the left side, of a street-car proceeding in the same direction, whether the street-car is actually in motion or temporarily at rest, except,

(*a*) when directed to do so by a traffic officer; or

(*b*) upon a one-way roadway; or

(*c*) upon a roadway where the tracks are so located as to prevent compliance with this section.

(2) When a driver is permitted to overtake and pass on the left of a street-car that is stopped at a passenger stop, he shall reduce speed and may proceed with caution.

49. Where a driver is proceeding in the same direction as and behind or beside a railway or street-car and is about to pass or is passing on the entrance side of a car that has stopped or is about to stop at a passenger stop, the driver,

(*a*) where there is no safety zone, shall bring the vehicle to a stop a safe distance, and in any case not less than 5 feet, behind the rear or front door of the car, as the case requires, and shall not again proceed until all passengers have boarded the car or are safely out of the path of the vehicle; and

(*b*) where there is a safety zone or when a traffic officer has signalled to proceed, may proceed past the car with caution.

50.—(1) When the driver of a vehicle is proceeding upon a roadway or track in front of a street-car, he shall drive the vehicle off the track as soon as practicable after a signal from the motorman of the street-car.

(2) Where a street-car has entered and is crossing an intersection, no driver shall drive a vehicle across street-car tracks within the intersection in front of the street-car.

(3) When overtaking and passing a street-car, no driver shall turn a vehicle in front of the street-car so as to interfere with or impede its movement.

51. No driver shall drive a vehicle through or within a safety zone.

SPECIAL STOPS

52.—(1) When the driver of a vehicle is approaching a railway crossing at a time when,

(*a*) a clearly visible electrical or mechanical signal device gives warning of the approach of a railway train; or

(*b*) a crossing gate is lowered or a flagman is giving a signal of the approach or passage of a railway train; or

(*c*) a railway train in dangerous proximity to a crossing is approaching the crossing and emits an audible signal or is visible,

he shall stop the vehicle not less than 15 feet from the nearest rail of the railway, and shall not proceed until he can do so safely.

(2) No driver shall drive a vehicle through, around or under a crossing gate or barrier at a railway crossing while the gate or barrier is closed or is being opened or closed.

53. Where a stop sign has been erected at a railway crossing, the driver of a vehicle shall stop the vehicle not less than 15 feet from the nearest rail of the railway and shall not proceed until he can do so safely.

54.—(1) Except as provided in subsections 3 and 4, the driver of,

(*a*) a vehicle carrying passengers for hire; or

(*b*) a school bus carrying a child; or

(*c*) a vehicle carrying explosive substances or flammable liquids as cargo,

shall, before crossing a track of a railway, stop the vehicle not less than 15 feet from the nearest rail and, remaining stopped, shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train, and shall not proceed until he can do so safely.

(2) Except as provided in subsection 4, where a driver has stopped and is proceeding as required in subsection 1, he shall cross the railway track in a gear that he will not need to change while crossing the track, and he shall not shift gears while crossing.

(3) Subsection 1 does not apply where a traffic officer or traffic-control device directs traffic to proceed.

(4) Subsections 1 and 2 do not apply to street railway grade crossings or to industrial spur railway crossings within an urban district.

55. Except when a traffic officer directs otherwise, where there is a stop sign at an intersection, the driver of a vehicle or the motorman of a street-car shall stop at a clearly marked stop line, or if none, then immediately before entering the crosswalk on the near side of the intersection, or if none, then immediately before entering the intersection.

56. Except when a traffic officer directs otherwise, where there is a yield sign at an intersection, the driver of a vehicle if required for safety to stop shall stop at a clearly marked stop line, or if none, then immediately before entering the crosswalk on the near side of the intersection, or if none, then immediately before entering the intersection.

57.—(1) The driver of a vehicle upon a highway outside of an urban district upon meeting or overtaking from either direction a school bus that has stopped on the highway for the purpose of receiving or discharging school children,

(*a*) when there is in operation on the school bus a visual signal as specified in section ....., shall stop the vehicle before reaching the bus; and

(*b*) shall not proceed until the school bus resumes motion or he is signalled by the driver of the school bus to proceed or the visual signal is no longer actuated.

(2) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words "school bus" in letters not less than 8 inches in height and shall be equipped with visual signals as specified in section ..... which shall be actuated by the driver of the school bus when the school bus is stopped on the highway for the purpose of receiving or discharging school children.

(3) A person shall not operate a school bus upon a highway for a purpose other than the transportation of children to or from school unless all marks indicating that it is a school bus are concealed.

(4) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or overtaking a school bus that is on a different roadway.

(5) The driver of a vehicle upon a controlled-access highway need not stop upon meeting or overtaking a school bus that is stopped in a loading zone that is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

Parking and Leaving Vehicles

58.—(1) Subject to subsection 3, where outside of an urban district it is practicable to stop, park or leave a vehicle off the roadway, no person shall stop, park or leave the vehicle either unattended or attended on the roadway.

(2) Subject to subsection 3, no person shall park a vehicle so as to obstruct the free passage of traffic on the roadway.

(3) Subsections 1 and 2 do not apply when a vehicle is so disabled that it is not practicable to avoid stopping and temporarily leaving it on a roadway.

59.—(1) Where a vehicle is standing or parked on a highway,

(*a*) in violation of section 58; or

(*b*) in a position that causes it to interfere with removal of snow from a highway by a person authorized to do so by the Minister or a municipality; or

(*c*) in a position that causes it to interfere with fire fighting,

a traffic officer may move the vehicle or require the driver or person in charge of the vehicle to move it to a position determined by the traffic officer.

(2) When an unattended vehicle is,

(*a*) parked in violation of section 58 or section 61; or

(*b*) apparently abandoned on or near a highway; or

(*c*) on a highway without proper registration plates, a traffic officer may take the vehicle into his custody and cause it to be taken to and stored in a safe and otherwise suitable place.

(3) Costs and charges incurred in moving or storing a vehicle, or both, under subsection 1 or 2 are a lien on the vehicle that may be enforced under (appropriate provincial statute) by the person who moved or stored the vehicle at the request of a traffic officer.

60.—(1) Except where otherwise provided in an urban district by a traffic authority or when necessary to avoid conflict with traffic or to comply with the law or the directions of a traffic officer or traffic-control device, no person shall stop, stand or park a vehicle on a highway,

(*a*) on a sidewalk;

(*b*) in front of a public or private driveway;

(*c*) within an intersection;

(*d*) within 10 feet from the point on the curb or edge of the roadway immediately opposite a fire hydrant;

(*e*) within a crosswalk;

(*f*) within 20 feet of the approach side of a crosswalk;

(*g*) within 30 feet upon the approach to any flashing beacon,

stop sign or traffic-control signal located at the side of a roadway;

(*h*) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a traffic authority indicates a different length by signs or markings;

(*i*) within 50 feet of the nearest rail of a railway crossing;

(*j*) within 20 feet of a driveway entrance to a fire station, or on the side of a street opposite the entrance to a fire station within 300 feet of the entrance when properly marked with signs;

(*k*) alongside or opposite a street excavacation or obstruction when stopping, standing or parking obstructs traffic;

(*l*) on the roadway side of a vehicle stopped or parked at the edge or curb of a roadway;

(*m*) upon a bridge or other elevated structure upon a highway, or within a highway tunnel;

(*n*) in a place in contravention of a traffic-control device that gives notice that stopping, standing or parking is there prohibited or restricted.

(2) No person shall move a vehicle that is not lawfully under his control into any of the places mentioned in subsection 1.

51. Except when a traffic authority otherwise permits, no driver shall stop, stand or park a vehicle on a highway other than on the right side of the highway and with the right-hand wheels parallel to that side and, where there is a curb, within 12 inches of the curb.

MISCELLANEOUS RULES

62. No driver of a motor vehicle shall permit it to stand unattended on a highway without first having,

(*a*) stopped the engine;

(*b*) locked the ignition;

(*c*) removed the key; and

(*d*) effectively braked the vehicle, and, when standing on a grade, having turned the front wheels to the curb or edge of the roadway.

63. No driver shall back a vehicle unless the movement can be made with reasonable safety and without interfering with traffic.

64.—(1) A person who is operating a motorcycle shall ride only upon the regular seat attached to it.

(2) No person, other than the operator, shall ride on a motorcycle unless,

(*a*) it is designed and equipped to carry more than one person; and

(*b*) he rides on a seat attached to the motorcycle and designed to carry a passenger.

(3) No person who is operating a motorcycle shall permit another person to ride on it in violation of subsection 2.

65.—(1) No person shall cause a vehicle to move on a highway if,

(*a*) the control of the driver over the driving mechanism of the vehicle; or

(*b*) the view of the driver to the front, sides or rear of the vehicle,

is obstructed or interfered with by reason of the load or the number of persons in the front seat.

(2) No passenger in a vehicle or street-car shall occupy a position in it that interferes with the driver's or motorman's view ahead or with his control over the driving mechanism of the vehicle or street-car.

66. When travelling through defiles or canyons or on mountain highways, the driver of a vehicle shall hold the vehicle under control and as near the right-hand edge of the roadway as reasonably possible and, upon approaching a curve where the view is obstructed within a distance of 200 feet along the roadway, shall give an audible warning with the horn of the vehicle.

67. When travelling down grade, no driver of a vehicle shall coast with the gears of the vehicle in neutral or the clutch disengaged.

68. No driver of a vehicle other than an emergency vehicle shall follow fire apparatus closer than 500 feet or drive or park within 500 feet of the place on the same street on which fire apparatus has stopped in answer to a fire alarm.

69. Unless he has received consent of the fire department official in command, no person shall drive a street-car or vehicle over an unprotected hose of a fire department when laid down on a highway, private driveway, or street-car track, at a fire or an alarm of fire.

70.—(1) In this section, "litter" means deposit or cause to be deposited any glass, nails, tacks or scraps of metal or any rubbish, refuse or waste.

(2) No person shall litter a highway.

(3) A person who removes a wrecked or damaged vehicle from a highway shall remove glass or other injurious substance or thing dropped upon the highway from the vehicle.

71. Except when entering or leaving a driveway or lane or when entering upon or leaving land adjacent to a highway, no driver shall drive a vehicle upon a sidewalk.

72. No person shall,

(*a*) open the door of a motor vehicle upon a highway without first taking due precautions to ensure that his act will not interfere with the movement of or endanger any other person or vehicle; or

(*b*) leave a door of a motor vehicle upon a highway open on the side of the vehicle available to moving traffic for a period of time longer than is necessary to load or unload passengers.

APPENDIX Q

(*See page 26*)

UNIFORM MECHANICS' LIEN ACT

REPORT OF THE NEW BRUNSWICK COMMISSIONERS

To the Conference of Commissioners on
Uniformity of Legislation in Canada:

At the 1957 session of the Conference following a suggestion that the Conference re-examine the matter of a Uniform Mechanics' Lien Act, it was agreed that the New Brunswick Commissioners be requested to make a study of the work already done by the Conference on the subject, to obtain the views of the Commissioners and the Bars of all the provinces with the object of determining whether or not there is a reasonable prospect of achieving uniformity in Mechanics' Lien Acts of the provinces, and to report at the next meeting of the Conference.

This matter came before the Conference first in 1921, and it was resolved that the Conference having learned that a committee of the Ontario Legislature had been appointed to consider and draft an improved Mechanics' Lien Act, and in view of the fact that all the provinces have statutes on this subject which are fundamentally the same, it is desirable that any model statute should be considered by the Commissioners from all the provinces with the object of having uniformity; accordingly the Conference offered its services in the matter.

It was further resolved that the subject of Mechanics' Lien be referred to the Commissioners for Alberta to collaborate with the committee of the Ontario Legislature and with the joint committee of the Ontario Bar Association and the County of York Law Association, and to report at the next meeting of the Conference.

The Alberta Commissioners submitted their report in 1923 as set out in Appendix F of the 1923 Proceedings, but discussion on the matter was postponed each year until 1929 when it was decided that no further action should be taken.

In 1943 the matter was discussed again, and it was resolved that the provincial Mechanics' Lien Acts be studied by the Manitoba Commissioners with a view to the preparation of a draft uniform Act, and that they report thereon the next year.

In 1944 it was resolved that the provincial Mechanics' Lien Acts be further studied by the Manitoba Commissioners in the light of comments received from members of the Conference, and that they report thereon the next year.

The Manitoba Commissioners presented their report in 1945 as set out in Appendix J of the 1945 Proceedings, and after further consideration it was resolved that the draft Uniform Mechanics' Lien Act be referred back to the Manitoba Commissioners for incorporation therein of the amendments made at that meeting, and that the draft be considered at the next meeting of the Conference.

In 1946 the Manitoba Commissioners presented the draft of part of the proposed Uniform Mechanics' Lien Act as set out in Appendix I of the 1946 Proceedings containing the amendments made at the last meeting, and after being considered clause by clause it was resolved that the draft Uniform Mechanics' Lien Act be referred back to the Manitoba Commissioners for completion of the draft and for further consideration in the light of the discussions at that meeting and any mailed comments that may be received by the Manitoba Commissioners, and that the Manitoba Commissioners report thereon at the next meeting.

The Manitoba Commissioners presented their report in 1947 as set out in Appendix G of the 1947 Proceedings, and upon completion of the consideration of the draft Uniform Act attached to the Manitoba report (other than the procedural sections at the end thereof which were left to each province to study in the light of its own requirements), it was resolved that the draft Uniform Mechanics' Lien Act be referred to the New Brunswick Commissioners for the preparation of a further draft incorporating therein the amendments made at that meeting and such other amendments as they considered advisable, and that such further draft be considered at the next meeting.

The New Brunswick Commissioners presented their report in 1948 as set out in Appendix H of the 1948 Proceedings, and after further consideration it was resolved that the draft Uniform Mechanics' Lien Act as amended at that meeting be referred back to the New Brunswick Commissioners, and that they prepare a further draft in the light of certain suggestions for consideration at the next meeting.

In 1949 the New Brunswick Commissioners presented their report as set out in Appendix N of the 1949 Proceedings, but in view of the difference of opinion on many points in connection

with the proposed Uniform Mechanics' Lien Act, it was agreed to drop this item from the agenda pro tem.

Although the proposed Uniform Act was not adopted by the Conference, nevertheless the New Brunswick Commissioners recommended the Act for New Brunswick where it was enacted in 1951 with slight modifications and brought into force in 1953.

Dated at Fredericton this 14th day of May, 1958.

M. M. HOYT,
for the New Brunswick Commissioners.

APPENDIX R

(*See page 35*)

CRIMINAL LAW SECTION

REPORT TO PLENARY SESSION

Representatives from all the Provinces except New Brunswick were in attendance at the meetings of the Criminal Law Section. Mr. H. W. Hickman, Q.C., Director of Public Prosecutions for the Province of New Brunswick, was prevented from attending due to the absence from his department of the Deputy Attorney General through illness.

The Commissioners in the Criminal Law Section were concerned with proposed amendments to the Criminal Code, and have made recommendations which the Secretary has been instructed to pass to the Minister of Justice.

It is felt that no good purpose is to be served by enumerating in detail the matters that were discussed in the Criminal Law Section as these will appear in the printed Proceedings of the Conference.

The Chairman of the Criminal Law Section for the ensuing year will be Dr. Gilbert Kennedy and the Secretary will be Mr. A. J. MacLeod, Q.C.

Respectfully submitted,

W. B. COMMON,
Chairman.
A. J. MACLEOD,
Secretary.

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