

PROCEEDINGS

OF THE

FOURTH ANNUAL MEETING

OF THE

CONFERENCE OF COMMISSIONERS

ON

UNIFORMITY OF LEGISLATION

IN CANADA

HELD AT

OTTAWA

2ND, 3RD, 5TH, 6TH, 7TH AND 8TH SEPTEMBER, 1921

Conference of Commissioners on Uniformity of Legislation in Canada

OFFICERS OF THE CONFERENCE, 1921-1922,

President Sir James Aikins, K.C., Winnipeg,
Manitoba.

Vice-President..... Mariner G. Teed, K.C., St. John,
New Brunswick.

Treasurer Frank Ford, K.C., Edmonton, Alberta.

Corresponding Secretary John C. Elliott, KC, London, Ontario.

Recording Secretary....., John D. Falconbridge, K.C., 22 Chest-
nut Park, Toronto, Ontario.

Local Secretaries.

*(For the purpose of communication between the commis-
sioners of the different provinces.)*

Alberta Walter S. Scott, K.C., Parliament
Buildings, Edmonton.

British Columbia Avard V. Pineo, Parliament Buildings;
Victoria.

Manitoba Herbert J. Symington, K.C.,
Merchants' Bank Building, Winnipeg.

New Brunswick J. D. Pollard Lewin, ,St. John.

Nova Scotia Frederick Mathers, K.C., Parliament
Buildings, Halifax.

Ontario John C. Elliott, K.C., London.

Prince Edward Island .. W . E. Bentley, K.C., Charlottetown.

Quebec Hon. Ed. Fabre Surveyer, Judges'
Chambers, Superior Court, Mont-
real.

Saskatchewan Robert W. Shannon, K.C., Parliament
Buildings, Regina.

Commissioners and Representatives of the Provinces of
Canada for the Purpose of Promoting
Uniformity of Legislation.

Alberta:

FRANK FORD, K.C., Edmonton.

WALTER S. SCOTT, K.C., Edmonton.

ALEXANDER ANDREW MCGILLIVRAY, K.C., Calgary.

(Commissioners appointed under the authority of the
Statutes of Alberta, 1919, c. 31).

British Columbia:

JOSEPH NEALON ELLIS, K.C., 470 Granville Street,
Vancouver.

AYARD VERNON PINEO, Parliament Buildings; Victoria.

JAMES .STUART YATES, 416 Central Building, Victoria.

(Commissioners appointed under the authority of the
Statutes of British Columbia, 1918, c. 92).

Manitoba

ISAAC PITBLADO, K.C., Bank of Hamilton Building,
Winnipeg.

HERBERT JAMES SYMINGTON, K.C., Merchants' Bank
Building, Winnipeg.

JAMES BOWES COYNE, K.C., Union Trust Building,
Winnipeg,

(Commissioners appointed under the authority of the
,Statutes of Manitoba, 1918; c. 99).

New Brunswick

WILLIAM BEDELL WALLACE, K.C., St. John.

MARINER GEORGE TEED, K.C., St. John.

J. D. POLLARD LEWIN, St. John,

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

Nova Scotia:

STUART JENKS, K.C. Halifax.

FREDERICK MATHERS, K.C., Halifax.

CHARLES ,JOST BURCHELL, K.C., Halifax.

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

Ontario:

SIR JAMES AIKINS, K.C., Winnipeg.
FRANCIS KING, K.C., Kingston.
JOHN DELATRE FALCONBRIDGE K.C.
22 Chestnut Park Toronto
JOHN CAMPBELL ELLIOTT, K.C., London
(Commissioners appointed under the authority
of the Statutes of Ontario, 1918, c.20)

Prince Edward Island:

WILLIAM EMERSON BENTLEY, K.C., Charlottetown.

Quebec:

Hon . ED. FABRE SURVEYER, Judges' Chambers, Superior
Court, Montreal.

Saskatchewan:

The HON. WILLIAM MELVILLE MARTIN,. K C., Attorney
General, Regina.
ROBERT WALKER SHANNON, K.C., Regina.
JOHN A. M. PATRICK, K.C., Yorkton,

PREFACE.

The independent action of the provincial legislatures naturally results in a certain diversity of legislation. In some cases diversity is inevitable, as for instance, when the Province of Quebec legislates upon subjects within the purview of the Civil Code of Lower Canada and according to principles derived from the old law of France, and the other provinces legislate upon similar subjects according to principles derived from the common law of England. In such cases the problem of securing uniformity is confined to the common law provinces. There are, however, many other cases in which no principle of either civil law or common law is at stake, with regard to which the problem of, securing uniformity is the same in all the provinces. Both these classes of cases include subjects of legislation as to which it is desirable, especially from the point of view of merchants doing business in different parts of Canada, that legislation should be made uniform throughout the provinces to the fullest extent possible.

In the United States work of great value has been done by the National Conference of Commissioners on Uniform State Laws. Since the year 1892 these commissioners have met annually. They have drafted uniform statutes on various subjects, and the subsequent adoption of these statutes by many of the state legislatures has seen red a substantial measure of uniformity. The example set by the state commissioners in the United States was followed in Canada when, on the recommendation of the Council of the Canadian Bar Association, several of the provinces passed statutes providing for the appointment of commissioners to attend an interprovincial conference for the purpose of promoting uniformity of legislation.

The first meeting of commissioners and representatives of the provinces took place at Montreal on the 2nd of September, 1918, and at this meeting the Conference of Commissioners on Uniformity of Legislation in Canada was organized. The second annual meeting of the Conference took place at Winnipeg on the 26th, 27th, 28th and 29th of August, 1919, the third at Ottawa on the 30th and 31st of August and the 1st, 2nd and 3rd of September 1920, and the fourth at Ottawa on the 2nd, 3rd, 5th, 6th, 7th and 8th of September 1921.

In 1919 the Conference considered and adopted a report on legislative drafting, containing a carefully prepared selection of extracts from books written by the leading authorities on the subject, and directing attention to many important rules to be observed by draftsmen of statutes.

In 1919 and 1920 the Conference secured the adoption of the Sale of Goods Act, 1893, and the Partnership Act, 1890, in those common law provinces which had not already adopted them, and these two codifying statutes are now in force in all the provinces of Canada except Quebec.

In 1920 the Conference revised and approved model uniform statutes relating to legitimation by subsequent marriage and to bulk sales.

In 1921 the Conference revised and approved model uniform statutes respecting fire insurance policies and warehousemen's liens.

Draft statutes relating to conditional sales, reciprocal enforcement of judgments and life insurance have been considered by the Conference, and it is hoped that in 1922 model uniform statutes on these subjects will be revised and approved. Other subjects which have been considered by the Conference or which have been referred to committees for report are: companies, devolution of estates, wills, succession duties, mechanics' liens, workmen's compensation for injuries and fraudulent conveyances.

Statutes have been passed in some of the provinces providing both for contributions by the provinces towards the general expenses of the Conference and for payment by the respective provinces of the travelling and other expenses of their own commissioners. It is hoped that similar statutes will be passed by the other provinces, The commissioners themselves receive no remuneration for their services.

It seems desirable to direct attention to the fact that the appointment of commissioners does not bind any province to accept any conclusions arrived at by the Conference, and that such uniformity of legislation as may be secured by the labours of the Conference will depend upon the subsequent voluntary acceptance by the provincial legislatures of the recommendations of the Conference.

PROCEEDINGS.

PROCEEDINGS OF THE FOURTH ANNUAL MEETING OF THE CONFERENCE OF COMMISSIONERS ON UNIFORMITY OF LEGISLATION IN CANADA.

The following commissioners or representatives were present at some of the sessions of the Conference:

Alberta:

MESSRS. SCOTT AND MCGILLIVRAY.

British Columbia:

Messrs. ELLIS, PINEO AND YATES.

Manitoba.:

MESSRS. PITBLADO, SYMINGTON AND COYNE.

New Brunswick:

MESSRS. WALLACE, TEED AND LEWIN.

Nova Scotia

MESSRS. JENKS, MATHERS AND BURCHELL.

Ontario:

SIR JAMES ATKINS AND MESSRS. KING, FALCONBRIDGE AND ELLIOTT.

Prince Edward Island:

MR. BENTLEY.

Saskatchewan

THE HON. W. M. MARTIN, AND MESSRS. SHANNON AND

PATRIC K.

FIRST DAY.

Friday, 2nd September, 1921.

The Conference assembled at 10 a.m., at the Chateau Laurier, Ottawa. In the absence of the president, the chair was occupied by the vice-president, Mr. Teed.

It was resolved that notes of the proceedings should be taken in shorthand and that a copy of the extended report should be furnished to each commissioner.

It was resolved that the minutes of the third annual meeting as printed should be taken as read and approved, subject to the following corrections on pages 8, 10 and 32:

P. 8. For the words "a draft of a proposed Act respecting Warehousemen's Liens was presented," substitute "An Act respecting Warehousemen's Liens passed by the legislature of British Columbia was presented."

P. 10. For the resolution with regard to the Fire Insurance Policy Act, substitute the following :

"That the Manitoba Commissioners and Mr. Shannon be requested to attend the Conference of Superintendents of Insurance in Winnipeg in October and discuss with them this bill, and that if, in their opinion, their views as to the bill and conditions thereon expressed are not changed substantially by the discussion, this bill be considered as a model bill and be submitted by the various Commissioners with their recommendations to their respective provincial governments."

P. 32. In Section 2, Clause (e) of the model Bulk Sales Act, omit the word " sale " where it first occurs in line 3, together with the comma immediately following it.

Mr. King presented the report of the Ontario Commissioners on the subject of Devolution of Estates of Intestates.

(Appendix B.)

The Conference resolved itself into committee of the whole for the purpose of considering the report clause by clause. There was much discussion of the recommendations contained in section 3 of the report. Under heading A, the committee approved the principle of the existing legislation of Alberta and Nova Scotia instead of that of Ontario, Under heading C, the Conference was of opinion that "next of kin " should be defined according to the principle approved under heading A, and that the minimum of \$5,000 was too small, but decided to leave the question of the amount for discussion at the meeting to be held in 1922. Under heading D the committee decided that the same principles should be adopted as had been approved under heading. In connection with paragraph 5 of the report the committee was of opinion that authority should be conferred

upon the administrator to mortgage the estate if necessary for the purposes of the estate. Subject to the foregoing variations, The committee approved the recommendations contained in the report.

The committee of the whole thereupon rose and reported that it had considered in detail the report of the Committee on Devolution of Estates of Intestates and recommended that the matter be committed to a committee to be named to draft a model uniform Act along the line of the principles recommended in the report as approved or modified by the discussion in committee.

The report of the committee of the whole was adopted.

A preliminary discussion then took place with reference to the Fire Insurance Policy Act (Appendix C.) and it was decided that from 2.30 to 3.30 p.m. the Conference would hear representatives of the insurance companies who desired to make certain representations.

At 1 p.m. the Conference adjourned.

AFTERNOON SESSION.

Friday, 2nd September, 1921.

At 2:30 pm. the Conference reassembled, and resolved itself into committee of the whole.

Mr. Shannon read the report of the Saskatchewan commissioners on the uniform Fire Insurance Policy Act, recommending certain amendments to the model statute provisionally adopted by the Conference in 1920.

(Appendix C.)

Mr. Robert McKay, K.C., representing the Canadian Fire Underwriters' Association, addressed the Conference, advocating certain changes in the model statute, especially the elimination of clause (a) of statutory condition 1.7 (clause (f) of statutory condition 17 as finally revised and approved.

The committee of the whole then rose and reported progress, and asked leave to sit again.

Mr. Bentley presented a draft of a uniform Act to facilitate the Reciprocal Enforcement of Judgments, being practically a copy of Part II of the Administration of Justice Act, 1920, enacted by the British Parliament.

(Appendix D.)

The Conference resolved itself into committee of the whole to discuss the draft clause by clause.

After discussion the committee rose and reported progress. At 6 p.m. the Conference adjourned.

EVENING SESSION.

Friday, 2nd September, 1921.

At 8:15 p.m., the Conference re-assembled and discussion of the Reciprocal Enforcement of Judgments Act was resumed.

It was resolved that the subject of reciprocal enforcement of judgments should be referred to a committee with instructions to prepare a draft model statute with a view of rendering judgments obtained in one province of Canada enforceable in another, and that in preparing this draft the committee should give effect to the following principles:

(1) Avoid the use of the word " extend in connection with the application of the statute;

(2) Statute to apply to the judgment of any court of record;

(3) No limitation as to amount of judgment;

(1) Judgment not to be registered more than six years after recovery;

(5) Provision to be made for service of notice of application for registration unless judgment was obtained after trial, at which the judgment debtor appeared or was represented;

(6) In ease of *ex parte* registration, provision to be made for service of notice subsequently;

(7) The words "or agree to submit" in s. 1, sub-s. 2(b) to be struck out.

(8) Sec. 2 to be omitted.

(9) Short title to be altered.

At 10 pm. the Conference adjourned,

SECOND DAY.

Saturday, 3rd September, 1921.

The Conference re-assembled at 9.30 a.m., the president, Sir James Aikins, in the chair. The president read his annual

address. It was resolved that the address should be printed as part of the proceedings of the Conference.

(Appendix, A.)

Messrs. Teed, Pitblado and Pineo were appointed a committee to report at a subsequent session of the present annual meeting on the subject of reciprocal enforcement of judgments throughout the British Empire.

The Conference resolved itself into committee of the whole for the purpose of discussing the report of the committee on a uniform Fire Insurance Policy Act.

(Appendix C.)

The report was presented by Mr. Shannon and was discussed clause by clause in committee, and various amendments to the draft statute were adopted.

At 1 p.m. the committee rose and reported progress and asked leave to sit again, and the Conference adjourned.

EVENING SESSION.

Saturday, 3rd September, 1921.

The Conference re-assembled at 8.30 p.m.

Discussion of the report of the committee on a uniform Fire Insurance Policy Act was resumed. The draft statute was further amended, and as amended, was provisionally approved, subject to the consideration of certain matters referred to the committee for further report.

Dr. Wallace read the draft of a uniform Act respecting Warehousemen's Liens, prepared by the New Brunswick commissioners.

(Appendix E.)

The draft statute was considered clause by clause in committee of the whole and was amended-in various respects, certain provisions were reserved for further consideration.

At midnight the Conference adjourned.

THIRD DAY.

Monday, 5th September, 1921.

The Conference re-assembled at 9.30 a.m. The committee on a uniform Fire Insurance Policy Act presented certain amendments and additions to the draft statute, which were adopted by the Conference,

The following resolution was then adopted:

Resolved by the Conference of Commissioners on Uniformity of Legislation in Canada that the draft of a model Act intituled " An Act to make Uniform the Law respecting Conditions in Policies of Fire Insurance," as revised at the present (1921) annual meeting of the Conference, be approved and adopted, and that this draft Act be now recommended to the legislatures of the several provinces of Canada for enactment.

(Appendix C.)

The subject of a uniform Life insurance Act was then introduced to the Conference by Mr. V. Evan Gray, Superintendent of Insurance for the Province of Ontario, On behalf of the Attorney-General of Ontario he laid before the Conference a draft Act, which it was hoped Might be made the basis of a uniform Act, which would be adopted by the legislatures of all the provinces. This draft was itself the result of the collaboration of various counsel and experts representing the Government of Ontario, the life insurance companies and fraternal associations and other persons interested.

It was then resolved that the Conference should proceed forthwith to consider the draft Act clause by clause, and for this purpose the Conference resolved itself into committee of the whole.

(Appendix F.)

The draft Act was then read and. discussed clause by clause. Various amendments were made provisionally, and various suggestions were made for the consideration of the committee to which the draft would be referred for revision in addition to Mr. Gray the following persons interested in the subject were present anti by permission of the Conference, took part in the discussion.

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Mr. A. M. Dymond, K.C., Legislative Counsel., Ontario; Mr. F. L. Monk, Superintendent of Insurance, Province of Quebec; Mr. H. J. Sims, K.C., representing the Canadian Life Officers Association; Mr. F. G. Dunham, Attorney for the Association of Life Insurance Presidents of the United States; Mr. Lyman Lee, Mr. W. F. Montague and Mr. V. E. Sinclair, representing the Canadian Fraternal Association, the Canadian Order of Chosen Friends and the Canadian Order of Foresters; and Mr. G. D. Finlayson, Dominion Superintendent of Insurance.

Before the Conference adjourned the president suggested that the subject of a uniform Mechanics' Lien Act should be considered by the Conference at a future meeting, and it was resolved as follows:

That this Conference having learned that a committee of the Ontario Legislature has 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 this Conference offers its services in the matter.

The Conference adjourned at 1 p.m.

AFTERNOON SESSION.

Monday, 5th September, 1921.

The Conference re-assembled at 2.30 p.m.

The discussion of the Life Insurance Act was continued in committee of the whole until 4:30 p.m., when the committee rose and reported the draft with the various suggestions that had been made, and recommended that in due course it should be allocated to a committee to report at next year's Conference.

The committee's report was adopted.

Dr. Wallace then submitted revised drafts of certain sections of the uniform Warehousemen's Lien Act, which after discussion and amendment were adopted.

(Appendix E.)

Mr. Shannon submitted revised drafts of other sections of the same statute, which after discussion were reserved for further consideration.

At 6 p.m. the Conference adjourned.

FOURTH DAY.

Tuesday, 6th September, 1921.

The Conference re-assembled at 9 a.m.

Mr. Shannon submitted a revised draft of certain sections of the uniform Warehousemen's Lien Act, which were approved.

The following resolution was then adopted:

Resolved by the Conference of Commissioners on Uniformity of Legislation in Canada that the draft of a model Act intituled " An Act to make Uniform the Law respecting Warehousemen's Liens," as revised at the present (1921) annual meeting of the Conference, be approved and adopted, and that this draft Act be now recommended to the legislatures of the several provinces of Canada for enactment.

(Appendix E.)

It was resolved that the editing, reprinting and distribution of the uniform Fire Insurance Policy Act and the uniform Warehousemen's Lien Act should be left in the hands of Mr. Shannon and Mr. Falconbridge respectively.

At 10 a.m the Conference adjourned in order that the members might attend the opening of the meeting of the Canadian Bar Association.

The Conference re-assembled at 11.30 a.m.

Mr. Shannon presented the report of the Saskatchewan commissioners on the subject of conditional sales and a draft of a uniform Conditional Sales Act.

(Appendix: G.)

After discussion of some sections of the draft in committee of the whole the Conference adjourned at 1. p.m.

AFTERNOON SESSION.

Tuesday, 6th September, 1921.

The Conference re-assembled at 2.30 p.m.

In Mr. Ford's absence, Mr. Falconbridge presented the treasurer's report, duly audited, showing a balance on hand of \$1,186.63. There was however, an unpaid account of Bulman Brothers, Limited, for \$715.02 (being the portion chargeable to the Conference of the expense of publishing the year book of the Canadian Bar Association, including the proceedings of the Conference), as to which Mr. Ford desired the instructions of the Conference.

The Conference adopted the treasurer's report, and instructed the treasurer to pay the account of Bulman Brothers.

It was resolved that the treasurer be instructed to write to each provincial board of commissioners asking it to obtain from its Government a contribution of \$200 to the general expenses of the Conference, and to write to the Attorney-General of each province which has not appointed commissioners, asking for a similar contribution.

It was resolved that the recording secretary be instructed to arrange with the Canadian Bar Association to have the report of the proceedings of the Conference published as an addendum to the report of the proceedings of the Association, the expenses of the publication of the addendum to be paid by the Conference. The secretary was also instructed to have the report of the proceedings published in pamphlet form and to send copies to the other commissioners.

The Conference then resumed the discussion, in committee of the whole, of the draft Conditional Sales Act.

At 4:30 p.m. the Conference adjourned to enable the members to attend the meeting of the Canadian Bar Association.

FIFTH DAY.

Wednesday, 7th September, 1921.

The Conference re-assembled at 9.15 a.m., and resumed the discussion, in committee of the whole, of the draft Conditional

Sales Act. The draft was discussed clause by clause and various amendments were adopted provisionally.

The officers of the Conference were re-elected for 1921-1922, as follows:

President—Sir James Aikins.

Vice-President—Mr. Teed,

Treasurer—Mr. Ford.

Corresponding Secretary—Mr. Elliott.

Recording Secretary—Mr. Falconbridge.

At 12.30 p.m. the Conference adjourned.

SIXTH DAY.

Thursday, 8th September, 1921.

The Conference re-assembled at 9.15 a.m.

Mr. Ellis presented the report prepared by the British Columbia commissioners on Provincial Laws relating to the Protection and Property Rights of Married Women.

(Appendix H.)

It was resolved that this report should be printed as part of the proceedings, but that the consideration of the report should be postponed until the next annual meeting of the Conference.

The committee appointed on the second day of the meeting to report on the subject of reciprocal enforcement of judgments throughout the British Empire made a report which was adopted by the Conference, as follows:

Resolved that this Conference, after considering the Imperial Act. of 1920 relating to the reciprocal enforcement of judgments throughout the Empire, and the draft model Act based thereon prepared by the Prince Edward. Island commissioner, is of opinion that it would be advisable, both as tending to the proper working out of the principle and to its ultimate adoption Throughout Canada, for the several provinces of Canada to establish as between themselves a reciprocal enactment of this nature before attempting to enter into such a relation with the other parts of the Empire;

And further resolved that the committee of the Conference to be charged with the drafting of a model Act for the reciprocal enforcement of judgments as between the provinces communicate with the parliamentary counsel's office, or other proper authority in England, and point out certain difficulties of construction which appear to be in the present Imperial Act and the principles as to notice to the judgment debtor which have been approved by this Conference with reference to reciprocal enforcement of judgments as between the provinces.

It was also resolved that consideration of the question of the reciprocal enforcement of maintenance orders should be postponed until the larger question of the reciprocal enforcement of judgments in general was disposed of.

It was resolved that the subject of Devolution of Estates be referred to the commissioner's for Saskatchewan for the purpose of drafting a model Act for submission at the next meeting of the Conference.

It was resolved that the draft Act respecting the Reciprocal Enforcement of Judgments be referred to the commissioners for British Columbia for redrafting in accordance with the principles approved by the Conference and for submission at the next meeting of the Conference.

It was resolved that the subject of Wills be again referred to the commissioners for Alberta for a report on the differences that exist in the laws of the various provinces and on any special provincial statutes affecting Wills, and, if thought desirable, the drafting of a model Act for submission at the next meeting of the Conference.

It was resolved that the subject of Succession Duties be again referred to the commissioners for Nova Scotia for a report on the subject, and, if deemed desirable, the drafting of a model Act for submission at the next Meeting of the Conference.

It was resolved that the subject of Company Law be again referred to the commissioners for Manitoba.

It was resolved that the Conditional Sales Act be referred to the commissioners for British Columbia for re-drafting in accordance with the principles approved by the Conference and for submission at the next meeting of the Conference.

It was resolved that the subject of Mechanics' Liens 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.

It was resolved that the subject of Workmen's Compensation be referred to the commissioners for New Brunswick for a report on the condition of the law in the various provinces, and the desirability of uniform legislation on the subject, for submission at the next meeting of the Conference.

It was resolved that the subject of Fraudulent Conveyances be referred to the commissioners for Prince Edward Island for a report on the condition of the law in the various provinces, and the desirability of uniform legislation on the subject, for submission at the next meeting of the Conference.

It was resolved that in 1922 the Conference should meet four days before the opening of the meeting of the Canadian Bar Association.

It was resolved that a vote of thanks be tendered to Sir James Aikins, Mr. Teed, Mr. Elliott, Mr. Falconbridge and Mr. Ford for their services as officers of the Conference.

At 12 noon the Conference was prorogued.

APPENDICES

- A. President's Address.
- B. Report on Devolution of Estates of Intestates.
- C. Uniform Fire Insurance Policy Act.
- D. Draft Reciprocal Enforcement of Judgments Act.
- E. Uniform Warehousemen's Lien Act.
- F. Draft Life Insurance Act.
- G. Draft Conditional Sales Act.
- H. Report on the Protection and Property Rights of Married Women.

APPENDIX A.

PRESIDENTS ADDRESS.

For the benefit of the commissioners who have not sat in this Conference before, may I state generally something of what has been accomplished and of what is contemplated?

A primary and important step was in the adoption of rules of *legislative drafting* prepared by Mr. Pineo and studied by the commissioners. The Conference has also considered and approved the *Sales of Goods Act* which was passed in England in 1893 and with modifications subsequently adopted in most of the Canadian provinces. As a result of the recommendation of the Conference the Act was passed in 1919 in New Brunswick and Prince Edward Island, and in 1920 in Ontario. *The Partnership Act* passed in England in 1890 and adopted by some of the provinces was also considered and approved by the Conference, and the Act as recommended was passed in 1920 in New Brunswick, Prince Edward Island and Ontario. These two Acts are in force now in all the provinces of Canada except Quebec. The Conference also carefully prepared a uniform Act respecting *Legitimation by Subsequent Marriage*, which was approved at the Conference in 1919. In 1920 it was adopted by Manitoba and Prince Edward Island and in the same year with slight modifications it was passed in New Brunswick and Saskatchewan, and in 1921 in the earlier part it was passed in Ontario. A similar Act had already been passed in British Columbia and the Quebec Civil Code has sections covering the subject. The *Bulk Sales Act* approved at the Conference in 1920 was adopted in 1921 in Manitoba.

The work now in hand is the revision of statutes respecting conditions in *policies of fire insurance and warehousemen's liens*, the consideration of the laws relating to the *protection and property rights of married women*, and those relating to *devolution of estates*, statutes relating to *conditional sales*, and the *reciprocal enforcement of provincial judgments*.

There will also be taken up at the Conference a model Act respecting *life insurance policies*.

It is gratifying to know that so many prominent and experienced lawyers are willing to give so much time and study to produce codes on subjects submitted to the Conference. These will save much laborious effort and time to Canadian practi-

tioners in the cases submitted to them. In addition to such benefits to lawyers, codification makes the law more understandable and accessible to the people.

The Conference should undoubtedly work more slowly but more thoroughly and accurately than legislators, and the provincial governments should not hesitate to pay adequately the draftsmen which the Conference must necessarily engage if the undertaking is to be successful.

Uniformity of provincial law contemplates local legislative Control of those subjects mentioned in section 92 of the British North America Act. But legislation alone will not secure uniformity. It will be necessary for the courts to construe the provisions of a uniform Act in the light of the decisions of other provincial courts on similar enactments. We can well afford to learn from the experience of the American Bar Association and their Conference of Commissioners. They insert in every uniform Act which they recommend this clause:—

"This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those provinces which enact it."

With such an expression of intention by the legislatures the courts of the several provinces would undoubtedly co-operate. The Hon. Mr. Justice Hughes, now Secretary of State of the United States, when on the Supreme Court, said in respect of a uniform Act:

"It is apparent that if these uniform Acts are construed in the several States adopting them Recording to the former local views upon analogous subjects, we shall miss the desired uniformity and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It is to prevent this result that the Uniform Warehouse Receipts Act expressly provides (section 57), This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it' This rule of construction requires that in order to accomplish the beneficent object of unifying as far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform Act, that it should not be regarded merely as an offshoot of local law."

I have been doubting since our last Conference whether our provincial governments or people have understood or appreciated the offer and action of the Canadian lawyers through the Canadian Bar Association or this Conference to assist in making uniform and satisfactory the local laws which relate to inter-provincial business and affairs. It is one of the most important services to the public that is being performed by any organized body of lawyers.

You who are present, and those who formed the Association and are active members of it, know how vital it is that such laws should be made uniform by legislation and judicial interpretation; vital for the preservation of the autonomous jurisdiction of the provinces and for the freer and more economical transaction of such business. Commerce and investment know no provincial limit save through the inconvenience and hampering effect of dissimilar laws relating to them and through the fear that as society is demanding the regulation of big businesses and of class unions each province may impose its own and differing rules. Further, people and groups are also requiring statutory rules and limitations on the operations of capital and of labour, or industry, employers' liability, workmen's compensation, pensions and the like. All those who are interested, whether it be in commerce, investments, industrial or social relations, insist that some legislative authority singly or in co-operation should make those regulations and limitations uniform throughout Canada. On a previous occasion I pointed out there are only two methods of accomplishing this one by a centralization of authority to that end in the Federal Government, the other by uniformity of provincial legislation. Are the people or those interested so urgent for that uniformity that they would rather than be without it suffer some loss of local self-government and an unbalancing of the fair adjustment under the British North America Act of the jurisdictions of the Dominion and the provinces? I do not care to say (for I am not officially free to express such political opinions), but others do, that there have been encroachments on provincial jurisdictions by the Federal Parliament, and they cite as instance—Acts relating to grain handling, insurance and loaning contracts, situs of bank shares, etc.

As to jurisdictional authority who is to decide? You have seen much discussion recently about our Supreme Court and the Privy Council appeals. It is argued that the Supreme Court

is a central Court of Justice appointed by a central authority, the Federal Government, and it may be called upon to decide between that Federal Government and a local government on the question of respective jurisdictions under the British North America Act. That Act allots exclusive legislative authority on stated subjects to the province and the whole balance under wide terms to the Dominion. This is the reverse of the United States Constitution, yet the great jurist, Chief Justice Marshall, interpreted the Constitution so favourably to the Federal body as to give it a power undreamed of by its framers. History tells us that Alexander Hamilton was concerned about uniform State laws, and in 1786 had a convention called to consider "How far a uniform system in their commercial requirements would be necessary to their common interests and their permanent harmony." Daniel Webster stated that its entire purpose was to devise means for the uniform regulation of trade. The convention resulted, however, in the United States Constitution, which was so construed by the United States Supreme Court as to give a great amount of centralized authority to Congress. Would our Supreme Court incline differently, especially when the British North America Act invests the Federal Government with the residuum of power and particularly if a strong public opinion demands uniformity of law on interprovincial affairs which properly come under the local jurisdiction when these local jurisdictions hesitate or neglect to give that uniformity so urgently demanded? As lawyers we assume that the Supreme Court will act impartially in constitutional questions. I have looked into the decisions and from them cannot assume otherwise. But will the people believe so, especially when they consider by whom it is appointed and its environment? Every precaution should be taken to avoid prejudice against our Courts of Justice in the minds of the people. One of the strong arguments advanced for the continuance of the right of Canadians to appeal especially in constitutional cases is that the Privy Council is appointed by the Government of the United Kingdom, is not subject to local influences, and is composed of able and experienced lawyers. Generally it is a safe rule to "Hold fast that which is good." If it is not quite adapted to the times and changed conditions, make suitable adjustments but maintain all ancient privileges and rights. Let us not forget Coke's wise remark, "Out of old fields cometh new corn." I may add "But cultivate the old fields."

On this subject of centralized jurisdiction one must give attention to the words of an eminent statesman, the leader of the United States Bar, Hon. Elihu Root. He said in 1909, before the National Civic Federation:

The framework of our Government aimed to preserve at once the strength and protection of a great national power, and the blessing, and the freedom, and the personal independence, of local self-government. It aimed to do that by preserving in the Constitution the sovereign powers of the separate states. Are we to reform the Constitution? If we do it as to insurance we must do it as to a hundred and thousand other things. The interdependence of life wiping out State lines, the passing to and fro of men and merchandise, the intermingling of the people of all sections of our country without regard to State lines, are creating a situation in which from every quarter of the horizon come cries for Federal control of business, which is no longer confined within the limits of separate states. Are we to reform our Constitutional system so as to put in Federal hands the control of all business that passes over State lines? If we do, where is our local self-government? If we do how is the central government in Washington going to be able to discharge the duties that will be imposed upon it? Already the administration, already the judicial power, already the legislative branches of our government are driven to the limit of their power to deal intelligently with the subjects that are before them. This country is too great, its population too numerous, its interests too vast and complicated already, to say nothing of the enormous increase that we can see before us in the future, to be governed as to the great range of our daily affairs from one central power in Washington. After all, the ultimate object of all government is the home, the home where our people live and rear their children, with its individual independence, its freedom, and I am not willing, for the sake of facilitating transactions of any kind of business, to overturn limitations that have been set by the Constitution—wisely set—between the powers of the National and State governments. Great is our nation. Let it exercise its 'constitutional powers to the fullest limit, but do not let us in our anxiety for efficiency cast away, break down, reject those limits which save to us the control of our homes, of our own domestic affairs, and of our local govern-

ments. For there, in the last analysis, under the protecting power of our great nation, there must be formed the character of free, independent, liberty-loving citizens, upon whom our Republic must depend for its perpetuity."

It is hopeless for individual effort to prevent the aggression of centralization; only co-operation of provincial governments can be effective for that purpose.

The second and sane protection and remedy is uniformity by provincial legislation. What does uniformity of provincial legislation mean? Simply a standardization of the substance and form of Acts relating to inter-provincial commerce and business for the purpose of preventing inconvenience, annoyance, expense and delay.

It is not the purpose of the Canadian Bar Association and the Conference of Commissioners to provide a uniform Act on any such subject unless to embody existing laws in all or some of the provinces which have been tested by experience, nor is it the intention of the Conference to trespass upon the territory of local legislatures by untried Acts on new subjects or entirely new Acts on old subjects, nor should they permit themselves to become a mere drafting bureau. Nor do the Association and the Conference propose to take up every worthy subject for a draft uniform Act, but to take up only those commercial business and industrial subjects in which uniformity of law is an essential and desirable thing, and upon the legal principles of which there is an approximation in the provinces, and subjects which provincial governments may submit for consideration.

APPENDIX B.

Report of Committee on a Uniform Act respecting Devolution of Estates of Intestates.

1. The committee, consisting of the Ontario commissioners, to which the Conference referred the Report on Devolution of Estates with instructions to prepare a draft Act, has come to the conclusion, in view of the great diversity of rules in force in the various provinces, that the principles to be adopted should be agreed upon by the Conference before any attempt is made at drafting uniform legislation. Any other course would, in the opinion of the committee, be a waste of time and labor on the part of the draftsman and would reverse the order of procedure which should be followed in a case where so much compromise between divergent views is necessary before results are obtained. In order, therefore, that the Conference may have an opportunity of expressing its wishes, your committee has formulated and now submits certain recommendations as to general principles. When these are considered and settled it is hoped that further progress will be possible.

2. The Conference has already (Proceedings, 1920, p. 10) determined by resolution that it is desirable to treat realty and personalty alike in any general scheme of distribution of intestates' estates. Several individual opinions were also expressed, although no declaration was made by resolution, against the continuance of dower and curtesy. Your committee considers that dower and curtesy might naturally disappear with the proposed abolition of the distinction between realty and personalty, and mindful of the fact that it is called upon to provide only for cases of intestacy it recommends that, in such cases, on account of the resolution of the Conference above cited, and in view of the recognition of the surviving consort made in the committee's other recommendations set out below, dower and curtesy be abolished.

3. For convenience of reference your committee present its several recommendations as to method of distribution under headings corresponding exactly with those of its report of 1920, and accordingly submits the following:

Upon the death intestate of

A

An unmarried man,
 An unmarried woman,
 A widower without issue,
 A widow without issue.

Alberta and Nova Scotia prefer the father and mother, or the survivor, to the brothers and sisters who take only if both parents be dead. Manitoba prefers the father, and classes the mother with the brothers and sisters. Saskatchewan makes three classes,—father first, then mother, then brothers and sisters. As to realty, British Columbia has an elaborate scheme recognizing the same classes, making special provision according as the inheritance came to the deceased on, the part of the father or on the part of the mother. New Brunswick and Prince Edward Island simply state that the "next of kin" will take. The Ontario method of treating father, mother, brothers and sisters, as members of one class and of dividing among them in equal shares seems a reasonable compromise and the committee recommends accordingly.

B

A widower with issue,
 A widow with issue.

The provinces named are already agreed in distributing among the children and the lineal descendants of deceased children per stirpes, and your committee recommends the continuance of this natural method.

C

A married man without issue.

Here arises the difficult question of the relative rights of the wife and the next of kin of the deceased. The wife takes,

In three provinces, all the estate;
 In one province, one-half the estate;
 In one province, \$1,000, plus one-half the estate;
 In two provinces, one-half the personalty and her dower in the realty;
 In one province, all the personalty and one-half the realty.

Your committee believes the reasons which led to the adoption of the rule in force in the three provinces first referred to above, Alberta, Saskatchewan and Manitoba, will not continue to exist as the country becomes more settled, and that reversion to the older rule which gives recognition to a man's own relatives may reasonably be expected. Distribution of one-half to the wife and one-half to the next of kin of the husband would accrue fairly well with the prevailing idea expressed in the legislation of the other provinces, and would seem a reasonable division if coupled with a provision, as in Ontario, that such division is subject to the payment to the wife of a fixed minimum. The Ontario minimum, \$1,000, is, however, too low, and the amount should be at least \$5,000. Your committee's recommendation therefore is: all to the wife if the estate is under \$5,000, otherwise \$5,000 and one-half of the, residue to the wife, and one-half to the next of kin.

D

A married woman without issue.

A reference to the report of 1920 will show that the distribution tallies closely with that outlined in " C " above, except that New Brunswick and Prince Edward Island give all the personalty to the consort instead of one-half, as in "C," so that in six out of eight provinces the husband takes all the personalty. Such a provision might be reasonable in cases where the personal estate is derived from the husband, but it is doubtful whether such cases represent the rule or the exception.

It would seem better to make an equal division between the consort and the next of kin as in "C," but to omit the special provision for a minimum payment in any event—inserted in "C" to make some provision for the widow's needs. Your committee's recommendation therefore is: one-half to the husband and one-half to the next of kin.

E

A married man with issue.

A division of one-third to the wife and two-thirds to the children, or in equal shares between wife and child if there is only one child, would seem to be reasonable in view of the rule prevailing in the various provinces, and the committee recommends accordingly.

A married woman with issue.

The committee recommends the same distribution as in "E," substituting the word " husband" for " wife."

4. Further recommendations based upon the present state of the law in the provinces as indicated in the notes on page 14 of the Report on Devolution_ of 1920 are the following:

- (1) Distribution to be per stirpes, save that where the only heirs are children of deceased brothers and sisters they shall take per capita, and distribution among collateral's is not to be carried beyond the children of brothers and sisters.
- (2) Advances to be treated as part of shares.
- (3) Degrees of kindred to be computed by the rule of the civil law.
- (4) Half blood and posthumous children to inherit.
- (5) Escheat to occur as at present.

6. The committee also recommends that the estate devolve upon and vest in the administrator trust to pay debts and distribute, with power of sale, the Ontario provisions regarding vesting of realty in the administrator and subsequent shifting to the heirs, and regarding cautions, to be abolished; the heirs or parties entitled being protected by their rights to move for administration and by the security filed ;

And that the main provisions of the Ontario Statute with reference to infants and to the Official Guardian be incorporated in the new Act.

Respectfully submitted,

FRANCIS KING,

For Ontario Commissioners.

Kingston, July 12th, 1921.

APPENDIX C.

Report of Committee on a Uniform Fire Insurance Policy Act,

At the annual meeting of the Conference held in Ottawa last autumn a motion was carried to the following effect:

"That the Manitoba Commissioners and Mr. Shannon be requested to attend the conference of Superintendents of Insurance in Winnipeg in October and discuss with them this bill, and that if, in their opinion, their views as to the bill and conditions therein expressed are not changed substantially by the discussion, this bill be considered as a model bill and be submitted by the various commissioners with their recommendations to their respective provincial governments."

If the bill were proposed to be materially changed, it was agreed that it should be referred again to the Conference.

In accordance with the above resolution the undersigned attended the meeting of Superintendents of Insurance of the provinces at Winnipeg on October 6, 1920, and discussed with them the bill as provisionally approved at Ottawa.

The provincial superintendents subsequently, on December 6, forwarded their suggestions with regard to the bill, and these have now been considered by the undersigned who in consequence recommend the following alterations:

SECTIONS.

Section 2, paragraph 4, to read as follows:—"4. Property' includes use and occupancy, rents, profits and charges where these are the subject matter of the insurance,"

Section 5.—Insert after the word "contents in the third line the following words, "or other interest in connection therewith."

Section 7.—Strike out the words after the quotation marks in the fourth line and substitute the following: "and unless those words are so printed or stamped such clause shall not be binding upon the insured. Such clause shall not be deemed an addition to the statutory conditions or subject to the provisions of section 6."

CONDITIONS.

Condition 3.—Insert after "otherwise" in the first line the word "specifically."

Condition .4.—Insert after "otherwise" in the first line the word "specifically."

(b) Alter this to read as follows:

"(b) For loss or damage caused by earthquake, invasion, insurrection, riot, civil commotion, military or usurped power;"

(c) Delete the words "or cement" in the second line.

Condition 5.—

(b) Insert the words "heating or cooking" after "lighting" in the sixth line of page 6.

(c) Alter the side-heading of this clause to "Change of Interest."

(d) Delete the last three words and insert the following:

"of thirty consecutive days or being a manufacturing establishment it ceases to be operated beyond that period."

Condition 9. -

(b) Insert "or" between "cancelled" and "altered" in the fourth line and delete the words "or otherwise dealt with."

The point has been raised, though not by the fire superintendents, that the protection of this clause should be extended to cover creditors other than mortgagees, a change which would mean inserting the words "or creditor" after "mortgagee" in the third and fifth lines. The commissioners think that this suggestion should be considered and passed upon by the Conference.

Condition 10.—

(a) Delete the words " before loss " in the second line.

(2) Delete the comma after "cheque" in the second line and substitute the word "and" for the comma after "par" in the third line. Put a period after "province" in the fourth line; then continue as follows

"If the notice is given by registered letter such repayment shall accompany the notice, and in such case the fifteen days, etc.," continuing to the end of the sub-condition as at present.

Condition 13.- Change the first "of" in the eighth line to "or" and substitute "replacement" for "reinstatement" in the thirteenth line.

Condition 17.—

- (a) Strike out the words "the appraisal of some disinterested person" in the third and fourth lines and substitute "a single appraiser."

After clause (c) insert a new clause as follows:

New clause (d).--

"(d) The appraisers shall be entitled to judge the value of the property insured, the property saved or the amount of the loss, from their own knowledge, inspection or examination or from such other sources of information as they may in their discretion deem proper."

- (d) The present clause (d) will now become. (e).

After the word " costs " in the first line of page 11 insert the words " of the appraisement" and alter "the " at the end of the third line to "'such."

- (e) The present clause (e) will become (f).

Strike out "and (d)" at the end of the fourth line and substitute "(d) and (e)".

*Subclause i.—*Alter this to read as follows:

"All the companies shall unite in the choice of a single appraiser or an appraiser to represent the companies;"

*Subclause iii.-*Amend by inserting after the words "paid by" in the second line the words "and recoverable from," and by adding the following words: "but shall be without prejudice to the right of any of the companies to claim against the other or others that the amount of its liability is less than the proportion awarded."

Most of the changes above suggested deal with matters of comparatively minor importance, but others are material and such as, in the opinion of the undersigned, should be dealt with by the Conference at its next annual meeting.

February 19, 1921.

H. J. SYMINGTON,
ISAAC PITBLADO,
TRAVERS SWEATMAN,
R. W. SHANNON.

THE FIRE INSURANCE POLICY ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada in September, 1921.

An Act to Make Uniform, the Law respecting Conditions in Policies of Fire Insurance.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of _____ enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Fire Insurance Policy Act*.

INTERPRETATION.

2. In this Act, unless the context otherwise requires, the expression:—

" Company " includes any corporation, or any society or association, incorporated or unincorporated, or any person or partnership, or any underwriter or group of underwriters, or the attorney in fact of any reciprocal or inter-insurance association, that undertakes or effects, or agrees or offers for valuable consideration to undertake or effect, a contract of insurance within the meaning of this Act;

2. " Contract " means an agreement whereby a company undertakes to indemnify the insured against loss of or damage to property in the province or in transit therefrom or thereto, caused by fire, lightning or explosion, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

3. " Policy " means an instrument containing all the terms of the agreement between the parties;

4. "Property" includes use and occupancy, rents, profits and charges where these are the subject matter of the insurance.

TERM OF CONTRACT.

3. No contract shall be made for a term exceeding three years, or, in the case of a mercantile or manufacturing risk, whether on building or contents, or other property or interest,

exceeding one year, but any contract may be renewed by the delivery of a renewal receipt or a new premium note.

CONTENTS OF POLICY.

4. Every policy shall contain the name of the company, the named of the insured, the name of the person or persons to whom the insurance money is payable, the premium or other consideration for the insurance, the subject matter of the insurance, the indemnity for which the company may become liable, the event on the happening of which such liability is to accrue and the term of the insurance.

STATUTORY CONDITIONS.

5. The conditions set forth in the schedule to this Act shall be deemed, subject to the provisions of section 6, to be part of every contract in force in, and shall be printed on every policy with the heading " Statutory Conditions."

VARIATIONS.

6. (1) if a company desires to vary, omit or add to the statutory conditions OT any of them, there shall be printed in conspicuous type, not less in size than ten point, and in red ink immediately after such conditions, the proposed variations or additions or a reference to the omissions with these introductory Words:—

Variations in Conditions.

"This policy is issued on the above statutory conditions with the following variations, omissions and additions, which are, by virtue of *The Fire Insurance Policy Act*, in force so far only as they shall be held to be just and reasonable to be exacted by the company."

(2) No variation, omission or addition shall be binding on the insured, unless the foregoing provisions of this section have been complied with; and any variation, omission or addition shall be so binding only in so far as it is held by the court before which a question relating thereto is tried to be just and reasonable.

CO-INSURANCE CLAUSE.

A policy may contain a co-insurance clause, in which case it shall have printed or stamped upon its face in conspicuous type and in red ink the words " This policy contains a co-insurance clause," and unless those words are so printed or stamped such clause shall not be binding upon the insured. Such clause shall not be deemed an addition to the statutory conditions or subject to the provisions of section 6.

USE OF RED INK.

8. No red ink shall be used in printing a policy except for the purposes mentioned in this Act.

RELIEF FROM FORFEITURE.

9. In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as may seem just.

RIGHT TO RECOVER EXCESS.

10. Where a company, having paid its share of the loss as determined by appraisalment under statutory condition number 17, is dissatisfied with the apportionment made by the appraiser or appraisers, it may, by action in a court of competent jurisdiction, recover from the other company or companies, in accordance with their respective liabilities, the amount, if any, which in the opinion of the court it has paid in excess of its just share of the loss.

CONSTRUCTION OF ACT.

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

COMING INTO FORCE.

12. This Act shall come into force on the first day of July, 1923.

SCHEDULE.

STATUTORY CONDITIONS.

1. *Misrepresentation.*—If any person applying for insurance falsely describes the property to the prejudice of the company, or misrepresents or omits to communicate any circumstance which is material to be made known to the company in order to enable it to judge of the risk to be undertaken, the contract shall be void as to the property in respect of which the misrepresentation or omission is made.

2. *Form of Contract.*—After application for insurance, if the same is in writing signed by the insured, it shall be deemed that any policy sent to the insured is intended to be in accordance with the terms of the application, unless the company points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy. If the policy has been issued on the verbal application or instructions of the insured it shall be deemed to be in accordance with such application or instructions, unless the insured, within two weeks from the receipt of the policy, points out to the company in writing the particulars wherein it differs from such application or instructions.

3. *Property not Insured.* — Unless otherwise specifically stated in the policy, money, plans, books of account, securities for money, evidences of debt or title, and automobiles, tractors and other motor vehicles, are not insured.

4. *Risks not Covered.*—Unless otherwise specifically stated in the policy, the company is not liable for the losses following, that is to say :-

(a) For loss of or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the policy;

(b) For loss or damage caused by earthquake, invasion, insurrection, riot, Civil commotion, military or usurped power ;

(c) For loss due to the want of good and substantial brick or stone chimneys; or caused by ashes or embers being deposited, with the knowledge and consent of the insured, in wooden vessels; or by stoves or stove-pipes being, to the

knowledge of the insured, in an unsafe condition or improperly secured; or

(d) For loss of or damage to goods while undergoing any process in or by which the application of fire heat is necessary.

5: *Risks not Covered Except by Special Permission.* -- Unless permission is given by the policy or indorsed thereon, the company shall not be liable for loss or damage occurring:

(a) *Repairs.*—To buildings or their contents during alteration or repair of the buildings and in consequence thereof, fifteen days being allowed in each year for incidental alterations or repairs without such permission;

(b) *Inflammable Substances.*—While illuminating gas or vapour is generated in the building insured or which contains the property insured, or while there is stored or kept therein by the insured or, to his knowledge, by any person under his control, fireworks, Greek fire, phosphorus, explosives, petroleum or any liquid product thereof, coal oil, camphene, gasoline, burning fluid, benzine, naphtha, or any of their constituent parts (refined oil for lighting, heating or cooking purposes only, not exceeding five gallons in quantity, gasoline, if contained in a tightly closed metallic can free from leaks and not exceeding one quart in quantity, or lubricating oil not being crude petroleum nor oil of less specific gravity than is required by law for illuminating purposes, not exceeding five gallons in quantity, excepted), or more than twenty-five pounds weight of gunpowder ;

(c) *Change of Interest.* — After the interest of the insured in the subject-matter of the insurance is assigned, but this condition is net to apply to an authorized assignment under *The Bankruptcy Act* or to change of title by succession, by operation of law, or by death;

(d) *Vacancy.*—When the building insured or containing the property insured is vacant or unoccupied for more than thirty consecutive days or, being a manufacturing establishment, ceases to be operated and continues out of operation for more than thirty consecutive days.

6. *Explosion and Lightning.*—The company will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gasworks, whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion ; but, if electrical appliances

or devices are insured, any loss or damage to them caused by lightning or other electrical currents is excluded and the company shall be liable only for such loss or damage to them as may occur from fire originating outside the articles themselves.

7. *Material Change.*—Any change material to the risk, and within the control and knowledge of the insured, shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the company or its local agent; and the company when so notified may return the unearned portion, if any of the premium paid, and cancel the policy, or may notify the insured in writing that, if he desires the policy to continue in force, he must within fifteen days of the receipt of the notice pay to the company an additional premium, and in default of such payment the policy shall no longer be in force and the company shall return the unearned portion, if any, of the premium paid.

8. *Other insurance.*-----

(a) If the insured has at the date of this policy any other insurance on property covered thereby which is not disclosed to the company, or hereafter effects any other insurance thereon without the written assent of the company, he shall not be entitled to recover more than sixty per cent of the loss in respect of such property ; but if for any fraudulent purpose the insured does not disclose such other insurance, this policy shall be void;

(b) The company shall be deemed to have assented to such other insurance unless it dissents by notice in writing within two weeks after notice thereof ;

(c) In the event of there being any other insurance on property herein described at the time of the happening of a loss in respect thereof, the company shall be liable only for payment of a ratable proportion of the loss or a ratable proportion of such amount as the insured shall be entitled to recover under clause (a) of this condition.

9. *Mortgagees and other Payees.*—

(a) In case this policy is assigned to a mortgagee or other creditor of the insured, if the company claims that no liability to the insured existed in respect of any loss or damage hereunder for which payment has been, made to such mortgagee or creditor it shall to the extent of such payment be subrogated to the rights of the mortgagee or creditor under any securities for the debt held by him; or it may pay the debt in full and require

an assignment of the claim or security. No such subrogation shall impair the right of the mortgagee or creditor to recover the full amount of his claim;

(b) Where the loss (if any), under a policy has, with the consent of the company, been made payable to some person other than the insured, the policy shall not be cancelled or altered by the company to the prejudice of the payee without reasonable notice to him

10, *Termination of insurance*,—(1) The insurance may be terminated :-

(a) Subject to the provisions of section 9, by the company giving to the insured at any time fifteen days notice of cancellation by registered mail, or five days notice of cancellation personally delivered, and, if the insurance is on the cash plan, refunding the excess of paid premium beyond the *pro rata* premium for the expired time;

(b) If on the cash plan, by the insured giving written notice of termination to the company, in which case the company shall, upon surrender of this policy, refund the excess of paid premium beyond the customary short rate for the expired time.

(2) Repayment of the excess premium may be made by money, post office order or postal note or by cheque payable at par and certified by a chartered bank doing business in the province. If the notice is given by registered letter, such repayment shall accompany the notice, and in such case the fifteen days mentioned in clause (a) of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

11. *Salvage*.—After any loss or damage to insured property, it shall be the duty of the insured, when and as soon as practicable, to secure the insured property from further damage, and to separate as far as reasonably may be the damaged from the undamaged property, and to notify the company of the separation.

12. *Insurance on Goods Moved*.—If any of the insured property is necessarily removed to prevent damage or further damage thereto, that part of the insurance under this policy which exceeds the amount of the company's liability for any loss already incurred shall for seven days only, or for the unexpired term if less than seven days, cover the property removed, and

any property remaining in the original location in the proportions in which the value of the property in the respective locations bears to the value of the property in them all; and the company will contribute *pro rata*, towards any loss or expense connected with such act of salvage, according to the respective interests of the parties.

13. Entry, Control, Abandonment —After any loss or damage to insured property, the company shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make an appraisal or particular estimate of the loss or damage, but the company shall not be entitled to the control or possession of the insured property, or the remains or salvage thereof, unless it accepts a part thereof at its agreed value or its value as appraised under condition 17 or undertakes replacement under condition 19, and without the consent of the company there can be no abandonment to it of insured property.

14. Who to Make Proof.----Proof of loss must be made by the insured, although the loss is payable to a third person, except that, in case of the absence of the insured or his inability to make the same, proof may be made by his agent, such absence, or inability being satisfactorily accounted for, or, in the like case Or if the insured refuse to do so, by a person to whom any part of the insurance money is payable.

15. Requirements after Loss.—Any person entitled to claim under this policy shall :—

(a) Forthwith after loss give notice in writing to the company ;

(b) Deliver, as soon thereafter as practicable, a particular account of the loss;

(c) Furnish therewith a statutory declaration declaring:—

that the account is just and true and as complete as the circumstances permit;

when and how the the loss occurred, and if caused by fire, how the fire originated, so far as the declarant knows or believes;

that the loss did not occur through any wilful act or neglect or the procurement, means or contrivance of the insured;

the amount of other insurances, and names of other insuring companies;

all liens and incumbrances on the property insured; the place where the property insured, if moveable, was deposited at the time of the fire;

(d) If required and if practicable, produce books of account, warehouse receipts and stock lists and furnish invoices and other vouchers verified by statutory declaration and furnish a copy of the written portion of any other policy. The evidence furnished under this clause shall not be considered proofs of loss within the meaning of conditions 18 and 19.

16. *Fraud.*—Any fraud or wilfully false statement in a statutory declaration, in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

17. *Appraisement.*—If any difference arise as to the value of the property insured, the property saved or the amount of the loss:—

(a) The question at issue shall, whether the right to recover on the policy is disputed or not and independently of all other questions, be submitted to a single appraiser to be chosen by both parties, or if they cannot agree on one person then to the appraisal of two persons, one to be chosen by the insured and the other by the company ;

(b) The appraisers shall select a competent and disinterested person to be a third appraiser or umpire ;

(c) In case either party fails to name an appraiser within seven clear days after being served with written notice so to do, or in case the appraisers fail to agree upon an umpire within fifteen days after their appointment, or in case an appraiser or umpire refuses to act, unreasonably delays in acting, or is incapable of acting or dies, a judge of a superior, county or district court having jurisdiction in the county or district in which the loss happened may make the necessary appointment, on the application of the insured or of the company ;

(d) The appraisers shall be entitled to judge the value of the property insured, the property saved or the amount of the loss, from their own knowledge, inspection, or examination or from such other sources of information as they may in their discretion deem proper; and shall be entitled to hear on any question of law any party or his counsel, to take

the opinion or counsel and (or) to refer any question of law, by stated case or Otherwise, to the court for its decision;

(e) The award in writing of a single appraiser, or of any two where an umpire is appointed, shall, if the company is liable for the loss, be conclusive as to the amount of the loss and the proportion to be paid by the company. Where the full amount of the claim is awarded the company shall pay the costs of the appraisal; where the amount awarded does not exceed the sum offered by the company in settlement, the insured shall pay such costs; in other cases the costs shall be in the discretion of the appraisers who may apportion the same as to them shall seem just;

(f) If the property is insured in more than one company, the question at issue shall be dealt with as between the insured and all the companies, and in such case the provisions of clauses (a,) , (b), (c), (d) and (e), shall apply with the following qualifications :-

- i. all the companies shall unite in the choice of a single appraiser or an appraiser to represent the companies;
- ii. notice under clause (c) shall be given to or on behalf of all the companies ;
- iii. the award shall determine the proportions to be paid by and recoverable from the companies respectively; but shall be without prejudice to the right of any of the companies to claim against the other or others that the amount, of its liability is less than the proportion awarded;
- iv. where costs are to be paid by the companies, they shall be borne by them in proportion to the amounts of their respective liabilities.

18. When Loss Payable.—The lose shall be payable within sixty days after completion of the proofs of loss, unles_s the contract provides for a shorter period.

19. Replacement .—The .company, instead of making payment, may within a reasonable time repair, rebuild Or replace the property damaged or lost, giving written notice of its intentions so to do within fifteen days after receipt of the proofs of loss.

20. Action. —Every action or proceeding against the company for the recovery of any claim under or by virtue of this

policy shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

21. *Agency.*—Any officer or agent of the company who assumes on behalf of the company to enter into a written agreement relating to any matter connected with the insurance shall be deemed *prima facie* to be the agent of the company for the purpose.

22. *Waiver.*—No condition of this policy shall be deemed to have been waived by the company, either in whole or in part, unless the waiver is clearly expressed in writing signed by an agent of the company.

23. *Notice.*—Any written notice to the company may be delivered, at 07 sent by registered post to the chief agency or head office of the company in this province or delivered or 80 sent to any authorized agent of the company therein. Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the company, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

24. *Subrogation.*—The company may require from the insured an assignment of all right of recovery against any other-party for loss or damage to the extent that payment therefor is made by the company.

APPENDIX D.

*Draft Reciprocal Enforcement of Judgments Act.**An Act to facilitate the reciprocal enforcement of judgments and awards.*

His Majesty by and with the advice and consent of the Legislative Assembly of the Province of _____ enacts as follows:

1. (1) Where a judgment has been obtained in a Superior Court outside this province in any part of His Majesty's Dominions to which this Act extends, the judgment creditor may apply to the Supreme Court of this province, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the Court, to have the judgment registered in the Court, and on such application the Court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in this province, and subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if—

- (a) the Original Court acted_ without jurisdiction; or
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court, did not voluntarily appear or otherwise submit or agree to submit 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 jurisdiction of that Court or agreed to submit to the jurisdiction of that Court ; or
- (d) the judgment was obtained by fraud; or
- (e) the judgment debtor satisfies the registering Court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

- (f) the judgment, was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering Court.
- (3) Where a judgment is registered under this section--
- (a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering Court;
 - (b) the registering Court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;
 - (c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original Court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.
- (4) Rules of Court shall provide
- (a) for service on the judgment debtor of notice of the registration of a judgment under this section; and
 - (b) for enabling the registering Court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the Court thinks fit; and
 - (c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.
- (5) In any action brought in any Court in this Province on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused or unless the Court otherwise orders.

2. Where a judgment has been obtained in the Supreme Court of this province against any person, the Court shall, on an application made by the judgment creditor, and on proof that the judgment debtor is resident outside this province in some part of His Majesty's Dominions to which this Act

extends, issue to the judgment creditor a certified copy of the judgment.

3. Provision may be made by rules of Court for regulating the practice and procedure (including scales of fees and evidence), in respect of proceedings of any kind under this Act.

4.(1) In this Act, unless the context otherwise requires--
The expression "judgment" means any judgment or order given or made by a Court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a Court in that place:

The expression "original Court" in relation to any judgment means the Court by which the judgment was given :

The expression "registering Court" in relation to any judgment means the Court by which the judgment was registered.

The expression "judgment creditor" means the person by whom the judgment was obtained, and includes the successors and assigns of that person:

The expression "judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given.

(2) Subject to rules of Court, any of the powers conferred by this Act on any Court may be exercised by a judge of the Court.

5. (1) Where the Lieutenant-Governor is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's Dominions outside this Province for the enforcement within that part of His Dominions of judgments obtained in the Supreme Court of this Province, the Lieutenant-Governor may by Order-in-Council extend this Act to that part of His Dominions, and on any such Order being made this Act shall extend accordingly.

(2) An Order-in-Council under this section may be varied or revoked by a subsequent Order.

6. This Act may be cited as the Judgments Extension Act.

APPENDIX E.

THE WAREHOUSEMEN'S LIEN ACT.

As revised and approved by the Conference of Commissioners on Uniformity of Legislation in Canada, in September, 1921.

An Act to make Uniform the Law respecting Warehousemen's Liens.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of _____, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Warehousemen's Lien Act*.

INTERPRETATION.

2. In this Act, unless the context otherwise requires:—
"Goods" includes personal property of every description that may be deposited with a warehouseman as bailee;
"Warehouseman" means a person lawfully engaged in the business of storing goods as a bailee for hire.

WAREHOUSEMAN'S LIEN.

3.---(1) *Subject* to the provisions of section 4, every warehouseman shall have a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority.

CHARGES COVERED BY LIEN.

(2) The lien shall be for the amount of the warehouseman's charges, that is to say:—

- (a) All lawful charges for storage and preservation of the goods; and

(b) All lawful claims for money advanced, interest, insurance, transportation, labour, weighing, coopering, and other expenses in relation to the goods; and

(c) All reasonable charges for any notice required to be given under the provisions of this Act, and for notice and advertisement of sale, and for sale or the goods where default is made in satisfying the warehouseman's lieu,

REQUIREMENT AS TO NOTICE OF LIEN IN CERTAIN CASES.

4.—(1) Where the goods on which a lieu exists were deposited not by the owner or by his authority, but by a person entrusted by the owner or by his authority with the possession of the goods, the warehouseman shall, within two months after the date of the deposit, give notice of the lien :-

(a) to the owner of the goods, including the person in whom the right of property therein is vested where a valid receipt note, hire receipt or other instrument evidencing a bailment or conditional sale of the goods is registered (or filed) under the Act at the date of deposit; and

(b) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under the Act at that date.

CONTENTS OF NOTICE:

(2) The notice shall be in writing and contain:—

(a) A brief description of the goods; and

(b) A statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and

(c) A statement that a lien is claimed by the warehouseman in respect of the goods under 'this Act.

LOSS OF LIEN FROM FAILURE TO GIVE NOTICE.

(3) Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, shall be void as from the expiration of the period of two months from the date of the deposit of the goods.

ENFORCEMENT OF LIEN BY SALE OF GOODS.

5.—(1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges, a warehouseman may sell by public auction, in the manner provided in this section, any goods upon which he has a lien for charges which have become due.

NOTICE OF SALE.

(2) The warehouseman shall give written notice of his intention to sell :-

- (a) to the person liable as debtor for the charges for which the lien exists; and
- (b) to the owner of the goods, including the person in whom the right of property therein is vested, where a valid receipt note, hire receipt or other instrument evidencing a bailment or conditional sale of the goods is registered (or filed) under the _____ Act at the date of deposit of the goods; and
- (c) to the grantee of the goods under any bill of sale or chattel mortgage registered (or filed) under the _____ Act at that date; and
- (d) to any other person known by the warehouseman to have or claim an interest in the goods.

CONTENTS OF NOTICE.

(3) The notice shall contain:—

- (a) A brief description of the goods; and
- (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman, and the name of the person by whom they were deposited; and
- (c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice; and
- (d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than twenty-one days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail; and

(e) a statement that unless the charges are paid within the time mentioned the goods will be advertised for sale and sold by public auction at a time and place specified in the notice.

ADVERTISEMENT OF SALE.

(4) Where the charges are not paid on or before the day mentioned in the notice, an advertisement of the sale, describing the goods to be sold, and stating the name of the person liable' as debtor for the charges for which the lien exists, and the time and place of the sale, shall be published at least once a week for two consecutive weeks in a newspaper published in the Province and circulating in the locality where the sale is to be held. The sale shall be held not less than fourteen days from the date of the first publication of the advertisement.

SUBSTANTIAL COMPLIANCE WITH ACT.

6. Where a notice of lien under the provisions of section 4, or a notice of intention to sell under the provisions of section 5 has been given, but such provisions have not been strictly complied with, if the court or a judge before whom any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with, or that it would be inequitable that the lien or sale shall be void by reason of such non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale.

DISPOSITION OF PROCEEDS OF SALE.

7. From the proceeds of the sale the warehouseman shall satisfy his lien, and shall pay over the surplus, if any, to the person entitled thereto ; and the warehouseman shall when paying over the surplus deliver to the person to whom he pays it a statement of account showing how the amount has been computed. If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the rights thereto are uncertain, the warehouseman shall pay the surplus into the Court upon the order of a judge. The order may be made *ex parte* upon such terms and conditions as to costs and otherwise as the judge

may direct, and may provide to what fund or name the amount shall be credited. The warehouseman at the time of paying the amount into court shall file in court a copy of the statement of account showing how the amount has been computed.

DUTY OF WAREHOUSEMAN WHERE CHARGES PAID BEFORE SALE.

8. At any time before the goods are sold any person claiming an interest or right of possession in the goods May pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving notices and advertisement and preparing for the sale tip to the time of the payment. The warehouseman shall deliver the goods to the person making the payment if he is the person entitled to the possession of the goods on payment of the warehouseman's charges thereon, otherwise the warehouseman shall retain possession of the goods according to the terms of the contract of deposit.

MANNER OF GIVING NOTICES REQUIRED BY ACT.

9. Where by this Act any notice in writing is required to be given, the notice shall be given by delivering it to the person to whom it is to be given, or by mailing it in the post office, postage paid and registered, addressed to him at his last-known address.

CONSTRUCTION OF ACT.

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

APPENDIX F,

DRAFT LIFE INSURANCE ACT.

SECTION

- 3—Application.
- 2—Interpretation.
- 4-16—General Provisions.
- 17-20—Insurable Interest.
- 21-24—Provisions Relating to Contracts.
- 25-27—Policies on the Lives of Infants.
- 28—Beneficiaries.
- 28—Classes of Beneficiaries.
- 29—Designation of Beneficiaries.
- 30—Beneficiaries for Value.
- 31—Death of Ordinary Beneficiaries.
- 32-35—Preferred Beneficiaries.
- 36, 37—Death of Preferred Beneficiaries.
- 38-41—General Provisions Relating to Preferred Beneficiaries.
- 42-46—Benefits under Policies.
- 47-49—Limitation of Actions and Presumption of Death.
- 50—Proofs of Claim.
- 51—Appointment of Trustees.
- 52-56—Payment of Shares of Infants, Lunatics, etc.
- 57—Payment to Foreign Representative.
- 58—Repeal.

AN ACT TO MAKE UNIFORM THE LAW RESPECTING
LIFE INSURANCE CONTRACTS.

His Majesty, by and with the advice and consent
of the Legislative Assembly of the Province of
enacts as follows:

SHORT TITLE.

1. This Act may be cited as "*The Life Insurance Act.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires:
 - (1) "Beneficiary" means and includes every person entitled to insurance money and the executors, administrators and assigns of every person so entitled.

(2) "Chief Agency" means the principal office or place of business in Ontario of any insurer having his head office out of Ontario, undertaking business in Ontario.

(3) "Contract," "Contract of Insurance" and "Policy" mean and include all contracts the subject matter of which is life insurance.

(4) " Declaration " means the designation by the insured of the beneficiary under a policy of insurance or the appointment or apportionment of the insurance money made by the contract of insurance itself or by any instrument in writing, including a will, in any way identifying the contract or describing the subject of it as the insurance, insurance fund, policy or policies of the insured or using language of like import in describing it, and shall include an assignment unless stated therein to be made for valuable consideration.

(5) "Endowment" insurance means an undertaking to pay an ascertained or ascertainable sum at a fixed future date, if the insured is then alive, or at his death, if he dies before such date, and shall include an undertaking to pay such sum on the insured reaching a stated age or attaining his expectation of life.

(6) "Foreign Jurisdiction" includes any jurisdiction other than that of Ontario.

(7) "Fraternal Society" means and includes a corporation, society, order or voluntary association, incorporated and carried on for the mutual benefit of its members and their beneficiaries and not for profit which makes provisions by its constitution and laws for payment of benefits on the death of its members to their beneficiaries or other persons entitled thereto or for this and other purposes.

(8) "Head Office" means the place where the chief executive officers of an insurer transacts his business.

(9) " Industrial Policy " means a policy or life insurance issued by an insurer other than a fraternal society, the premium for which is computed for a period of less than three months and may be paid to a collector for the insurer at the residence or other address of the insured,

(10) " Instrument in writing" includes the last will of the insured.

(11) " Insurance " or " Life Insurance " means a contract whereby one person called the insurer, undertakes, for a valuable consideration, to pay the other person, called the insured, or his representatives or his beneficiaries, a sum of money or

other thing of value upon the happening of a particular event contingent upon the duration of human life. Life insurance shall be deemed to include contracts involving the payment of endowments or annuities.

(12) " Insurance moneys" and "benefits" include all insurance moneys, benefits, surplus, profits, dividends and bonuses payable by the insurer under the contract of insurance.

NOTE.—It is proposed to use the term "insurance money throughout the Act.

(15) " Maturity of the contract " means the happening of the event or the expiration of the term at which the benefit under the policy or contract accrues due.

(16) " Person " includes firms, partnerships and unincorporated societies and associations.

(17) " Premium " means the single or periodical payment which the insured agrees to make for the insurance and includes dues and assessments.

APPLICATION.

3. (1) This Act applies to every contract of life insurance entered into in the province and every contract of life insurance made or purporting to be made or containing any term or provision in contravention of the provisions of this Act shall be null and void.

(2) Except as otherwise herein provided this Act applies to every contract of insurance whether heretofore or hereafter effected, but nothing herein contained shall affect any payment of insurance money heretofore lawfully made.

(3) This Act shall have effect notwithstanding any agreement, condition or stipulation to the contrary.

(4) This Act does not apply to contracts of accident or sickness insurance.

GENERAL PROVISIONS.

5. The contract of life insurance shall be witnessed by an instrument in writing called a policy of insurance.

6. (1) Except as otherwise provided in sub-section (2) every policy issued by an insurer other than a fraternal society, shall state the name or sufficient designation of the person whose life is insured, the person in whose favor it is made, the amount of benefits payable, the manner of payment, the amount or rate of premium and the commencement and duration of the risk.

(2) In an industrial policy where the amount of insurance money exclusive of dividends and bonus does not exceed \$500, the policy may be expressed to be payable to a named beneficiary or to any relative by blood or connection by marriage of the insured or any other person appearing to the insurer to be equitably entitled to the same by reason of having incurred expense for the maintenance, medical attendance or burial of the insured or to have claim against the estate of the insured in relation thereto.

7. (1) Fraudulent misrepresentation or concealment on the part either of the insurer or of the insured shall render the contract voidable at the instance of the innocent party.

(2) The insured shall represent to the insurer fully and fairly every fact which shows the nature and extent of the risk and which may prevent the undertaking of it or affect the rate of premium, and his failure so to do shall be deemed to be fraudulent concealment within the meaning of sub-section (1).

9. (1) Unless the contract otherwise expressly provides, it shall not take effect or be binding on either party until the policy is delivered to the insured, his assign, agent or the beneficiary named therein and payment of the first premium has been accepted by the insured or his duly authorized agent while the person whose life is insured is living and in good health.

(2) Where the premium is paid by a cheque or promissory note and the cheque is not paid on presentation or the promissory note at maturity, the contract shall be void unless otherwise provided for in the policy.

10. The insurer shall upon request furnish to the insured a true copy of the application or proposal for insurance.

11. In a policy, an assignment thereof or a declaration, the words " heirs," "legal heirs," " lawful heirs," or "next of kin" shall mean and include all persons entitled to share in the distribution of the personal estate of an intestate.

12. Where the event has happened, on the occurrence—of which insurance money is payable under the contract, but the amount payable is in dispute, it shall *prima facie* be the maximum amount stated or indicated in the contract.

13. If the premium or premiums on an insurance policy are paid with intent to defraud the creditors of the insured or the beneficiary or the assignee of the policy, such creditors shall be entitled to receive out of the insurance money an amount not exceeding the premiums so paid and interest thereon.

14. No officer, agent, employee or servant of the insurer nor any person soliciting insurance, whether an agent of the insurer or not, shall be deemed to be for any purpose whatever the agent of any person insured in respect of any question arising out of the contract of insurance between such person insured and the insurer.

15. Until the insurer has received the original or, a copy of an instrument in writing affecting the insurance money or any part thereof, or of any appointment or revocation of an appointment of a trustee, the insurer may deal with and obtain a, valid discharge from the insured or his beneficiaries or his trustees, executors, administrators or assigns in the same manner and with the like effect as if such instrument in writing, appointment or revocation had not been made, but nothing in this section shall affect the right of any person entitled by virtue of such instrument, appointment or revocation to recover insurance money from the person to whom it has been paid by the insurer.

16. Where the insured is a person domiciled or resident in the pr evince at the time the contract is made, or applies for the insurance while in the province, the policy, if issued or delivered over in the province, or committed to the post office or to any carrier, messenger or agent to be delivered in the province to the insured, his assignee, agent or the beneficiary named in the policy, shall be deemed to evidence a contract made in the province, and the contract shall be construed, and the rights and status of preferred and ordinary beneficiaries thereunder shall be determined according to the law of the province and all moneys payable under the contract shall be paid in the province in lawful money of Canada.

INSURABLE INTEREST.

17. A contract of life insurance made for the use, benefit or on account of a person not having an insurable interest in the life insured, or which is entered into by way of gaming or wagering, shall be null and void.

18. It is declared that the following persons shall have an insurable interest:—

- (1) A parent in the life of his child under 21 years of age.
- (2.) A husband in the life of his wife.
- (3) A wife in the life of her husband.

- (4) A person who is wholly or in part dependent for support or education on another, in the life of such other person.
- (6) A corporation in the life of an officer or employee of the corporation.
- (6) A person who has pecuniary interest in the duration of another person's life, in the life of such other person. -

19. Every person shall have an unlimited insurable interest in his own life and may effect *bona fide* at his own charge insurance of his own person for the sole or partial benefit of himself, or of his estate, or of any other person, whether the beneficiary has or has not an insurable interest in the life of the insured, and the insurance money may be made payable to any person for his own use or as trustee for another person.

20. The policy of insurance may pass by transfer, assignment, will or succession to any person whether he has an insurable interest or not in the life of the person insured.

PROVISIONS RELATING TO CONTRACTS.

21. (1) Where the money payable by way of premiums (not being the initial premiums), under any contract is unpaid, the insured, his assign or agent or any beneficiary under the policy, may, within thirty days from and including the first day on which the money is due, pay, deliver or tender to the insurer at his head office, or at his chief agency in the province, or to his collector or authorized agent, the sum in default.

(2) The payment, delivery or tender may be by sending the money in a registered letter, and it shall be deemed to have been paid, delivered or tendered 'at the time of the delivery and registration of the letter at any post office.

(3) On payment, delivery or tender as aforesaid, the contract shall be *ipsi facto* revived notwithstanding any agreement or stipulation to the contrary.

(4) The thirty days hereinbefore mentioned shall run concurrently with the period of grace or credit, if any, allowed by the insurer for the payment of a premium or of an installment of premium.

(5) In the event of the policy becoming a claim during the said thirty days and before the overdue premium or the deferred premiums, if any, of the current policy year are paid, the policy shall be deemed to be in full force and effect, that the

amount of such premiums with interest on any overdue premium (not in excess of six per cent. per annum) May in settlement of claim be deducted from the amount payable under such policy.

(6) Nothing in this section shall be deemed to extend the period of grace or credit beyond the total of thirty days.

22. The representations made by the insured in his application for insurance and in the medical examination shall, except; in the case of fraud or error in age, be accepted as true and incontestable after the policy has been in force during the life of the insured for a period of not more than two years,

23. (1) Every term and condition of the contract of insurance shall be set out in full in the policy or by writing securely attached to it, and unless so set out no term of the contract or condition, and no stipulation, warranty or proviso modifying or impairing its effect shall be valid or admissible in evidence to the prejudice of the insured or beneficiary.

(2) The renewal of the contract by a renewal receipt shall not be deemed to be a contravention of sub-section (1) if the renewal receipt refers to the contract by its number and date.

(3) Sub-sections (1) and (2) shall not apply to a contract of insurance of a fraternal society but in the case of a fraternal society the policy, the Act or instrument of incorporation, constitution and laws of the society and all amendments to them or any of them and (subject to the provisions of sub-section (4)) the application and medical examination of paper signed by the applicant shall constitute the contract between the society and the member.

(4) The statements made by the insured in the proposal or application for the insurance shall not as against him be deemed a part of or be considered with the contract of insurance except in so far as the Court may determine that they contain a material misrepresentation by which the insurer was induced to enter into the contract.

(6) No contract of insurance shall contain or have endorsed upon it, or be made subject to, any term, condition, stipulation, warranty or proviso, providing that such contract shall be avoided by reason of any statement in the application therefore, or inducing the entering into of the contract by the insurer, unless such term, condition, stipulation, warranty or proviso is and is expressed to be limited to cases in which such statement is material to the contract, and no contract shall be avoided

by reason of the inaccuracy of any such statement unless it is material to the contract.

(7) The question of materiality in any contract of insurance shall be a question of fact for the jury or for the Court if there is no jury; and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto, shall have any force or validity.

24. (1) If the age of the insured has been understated in the contract, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the table of rates of premiums of the insurer.

(1a) Where the tables of rates of premium of the insurer do not extend to or include the rates for the correct age of the insured the amount of benefits payable under the contract according to sub-section (1) shall be calculated according to the rate of premium shown in, or deduced from the Hm. Tables of the Institute of Actuaries of Great Britain (Schedule "A"), the rate of interest being taken at four and one-half per centum per annum.

(2) Where, by the terms and for the purposes of the contract, the age was taken to be greater than the age stated in the application, the number of years added to such age shall, for the purposes of the calculation, be added to the actual age.

(3) Where the application for and contract of insurance expressly limit the insurable age, and the actual age at the date of the application exceeds the age so limited, the contract shall, during the lifetime of the person on whose life the insurance was effected, and not later than five years from the date of the contract, be voidable at the option of the insurer within thirty days after the error comes to his knowledge.

(4) Where an error is discovered in respect of a contract of insurance, or of any premium paid or to be paid upon such contract, nothing herein contained shall at any time before the maturity of the contract prevent an adjustment between the insurer and the insured of the amount of the insurance effected or of any premium paid or to be paid.

POLICIES ON THE LIVES OF INFANTS.

25. (1) A minor over the age, of fifteen years may effect contracts of insurance on his life and may do in respect of any

such contract whatever a person of full age may lawfully do and the like rules of construction shall prevail.

(2) A minor, over the age of fifteen years, shall not, on the ground of infancy, be entitled to avoid or repudiate a contract of insurance entered into by him or to avoid or repudiate any discharge or receipt given by him for any benefit accrued or accruing or for any money paid or payable under the contract or any cheque given by him in payment of a premium or premiums payable thereunder.

(3) With the consent of the person by whom the insurance was effected, where a minor over the age of fifteen years, upon whose life a contract of insurance has been entered into before he attained the age of fifteen years, either by himself or some other person, pays or continues to pay the premium or premiums under such contract, he may do in respect thereto whatever a person of full age may lawfully do and the like rules of construction shall prevail,

(4) Failure on the part of the person by whom the insurance was effected to pay any premium thereon when due shall constitute an implied consent by such person to the payment of such premium by the minor,

26. (1) No insurer shall insure or pay on the death of a child under ten years of age any sum which alone or together with any sum payable on the death of such child by any other insurer exceeds respectively :

\$ 30 if the child dies under the age of 1 year

50 if the child dies under the age of 2 years

70 if the child dies under the age of 3 years

90 if the child dies under the age of 4 years

110 if the child dies under the age of 5 years

140 if the child dies under the age of 6 years

180 if the child dies under the age of 7 years

230 if the child dies under the age of 8 years

300 if the child dies under the age of 9 years

400 if the child dies under the age of 10 years

(2) Nothing in sub-section (1) shall apply to such insurances as were in force on the _____ or to an insurance on the life or a child of any age where the person effecting the insurance has a pecuniary interest in the life, or to an insurance effected on the life of a child under ten years of age which limits the payment on the death of the child before _____

attaining ten years of age to the premiums that have been paid, with interest at the rate provided for in the contract.

(3) Where the age of the child at the date of the contract is less than ten years, and the insurer has knowingly or without sufficient inquiry entered into any contract prohibited by this section, the premiums paid thereunder shall be recoverable from the insurer by the person paying the same, together with interest thereon at the legal rate, compounded annually.

(4) Every insurer who undertakes or effects insurances on the lives of children under ten years of age shall print the scale of benefits provided in sub-section (1) or a lower scale if the contract limits the amount to such lower scale, in conspicuous type upon every circular soliciting, and upon every application for, and every contract of such insurance.

(5) A person who contravenes the provisions of the preceding sub-section shall be guilty of an offence and liable to the penalties provided by law for the illegal conduct of insurance business in the province.

BENEFICIARIES.

CLASSES

28. (1) For the purpose of this Act beneficiaries under a contract of insurance shall consist of three classes, namely:

- (1) For value.
- (2) Preferred.
- (3) Ordinary.

(2) The class of beneficiaries for value shall consist of all beneficiaries for a valuable consideration other than marriage who are expressly stated to be beneficiaries for value in the contract or in an endorsement thereon or by a subsequent declaration signed by the insured.

(3) The class of preferred beneficiaries shall consist of the husband, wife, children, grandchildren and mother of the insured.

(4) The class of ordinary beneficiaries shall consist of all beneficiaries other than preferred beneficiaries or beneficiaries for value.

DESIGNATION OF BENEFICIARIES.

29. (1) The insured may designate the beneficiary by any mode of "declaration" as defined in this Act and may, whether

the beneficiary has been designated in the contract or by a prior declaration, and whether the insurance money has or has not been already appointed or apportioned, from time to time, except as against a beneficiary for value or an assignee for valuable consideration, and subject to the provisions of this . Act as to preferred beneficiaries, by declaration, appoint or apportion the same, or alter or revoke the benefits, or add or substitute Be beneficiaries, or divert the insurance money wholly or in part to himself or his estate.

(2) Where the declaration is made by will, such declaration as against a subsequent declaration shall be deemed to have been made at the date of the will and not at the death of the testator, A declaration contained in an instrument purporting to be a will shall be effective notwithstanding such instrument may be invalid as a testamentary document.

BENEFICIARIES FOR VALUE.

30. A beneficiary for value shall be deemed to acquire a vested interest in a policy in which he is designated as such, according to the provisions of this Act, and nothing in this Act shall be considered as enabling the insured to restrict, interfere with or defeat the rights of a beneficiary for value so acquired as aforesaid.

DEATH OF ORDINARY BENEFICIARIES.

31. Where there are several beneficiaries, if one or more of them die before the maturity of the contract and no apportionment or other disposition is subsequently made by the insured, and it is not otherwise provided for in the contract or prior declaration, the share of such beneficiary or beneficiaries shall be for the benefit of the surviving beneficiary or beneficiaries, in equal shares if more than one, and if all the beneficiaries or the sole beneficiary die before the maturity of the contract and no other disposition is made by the insured and it is not otherwise provided for in the contract or prior declaration, the insurance shall be for the benefit of the insured or his estate.

This section shall only apply to the shares of ordinary beneficiaries.

PREFERRED BENEFICIARIES.

32, Sections 33 to 41, both inclusive, of this Act shall apply to all contracts of insurance for the benefit in whole or in part

of preferred beneficiaries, whether made before or after the passing of this Act.

33. Where the contract of insurance or declaration provides that the insurance money or part thereof, or the interest thereof, shall be for the benefit of one or more preferred beneficiaries, such contract or declaration shall, subject to the right of the insured to apportion or alter as hereinafter provided, create a trust in favour of such preferred beneficiary or beneficiaries, and so long as any object of the trust remains, the money payable under the contract, or any part thereof or the interest thereon which has been designated for the benefit of one or more preferred beneficiaries shall not be subject to the control of the insured, or of his creditors, or form part of his estate, but this shall not interfere with any transfer or pledge of the contract to any person prior to such declaration.

31. Where two or more preferred beneficiaries are designated, but no apportionment is made, all of them shall share equally.

35. (1) Where it is stated in the contract or declaration that the insurance money or any part of it is for the benefit of the wife of the insured only, or of his wife and children generally, Or of his children generally, the word " wife " shall mean the wife living at the maturity of the contract, and the word children" shall include all the children of the insured living at the maturity of the contract, and also the issue living at the maturity of the contract of any child of the insured who predeceased him, such issue taking by representation, and the like construction shall prevail where the insurance is effected by a man while unmarried or a widower for the benefit of his future wife or his future wife and children or of his children.

This subsection shall not apply where the beneficiary is designated by name.

(2) The provisions of the preceding sub-section shall *mutatis mutandis* apply to insurance effected by a woman on her life and declared to be for the benefit of her husband or future husband only, or of her husband and children or future husband and children generally or of her children generally.

DEATH OF PREFERRED BENEFICIARIES.

36. (1) Notwithstanding anything contained in the preceding section, if one or more or all of the designated preferred beneficiaries or a sole preferred beneficiary, whether or not such sole beneficiary is designated by name, die before the maturity of

the contract, the insured may, whether an apportionment has been made or not, provide by declaration that the share or shares of such person or persons shall be for the benefit of the insured or of his estate or of any other person whether or not such person belongs to the class of preferred beneficiaries.

(2) In the absence of any declaration under the preceding sub-section, the share of such deceased beneficiary, and any share to which he would have become entitled if he had survived, shall, if such deceased beneficiary was a child of the insured and has left issue, surviving at the maturity of the contract, be for the benefit of such issue, who if more than one, shall take in equal shares.

(3) If there is no person entitled under the preceding sub-section, the share of such deceased beneficiary shall, in the absence of any declaration as aforesaid, be for the benefit of the surviving designated preferred beneficiary or beneficiaries, who if more than one, shall take in equal shares.

(4) If there is no person entitled under either of the two preceding sub-sections, and the wife or child or children of the insured is or are living at the maturity of the contract, the share of such deceased beneficiary shall, in the absence of any declaration as aforesaid, be for the benefit of such wife, child or children, or wife and child or children in equal shares if there are more than one of such persons surviving, provided that if, in such case, any child of the insured has died before the maturity of the contract, and has issue surviving at such maturity, such issue shall be entitled in equal shares, if more than one, to the share which his, her or their parent if living would have taken.

(5) If there is no person entitled under any of the preceding sub-sections, the share of such deceased beneficiary shall be for the benefit of the insured, and if he be dead, such share shall form part of his estate.

37. Nothing in this Act shall prevent a policy from being made payable, either by the policy itself or by a subsequent declaration, to one or more preferred beneficiaries if living at the maturity of the contract, otherwise to the insured, his estate, or any other person whether or not such other person belongs to the class of preferred beneficiaries.

GENERAL PROVISIONS RELATING TO PREFERRED BENEFICIARIES,

38. The insured may by a declaration vary a contract. or declaration previously made so as to restrict, extend, transfer or

limit the benefits of the insurance to any one or more persons of the class of preferred beneficiaries to the exclusion of any or all others of the class or wholly or partly to one or more for life, or any other term, with remainder to any other or others of the class, but the insured shall not, except as provided by section 36, revoke or alter any disposition made under the provisions of this Act in favour of any one or more of the preferred class, except in favour of sonic one or more persons within the preferred class, so long as any of the persons of the preferred class in whose favour the contract or declaration is made are living,

39. (1) Where the beneficiary under a contract of insurance is a wife or husband who has been lawfully divorced from the insured, all interest of the beneficiary under the policy shall lapse and revert to the insured or his estate, unless such beneficiary is a beneficiary for value, or an assignee for valuable consideration.

(2) Where a divorce has been granted on the application of the beneficiary he shall for the purposes of the preceding subsection, be deemed lawfully divorced.

40. Upon it being made to appear to a Judge of the Supreme Court on application of the insured that the wife of such insured is a preferred beneficiary under any contract of insurance on the life of the insured or declaration in respect thereto, and that such wife is living apart from him under circumstances disentiing her to alimony, and that the insured has no mother, child or grandchild to whom the share of such wife in the benefits of the insurance may be transferred under the provisions of this Act, the Judge may, on such terms and conditions as he may deem fit; declare such wife to be disentitled to the benefits of this Act.

NOTE.---It is proposed that this section be extended to be applicable to a husband who is a preferred beneficiary if he is living apart from his wife and has been guilty of misconduct.

41. A declaration changing the preferred beneficiaries or altering, apportioning or varying the benefits of the insurance, may be made notwithstanding that by the contract of insurance or a previous declaration the insurance money is payable to a trustee for preferred beneficiaries.

BENEFITS UNDER, POLICIES.

42. (1) The insured may surrender the contract to the insurer and accept in lieu thereof such paid-up or extended

insurance benefit as may be provided by the contract, payable as the money insured by the original contract if not surrendered would have been payable, and the insurer may accept the surrender and issue the paid-up contract or extended insurance notwithstanding any declaration in favour of a preferred beneficiary.

(2) Notwithstanding the designation of a preferred beneficiary the insured may, from time to time, borrow from the insurer or from any other person on the security of the contract, such sums as may be necessary and shall be applied to keep it in force, and on such terms and conditions as may be agreed on; and the sums so borrowed, with such interest as may be agreed on, shall be a first lien on the contract and on all moneys payable thereunder.

(3) The provisions of this section shall be applicable whether the benefits under a policy are payable to ordinary or preferred beneficiaries.

43. (1) Notwithstanding that the insurance money may be payable to or for the benefit of preferred beneficiaries, any person who has effected a participating policy may either receive the surplus or profits for his own benefit, or may, from time to time, either apply the same in payment or reduction of premiums, or direct them to be added to the insurance money; and the share of each person when more than one are benefited, shall, in the last case, be proportionately increased.

(2) Profits, accruing after a policy has been paid up, may be received by the insured for his own benefit or may be added to the insurance money; and the share of each person, when more than one are benefited, shall then also be proportionately increased.

(3) The insurer shall not be obliged to pay or apply such surplus or profits in any manner contrary to the stipulations in the contract or application therefore.

44. (1) When all of the beneficiaries named in the contract or by way of declaration are of full age, they and the insured may surrender the Contract or may assign or dispose of the same either absolutely or by way of security.

(2) Where the beneficiaries include children or grandchildren, it shall be sufficient so far as their interests are concerned, if all then living are of full age and join in the surrender, assignment or disposal as the case may be.

(3) Where a person is entitled to a benefit only in the event Of the death of another person named as a beneficiary, it shall be sufficient for the purposes of this section if such last-mentioned person joins in the surrender, assignment or disposal.

45. Where a contract is or becomes payable to the beneficiary Upon the death of the insured in installments and the contract expressly provides that the beneficiary shall not have the right to commute the installments or to alienate or assign his interest therein, the insurer shall not be obliged to Commute such installments or to pay the same to any person other than the beneficiary named in the contract or subsequent declaration notwithstanding any form of assignment, 'alienation or transfer executed by the beneficiary, provided that the insured may by notice in 'writing to the insurer given during his lifetime or by his will, waive or vary any such condition.

46. Where it is expressly provided in the contract or by any subsequent agreement in writing, the insurer may hold the proceeds of the policy or any part thereof after maturity of the contract subject to the order of the beneficiary, or upon such trusts for the beneficiary as may be provided in the contract or agreement and may allow and pay to the person entitled to such proceeds or any part thereof interest thereon at a rate not less than specified in the contract or agreement for the term during which the insurer retains snob proceeds or any part thereof.

LIMITATION OF ACTIONS AND PRESUMPTION OF DEATH.

47. Every lawful claim against au insurer under any contract of insurance shall be payable at the expiration of thirty days after reasonably sufficient proof has been furnished to the insurer of the happening of the event on which the claim was by said contract to accrue due and of the right of the claimant to the proceeds of the policy; provided, however, that the insurer may, in his discretion, pay the claim at any time before the expiration of said thirty days.

48. (1) Subject to the provisions of the preceding section and of sub-sections 2 to 10 of this section, any action or proceeding against the insurer for the recovery of any claim under the Contract of insurance shall be commenced within one year after the cause of action arose or within six years from the date of maturity of the contract whichever period shall first expire. (2) Where death is presumed from the person on whose life the insurance is effected not having been heard of for seven

years, an action or proceeding shall be commenced within one year and six months from the date which such presumption arose, but not afterwards.

(3) Where the death of the person on whose life the insurance is effected is unknown to the person entitled to claim under the contract, an action or proceeding may be brought within one year and six months after the death becomes known to him, but not afterwards; however, where the death is presumed as mentioned in sub-section 2, this sub-section shall not entitle the claimant to bring an action or proceeding after the time mentioned in that sub-section.

(4) Where an action or proceeding brought within the prescribed period fails because of its having been prematurely brought, and on that ground only, the plaintiff shall be entitled to bring a new action or proceeding at any time within the prescribed period or within six months after the final determination of the first action or proceeding.

(6) Where a claim is made against an insurer on the ground that the person on whose life the insurance is effected is presumed to be dead by reason of his not having been heard of for seven years, and his death is the sole issue between the parties other than disputes as to the person entitled, the insurer may, before or after action brought, upon at least ten clear days' notice served on the claimant or his solicitor, apply to a Judge of the Supreme Court in 'Chambers for a declaration as to the presumption of the death.

(6) If the Judge is satisfied that a presumption of death has been established, he shall so find and his finding shall, subject to appeal, be binding and conclusive upon all parties interested as establishing the presumption of death, and he may make such order as to the payment of the insurance money as he may deem just.

(7) The payment by the insurer, as so ordered, shall discharge him from all liability under the contract of insurance.

(8) Where the Judge declares that the presumption of death has not been established, he may make such other order as he may deem just.

(9) Unless otherwise ordered by the Judge, the application shall operate as a stay of any pending action based upon such presumption.

(10) The onus of proving that the death took place at any particular time during the seven years rests on the person who

claims the right, to the establishment of which that fact is material.

49. Where the insured and beneficiaries under a policy or any two or more of them perish, in the same disaster, it shall be *prima facie* presumed that such persons so perishing all died at the same moment of time.

PROOFS OF CLAIM.

50. (1) Before paying the insurance money the insurer shall be entitled to reasonably sufficient proof in writing verified by oath or statutory declaration of the happening of the event on which insurance money is to become due under the contract of insurance and of the title of the claimant to payment thereof.

(2) Where there is a dispute between the claimant and the insurer as to the sufficiency of the proofs of the happening of the event on which the claim is by the Contract to accrue due and of the title of the claimant, and such question is the sole dispute between the parties, the insurer or the claimant may, before or after action is brought, upon at least ten clear days notice served on the other party or his solicitor, apply to a Judge of the Supreme Court in Chambers for a declaration as to the sufficiency of such proofs.

(3) The provisions of sub-sections 6, 7, 8 and 9 of section 48 of this Act relating to the obtaining of a declaration as to the presumption of death shall *mutatis mutandis* apply to an application provided for in the preceding sub-section.

(4) Where the insurance money or part thereof is payable to minors the insurer before paying the money may require reasonable proof of the number, names and ages of such minors.

APPOINTMENT OF TRUSTEES.

51. (1) The insured may, by the policy or by his will or by any writing under his hand, appoint a trustee or trustees of the money payable under the policy, and may from time to time revoke such appointment in like manner, and appoint a new trustee or new trustees; and make provision for the appointment of a new trustee or new trustees and for the investment of the moneys payable under the policy.

(2) In case of refusal or neglect by the trustee or trustees to act under the trust the insurance money payable to the person for whose benefit the trust was created who is not under disability may be paid directly to such person.

PAYMENT OF SHARES OF INFANTS, LUNATICS, ETC.

52. (1) If no trustees are named in the policy or appointed as mentioned in the preceding section to receive the shares to which infants or other persons who are under disability are entitled, or if the trustees are named but refuse or neglect to act, the shares of such infants or other persons under disability may be paid to the executors of the last will and testament of the insured or to a guardian or tutor or trustee of such infants or to a curator, committee or trustee of such other disqualified persons duly appointed by the laws of this province.

(3) When insurance money not exceeding two thousand dollars is payable to the wife and children, or to the children of the insured, and one or more of the children are infants, the Supreme Court or a Judge thereof may, if the insured is dead and if the widow of the insured is the mother of such infants, appoint such widow as their guardian with or without security, and such insurance money may be paid to her as such guardian.

(4) When it appears by letters of guardianship or other like document, relating to persons under disability, issued by a court in a foreign jurisdiction, or by a certificate of a Judge under the seal of such court, that it has been shown to the satisfaction of such court that the insured, at the maturity of the contract was domiciled or resident within its jurisdiction, and it also appears that security to the satisfaction of such court in respect of and for the due application and account of the money payable under the contract has been given by the guardian or other like officer appointed by such letters or document, the Supreme Court or a Judge thereof upon application for the appointment of such guardian or like officer as trustee under this section may dispense with the giving of security if it is also shown that the infants or other beneficiaries under disability reside within the jurisdiction of the foreign court, and that the trustee is a fit and proper person.

53. Where—

- (a) there are adverse claimants to the insurance money or any part thereof, or
- (b) there is no person competent to receive the share of an infant or other person incapable of giving a discharge or
- (c) the insurance money or any part thereof is payable to a person whose place of abode is unknown,

and the insurer admits the claim or any part thereof, he may at any time after the expiration of one month from the maturity of contract apply to the Supreme Court according to the practice of the Court for an order for the payment of the money into Court.

53a. Where the insurer does not within two months from the maturity of the contract, pay the insurance money to some person competent to receive the same under this Act or into the Supreme Court, the Court may, upon application of any person competent to receive the money, order that the insurance money, or any part thereof, be paid to the applicant or into Court or may make such other order as to the distribution of such money the Court may deem just, and full payment made in accordance with such order shall be deemed a sufficient discharge to the insurer.

53b. The Court may order the costs incurred upon or in connection with any application or order made under section 53a be paid out of the insurance money or by the insurer or otherwise as may seem just.

54. (1). The payment made to any benefited persons not disqualified from exercising their rights, to any trustees, or to any guardian, tutor, curator or committee, shall be a valid and sufficient discharge to the insurer for the insurance money so paid.
(2) The insurer shall not be bound to see to the investment of the money, or be liable for the subsequent misapplication thereof by anyone to whom the same has been paid pursuant to the provisions of this Act.

55. Subject to the express terms of the trust instrument (if any), the insurance money received by any trustee, guardian, tutor, curator or committee for minors or persons disqualified from exercising their rights, shall be invested by the parties receiving it in any security in which trustees under the law of the province may invest trust funds, with power, however, from time to time, to alter, vary and transpose the investments held.

56. (1) All or any part of the annual income arising from the investment of the insurance money may be applied towards the maintenance and education of the minor children, or towards the maintenance of the persons disqualified for any other reason than that of minority from exercising their rights, as the trustee, guardian, tutor, curator or committee may think fit.

(2) When all the annual income is not so applied, the surplus shall be capitalized and invested in the same manner as the insurance money received.

(3) It shall be lawful, should the trustee, tutor or guardian think fit, to advance the insurance money, or to dispose of the • investments and advance the insurance money, or to dispose of the investments and advance the proceeds to any minor child during his minority, for the maintenance, education or the settlement in marriage of such child.

PAYMENT TO FOREIGN REPRESENTATIVE.

57. Where under a contract made or by-law deemed to be made in the province, the insurance money is payable. to the representatives of a person, who at his death was domiciled or resident in a foreign jurisdiction and who died either testate or intestate, and the insurer has no notice of the appointment of a personal representative in the province, the money may after such death be paid to the personal representative appointed by the proper Court of the foreign jurisdiction as if such money were, by the terms of the contract, payable in such foreign jurisdiction.

REPEAL.

58. Chapter of the is hereby repealed.

APPENDIX G.

REPORT OF COMMITTEE SUBMITTING A UNIFORM CONDITIONAL SALES ACT WITH NOTES.

*To the Conference of Commissioners on
Uniformity of Legislation in Canada.*
GENTLEMEN, -

At the annual meeting of the Conference held in Ottawa last year a draft Act upon the above subject, which will be found at page 355 of the proceedings of The Canadian Bar Association for 1920, was referred to the Saskatchewan Commissioners to be re-drafted in the light of the discussion which had taken place at the meeting and to report with a model Act at the next session of the Conference. The Commissioners were further asked to consult the American Uniform Act upon the same subject in preparing their report. The Commissioners have, in accordance with their instructions, revised the draft measure, giving consideration to the American Act while doing so.

A very full analysis of the legislation in the various provinces upon conditional sales of chattels will be found appended to the report of a committee of the Bar Association upon the subject printed in the proceedings of the Association for 1916, at pages 223 to 241 inclusive. A few changes have been made in some of the provinces in the interval, but the report and analysis will still be found useful in considering the draft Act now submitted.

The American Uniform Act is an elaborate measure codifying the law upon the subject with which it deals. For the sake of a complete enumeration of the rights of the parties, provisions are inserted which are usually expressed in the contract itself or are necessarily implied from its terms.

Complete and excellent as the American Act is, it has not been considered necessary or desirable, in drafting a uniform measure for adoption in Canada, to take that Act as a model or to depart substantially from existing provincial legislation. At the same time reference has been made in the notes to the terms of that Act where such reference has been deemed advisable.

Respectfully submitted,
R. W. SHANNON,
On behalf of the Committee.

CHATTER....

An Act to make Uniform the Law respecting Conditional Sales of Goods..

(Assented to)

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of enacts follows:

SHORT TITLE.

I. This Act may be cited as *The Conditional Sales Act.*

INTERPRETATION.

2. In this Act, unless the context otherwise requires, the expression:

1. "Buyer " means the person who buys or hires the goods covered by a conditional sale, or any legal successor in interest of such person;

2. "Conditional sale" means (a) any contract for the -sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in him at a subsequent time upon payment of the whole or part of the price or the performance of any other condition; or (b) any contract for the hiring of goods by which the hirer contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the hirer shall become, or have the option of becoming, the owner of the goods upon full compliance with the terms of the contract;

3. "Goods" means all chattels personal other than things in action or money, and includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed. to be severed before sale, or under the contract of sale;

4. " Proper officer " means the officer with whom bills of sale and chattel Mortgages are registered or filed;

5. "Registration district " means the registration district for bills of sale and chattel mortgages; and

6. "Seller" means the person who sells or leases the goods covered. by a conditional sale, or any legal successor in interest of such person.

REQUISITES AS AGAINST CERTAIN PERSONS.

3. (1) Every provision in a conditional sale reserving property in the Feller after possession of the goods has been delivered to the buyer shall be void as against subsequent purchasers or mortgagees claiming from or under the buyer in good faith, for valuable consideration and without notice, and as against creditors of the buyer who have obtained a lien or charge upon the goods by judgment, execution or attachment, and the buyer shall, notwithstanding such provision, be deemed the owner of the goods, unless the requirements of this Act are complied with.

(2) Such provision shall be evidenced. by a writing signed, prior to or at the time of delivery, by the buyer or his agent, giving a description of the goods by which they may be readily and easily known and distinguished, and stating the amount unpaid of the purchase price or the terms and conditions of the hiring; and a true copy of such writing shall be filed, within twenty days after it has been signed, with the proper officer of the registration district in which the buyer resided at the time of the sale, or, in case his residence is outside the province, of the district where the goods are delivered.

(3) If the goods are delivered to a resident buyer in a registration district other than that in which he resides, such copy shall be filed in the district in which the delivery is made as well as in that of the buyer's residence.

(4) If the goods are after delivery removed by the buyer into another registration district, a true copy of such writing shall be filed in the district into which the goods are removed within sixty days after such removal.

(5) If the goods, having been delivered at a place outside this province are subsequently brought into the province by the buyer, such copy shall be filed in the registration district to which the goods are removed within sixty days from the date when such goods are brought into the district.

(6) In case the buyer is an incorporated company, the place where the head office, or its chief agency or place of business in the province, is situated shall be considered its residence.

(7) This section shall not apply to a contract for the sale to a railway company, street railway or interurban railway, of rolling stock if the contract or a copy of it is filed in the office of the Provincial Secretary within thirty days of its execution.

SALES TO TRADERS.

4. If the goods are delivered to a trader or other person and the seller expressly or impliedly consents that the buyer may resell them in the course of business, and such trader or other person resells the goods in the ordinary Course of his business, the property in and ownership of the goods shall pass to the purchasers notwithstanding that the provisions of this Act have been complied with.

DELIVERY OF COPY TO BUYER.

5. The seller shall deliver a copy of the writing to the buyer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so a judge of the county (or district) court of the county (or district) in which the buyer resided when the contract was made may, on summary application, make an order for the delivery of such copy.

INDEX BOOK.

G. The proper officer shall make an entry of every writing of which a copy is filed in his office under this Act in an index book to be kept for that purpose.

IMMATERIAL ERRORS.

7. An error of a clerical nature or in an immaterial or non-essential part of the copy of the writing, which does not mislead, shall not invalidate the filing or destroy the effect of it.

SELLER'S DUTY TO FURNISH PARTICULARS.

8. (1) The seller shall, within five days after the receipt of a request in writing from any person proposing to purchase the goods Or from any actual or intending creditor of the buyer, furnish particulars of the amount remaining due to him and the terms of payment, and in default he shall be liable on summary conviction to a penalty not exceeding \$50.

(2) If the request is by letter the person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter deposited in the post office within the prescribed time addressed to the person enquiring at his proper post office

address, or, where he has given his name and address, by the name and at the post office address so given.

NOTICE TO BE GIVEN OF SALE OR REMOVAL.

9. (1) Except for temporary purposes for a period of not more than thirty days, the buyer shall not remove the goods into another registration district unless he has, at least ten days before such removal, given the seller personally or by registered mail Written notice of the place to which the goods are to be removed and the approximate time of the intended removal.

(2) The buyer shall not, prior to complete performance of the contract, sell, mortgage or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage or otherwise dispose of same, has notified the seller in writing, personally or by registered mail, of the name and address of such person, not less than ten days before such sale, mortgage or other disposal.

(3) In case the buyer removes the goods or disposes of his interest in them contrary to the foregoing provisions of this section, the seller may retake possession of the goods and deal with them as in case of default in payment of all or part of the purchase price.

RETAKEING POSSESSION.

10. (1) Where the seller retakes possession of the goods pursuant to any condition in the contract, he shall retain them for twenty days, and the buyer may redeem the same within that period upon payment of the balance of the contract price, together with the actual costs and expenses of taking and keeping possession, or upon performance or tender of performance of the condition upon which the property in the goods is to vest in the buyer and payment of such costs and expenses.

(2) If the price of the goods exceeds \$30 and the seller intends to look to the buyer for any deficiency on a resale, the goods shall not be resold until after notice in writing of the intended sale has been given to the buyer.

(3) The notice may be served personally upon or left at the residence or last known place of abode in the province of the buyer at least five days before the gale, or may be sent by registered post at least seven days before the sale addressed to the buyer at his last known post office address.

(4) The notice may be given during the twenty days mentioned in sub-section (1)

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

MEMORANDUM OF SATISFACTION.

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

(2) If for ten days after receipt of such demand the seller fails to mail or deliver the required statement, he shall forfeit to the demandant the sum of \$10 and shall be liable for all damage suffered by the demandant in consequence of his default.

(3) Whom registration of such statement the proper officer with whom the copy of the writing evidencing the conditional sale agreement is filed under the provisions of section 3 shall enter satisfaction upon such copy.

GOODS AFFIXED TO REALTY.

12. (1) If the goods have been affixed to realty they shall remain subject to the rights of the seller as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other encumbrancer thereof shall have the right as against the seller to retain the goods upon payment of the amount owing on them.

(2) If the goods are in or upon premises with respect to which rent is in arrear, the landlord, or other person exercising a right of distress, may distrain the goods upon payment to the seller of the amount owing thereon, and. the landlord May add the amount so paid to his claim for the rent.

ASSIGNMENT.

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

EVIDENCE.

14. Copies of any instrument filed under this Act certified by the registration clerk shall be received as *prima facie* evidence of the contents of the original instrument and of its execution according to the purport of the copy. And the clerk's certificate shall also be *prima facie* evidence of the date and hour of filing.

FEES.

15. For services under this Act each registration clerk shall be entitled to the following fees:

1. For each registration, including stamping original or duplicate, if any, with registration stamp, _____ cents;
2. For searching each name, _____ cents;
3. For each certificate or abstract of search _____ cents;
4. For copies of documents, including certificate thereof, every 100 words, _____ cents.

COMING INTO FORCE.

16. This Act shall come into force on the _____ day of _____ 192 .

UNIFORM CONDITIONAL SALES ACT.

NOTES UPON THE SECTIONS.

The statutes covering conditional sales in the respective provinces are as follows:

Ontario. R. S. O. 1914, c. 136; amended by 1916, C. 24, s. 23.

Quebec. No Act.

New Brunswick, C. S. N. B. 1903, c. 143; amended by 1909, c. 31 and 1912, c. 30.

Nova Scotia. 1918, c. 11.

Prince Edward Island. 1896, c. 6.

Manitoba. R. S. M. 1913, c. 115; amended by 1915, c. 38.

Saskatchewan. R. S. S. 1920, c. 201.

Alberta. Consolidated Ordinances 1915, c. 44; amended by 1916, c. 3, s. 8; 1917, c. 3, s. 32; and 1920, c. 4, s. 8.

British Columbia. R. S. B. C. 1911, c. 203; amended by 1916, c. 56; and 1917, c. 55.

Section 1.

Short title. See R. S. O. 1914, c. 136, a. 1, and R. S. 8. 1.920, e. 201, s. 1.

Section 2 .

This definition of "conditional sale," taken in substance from the American uniform Act, includes contracts where the property in the goods is to pass to the buyer on part payment, as well as those in which it is to pass on the performance of any condition other than payment of the price. The former of these two classes of transactions is now provided for by the statutes of Ontario, Nova Scotia, New Brunswick and British Columbia. Both classes are covered in Alberta and Saskatchewan. The definition also covers agreements where the buyer has merely an option of becoming the owner, which were held in *Mason, v. Lindsay*, 4 O. I., E. 365, following *Helby v. Mathews* (1895), A. C., not to be within the Ontario statute of that date.

The definition of "seller" and " buyer" are derived from the same source.

The definition of "goods" here given is from the Imperial Sale of Goods Act which has, been copied in most of the Canadian provinces. This definition has been imported into the American uniform Act.

Section 3 (1).

This sub-section, following the, laws of Alberta and Saskatchewan, extends the protection of the Act to creditors by judgment, execution or attachment. Elsewhere in Canada only subsequent purchasers and mortgagees are considered, except where the goods are delivered to a trader to be re-sold by him in the course of business. The American uniform Act contains provisions similar to those of this sub-section.

Section 3 (2).

Ontario requires the "contract" to be in writing and a copy filed, as does the American uniform Act. The Nova Scotia Act says that "every hiring, lease, bailment or bargain . . . shall be evidenced by instrument or instruments in writing, etc.," and that a copy shall be filed. New Brunswick and British Columbia also require a copy of the writing evidencing the sale

or bailment to be filed. Saskatchewan and Alberta provide that the "sale or bailment With such agreement, proviso or condition" (for passing of the property) shall be in writing, that such writing or a copy thereof shall be registered, and that for registration purposes it shall be accompanied by an affidavit that the "written agreement annexed thereto truly sets forth the agreement entered into between the parties." In *Wenbourne v.*

J.I. Case Threshing Machine Co. (1916), 10 W. W. 11. 183, it was held by the. Supreme Court of Alberta, on appeal, that it is not necessary under the above language that all the terms of the agreement of sale, (or of hiring) shall be contained in the writing. In the west it is customary on sales of farm stock and other chattels to give lien notes which do-not contain the complete contract between the parties. For the protection of purchasers and others it should be sufficient that the provision retaining the property in the seller, together with the amount of his claim against the goods, appear on the record, and the section has been drawn accordingly.

The words "signed prior to or at the time of delivery" are not in the provincial Acts but are deemed necessary to complete the protection of innocent purchasers.

In Ontario and Prince Edward Island the time allowed for registration or filing is 10 days after the execution of the contract ; in Nova Scotia it is 10 days, in New Brunswick 15 days and in (Saskatchewan and Alberta 30 days from the time of delivery or the goods. It has been thought that 20 days after the writing is signed might fairly meet the requirements of all parts of the country, but where the conditions of settlement differ so widely it is probable that different provinces will continue to differ in the length of the periods prescribed.

Alberta, Saskatchewan and Nova Scotia require the instrument evidencing the sale to be accompanied by an affidavit; of good faith for registration purposes, the object being no doubt to prevent the register being incumbered with idle documents. The danger train this source is, however, so slight as to be negligible and the requirement of an affidavit has, therefore, been omitted.

Section, 3 (3).

The Ontario Act requires a true copy of the contract to be filed in " the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or

hiring." Where, however, delivery is made in another district, such a record does not seem to afford sufficient protection to innocent purchasers and others, as it is in the district where the goods are situated that persons dealing with the conditional vendee are most apt to be misled by his apparent ownership of the goods. The American uniform Act prescribes that the conditional sale contract or copy shall be filed in the registration district "in which the goods are first kept for use by the buyer after the sale." The place of delivery is, as a rule, that place and accordingly provision is here made, as in Saskatchewan, for a double record.

Section 3 (4).

Taken from the statutes of Alberta and Saskatchewan.

Section 3 (5).

There is at present no provision in any of the provinces with regard to goods the subject of a conditional sale made elsewhere being brought into the province. The nature of the ease, however, renders registration as desirable under such circumstances as it is in the ordinary case because subsequent purchasers and mortgagees are liable to be deceived.

Section 3 (6).

As the buyer may be an incorporated company, we must either have a provision of this kind, or else leave it to the courts to say what is the "residence" of such a company.

Section 3 (7).

A somewhat similar provision is found in the Ontario, Saskatchewan and Alberta Acts, but it is restricted to sales by incorporated companies to railways. The addition of the words "street railway or inter-urban railway" is taken from the American uniform Act.

Section 4.

A similar provision is now found in the Ontario Act, section 3, sub-sections (3) and (4).

Section 5.

Redrawn from sections in the Ontario, Nova Scotia, and New Brunswick Acts.

Section 6.

Ontario, section 5; New Brunswick, section 3; Nova Scotia, section 8 (4); British Columbia, section 34.

Section 7.

Ontario, section 6 ; New Brunswick, section 3 jn part.

Section 8.

Ontario, section 7; British Columbia, sections 30 and 31. New Brunswick and Nova Scotia provide that a statement shall be filed with the registrar within twenty days after demand from any creditor or interested person.

Section 9 (1).

Taken in substance from the American uniform Act. Ontario, British Columbia, Alberta, Nova Scotia and New Brunswick have no provision. Saskatchewan 3 (5) prohibits removal without any exception, unless on twenty days' notice.

Section 9 (2).

Taken in substance froth American uniform Act; none of the Canadian provinces have a similar provision.

Section 9 (3).

The same remarks apply here.

Section 10 (1).

Ontario, section 8 (1) ; British Columbia, section 32; Saskatchewan, section 5; Alberta, section 7; *New Brunswick*, section 6. "Pursuant to any condition in the contract." Ontario, British Columbia, Nova Scotia and New Brunswick use the expression "for breach of condition." Saskatchewan and Alberta say " In case the seller shall retake possession."

Section 10 (2) and (3).

Ontario, section 8 (2) and (3), omitting the words "or his successor in interest" which are not required in view of the definitions given. British Columbia, section 33 in part, omitting the same words. Saskatchewan, section 6 in part. In Saskatchewan eight days notice by personal service or ten days by registered letter is required. Alberta, section 8 in part. New Brunswick, section 7 in part. In Nova Scotia, section 8 (8) and (9), the goods must be retained for three months. The period of notice is 20 days by personal service, or 22 days by registered mail.

Section 10 (4).

Ontario, section 8 (4) ; British Columbia, section 33 in part ; Saskatchewan, section 6 in. part; Alberta, section 8 in part ; New Brunswick, section 7 in part.

Section 10 (5).

Ontario, section 8 (5).

It has been objected to the provisions of section 10 that they practically compel the seller to sell by public auction, since a sale to a private purchaser can only be made, as a rule, when the opportunity occurs and when there is no time for giving notice. In the majority of cases, however, a better price can be obtained by a private sale. To meet this objection it has been suggested that the notice in writing should be notice of seller's "intention to sell" and not "of the intended sale." Or, sub-section (5) might be omitted, thus allowing the parties to make another arrangement.

The American uniform Act contains elaborate provisions upon this subject:

(a) The seller is allowed, at his option, to give not less than 20 nor more than 40 days notice of his intention to retake possession and, on default continuing, may at the end of the period retake the goods and hold them without any right of redemption in the buyer.

(b) If 110 such notice is given the seller may retake the goods and hold them for 10 days, subject to redemption.

(c) In the latter case if the goods are not redeemed and the buyer has paid at least 50 per cent of the price the seller must sell them at public auction but may himself bid at the sale.

(d) If the buyer has paid less than 50 per cent of the price, he may, by written notice, require a sale by public auction. In the absence of notice the seller may voluntarily resell for account of the buyer.

(e) In all cases of resale the seller may recover any deficiency from the buyer, while the buyer is entitled to any surplus remaining.

(f) Where there is no resale within the period limited, the seller may retain the goods without accounting to the buyer and the buyer is discharged from all obligations under the contract.

Section 11 (1).

Similar provisions are to be found in Saskatchewan, section 4, and Alberta, section 6% British Columbia, Ontario, Nova Scotia and New Brunswick have no provision.

Section 11 (3).

See British Columbia, 1917, c. 55, s. 2.

Section 12 (1).

Ontario, section 9 ; British Columbia, section 29; Saskatchewan, section 12; Alberta, section 4; New Brunswick, section 8; Nova Scotia, section 8 (10).

Section 12 (2).

Ontario, section 9a (1916, c. 24, s. 23). No provision in other provinces.

Section. 13.

Saskatchewan, section 13.

Section 14.

Saskatchewan, section 7; Alberta, section 9; Ontario, British Columbia, Nova Scotia and New Brunswick no provision.

Section 15.

Saskatchewan, section 8.

APPENDIX H.**REPORT ON PROVINCIAL LAWS RELATING TO THE
PROTECTION AND PROPERTY RIGHTS OF MARRIED
WOMEN.**

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

The Conference at its annual meeting in 1920 referred to the British Columbia Commissioners the matter of the laws of the several provinces relating to the protection and property rights of married women, with a request that the commissioners investigate these laws and report thereon.

In compliance with this request the commissioners have made a comparative analysis of the Statutes in force in the several provinces relating to the following subjects:—

Married Women's Property;
Dower;
Guardianship and Custody of Infants;
Adoption of Children;
Deserted Wives' Maintenance;
Relief of Widows of Testators; and
Mothers' Allowances.

A memorandum has been prepared to accompany this report, containing a statement in condensed form of such of the provisions of these statutes as were thought likely to be of interest to the Conference.

In a number of instances the Statutes of Quebec were not available for examination, and are not covered by the memorandum.

The memorandum does not include the statutes relating to the devolution of estates of intestates, as this subject has already been fully dealt with in the very able report presented to the Conference in 1920 by the Ontario Commissioners. For a similar reason brief reference only has been made to the subject of dower, which subject is also included in the list of Acts referred to the Alberta Commissioners for report in connection with the subject of wills.

A number of Acts are in force in the several provinces which-incidentally relate to the protection and rights of married women, but as to which it has not been considered necessary for

the purposes of the present report to set out a detailed statement in the memorandum. As an example of these may be mentioned the " Families Compensation Act " (Revised Statutes of British Columbia, 1911, c. 82), under which, where an action is maintainable in respect of a wrongful act or default causing death, the wife is entitled to benefit by the amount recovered. This Act (Lord Campbell's Act) is found under varying titles in the statutes of practically all the provinces. Another statutory provision which may be mentioned as common to most of the provinces is found in the Acts relating to life insurance, by which insurance on the life of a husband may be effected or transferred for the benefit of his wife, and secured to her as against the husband's estate or his creditors.

In the course of the preparation of this report copies of the accompanying memorandum in galley proof form were submitted to the Local Secretary of the conference in each province, or to some person designated by him, with a request for revision of the statements contained as to the laws of that province, and for suggestions generally. Replies have been received from the local secretaries for Nova Scotia, Prince Edward Island, and Saskatchewan; and the commissioners in charge of the preparation of the report desire to acknowledge their indebtedness to these gentlemen for the criticism and suggestions offered.

Respectfully submitted.

A. V. PINEO,

For British Columbia Commissioners.

Victoria, August 25th, 1921.

MEMORANDUM.

ACCOMPANYING REPORT ON PROVINCIAL LAWS RELATING TO
THE PROTECTION AND PROPERTY RIGHTS OF MARRIED
WOMEN.

MARRIED WOMEN'S PROPERTY.

ALBERTA.

(Con. Ord. N. W. T. 1898, c. 47; Stats. of Alta. 1906, c. 19).

In respect of personal property a married woman is under no disabilities by reason of coverture, but has all the rights and is subject to all the liabilities of a *feme sole*.

In respect of land acquired *by* her after January 1st, 1887, a married woman has all the rights and is subject to all the liabilities of a *feme sole*, and may in all respects deal with land as if she were unmarried.

A wife may make a valid transfer of land to her husband, and a husband may make a valid transfer to his wife, without the intervention of a trustee.

Where land is transferred to a man and his wife they take according to the tenor of the transfer, and do not take by entireties unless it is so expressed in the transfer.

BRITISH COLUMBIA.

("Married Women's Property Act," R. S. B. C. 1911, e. 152; Stats. of B. C. 1915, c. 41; " Land Registry Act," Stats of B. C. 1921, e. 26, ss. 21, 23, 70 (3).)

For purposes of the present investigation, the provisions of these statutes may be conveniently summarized under the following items:—

- (a) A married woman may acquire, hold, and dispose, by will Or otherwise, of real or personal property *as* her separate property as if she were a *feme sole*, without the intervention of any trustee;
- (b) A married woman may enter into contracts, sue and be sued, as if she were a *feme sole*. Her contracts are made binding on all separate property which she is then possessed of or entitled to, and are also made enforceable against all property which she may thereafter while discovert be possessed of or entitled to, except property which she is restrained from anticipating;

- (C) A married woman is entitled to hold as her separate property and dispose of all real and personal property belonging to her at marriage, or acquired or devolving upon her after marriage, including earnings and property acquired by her in any employment or in any business or separately from her husband, or by the exercise of any literary, artistic, or scientific skill;
- A married woman has in her own name the same remedies against all persons, including her husband, for protection of her separate property as if it belonged to her as a *femme sole*;
- A married woman is liable for her antenuptial debts and torts, and her husband's liability therefor is limited to the extent of property acquired from or through his wife;
- The husband of a married woman may make a valid conveyance of property to her without the intervention of a trustee, but the Statute contains no corresponding provision as to conveyances from a wife to her husband;
- A married woman as executrix, administrator, or trustee may sue and be sued, transfer securities, and convey land without the concurrence of her husband;
- The will of a married woman made during coverture is not affected by the death of her husband;
- Valid conveyances of real property acquired under will or deed and transfers of personal securities may be made by a married woman without the consent or concurrence of her husband;
- A married woman having a decree for alimony against her husband, or who lives apart from him for cause, or whose husband is a lunatic or undergoing imprisonment, or whose husband fails to provide for the support of his family or has never been in the province, or who is deserted or abandoned by her husband, shall have as her separate property her own earnings and those of her minor children in her custody. No protection order is required from any Court to give effect to this provision;
- (~~k~~) Disputes between husband and wife as to title or possession of property may lie determined by a Ridge of the Supreme Court on application in a summary way;
- (l) A married woman is presumed a tenant in common with equal interest to her husband in respect of land

- conveyed to them, unless a contrary intention appears in the instrument of conveyance;
- (m) A married woman may appoint her husband as her attorney.

MANITOBA.

(" The Married Women's Property Act," R. S. Man. 1913, c. 123.)

This statute contains provisions similar to those of the British Columbia Statutes enumerated above under items (a), (b), (c), (d), (e) and (g). The provision of British Columbia item (f) is enlarged to cover conveyances from a wife to her husband. Provisions having an effect similar to British Columbia item (h) are found in "The Manitoba Wills Act" (R. S. Man. 1913, c. 204, ss. 15-17). Provisions similar to British Columbia item (j) are available to a married woman upon her obtaining a protection order from a Judge of the County Court.

The statute contains no provisions similar to British Columbia items (k), (l), or (m).

The provisions of " The Married Women's Property Act " are now made subject to the provisions of " The Dower Act"; and when the married woman owns the homestead as defined in the latter Act, her powers of disposition of that portion of her property are subject to her husband's consent, while she is given the like control over his disposition of the homestead when it is owned by him (Stats. of Man. 1919, cc. 26, 115).

NEW BRUNSWICK.

("The Married Women's Property Act," Con. Stats. of N. B. 1903, c. 78; Stats. of N. B. 1906, c. 9; 1916, c. 29; "The Registry Act," Stats. of N. B. 1920, c. 6, s. 60; "The Property Act," Con. Stats. of N. B. 1903, e. 152, s. 22; Con. Stats. of N. B. 1903, c. 160, as, 12-14, 28).

Provisions are found similar to those of the British Columbia Statutes enumerated above under items (a), (b), (e), (d), (e), (g), (h), and (k). There is no express provision in " The Married Women's Property Act " as to conveyances between husband and wife, but "The Property Act" contains the provision of the "Conveyancing and Law of Property Act" (Imp. 44 & 45 V., c. 41, s. 50) as to conveyance of freehold land by either to the other. It is not necessary for the husband to join in the transfers made by his wife of her personal securities, but

no express provision is made as to transfers of her real property. The separate acknowledgment of a married woman to her deed is required before it can be registered. Provisions similar to British Columbia item (*j*) are available to a married woman upon her obtaining a protection order from a Judge of the County Court. "The Married Women's Property Act" is expressly declared not to affect the husband's right to curtesy. The consent of her husband is not necessary to the validity of a will made by a married woman,

No provisions are found similar to British Columbia items (*l*) or (*m*).

NOVA SCOTIA.

("The Married Women's Property Act," R. S. N. S. 1900, c. 112; 1914, c 30; " The Married Women's Deeds Act," R. S. N. S. 1900, c. 113; 1906, c. 52; 1908, c. 49; 1910, c. 17, s. 12; 1913, c. 35; 1915, cc. 23, 24; R S. N. S. 1900, c. 136, s. 9; " The Wills Act," R. S. N. S. 1900, c. 139, ss, 15, 19, 20; " The Trustee Act," R. S. N. S. 1900, c. 151, s. 17.

Provisions are found similar to those of the British Columbia Statutes enumerated above under items (*a*), (*b*), (*c*), (*d*), (*a*), (*g*), (*h*), and (*7v*). The general Statute dealing with the transfer of property contains section 50 of the "Conveyancing and Law of Property Act" (Imp.) relating to the conveyance of freehold land between wives and husbands. The concurrence of the husband is necessary to the validity of a married woman's deed, and her separate acknowledgment to its execution is also required. Freeholds vested in a married woman as a bare trustee may be conveyed as if she were a *feme sole*. The concurrence of her husband is not necessary as to transfers or personal securities made by a married woman. Provisions similar to British Columbia item (*j*) are available to a married woman upon her obtaining a protection order from a Judge of the Supreme Court. The filing in the Registry of Deeds of a special certificate is required where a married woman proposes to carry on business separately from her husband. The will of a married woman by which her husband takes a greater interest in her property than he would be entitled to in case of intestacy is invalid unless executed when her husband is not present, and is declared by her to be executed of her own free will.

No provisions are found similar to British Columbia items (*l*) or (*m*).

ONTARIO.

("The Married Women's Property Act," R. S. Ont. 1914, c. 149; "The Conveyancing and Law Property Act," *id.* c. 109, ss. 13, 40; "The Wills Act," c. 120, ss. 21-23; "The Married Woman's Conveyances Act," *id.* c. 150, ss. 3, 4 (1) (2), 10 (1) (4); "The Land Titles Act," *id.* c. 126, s. 103).

Provisions are found similar to those of the British Columbia Statutes enumerated above under items (a), (b), (c), (d), (e), (g), (h), (7c), and (l). The general statute dealing with the transfer of property contains section 50 of the "Conveyancing and Law of Property Act" (Imp.) relating to conveyances between wives and husbands, and extends the application of the section to all property, real and personal. Freeholds vested in a married woman as a bare trustee may be conveyed as if she were a *feme sole*, and without her husband joining in the conveyance. The concurrence of her husband is not necessary as to transfers of personal securities by a married woman, but a consideration of the provisions of "The Married Woman's Conveyances Act" and "The Land Titles Act" cited above leads to the inference that in some cases a married woman may validly execute a deed of real property without her husband's concurrence, while in other cases she cannot. Section 6 (4) of "The Married Women's Property Act" provides that nothing therein contained shall prejudice the right of the husband as tenant by the curtesy in any real estate of the wife which she has not disposed of *inter vivos* or by will. Provisions similar to British Columbia item (j) are available to a married woman upon her obtaining a protection order from a Police Magistrate or a Judge of a Division Court.

No provision is found similar to British Columbia item (m).

PRINCE EDWARD ISLAND.

("Married Women's Property Act," Stats. of P. E. I. 1903, c. 9; 1908, c. 5).

This Statute contains similar provisions to those of the British Columbia Statutes enumerated above under items (a.), (b), (c), (d), (6), (g), (h), and (k). The concurrence of her husband is not necessary as to transfers of personal securities by a married woman, but no express provision is made as to her conveyances of real property. Provisions similar to British Columbia item (j) are available to a married woman upon her

obtaining a protection order from a Judge of the Supreme Court or a Judge in Equity.

No provisions are found similar to British Columbia items (f) (l) or (m)

QUEBEC.

(Statutes not examined).

SASKATCHEWAN.

(" The Married Woman's Property Act," R. S. Sask. 1920, c. 153; "The Wills Act," *id.* c. 74, ss. 5, 24 (2); " The Land Titles Act," *id.* c. 67, as. 201, 202).

Provisions are found similar to those of the British Columbia Statutes enumerated above under items (d), (e), (g), (h), (k), and (l). A corresponding section to British Columbia item (a) expressly empowers the married woman to acquire and dispose " without her husband's consent " of real and personal property whenever acquired, and provides that in respect of same she shall be under no disabilities heretofore existing by reason of her coverture," and she may in all respects deal with real and personal property as if she were a *feme sole*. The expression "separate property" is not used. This section thus covers in extended form the provisions mentioned in British Columbia item (i). " The Wills Act" also provides that a married woman may make a will without her husband's consent, and thus dispose of real and personal property as if she were a *feme sole*. A married woman is declared by "The Married Woman's Property Act" to be capable of entering into and rendering herself liable on contract as if she were a *feme sole*, no mention being made as to binding her "separate property." All property standing in the sole name of a married woman is deemed to be her property unless the contrary is shown., All earnings of a married woman and profits from any business carried on separately from her husband or from the exercise of literary, artistic, or scientific skill are free from the debts or disposition of her husband, and may be disposed of without his consent. "The Land Titles Act" expressly provides that valid transfers of land may be made by a man to his wife and by a woman to her husband. Provisions similar to British Columbia item (j) are available to a married woman upon her obtaining a protection order from a Judge of a District Court.

No provision is found similar to British Columbia item (m).

DOWER.

BRITISH COLUMBIA.

("Dower Act," R. S. B. C. 1911, c. 68).

The common law right of dower has been materially limited by this Act, Which follows the English Statute (3 & 4 William

IVth, c. 105), and enables the husband to deprive his wife of dower by deed disposing of his land or declaring that she shall not be entitled to dower in it. The widow's right to dower is also made subject to any conditions or restrictions declared by the husband's will.

NEW BRUNSWICK, NOVA SCOTIA, ONTARIO, AND PRINCE EDWARD ISLAND.

The law of dower as existing in these provinces for many years does not follow the English Statute. The husband is not enabled to deprive his wife of her common law right of dower by conveying away his land or in any way without her consent. If he seeks in his will to substitute other provisions in lieu of dower, the widow may elect between the provisions so made and her dower.

ALBERTA, MANITOBA, AND SASKATCHEWAN,

The common law right of dower does not exist in these provinces.

By recent enactments in Alberta (Stats. of Alta. 1917, c. 14) and Manitoba (Stats. of Man. 1919, c. 26) a so-called "Dower Act" has been passed. While the title of these Acts gives the impression that dower as understood at common law has been introduced, the rights created are entirely different from dower. The main provisions in these Acts are:—

- (a) The widow is given a life estate in the homestead (home dwelling and the premises connected therewith) of her deceased husband;
- (b) The husband cannot sell or encumber the homestead without the consent in writing or release of his wife;
- (c) Any disposition by will of the homestead or distribution in case of intestacy is subject and postponed to the estate for life of the widow.

The Manitoba Act, in addition to the wife's life estate in her husband's homestead, makes special provisions for her relief

where the husband has left a will giving her less than one-third of his estate. This provision is noted below under the heading "Relief of Widows of Testators." Where the married woman owns the homestead the Manitoba Act gives the husband the same interest therein and in her estate generally as is given by the Act to wives.

"The Homestead Act" of Saskatchewan (R. S. Sask. 1920, c. 69) gives protection to the widow in respect of her husband's homestead somewhat similar to that afforded by the "Dower" Acts of Alberta and Manitoba. Under this Act the widow is protected in the use and enjoyment of the homestead so long as it is necessary for the maintenance and support of herself or her children.

The "Homestead Act" of British Columbia (It. S. B. C. 1911, c. 100) gives the widow a similar protection to that afforded by the Saskatchewan Act, but it applies only in cases where the husband has formally registered the homestead as such in the manner prescribed in the Act.

PRINCE EDWARD ISLAND AND QUEBEC.

(Statutes not examined).

GUARDIANSHIP AND CUSTODY OF INFANTS.

ALBERTA.

("The Infants Act," Stats. of Alta. 1913, 2nd Sess., c. 13; 1920, c. 10; "The Marriage Ordinance," N. W. T. Con. Ord. 1898, c. 46; Stats. of Alta. 1916, e. 3, s. 20).

The father and mother of an infant are joint guardians, and the father possesses no right or control over person, education, and conduct of infant that is not possessed by the Mother. The guardianship rights of the mother as a surviving parent are the same as those of the father.

The father and mother have like rights of application to the Court for custody of their infant children.

The consent of both parents is required to the marriage of a child under 18 years of age, and the consent of the father or the mother where the children is between the ages of 18 and 21 years.

BRITISH COLUMBIA.

("Equal Guardianship of Infants Act," Stats. of B. C. 1917, c. 27; 1919, c. 31; " Infants Act," R. S. B. C. 1911, c. 107, ss, 15, 16; "Marriage Act," R. S. B. C. 1911, e. 151, s. 1§; Stats. of B. C. 1919, c. 52, s. 2).

All disabilities of married women as to guardianship are removed, and the husband and wife are joint guardians of their minor children with equal rights, powers and duties. The husband and wife have equal rights of appointing a guardian by deed or will, and of applying to the Court for the custody of their children. They are jointly and severally liable for the support of their minor children.

A parent having the care or charge of an infant may by indenture bind the infant as apprentice, but the approbation of two Justices of the Peace is required where the mother exercises this right.

The consent of both parents is required to the marriage of a child under the age of 21 years.

MANITOBA.

("The Infants Act," R. S. Man. 1913, e. 94, ss. 4-8, 22, 32; "The Married Women's Property Act," R. S. Man. 1913, c.122, s. 19; "The Marriage Act," R. S. Man. 1913, c. 122, s. 15).

"Any parent" having the care or charge of a minor may by writing appoint a guardian. The right of appointing a guardian where the father is dead is vested in the Surrogate Court, which may appoint the mother guardian notwithstanding the testamentary disposition of the father to the contrary. A testamentary appointment of a guardian by the mother requires an order of the Court to give it effect.

The custody and control of children is vested in the father, but on petition of the mother the Court may give her access or sole control of any child. Provisions as to apprenticing of infants are similar to the British Columbia Statute.

A married woman is made subject to the same liability as a husband for the maintenance of her children, but this provision does not relieve her husband from the liability imposed upon him by law to maintain her children.

The consent of the mother to the marriage of an infant is required only when the father is dead.

NEW BRUNSWICK.

(No Statute defining parents' rights as to guardianship.)

A mother may apply to the Court for access to or custody of any infant, (C. S. N. B. 1903, c. 112, s. 196).

A. mother may apprentice her minor children in case the father is dead or incompetent *id. c. 83*).

The consent of the " father, mother, or guardian " is required to the marriage of an infant under the age of 18 years (Stats. of N. B. 1917, c. 23, s. 9).

NOVASCOTIA.

(R. S. N. S. 1900, cc. 115, 117, 121; " The Solemnization ,of Marriage Act," *id. e. 111, s. 11*; " The Married. Woman's Property Act," *id. c. 112, 6. 29*).

The father of an infant may by instrument appoint a guardian, while the mother may only do so if the father is dead. On the death of the father the mother becomes guardian, either alone or jointly with any guardian appointed by the father. Power is given the Probate Court to appoint the father guardian of the estate of an infant, but this provision does not extend to the mother. Agreements made before marriage as to the religion in which the children of the intended marriage shall be educated are made binding on the husband and wife after marriage. A mother may apply to the Supreme Court for access to or custody of an infant, and her wishes as well as those of the father are to be considered.

A mother may bind her infant children as apprentices or servants if the father is dead, insane, absent or incompetent.

The consent of the mother to the marriage of an infant is required only when the father is dead.

ONTARIO.

(" The Infants Act," R.S. Ont. 1914, c. 153, sc. 2, 3, 26, 28;

"The Apprentices and Minors Act," *id. c. 147*; " The Marriage Act," *id, e. 148, s. 15*).

The provisions as to guardianship, access, custody, and consent to marriage of infants are similar to the Nova Scotia Statute. Provisions as to apprenticeship of infants are similar to the British Columbia Statute.

PRINCE EDWARD ISLAND.

(Stats. of P. E. I. 1916, c. 6).

There is no Statute vesting in the mother any rights as to guardianship, access, custody, apprenticeship, or consent to the marriage of infants.

Provision is made that "the parent" may by agreement in writing assign all rights over an infant to a third person and thus effect a binding transfer of guardianship. Presumably this provision applies only to the father, if living, as entitled at common law to the custody of the infant.

QUEBEC.

(Apparently no Statute).

SASKATCHEWAN.

("The Infants Act," B. S. Sask. 1920, c. 155; " The Children's Protection Act," *id*, c. 192, s. 16; " The Marriage Act," *id*, c. 162, 8. 11).

The mother is constituted sole guardian of her infant child on the death of the father until the infant attains the age of years, and thereafter sole guardian unless a guardian has been appointed by the father, in which case she becomes joint guardian with the guardian so appointed. The mother may by deed or will appoint a guardian, and where both parents have appointed guardians they shall act jointly. The mother may by will provisionally nominate a guardian to act jointly with the father after her death, and the Court, upon it being shown that the father is unfit to be sole guardian, may confirm the appointment.

The mother is given the custody of her infant until the age of 14 years is attained, after which, or on the death of the mother, the custody belongs to the father. The mother and father have equal rights of applying to the Court for an order of access or custody. The surviving parent may by deed or will dispose of the custody of an infant. Provision is made that the surrender of custody of an infant to a children's home shall only take effect where both the father and mother, if living, execute the instrument of surrender.

The statute expressly provides that the law as to the authority of the father in respect of the religious faith in which his child shall be educated is not changed.

No provision is made as to the apprenticing of infants by the mother.

Consent to the marriage of an infant is required to be given by the father, or, if he is dead, by the mother.

ADOPTION OF CHILDREN.

ALBERTA.

(" The Infants Act," Stats. of Alta. 1913, 2nd Sess., c. 13, ss. 27-33).

Any adult person or a husband and wife jointly may adopt an infant by obtaining: leave from the Supreme Court. The interest of both natural parents is to be considered by the Court, and their consent is required.

BRITISH COLUMBIA

(" Adoption Act," Stats. of B. C. 1920, e. 2; 1.921, c. 1).

A wife, either separately or together with her husband, may adopt an infant by obtaining leave from the Supreme Court. The consent of a wife is made a condition of the adoption of an infant by her husband. Provisions as to interest and consent of natural parents are similar to the Alberta Statute.

MANITOBA.

(No Statute).

NEW BRUNSWICK.

(" The Supreme Court in Equity Act," Con. Stats. of N. B. 1903, e. 112, ss. 240-246).

Any unmarried person or a husband and wife jointly may adopt an infant. Other provisions are similar to Alberta statute.

NOVASCOTIA.

(R. S. N. S. 1900, c. 122; .Stats. of N. S. 1901, c. 17).

Provisions similar to New Brunswick Statute.

ONTARIO.

(" The Adoption Act,1921.")

Both husband and wife are required to join in the application for an order of adoption, and the child upon adoption

becomes in law the child of both. Provisions as to interest and consent of natural parents are similar to the Alberta Statute.

PRINCE EDWARD ISLAND.

(Stats. of P. E. I. 1916, c. 6).

Although this statute is intituled "An Act regarding the Adoption of Children," its provisions extend merely to the transfer of guardianship during minority.

QUEBEC.

(No Statute).

SASKATCHEWAN.

(No Statute).

DESERTED WIVES' MAINTENANCE.

ALBERTA.

(" The Maintenance Order Act," Stats. of Alta. 1921, c. 13). Under this Act a husband is primarily liable for the maintenance of his wife who is unable to maintain herself, and a similar liability is imposed on a wife for the maintenance of her husband. Both are liable for the maintenance of their children under the age of 16 years, but the liability of the mother does not arise unless the father is unable to provide maintenance. Provision is made for the obtaining and enforcement of a maintenance order where the person liable to maintain a child fails to do so, but no provision is made for enforcement of the liability of a husband or wife to maintain the other.

BRITISH COLUMBIA.

("Deserted Wives' Maintenance Act," Stats. of B. C. 1919, c. 19).

Protection is extended to a wife who is deserted (*i.e.*, living apart from her husband because of his assaults or cruelty or neglect to supply her with necessaries) or who is destitute (*i.e.*,

in necessitous circumstances because of her husband's neglect, although she may be living with him). Upon the complaint of the wife, or by a municipality, or the Attorney-General on her behalf to a Magistrate, an order may be made for the husband to pay the wife a weekly sum, not exceeding \$20, for her maintenance and the maintenance of their infant children. The duty of the wife and husband to contribute to the support of the infant children is equal. The adultery of the wife is a bar to the application of the Act. Orders under the Act are enforceable by registration against lands, by attachment of debts of the husband, and by distraint and imprisonment. Complaint under the Act may be lodged with the Magistrate where the husband resides or where the cause of complaint arose, or, if the husband resides out of the province, the complaint may be lodged where the wife resides.

MANITOBA.

(" The Wives' and Children's Maintenance and Protection Act," R. S. Man. 1913, c. .06; Stats. of Man. 1919, c. 117).

This statute contains similar provisions to those of the British Columbia Statute, except :--

- (a) The order may provide that the wife is no longer bound to cohabit with her husband, and may provide for the custody of all children under the age of 16 years;
- (b) No maximum is fixed as to sums payable;
- (c) The application is limited to the place where the cause of complaint arose;
- (d) In certain cases the application can be made by the wife only, and in other cases by any person or charitable society acting on her behalf ;
- (e) No provision is made for the enforcement of orders by registration against lands- or by attachment of debts; but the husband may be required in certain cases to give security for the fulfilment of the order;
- (f) The wife is given a similar right of application for an order against a guardian or person having control. of any child under the age of 16 years for the support of the child;
- (g) Express provision is made that every man shall be liable to support and educate his wife's infant children up to the age of 16 years.

ONTARIO.

("The Deserted Wives' Maintenance Act," R. S. O. Ont, 1914, c. 152; Stats. of Ont. 1920, c. 44).

This statute contains similar provisions to those of the British Columbia Statute, except:—

- (a) No protection is extended to a destitute wife who is not living apart from her husband
- (b) The application can be made only by the wife;
- (c) No provision is made for the enforcement of orders by registration against lands or by attachment of debts.

SASKATCHEWAN.

("The Deserted Wives' Maintenance Act," R. S. Sask. 1920, c. 154).

This statute contains similar provisions to those of the Ontario Statute.

NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND AND QUEBEC.

(No Statute dealing with this subject).

RELIEF OF WIDOWS OF TESTATORS,

ALBERTA.

("The Married Women's Relief Act," Stats. of Alta. 1910, 2nd Sess., c. 18; 1916, c. 3, s. 25).

Where by the will of a testator the widow receives less than if he had died intestate, the widow may apply to the Court for relief. The Court is empowered to make such allowance to the applicant out of the estate of her husband disposed of by will "as may be just and equitable in the circumstances." Allowances may be by way of periodical payments lump sum, of conveyance of property.

BRITISH COLUMBIA.

("Testator's Family Maintenance Act," Stats. of B. C. 1920, c. 94).

Where in the opinion of the Judge before whom application is made adequate provision for the proper maintenance of a testator's wife, husband, or children is not made in the will, the

Judge may, at his discretion, order that such provision as he thinks "adequate, just and equitable " in the circumstances be made out of the testator's estate for such wife, husband, or children. The provision may consist of a lump sum or periodical payment. Application may be made by or on behalf of any person entitled.

MANITOBA.

(" The Dower Act," Stats. of Man. 1919, e. 26, ss. 13, 14).

Where the testator has not provided for his widow to the value of at least one-third of his net real and personal property, the widow is entitled to receive from the executor such share of the estate as will, together with the provision otherwise made for her by the testator, equal in value one-third of the net estate. Exceptions to the application of this provision are made in the case of larger estates; *e.g.*, where the testator has provided an annual income of not less than \$6,000 for his wife during her life, or has given her property of the value of not less than \$100,000.

NEW BRUNSWICK, NOVA SCOTIA, ONTARIO, PRINCE EDWARD ISLAND, QUEBEC, AND SASKATCHEWAN,

(No Statute dealing with this subject).

M OTHERS' ALLOWANCES.

ALBERTA.

(" The Mothers' Allowance Act," Stats. of Alta. 1919, c. 6).

The application of the Act to married women is limited to the case where the husband is committed to a hospital for insane. The Act applies in respect of boys under the age of 15 years and girls tinder the age of 16 years while in the custody of a married woman who is unable to take proper care of them. Provision is made for the payment to the married woman of such sums in weekly installments as may seem fit and necessary. Application for allowances may be made by the married woman, or the superintendent in charge of the administration of the Act may act on his own initiative without any application being made.

BRITISH COLUMBIA.

(" Mothers' Pensions Act," Stats. of B. C. 1920, c. 61; 1921, c. 43)

The application of the Act extends to married women where:

- (a) The husband. became an inmate of a penitentiary or hospital for insane while domiciled in the province;
- (b) The husband is unable to support his family by reason of sickness or accident while domiciled in the province.
- (c) The husband deserted her while domiciled in the province.

The application of the Act is limited to mothers who are:

- (a) British subjects;
- (b) Residents of the province for eighteen months;
- (c) In custody of a child under the age of 16 years, and without having the necessary means with which to support the child.

The maximum allowance is fixed at \$42.50 per month to the mother and one child, with \$7.50 for each additional child under the age of 16 years. The application for allowance is to be made by the mother.

MANITOBA.

(" The Mothers' Allowance Act, 1916," Stats. of Man. 1916, c. 69; 1917, c. 56; 1918, c. 4; 1920, c. 80; 1921, e. 42).

The Act applies to every married woman who is a mother of a neglected or dependent child within the province, and whose husband is an inmate of a, penal institution or insane asylum, or, because of physical disability, is unable to support his family. No age limit is fixed as to the child. Payments of allowances are made in accordance with regulations to be made by the Lieutenant-Governor in Council.

NEW BRUNSWICK.

(No Statute).

NOVA SCOTIA.

(No Statute).

ONTARIO.

(" The Mothers' Allowance Act," Stats. of Ont. 1920, c. 89).

The application of the Act to married women is limited to cases where :-

- (a) The husband is an inmate of a hospital for insane in Canada, or is permanently disabled and incapable of contributing to the support of his family, or has deserted her or has not been heard of for five years;
- (h) The wife was resident in Canada at the time of the disability of her husband; and for three years prior to application for allowance;
- (e) The wife is a British subject;
- (d) The wife has resided with, two or more of her own children under the age of 14 years and has not adequate means to care for them

Power to fix maximum and minimum allowances is vested in. the Commission which has charge of the administration of the Act.

PRINCE EDWARD ISLAND.

(No Statute).

QUEBEC

(No Statute).

SASKATCHEWAN.

(" The Mothers' Pensions Act," R. S. ,Sask. 1920, c. 189). The Act applies to married Women where the husband is an inmate of an institution for incurables or for feeble-minded or insane, or is permanently incapacitated by incurable disease, feebleness of mind, or insanity. The amounts of allowances to be paid is left to regulations to lie made by the Lieutenant Governor in Council.

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